

July 19, 2024

Via electronic submission

Cannabis Control Commission’s Comment on Docket No. DEA-2024-0059-0001

The Massachusetts Cannabis Control Commission (Commission) submits this public comment regarding the Department of Justice (DOJ) proposed rule to reschedule cannabis from Schedule I to Schedule III of the Controlled Substances Act (CSA), in alignment with the Department of Health and Human Services' (HHS) recognition of the accepted medical use of cannabis, its abuse potential, and its level of physical or psychological dependence.

I. Current and Future Medical Uses of Cannabis

The Commission strongly supports the DOJ and HHS’ acknowledgment of the accepted medical use of cannabis. This recognition aligns with extensive scientific research and the experiences of many states, including Massachusetts, where medical cannabis has been safely and effectively used to treat various medical conditions and improve patients' lives. Rescheduling cannabis to Schedule III may help facilitate further clinical research and broaden patient access to therapeutic treatments.

The Commission believes that rescheduling cannabis to Schedule III of the CSA will enhance research opportunities and deepen society's understanding of the effects and benefits of cannabis. Currently, as a Schedule I substance, cannabis is classified alongside drugs considered to have no accepted medical use and a high potential for abuse. This classification imposes stringent regulatory hurdles on researchers, limiting the scope and scale of scientific studies. By rescheduling cannabis to Schedule III, barriers may be substantially reduced. Researchers could encounter fewer regulatory obstacles when applying for grants, obtaining necessary licenses, and conducting clinical trials. This reclassification could also streamline the approval process for research protocols and allow for greater collaboration across institutions. The resulting increase in research activities would provide a more comprehensive understanding of the therapeutic potential of cannabis, its pharmacological properties, and its long-term health effects.

Enhanced research capabilities will enable the medical community to better identify the specific conditions and patient populations that may benefit most from cannabis therapies. It will also allow for the development of standardized dosages and delivery methods, improving patient



safety and treatment efficacy. Furthermore, expanding the body of scientific evidence on cannabis will assist policymakers in crafting more informed and effective regulations.

II. Regulatory Considerations of Rescheduling

While rescheduling cannabis to Schedule III is a significant step forward, it underscores the need for broader legislative action. If the proposed rule is accepted, the ongoing discrepancy between federal and state cannabis policies will continue to create substantial legal and operational challenges for many individuals and businesses across the country, which in turn, may adversely impact patients and adult consumers seeking safely regulated products. The Commission requests additional steps to reconcile these differences and provide clear regulatory pathways, enhance public safety, and support the burgeoning cannabis industry. In developing additional guidelines, it is crucial that the Commission be able to protect the Commonwealth's well-regulated marketplace, which contributes significantly to employment and revenue in the state. The Commission would encourage those developing these regulations to look at programs in states with existing, flourishing medical- and adult-use cannabis industries as a model or to allow states with operational industries to continue operating them.

As stated in the proposed rule, transferring cannabis to Schedule III would allow the Drug Enforcement Agency (DEA) to continue regulating cannabis and develop a new regulatory scheme. The Commission requests the DEA take steps to prioritize and assist those who have been disproportionately impacted by previous marijuana prohibition and enforcement. One of the major reasons voters legalized cannabis in the Commonwealth in 2012 and 2016 was to assist individuals and communities negatively impacted by decades of disproportionate arrest and incarceration caused by the War on Drugs. In accordance with the Commission's nation-leading mandate and mission, additional steps have been taken to promote and encourage full industry participation from these communities that ensure a level playing field in the regulated cannabis market. These include a requirement that all licensees implement plans to positively impact affected communities and hire a diverse workforce; a free technical assistance and training program available to disproportionately harmed individuals, plus license carve-outs and reduced fees available to those program participants; and mandated, equitable licensing processes at the local level. The Commission believes these efforts and others implemented by partner agencies, such as a state-administered Cannabis Social Equity Trust Fund, are essential to fostering an inclusive and equitable cannabis industry, not only in Massachusetts, but across the country.

