

## **DEA Just Said No to Rescheduling Cannabis: Why It Matters**

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The U.S. Drug Enforcement Agency (DEA) recently denied a petition to initiate proceedings to reschedule cannabis under the Controlled Substances Act (CSA). Thus, Cannabis will remain a Schedule I substance under the CSA. Prior to the announcement, there was a good deal of speculation that the DEA was considering rescheduling cannabis to Schedule II.

*Why rescheduling matters:*

- **Medical use.** A number of states have adopted medical cannabis laws that permit manufacturing and dispensing of cannabis for medical purposes. These laws currently conflict with the CSA. Rescheduling cannabis to Schedule II or III (or higher) would permit cannabis dispensing for medical purposes under federal law. A potential side effect of medical use under federal law is the elimination of production and dispensing businesses operating under state law.
- **Criminal penalties.** Penalties imposed for acts involving Schedule I, II and III controlled substances are more severe than acts involving Schedule IV or V substances. Removing cannabis from the list of controlled substances should further reduce potential criminal penalties related to the substance.
- **Taxes.** Any business trafficking a Schedule I or II controlled substance is subject to section 280E of the tax code. This section denies taxpayers deductions for items other than costs of goods sold. As a result, businesses operating under state medical or recreational laws face significant U.S. federal income tax liabilities. Rescheduling cannabis to Schedule III, IV or V would make section 280E inapplicable to businesses dealing with cannabis.
- **Advertising.** The CSA makes it unlawful for any person to place any written advertisement that has the purpose of offering to illegally receive, buy or distribute a Schedule I controlled substance. Rescheduling to Schedule II or higher would remove the prohibition on advertising.

Rescheduling cannabis from Schedule I to Schedule II requires acknowledgement from the DEA that cannabis has a currently accepted medical use in the U.S. A substance having no currently accepted medical use and meeting other controlled substance criteria must be classified as a

Schedule I substance. In making the scheduling determination, the DEA is bound by scientific and medical recommendations from the U.S. Department of Health and Human Services (HHS).

Based on the current federal medical record, HHS concluded that cannabis has no accepted medical use. HHS evaluated whether cannabis has a currently accepted medical use in the U.S. under a five-part test. These five parts dictate that: (1) the drug’s chemistry must be known and reproducible; (2) there must be adequate safety studies; (3) there must be adequate and well-controlled studies proving efficacy; (4) the drug must be accepted by qualified experts; and (5) the scientific evidence must be widely available. HHS found that cannabis does not meet any of the five parts. Therefore, the DEA determined that cannabis must remain a Schedule I controlled substance. The following chart explains the practical significance of scheduling.

	<b>Criteria for Scheduling</b>	<b>Practical Significance of Scheduling</b>
<b>Schedule I</b>	High potential for abuse; No currently accepted medical use in the U.S.; Lack of accepted safety for use under medical supervision	May not be dispensed for medical or recreational use; Requires federal registration for manufacturing & dispensing; Trafficking businesses are subject to section 280E of the tax code; Penalties for unlawful acts are higher (Schedule I, II, and III); Unlawful to advertise
<b>Schedule II</b>	High potential for abuse; Currently accepted medical use in the U.S.; Abuse may lead to severe psychological or physical dependence	May be dispensed for medical use (but not recreational); Requires federal registration for manufacturing & dispensing; Trafficking businesses ARE subject to section 280E of the tax code; Penalties for unlawful acts are higher (Schedule I, II, and III)
<b>Schedule III</b>	Potential for abuse but less than Schedule I or II; Currently accepted medical use in the U.S. Abuse may lead to moderate or low physical or high psychological dependence	May be dispensed for medical use (but not recreational); Requires federal registration for manufacturing & dispensing; Trafficking businesses ARE NOT subject to section 280E of the tax code; Penalties for unlawful acts are higher (Schedule I, II, and III)
<b>Schedule IV</b>	Low potential for abuse relative to Schedule III; Currently accepted medical use in the U.S.; Abuse may lead to limited physical or psychological dependence relative to Schedule III	May be dispensed for medical use (but not recreational); Requires federal registration for manufacturing & dispensing; Trafficking businesses ARE NOT subject to section 280E of the tax code; Penalties for unlawful acts are lower (Schedule IV and V)

<b>Schedule V</b>	Low potential for abuse relative to Schedule IV; Currently accepted medical use in the U.S.; Abuse may lead to limited physical or psychological dependence relative to Schedule IV	May be dispensed for medical use (but not recreational); Requires federal registration for manufacturing & dispensing; Trafficking businesses ARE NOT subject to section 280E of the tax code; Penalties for unlawful acts are lower (Schedule IV and V)
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