

The Most Significant Federal Marijuana Reform in Modern History



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Quietly and with little fanfare, the Biden Administration may have just recommended the most significant federal marijuana reform in American history.

In late August, the Department of Health and Human Services (HHS) sent a letter to the Drug Enforcement Administration (DEA) recommending the agency reschedule marijuana from a Schedule I controlled substance to a Schedule III controlled substance. ¹ The recommendation came almost a year after President Biden directed HHS Secretary Xavier Becerra to conduct a review of how marijuana is regulated under federal law, around the same time that the President pardoned those who had been convicted of simple marijuana possession under federal law. ²

Marijuana is currently designated as a Schedule I substance, indicating a high potential for abuse with no accepted medical use, alongside drugs like heroin and ecstasy. It's scheduled higher than far more dangerous drugs, like fentanyl, oxycontin, and meth, which are all Schedule II substances. ³ Many have criticized its scheduling as too strict, overlooking its medical benefits to treat conditions like chronic pain and insomnia. ⁴ These benefits are so widely accepted at this point that medical marijuana has been legalized in 38 states and DC. ⁵ If rescheduled at the federal level per the HHS recommendations, marijuana would join the likes of ketamine and testosterone as substances with a moderate to low potential for abuse. Schedule III substances still require regulation, as they're controlled substances, but at a less restrictive level.

The rescheduling decision is currently in the hands of the DEA, but it could have major implications for the marijuana industry operating in scores of states, as its current classification has created significant barriers for both businesses and researchers who are trying to comply with conflicting state and federal rules.

Businesses

Due to marijuana's classification as a Schedule I substance, marijuana businesses operating in accordance with the laws in their state face myriad roadblocks. Most businesses are allowed to write off a number of expenses, including salaries, rent, travel, shipping, etc., as tax deductions. But the Internal Revenue Service (IRS) tax code currently blocks individuals or "companies" producing or selling a Schedule I or Schedule II substance from receiving tax deductions (intended to stop drug dealers from getting tax breaks). This means marijuana businesses are paying much higher federal taxes, sometimes to the tune of 70%.⁶ Small business owners have said that their inability to claim tax deductions is their single biggest financial burden. Rescheduling marijuana as a Schedule III substance would circumvent this issue and save marijuana businesses hundreds of millions of dollars a year.⁷ Lower tax rates could directly lead to a healthier, more representative, and more competitive market for small business owners and consumers.

Marijuana businesses also struggle financially due to their lack of access to banking services. Any bank or credit union that provides banking services to a marijuana business could be prosecuted for money laundering, aiding and abetting, or conspiracy, even if it's operating in a state where marijuana has been legalized.⁸ As a result, only 10% of US banks and 5% of credit unions provide banking services to marijuana businesses, restricting access to bank accounts, loans, and new capital.⁹ Without access to bank accounts, some businesses are forced to operate on an all-cash basis, inviting both violent and financial crimes.¹⁰ And with so few banking options, businesses are stuck with loans with interest rates as high as 20% compared to the 5% to 5.7% average rate for traditional businesses.¹¹ While rescheduling marijuana wouldn't solve this issue, it would help make it easier for businesses to access banking services and raise cash without legislative changes.¹² To solve this problem once and for all, Congress should pass the *Secure and Fair Enforcement (SAFE) Banking Act*, which would provide banks with permanent protections from criminal and civil liability for working with marijuana businesses that are legal in their state.

Research

Marijuana's status as a Schedule I substance also impedes researchers' ability to study its potential medical uses and health effects. To receive authorization from the DEA to study Schedule I substances, researchers have to navigate a complex application process, so complex that even the Director of the National Institute on Drug Abuse (NIDA), Nora Volkow, is reluctant to conduct studies on marijuana due to "cumbersome" rules.¹³ Researchers can expect the application process to be lengthy, costly, and burdensome. And if researchers need to make changes to their study, such as quantity or type of marijuana tested, they have to re-register with the DEA, causing further delays.¹⁴ Making adjustments to studies is very common in the scientific method, making this barrier especially onerous for those hoping to study marijuana's impacts.

If researchers can get past all the red tape, there's still no guarantee their research is going to be applicable. Up until 2020, researchers were only allowed to study marijuana grown at the University of Mississippi, the only federally authorized marijuana manufacturer.¹⁵ The DEA has since authorized eight companies to grow marijuana for federal research.¹⁶ But concerns remain about how representative these sources are of products on the market, which tend to be more diverse and have higher levels of Tetrahydrocannabinol (THC).¹⁷ Researchers are conducting studies on the medical uses and health effects of marijuana, but they aren't studying the kinds of marijuana that Americans are actually using, limiting the scope and effectiveness of their research.

Rescheduling marijuana as a Schedule III substance would help remove many of these barriers to medical research. Research would still have to be approved by the DEA, as marijuana would remain a controlled substance. But

rescheduling would reduce the amount of red tape researchers face, free up more federal funding, and increase willingness among researchers to study marijuana. It could also allow researchers to acquire marijuana directly from dispensaries, making their research more significant and actionable for Americans from coast to coast.

Conclusion

The Department of Health and Human Services' (HHS) recommendation to reschedule marijuana as a Schedule III substance could lead to the most significant marijuana reform in modern history. It could help professionalize marijuana businesses struggling with high tax rates and a dearth of banking services. And it would make conducting research on the medical uses and health effects of marijuana easier and more accurate. This move could be a big step toward the ultimate goal of deconflicting state and federal rules and ensuring marijuana markets across the country are regulated in a safe and effective manner.

