



Rescheduling Marijuana in the Federal Controlled Substances Act

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KEY FINDINGS

- It is increasingly likely that marijuana will be rescheduled in the federal Controlled Substances Act from Schedule I to Schedule III.
- The final rule for rescheduling will likely be published in late summer, or early fall.
- Without state legislation, even if the federal government reschedules marijuana, it will remain a Schedule I controlled substance in Utah under Utah’s Controlled Substances Act.
- Outside of the tax benefits, the immediate impact of federal rescheduling on Utah’s medical cannabis businesses will be minimal.
- It remains to be seen how federal rescheduling may eventually impact the workforce, criminal justice system, interstate commerce, or federal assistance programs.

Background

Since the federal Controlled Substances Act (CSA) was enacted in 1970, marijuana has been listed as a Schedule I controlled substance. The federal CSA classifies controlled substances into five levels of control, or “schedules,” based on the following three criteria¹:

1. A drug’s potential for abuse;
2. Whether the drug has a currently accepted medical use (“CAMU”) for treatment in the United States; and
3. Whether there is a lack of accepted safety for use of the drug under medical supervision or the level of psychological or physical dependence that could result from abuse of the drug.

Schedule I vs. Schedule III

Schedule I controlled substances are subject to the strictest controls while Schedule V drugs are subject to the least strict. Schedule III falls in the middle. See Figure 1 for highlighted differences in the two schedules.

Figure 1: Highlighted Differences Between Schedule I and Schedule III

Schedule I	Schedule III
<ul style="list-style-type: none"> • The drug or other substance has a high potential for abuse. 	<ul style="list-style-type: none"> • The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
<ul style="list-style-type: none"> • The drug or other substance has no currently accepted medical use in treatment in the United States. 	<ul style="list-style-type: none"> • The drug or other substance has a currently accepted medical use in treatment in the United States.
<ul style="list-style-type: none"> • There is a lack of accepted safety for use of the drug or other substance under medical supervision. 	<ul style="list-style-type: none"> • Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

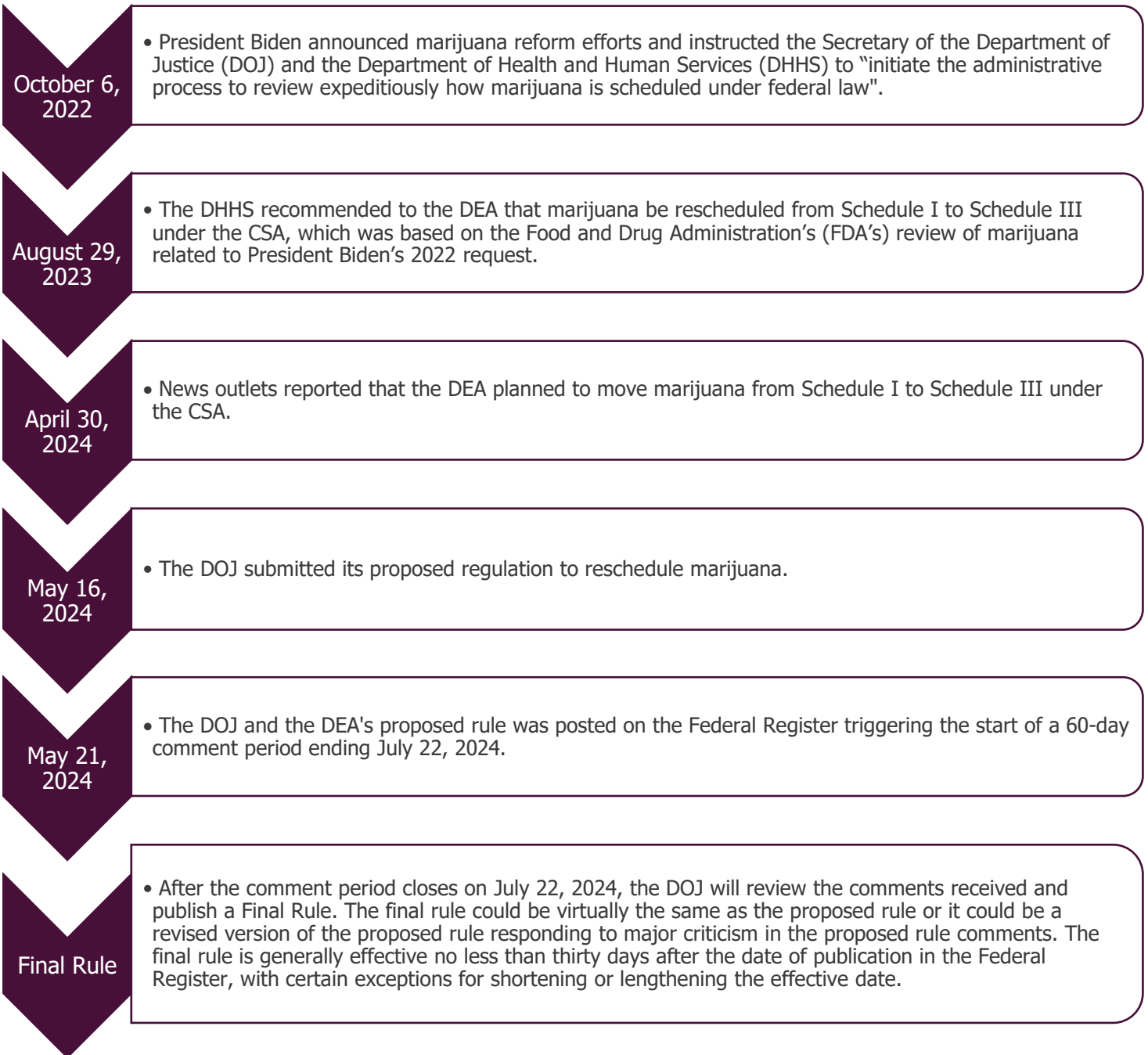
Source: 21 U.S.C. § 812 - Schedules of controlled substances