To prioritize and assist those disproportionately impacted, the DOJ should implement a needed regulatory change to expunge criminal records for marijuana-related offenses. This would be a crucial step toward rectifying the injustices of past drug policies as many individuals continue to face significant barriers to employment, housing, and education due to convictions for activities that are now legal or would not carry the same sentencing guidelines today. By expunging these records, it would acknowledge the evolving benefits of licensed marijuana programs and provide

affected individuals with the opportunity to fully reintegrate into society without the lingering stigma of a criminal record. Moreover, expungement aligns with broader criminal justice reform efforts aimed at reducing the long-term consequences of minor, non-violent offenses. The disproportionate impact of marijuana prohibition on communities of color has been well-documented, leading to systemic inequalities that persist today. Addressing these disparities through the expungement of marijuana-related convictions can help to correct some of the historical wrongs and promote a more equitable legal system. Implementing a streamlined process for expungement is essential to ensure that those eligible can easily access this relief. This could involve automatic expungement for qualifying offenses or providing legal assistance to help individuals navigate the process. By prioritizing the expungement of marijuana-related criminal records, we take a meaningful step toward justice, equality, and the fair treatment of all individuals under the law.

When considering regulatory implications, the Commission requests additional information about how this federal change will affect taxation and the handling of banking and financial services for cannabis businesses. Currently, cannabis businesses are subject to Internal Revenue Code Section 280E (IRC 280E), which disallows all deductions or credits for any amount paid or incurred in carrying on any trade or business that involves Schedule I or Schedule II substances, even if these businesses operate in states that have legalized such substances. Rescheduling cannabis to Schedule III would exclude these businesses from the application of IRC 280E, however the Internal Revenue Service (IRS) would likely need to provide new guidance for these businesses when filing federal taxes as cannabis is still federally illegal. Further guidance or clarification is also needed for financial institutions, which have been hesitant to serve cannabis businesses due to Federal Deposit Insurance Corporation (FDIC) restrictions. Rescheduling from Schedule I to Schedule III could influence the FDIC's stance, potentially allowing banks to handle cannabis accounts.

Furthermore, cannabis businesses are currently ineligible for other federal benefits such as the Work Opportunity Tax Credit and the use of federally funded career centers, limiting their ability to hire employees, notwithstanding their contribution to federal tax revenues. This has been a recurring topic in the Commission's public meetings, highlighting the need for these programs to support the industry's growth. In Massachusetts, the cannabis industry has significantly contributed to job creation, investment, and revenue generation despite the lack of access to these resources. Addressing these barriers when considering rescheduling will further enhance the cannabis industry's success and economic impact not only in Massachusetts, but across the country.

When drafting a regulatory scheme for marijuana as a Schedule III drug, it is crucial to consider the impact on interstate commerce. Currently, states have flourishing cannabis markets under different regulatory frameworks. With reclassification, clear guidance will be needed to regulate the interstate commerce of cannabis and cannabis products. Given the varying state regulations, the question of which regulations apply is crucial. For instance, cultivators in one state

with a surplus harvest could potentially sell their product to licensees in another state. Guidance would be needed to clarify whether the home states', destination states', or both states' testing and labeling regulations would apply for compliance.

As expressed, additional clarification and regulatory guidance will be necessary to address the complex issues surrounding the rescheduling of cannabis and maintain compliance with both federal and state laws.

III. Practical Considerations for Understanding New Classification

To ensure successful understanding of the new classification and its implications, the Commission emphasizes the need for the federal government to provide comprehensive training and educational resources. These resources should be tailored for healthcare providers, law enforcement, existing medical marijuana patients and caregivers, state regulators, existing cannabis business owners, and the general public, to ensure a thorough understanding of the changes and their impacts.

While rescheduling cannabis will continue to positively influence public perception around cannabis use and reduce existing stigmas, public education campaigns are also necessary to raise awareness about the rescheduling and its implications. These campaigns should provide clear information on the legal status of cannabis, its medical uses, and safe consumption practices. Public awareness initiatives, such as Massachusetts' "More About Marijuana" campaign, can help dispel myths and promote informed decision-making among citizens whether they are novice or seasoned consumers.

The Commission appreciates the opportunity to comment on this important issue and looks forward to the continued efforts of federal agencies in advancing policies that recognize the medical use of cannabis, promote public health, and support effective and equitable adult- and medical-use cannabis programs. The Commission is available to serve as a resource for the Department of Justice and welcomes the opportunity to collaborate.

Sincerely,

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