Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Legal Consequences of Rescheduling Marijuana

Updated May 1, 2024

On April 30, 2024, news outlets reported that the Drug Enforcement Administration (DEA) planned to move marijuana from Schedule I to Schedule III under the Controlled Substances Act (CSA). The planned change followed an August 2023 recommendation from the Department of Health and Human Services (HHS) that DEA reschedule marijuana from Schedule I to Schedule III. Any change to the status of marijuana via the DEA rulemaking process would not take effect immediately. According to reports, the proposal will be reviewed by the White House Office of Management and Budget and will then be subject to public comment.

A previous CRS Insight outlined policy considerations related to rescheduling marijuana. This Legal Sidebar provides additional information on the legal consequences of the possible move of marijuana from Schedule I to Schedule III.

Current Legal Status of Cannabis Under the CSA

Cannabis and its derivatives generally fall within one of two categories under federal law: *marijuana* or *hemp*. Unless an exception applies, the CSA classifies the cannabis plant and its derivatives as *marijuana* (some provisions of the statute use an alternative spelling, "marihuana"). The CSA definition of *marijuana* excludes (1) products that meet the legal definition of *hemp* and (2) the mature stalks of the cannabis plant; the sterilized seeds of the plant; and fibers, oils, and other products made from the stalks and seeds. Marijuana is a Schedule I controlled substance under the CSA.

Federal law defines *hemp* as the cannabis plant or any part of that plant with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3%. The non-psychoactive compound cannabidiol (CBD) falls within the legal definition of *hemp*. Hemp is not a controlled substance under the CSA.

Substances become subject to the CSA through placement in one of five lists, known as Schedules I through V. Congress placed marijuana in Schedule I in 1970 when it enacted the CSA. A lower schedule number carries greater restrictions under the CSA, with controlled substances in Schedule I subject to the most stringent controls. Schedule I controlled substances have no currently accepted medical use. It is illegal to produce, dispense, or possess such substances except in the context of federally approved

Congressional Research Service
https://crsreports.congress.gov
LSB11105

scientific studies, subject to CSA regulatory requirements designed to prevent abuse and diversion. Unauthorized activities involving Schedule I controlled substances are federal crimes that may give rise to large fines and significant jail time. DEA is required to set annual production quotas for Schedule I controlled substances manufactured for use in approved research.

In addition to the general regulatory framework that applies due to marijuana's Schedule I status, some provisions of the CSA apply specifically to marijuana. For instance, 21 U.S.C. § 841 imposes mandatory minimum prison sentences for persons convicted of criminal CSA violations involving set quantities of specific controlled substances, including marijuana. In addition, 21 U.S.C. § 823 creates special registration requirements for those who manufacture marijuana for research purposes.

In sharp contrast to the stringent federal control of marijuana, in recent decades nearly all the states have changed their laws to permit the use of marijuana (or other cannabis products) for medical purposes. In addition, twenty-four states and the District of Columbia have passed laws removing certain state criminal prohibitions on recreational marijuana use by adults. As the Supreme Court has recognized, states cannot actually legalize marijuana because the states cannot change federal law, and the Constitution's Supremacy Clause dictates that federal law takes precedence over conflicting state laws. So long as marijuana is a Schedule I controlled substance under the CSA, all unauthorized activities involving marijuana are federal crimes anywhere in the United States, including in states that have purported to legalize medical or recreational marijuana.

Nonetheless, Congress has granted the states some leeway to allow the distribution and use of medical marijuana. In each budget cycle since FY2014, Congress has passed an appropriations rider barring the Department of Justice (DOJ) from using taxpayer funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Courts have interpreted the appropriations rider to prohibit federal prosecution of state-legal activities involving *medical marijuana*. However, it poses no bar to federal prosecution of activities involving *recreational marijuana*. Moreover, the rider does not remove criminal liability; it merely limits enforcement of the CSA in certain circumstances while the rider remains in effect. While official DOJ policy has varied somewhat across Administrations, recent presidential Administrations have not prioritized prosecution of state-legal activities involving marijuana.

Even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities in violation of the CSA—including participants in the state-legal marijuana industry—may face collateral consequences arising from the federal prohibition of marijuana. Other federal laws impose legal consequences based on criminal activity, including violations of the CSA. For example, a financial institution handling income from a marijuana business may violate federal anti-money laundering laws. Likewise, Section 280E of the Internal Revenue Code renders marijuana businesses ineligible for certain federal tax deductions. The presence of income from a marijuana-related business may also prevent a bankruptcy court from confirming a bankruptcy plan (though courts have split on the issue). For individuals, participation in the state-legal marijuana industry may have adverse immigration consequences. Violations of the CSA may also affect individuals' ability to receive certain federal government benefits. In addition, federal law prohibits gun ownership and possession by any person who is an "unlawful user of or addicted to any controlled substance," with no exception for users of state-legal medical marijuana.