Rescheduling

A controlled substance can be rescheduled through Congressional legislation or by the Attorney General through filing a petition to the Drug Enforcement Administration (DEA).ⁱⁱ Although rescheduling has been attempted many times through both methods, these efforts have not approached the level of likelihood for success that the current effort is showing. Figure 2 depicts the timeline of events for current rescheduling efforts.

Figure 2: Timeline of Events for Current Rescheduling Efforts



Sources: [White House Briefing Room](#), [Congressional Research Service](#), [Department of Justice](#), [Federal Register – Proposed Rule](#); [Federal Register – Rulemaking Process](#).



Effects on Taxes and Research

There are two areas whereby rescheduling marijuana will have known effects: taxes and research.

Tax Issues

The Internal Revenue Code Section 280E denies deductions and credits to businesses engaging in ‘the trade or business of trafficking’ Schedule I and II controlled substances. If marijuana is rescheduled to Schedule III, marijuana businesses will be able to access the same deductions and tax credits available to every other business. ⁱⁱⁱ

Research Issues

Research involving Schedule I substances is impacted by federal regulations that are more stringent than other schedules. While rescheduling marijuana to Schedule III would loosen some of these requirements, researchers will still be subject to federal regulations that apply to all schedules.

Additionally, researchers currently must obtain marijuana for research through the National Institute on Drug Abuse (NIDA) and comply with National Institute of Health standards. NIDA has a longstanding contract with the University of Mississippi, which has been the only official source of marijuana for research purposes for over 50 years. Rescheduling marijuana would likely resolve supply issues for researchers who have contended that the supply has been “both qualitatively and quantitatively inadequate^{iv}.”

Utah’s Marijuana Landscape

Throughout the next section, there are references to the term ‘cannabis.’ While there are some differences between ‘cannabis’ and ‘marijuana’ the terms are generally used interchangeably, and, in Utah, following [UCA 26B-4-201](#), the term ‘cannabis’ means marijuana.

