

A Major Step Towards Reform: The DEA Recommends Rescheduling Cannabis

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By Darren Grady on May 1, 2024

In a recent historic announcement, the U.S. Drug Enforcement Administration has determined that cannabis, which is currently categorized as a Schedule I drug under the Controlled Substances Act (CSA), should be rescheduled to Schedule III. As Schedule I substance, cannabis is classified alongside heroin, LSD, ecstasy, methaqualone, and peyote. Per the CSA, Schedule I substances have “no currently accepted medical use and a high potential for abuse.” Schedule III drugs, on the other hand, have only “moderate to low potential for physical and psychological dependence” and have a currently accepted medical use. Schedule III substances include ketamine, anabolic steroids, testosterone, and Tylenol with codeine, among others.

The seeds for this DEA decision were sown back in October of 2022, when the Biden Administration started an official cannabis policy review process. This process began with granting pardons to all people convicted of simple cannabis possession under federal law. This was considered to be the most extensive White House action on federal drug policy in quite some time. Subsequently, the process shifted to the review of cannabis policy by certain critical governmental agencies, including the Food & Drug Administration (FDA). The FDA conducted its review, and then provided comment to the National Institute on Drug Abuse and Department of Health and Human Services (HHS). In August of 2023, the HHS recommended that the DEA remove cannabis from Schedule I of the CSA and reschedule it to Schedule III. The DEA has now agreed with that recommendation.

Attorney General Merrick Garland, whose Justice Department has ultimate oversight of the DEA, is expected to sign off on the proposed change. Garland's approval obviously indicates that the U.S. Justice Department fully supports the DEA's recommendation, which still has to be reviewed by the White House Office of Management and Budget. Assuming the White House agrees with the recommendation (which is expected), there will be an open public comment period. After the comment period, the rescheduling recommendation would likely become law following an administrative judge's review. While a timeframe is yet to be determined, this process is expected to take at least three months.

The rescheduling of cannabis would be the most significant DEA policy change in decades. Further, rescheduling would alter the way cannabis is treated in the eyes of the Federal government and would make operating in the legal cannabis industry easier. Retail operators would likely be freed from Section 280E, an IRS code provision which blocks cannabis businesses from taking customary business-related deductions. Additionally, rescheduling could open up lanes for interstate shipment of cannabis. Another likely benefit would be increased access to traditional banking services. Currently, due to federal prohibition, access to bank accounts is highly restricted for state-legal operators who often have to resort to state chartered banks or credit unions. The potential rescheduling of cannabis would also ease the ability of organizations to conduct research on the potential health benefits of cannabis. This would, in turn, smooth the process for pharmaceutical companies to develop more cannabis derived medicines.

Rescheduling would not, however, create a cannabis free-for-all. Schedule III drugs are still regulated by the DEA. Dispensaries in the United States would have to register with the DEA (similar to pharmacies) and meet very strict compliance and reporting requirements. The rescheduling of cannabis will not end the federal cannabis prohibition that many industry, legislative, and social justice advocates have been clamoring for. This significant and historic step in cannabis policy reform may just put some pressure on lawmakers to act sooner than later. While it remains to be seen what Congress will do, it is abundantly clear that the seeds of sweeping cannabis reform are now starting to bear real fruit.

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