Legal Consequences If Marijuana Moved to Schedule III

Moving marijuana from Schedule I to Schedule III, without other legal changes, would not bring the state-legal medical or recreational marijuana industry into compliance with federal controlled substances law. With respect to medical marijuana, a key difference between placement in Schedule I and Schedule III is that substances in Schedule III have an accepted medical use and may lawfully be dispensed by

prescription, while substances in Schedule I cannot. However, prescription drugs must be approved by the Food and Drug Administration (FDA). Although FDA has approved some drugs derived from or related to cannabis, marijuana itself is not an FDA-approved drug. Moreover, if one or more marijuana products obtained FDA approval, manufacturers and distributors would need to register with DEA and comply with regulatory requirements that apply to Schedule III substances in order to handle those products. Users of medical marijuana would need to obtain valid prescriptions for the substance from medical providers, subject to federal legal requirements that differ from existing state regulatory requirements for medical marijuana.

Rescheduling marijuana would not affect the medical marijuana appropriations rider. Thus, so long as the current rider remains in effect, participants in the state-legal medical marijuana industry who comply with state law would be shielded from federal prosecution. If the rider were to lapse or be repealed, these persons would again be subject to prosecution at the discretion of DOJ.

With respect to the manufacture, distribution, and possession of recreational marijuana, if marijuana were moved to Schedule III, such activities would remain illegal under federal law and potentially subject to federal prosecution regardless of their status under state law.

Some criminal penalties for CSA violations depend on the schedule in which a substance is classified. If marijuana were moved to Schedule III, applicable penalties for some offenses would be reduced. However, CSA penalties that apply to activities involving marijuana specifically, such as the quantity-based mandatory minimum sentences discussed above, would not change as a result of rescheduling. DEA is not required to set annual production quotas for Schedule III controlled substances.

The prohibition on business deductions in Section 280E of the Internal Revenue Code applies to any trade or business that "consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted." Because the provision applies only to activities involving substances in Schedule I or II, moving marijuana from Schedule I to Schedule III would allow marijuana businesses to deduct business expenses on federal tax filings. Other collateral legal consequences would continue to attach to unauthorized marijuana-related activities.

Considerations for Congress

Either Congress or the executive branch has the authority to change the status of marijuana under the CSA. Congress can change the status of a controlled substance through legislation, while the CSA empowers DEA to make scheduling decisions through the notice-and-comment rulemaking process. When considering whether to schedule or reschedule a controlled substance, DEA is bound by HHS's recommendations on scientific and medical matters. However, DEA has stated that it has "final authority to schedule, reschedule, or deschedule a drug under the Controlled Substances Act." A proposal from the 118th Congress would provide for congressional review of DEA rescheduling decisions related to marijuana.

If Congress wishes to change the legal status of marijuana, it has broad authority to do so before or after DEA makes any final scheduling decision. Several proposals from the 118th Congress would remove marijuana from control under the CSA or move the substance to a less restrictive schedule. If Congress moved marijuana to Schedule III by legislation, it could simultaneously consider whether to change some of the legal consequences of Schedule III status described above. Congress could also legislate to move marijuana to another CSA schedule, which would subject it to controls more or less stringent than those that apply to Schedule III controlled substances.

Rescheduling or descheduling marijuana under the CSA could raise additional legal questions. For instance, FDA regulates certain cannabis products under the Federal Food, Drug, and Cosmetic Act, so

Congress might also consider whether to alter that regulatory regime or create some alternative regulatory framework. In addition, relaxing the CSA's restrictions on marijuana could implicate the United States' international treaty obligations.

While most recent proposals would relax federal regulation of marijuana, Congress could also seek to impose more stringent controls. One proposal from the 118th Congress would withhold certain federal funds from states in which the purchase or public possession of marijuana for recreational purposes is lawful. A proposal from the 117th Congress would have prohibited the use of benefits under the Temporary Assistance for Needy Families block grant at any store that offers marijuana for sale. Other proposals from the 117th Congress sought to address the issues of workplace impairment or driving under the influence of marijuana and other substances.

Author Information

Joanna R. Lampe
Legislative Attorney

Disclaimer