Marijuana will remain a Schedule I controlled substance – [Title 58, Chapter 37, Section 4](#) – in Utah even if the federal government reschedules it. Utah, along with every other state, has its own CSA with substances categorized into different degrees of control. Utah’s CSA does not mirror the federal CSA exactly; however, this is not the case in every state (see Figure 3). Nineteen states have statutory provisions that call for ‘similar control’ at the state level if a substance is designated, rescheduled, or deleted as a controlled substance under federal law.^v

Most states throughout the country currently have marijuana categorized as a Schedule I substance. Figure 3 shows the eleven states^{vi} that schedule marijuana in a more lenient category than Schedule I. These eleven states range in type of cannabis/marijuana program – recreational use for adults and medical programs, only medical cannabis programs, CBD and low THC programs, and no public cannabis access.^{vii}

Marijuana vs. Cannabis

Although the two are often used interchangeably, they have different definitions. While this has no practical impact on the rescheduling, it is important to note the difference.

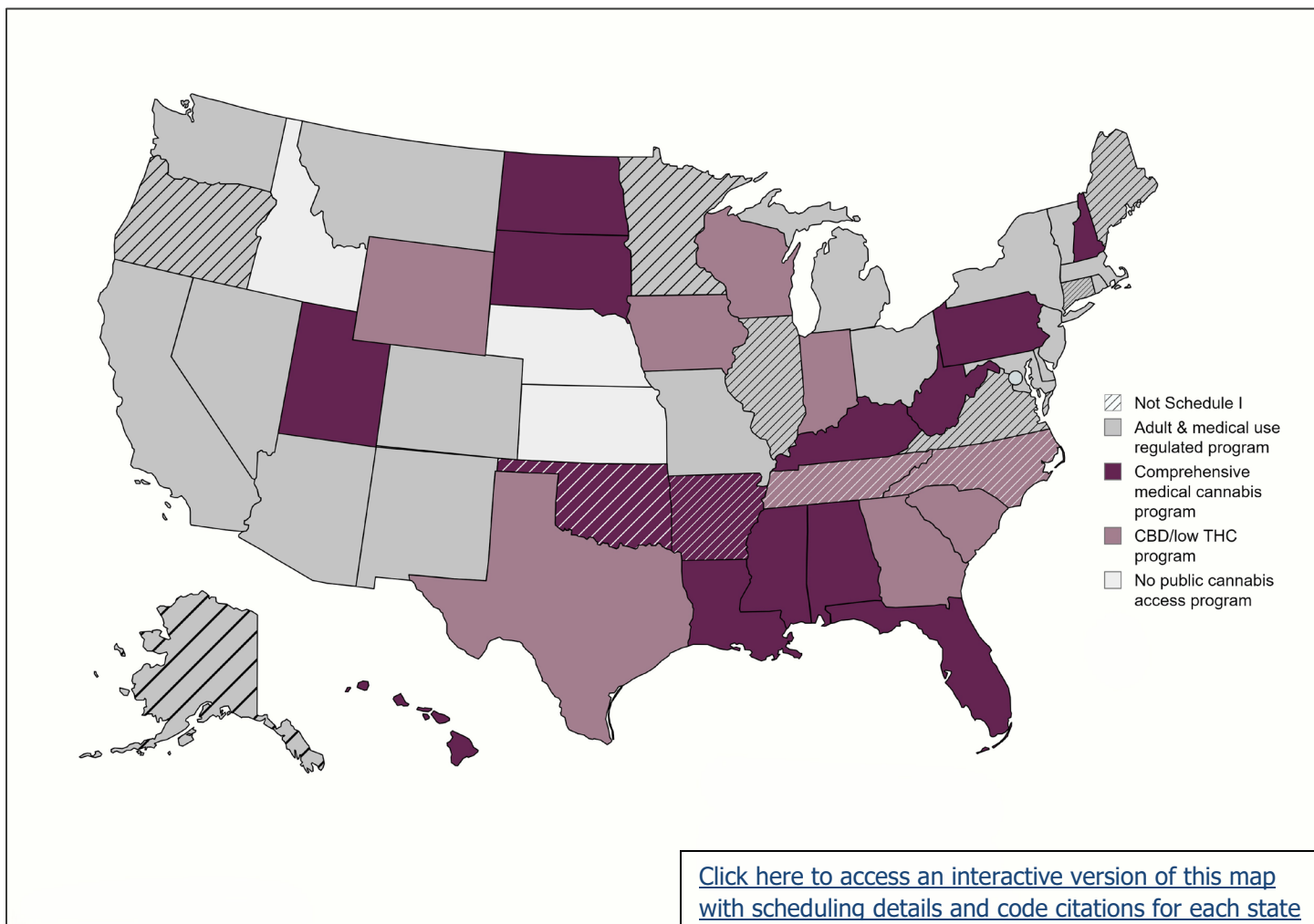
Cannabis: refers to all products derived from the plant *Cannabis sativa* (about 540 chemical substances.)

