

## Cannabis Practice

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### **Historic Shift in U.S. Drug Policy: DEA Proposes to Reclassify Marijuana**

By [Raymond Cooper](#), [Amanda K. Cipriano](#), [James C. Shehan](#), and [Mary \(Kristi\) Nicholes](#)

The U.S. Drug Enforcement Administration (DEA) is on the brink of reclassifying marijuana, marking a watershed moment in American drug policy.

For decades, marijuana has been classified as a Schedule I drug, alongside substances like heroin, ecstasy, and LSD, under the Controlled Substances Act. The proposed reclassification of marijuana from Schedule I to Schedule III represents a shift in federal drug policy. Schedule I substances are classified as drugs with a high potential for abuse and no currently accepted medical use in the United States. In comparison, oxycodone and fentanyl, which have accepted medical uses, are only Schedule II substances (i.e., drugs with a high potential for abuse). Schedule I substances are considered to be the most dangerous and tightly controlled under the Controlled Substances Act.

The classification of marijuana as a Schedule I drug has been a point of contention for many years, especially given research suggesting its potential medical benefits. Critics argue that this classification has hindered scientific research into marijuana's therapeutic properties and has resulted in disproportionate criminal penalties for individuals involved in its possession, distribution, or use.

By contrast, Schedule III substances are considered to have a moderate to low potential for physical and psychological dependence as compared to Schedule I and II drugs. They also have accepted medical uses in the United States. Schedule III drugs are subject to less stringent regulations compared to Schedule I and II drugs. Schedule III drugs are still controlled substances, meaning they are subject to regulation and oversight by the DEA, but they have a lower risk profile than do Schedule I and II substances.

There will not be any immediate changes due to the proposal. The proposal, which was submitted by Attorney General Merrick Garland on Tuesday, April 30, 2024, must still be reviewed by the White House Office of Management and Budget (OMB). Once OMB signs off, the proposed rule will be published with a call for public comments. DEA must then evaluate the comments, draft a final rule including responses to the comments, have the draft final rule reviewed by an administrative law judge, and publish the final rule. Even then, there likely will be legal challenges to the final rule, which could further delay its implementation.

The proposal, which is not yet public, signals acknowledgement of the following:

- **Recognition of Medical Uses:** The reclassification acknowledges the medical uses of cannabis and its potential to alleviate symptoms for various conditions ranging from chronic pain to epilepsy. With reduced regulatory barriers, companies and researchers may find it less costly and burdensome to explore, for example, new pharmaceutical drug formulations and plant technologies, leading to the development of innovative products related to cannabis. This could pave the way for new revenue streams and technological advancements within the industry.
- **Recognition of Lesser Potential for Abuse:** Marijuana's placement in Schedule III reflects a recognition that it has a lower potential for abuse than do other drugs in more restrictive schedules.

A significant impact of reclassification would be to allow cannabis businesses to take deductions of normal business expenses on their federal tax returns. Cannabis businesses are currently barred from doing so under IRS Code 280E, and this prohibition has made it very difficult for these businesses to be profitable. In addition, federal rescheduling may mitigate conflicts between

some federal and state laws, thereby enabling interstate transport and commerce of cannabis products. This harmonization could open up new markets and distribution channels for businesses operating in multiple states.

Lawmakers are also actively pursuing legislative solutions to complement the DEA's proposed reclassification. Efforts such as the SAFER Banking Act and initiatives to remove cannabis from the Controlled Substances Act entirely aim to address the complex legal landscape surrounding marijuana. Such reforms could allow cannabis businesses to bank more freely and openly. Rescheduling could facilitate improved access to banking services and capital for cannabis businesses, alleviating one of the industry's long-standing challenges. This newfound access to financial resources could fuel expansion and innovation within the sector.

As noted, the proposal for reclassifying marijuana will proceed to a rulemaking process, which includes a public comment period. We encourage our clients to actively participate in this process by submitting comments or collaborating with us on a submission.

If you are interested in collaborating on a submission or have any questions or concerns regarding this matter, please feel free to reach out to us. Your input is invaluable as we navigate this historic shift in U.S. drug policy. We will continue to closely monitor developments related to the DEA's proposed reclassification of marijuana and provide updates as necessary.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

### RAYMOND COOPER

Associate

**T: 973.422.6764**

[rcooper@lowenstein.com](mailto:rcooper@lowenstein.com)

### AMANDA K. CIPRIANO

Associate

**T: 862.926.2262**

[acipriano@lowenstein.com](mailto:acipriano@lowenstein.com)

### JAMES C. SHEHAN

Senior Counsel

Chair, FDA Regulatory Practice

**T: 646.414.6897**

[jshehan@lowenstein.com](mailto:jshehan@lowenstein.com)

### MARY (KRISTI) NICHOLS

Counsel

**T: 973.422.6536**

[mnichols@lowenstein.com](mailto:mnichols@lowenstein.com)

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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