TOPICS

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ENDNOTES

1. Griffin, Riley, et al. "US Health Officials Urge Moving Pot to Lower-Risk Tier." *Bloomberg*, 30 Aug 2023. https://www.bloomberg.com/news/articles/2023-08-30/hhs-calls-for-moving-marijuana-to-lower-risk-us-drug-category?in_source=embedded-checkout-banner&sref=sLBNpTza#xj4y7vzkg. Accessed 22 Sept 2023.
2. "A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana." *The White House*, 6 Oct 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/>. Accessed 9 Sept 2023.
3. "Controlled Substance Schedules." *U.S. Department of Justice*. [https://www.deadiversion.usdoj.gov/schedules/#:~:text=Schedule%20II%2FIIN%20Controlled%20Substances%20\(2%2F2N\)&text=Examples%20of%20Schedule%20II%20narcotics,opium%2C%20codeine%2C%20and%20hydrocodone](https://www.deadiversion.usdoj.gov/schedules/#:~:text=Schedule%20II%2FIIN%20Controlled%20Substances%20(2%2F2N)&text=Examples%20of%20Schedule%20II%20narcotics,opium%2C%20codeine%2C%20and%20hydrocodone). Accessed 22 Sept 2023.
4. Jaeger, Kyle. "Marijuana Is Associated With 'Significant' and 'Sustained' Health Improvements, American Medical Association Study Finds." *Marijuana Moment*, 16 May 2023. <https://www.marijuanamoment.net/marijuana-is-associated-with-significant-and-sustained-health-improvements-american-medical-association-study-finds/>. Accessed 22 Sept 2023.
5. "State Medical Cannabis Laws." *National Conference of State Legislatures*, 22 June 2023. <https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Medical%2DUse%20Update,1%20below%20for%20additional%20information>. Accessed 22 Sept 2023.
6. Demko, Paul. "Why weed companies can't make any money." *POLITICO*, 4 Sept 2022. <https://www.politico.com/news/2022/09/04/weed-companies-cant-make-money-00054541>. Accessed 22 Sept 2023.
7. Demko, Paul. "Why weed companies can't make any money." *POLITICO*, 4 Sept 2022. <https://www.politico.com/news/2022/09/04/weed-companies-cant-make-money-00054541>. Accessed 22 Sept 2023.
8. Trumble, Sarah. "Three Reasons to Support the Secure and Fair Enforcement Banking Act." *Third Way*, 18 May 2017. <https://www.thirdway.org/memo/three-reasons-to-support-the-secure-and-fair-enforcement-banking-act>. Accessed 22 Sept 2023.
9. Roy, Mrinalika. "High & Dry: Banking crisis to further choke funding for cannabis sector." *Reuters*, 24 Mar 2023. <https://www.reuters.com/business/high-dry-banking-crisis-further-choke-funding-cannabis-sector-2023-03-24/>. Accessed 22 Sept 2023.
10. Trumble, Sarah. "Three Reasons to Support the Secure and Fair Enforcement Banking Act." *Third Way*, 18 May 2017. <https://www.thirdway.org/memo/three-reasons-to-support-the-secure-and-fair-enforcement-banking-act>. Accessed 22 Sept 2023.
11. Roy, Mrinalika. "High & Dry: Banking crisis to further choke funding for cannabis sector." *Reuters*, 24 Mar 2023. <https://www.reuters.com/business/high-dry-banking-crisis-further-choke-funding-cannabis-sector-2023-03-24/>. Accessed 22 Sept 2023.
12. Fertig, Natalie and Demko, Paul. "Slightly higher times: Biden administration moves to loosen weed restrictions." *POLITICO*, 30 Aug 2023. <https://www.politico.com/news/2023/08/30/marijuana-review-move-to-schedule-iii-00113493>. Accessed 22 Sept 2023.
13. Jaeger, Kyle. "Top Federal Health Officials Say Psychedelics' Schedule I Status Creates 'Hurdles' To Studying Them." *Marijuana Moment*, 31 July 2023. <https://www.marijuanamoment.net/top-federal-health-officials-say-psychedelics-schedule-i-status-creates-hurdles-to-studying-them/>. Accessed 22 Sept 2023.
14. Jaeger, Kyle. "Top Federal Drug Agency Tells Congress About Marijuana Research Barriers Caused By Restrictive Scheduling." *Marijuana Moment*, 25 Oct 2021. <https://www.marijuanamoment.net/top-federal-drug-agency-tells-congress-about-marijuana-research-barriers-caused-by-restrictive-scheduling/>. Accessed 22 Sept 2023.

15. Jaeger, Kyle. "Top Federal Drug Agency Tells Congress About Marijuana Research Barriers Caused By Restrictive Scheduling." *Marijuana Moment*, 25 Oct 2021. <https://www.marijuanamoment.net/top-federal-drug-agency-tells-congress-about-marijuana-research-barriers-caused-by-restrictive-scheduling/>. Accessed 22 Sept 2023.
16. Zagorski, Nick. "Experts Reflect on What New Law Might Mean for Cannabis Research." *Psychiatric News*, 9 Mar 2023. <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2023.04.4.20>. Accessed 22 Sept 2023.
17. Zagorski, Nick. "Experts Reflect on What New Law Might Mean for Cannabis Research." *Psychiatric News*, 9 Mar 2023. <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2023.04.4.20>. Accessed 22 Sept 2023.