Marijuana: refers to parts or products of the plant *Cannabis sativa* containing substantial amounts of tetrahydrocannabinol (THC) – the psychoactive ingredient in marijuana.

Source: [National Institutes of Health](#)



Figure 3. Schedule I Status of Marijuana in State CSAs and Type of Regulated Cannabis Program



Source: Marijuana scheduling research obtained from the National Conference of State Legislatures. May 14, 2024.

Without further legislation, the penalties for illegal possession, distribution, or use will not change from the current penalties already in force. Generally, Utah treats drug offenses for marijuana less stringently than a drug offense for another Schedule I controlled substance.

Impacts to Utah’s Medical Cannabis Program

Outside of the tax benefits, the immediate impact of federal rescheduling on Utah’s medical cannabis businesses will be minimal.

Even if the DEA starts permitting the transport of unprocessed cannabis across state lines for research purposes, Utah’s medical cannabis cultivators would remain prohibited from sending their product out of state. They are only able to send cannabis to other Utah-licensed [production establishments](#) or [academic institutions](#) with a research license from the Utah Department of Agriculture and Food (UDAF).

Furthermore, Schedule III controlled substances still need FDA approval to move in interstate commerce and to be sold to consumers. In other words, until a cannabis product receives FDA approval, products created in other states will not be able to be sold in Utah.



Conclusion

As federal marijuana rescheduling appears to be an ever-increasing possibility, it could be useful for state policymakers to consider how, if at all, this change to the federal Controlled Substances Act would impact state-level regulation of marijuana.

While it is evident that marijuana researchers and business owners stand to benefit from this change, it remains less clear how other systems will be impacted.

The Utah Medical Cannabis Program would not be impacted directly by federal rescheduling, and Utah would continue to treat marijuana as a Schedule I substance, but plenty of questions remain about the ripple effects of the policy and the areas it could eventually touch – workforce, criminal justice, commerce, federal assistance programs, to name a few.



Endnotes

ⁱ 21 U.S.C. § 812 - Schedules of controlled substances. <https://www.law.cornell.edu/uscode/text/21/812>

ⁱⁱ Emergency Scheduling: The DEA Administrator also has authority to place a substance in Schedule I temporarily when “Necessary to avoid an imminent hazard to the public safety.” There are specific processes that must be followed under the emergency scheduling provision.

ⁱⁱⁱ The Application of Internal Revenue Code Section 280E to Marijuana Businesses: Selected Legal Issues. Congressional Research Service. March 10, 2021. <https://crsreports.congress.gov/product/pdf/R/R46709>

^{iv} The Marijuana Policy Gap and the Path Forward. Congressional Research Service. March 10, 2017. <https://crsreports.congress.gov/product/pdf/R/R44782/4>

^v Nineteen states (Alabama, Delaware, Idaho, Illinois, Kentucky, Massachusetts, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Washington, Wisconsin, and Wyoming) have provisions in their statute that call for the state to control substances like federal scheduling. Several states have similar language, with North Carolina’s provision reading, *“If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to Chapter 150B of the General Statutes within 180 days of its decision to object.”*

It is not clear how – or if – these ‘mirrored’ scheduling provisions are being implemented in each state. For example, it was found that Illinois, North Carolina, and Tennessee, have a mirroring provision but also currently schedule marijuana as a non-Schedule I substance.

^{vi} The eleven states that do not classify marijuana as a Schedule I controlled substance are Alaska, Arkansas, Connecticut, Illinois, Maine, Minnesota, North Carolina, Oklahoma, Oregon, Tennessee, and Virginia. Additionally, four other states – Kentucky, Massachusetts, New Hampshire, and Vermont – do not clearly classify marijuana in their Controlled Substances Act.

^{vii} State Medical Cannabis Laws. National Conference of State Legislatures. Updated June 4, 2024. <https://www.ncsl.org/health/state-medical-cannabis-laws/maptype/tile#undefined>