

Historic Cannabis Rescheduling on the Horizon? It's Up to the DEA Now

Cannabis Business Legal News

By Darren Grady on August 31, 2023

In October of 2022, the Biden Administration started an official cannabis policy review process, which began with granting pardons to all people convicted of simple cannabis possession under federal law. At the time, this was considered to be the most extensive White House action taken to date on federal drug policy in quite some time. Over the last year, 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 (NIDA) and Department of Health and Human Services (HHS).

Yesterday, August 30, 2023, in what is likely be the start of the most historic drug policy change since the passage of the Controlled Substances Act (CSA), the HHS recommended that the Drug Enforcement Administration (DEA), remove cannabis from Schedule I of the CSA and reschedule it to Schedule III. Cannabis is currently a Schedule I drug, alongside heroin, LSD, ecstasy, methaqualone, and peyote. According to the current CSA schedules, cannabis has "no currently accepted medical use and a high potential for abuse." According to the CSA, Schedule III have only "moderate to low potential for physical and psychological dependence" and have a currently accepted medical use. Schedule III drugs include ketamine, anabolic steroids, testosterone, and Tylenol with codeine, among others. The DEA has the final say on cannabis rescheduling and there has been no directive from the Biden Administration that the DEA must follow HHS's recommendation. In fact, the White House has yet to comment formally on the matter.

A DEA spokesperson has confirmed receipt of the HHS recommendation, and also noted that the "HHS conducted a scientific and medical evaluation for consideration by DEA. DEA has the final authority to schedule or reschedule a drug under the Controlled Substances Act. DEA will now initiate its review." In the event that the DEA decides to follow the recommendation and cannabis becomes a Schedule III drug, the cannabis industry should see a loosening of some of the restrictions put on the industry by the omnipresent conflict of state legality vs. federal prohibition. This would be welcome relief for legitimate state

legal cannabis operators who are struggling with banking solutions and federal tax issues. Due to the fact that all state operators are technically in violation of federal law, when it comes time to pay federal taxes, the businesses cannot claim standard tax exemptions (such as the payment of employee salaries and benefits). These tax restrictions will no longer be applicable to state legal businesses cultivating, processing, and selling Schedule III drugs. This, of course, would result in lower tax obligations for cannabis business (and higher profits).

Other benefits of rescheduling cannabis would also likely include increased options and availability of banking solutions. 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.

While the potential rescheduling of cannabis would not end the federal cannabis prohibition that many industry, legislative, and social justice advocates have been clamoring for, this would be a significant and historic step in the process of much needed cannabis policy reform. It remains to be seen what the DEA will decide, but it certainly seems that the seeds of sweeping cannabis reform are now starting to bear real fruit.

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