



Office of Cannabis Management

KATHY HOCHUL
Governor

FELICIA A. B. REID
Acting Executive Director

Submission of Public Comment

To: Drug Enforcement Administration, Attn: DEA Federal Register Representative

From: New York State: Office of Cannabis Management

Date: July 19, 2024

Re: **Docket No. DEA-1362; A.G. Order No. 5931-2024 / Schedules of Controlled Substances: Rescheduling of Marijuana**

The New York State Office of Cannabis Management (OCM) extends its support to the Drug Enforcement Administration (DEA) and Department of Justice (DOJ) in reevaluating marijuana's status under the Controlled Substances Act (CSA). This historic step reflects the growing consensus that cannabis should be regulated and accessible for both medical and adult-use purposes, aligning with the views of 88%¹ of Americans who support cannabis legalization. New York State has had a state-run medical cannabis program for a decade and legalized adult-use cannabis in 2021, regulating the cannabis industry in a manner that protects public health and safety. Federal rescheduling of marijuana from Schedule I to Schedule III acknowledges its medicinal value, consistent with recent recommendations from the Department of Health and Human Services (HHS).¹

OCM requests additional guidance from the federal government, like the Cole Memorandum (2013) which signaled the federal government's enforcement priorities and commitment to allow states to regulate cannabis by their state-run programs. New York's cannabinoid hemp, adult-use, and medical cannabis programs include hundreds of licensees and over 100,000 medical cannabis patients, who depend on access to regulated cannabis. Rescheduling marijuana to Schedule III would be a positive change, however state regulated cannabis programs need surety from the federal government that these programs will remain stable and accessible to consumers even as the federal government develops and issues guidance areas unaddressed by rescheduling alone.

I. Impact of Prohibition and the New York Marijuana Regulation and Taxation Act

New York State enacted the Marijuana Regulation Taxation Act (MRTA) in March 2021. The MRTA created OCM and established a comprehensive regulatory structure to oversee the licensure of state-based businesses that engage in the cultivation, production, distribution, sale, and taxation of medical cannabis; adult-use cannabis; and cannabinoid hemp. The MRTA:

¹ U.S. Department of Health and Human Services. (2016). *Evaluation of cannabis for abuse potential*. <https://www.dea.gov/sites/default/files/2024-05/2016-17954-HHS.pdf>

- Established a robust social and economic equity program to actively encourage members from communities disproportionately impacted by the policies of marijuana prohibition to participate in the new industry,
- Created a process to automatically expunge criminal records for cannabis-related offenses, and
- Developed a community reinvestment fund to direct 40% of adult-use cannabis tax revenue to communities that had been most disproportionately impacted by cannabis prohibition.

These initiatives aimed to address the social and economic harm caused by decades of disproportionately applied drug policies and provide accessible, equitable opportunities within a legal cannabis framework. Today, New York has one of the highest rates of social equity licensees operating cannabis businesses in the country.

II. Advantages of Rescheduling and Considerations for State-Regulated Cannabis Operations

Rescheduling cannabis from Schedule I to Schedule III is a policy shift that impacts several sectors of the cannabis industry, including the medical cannabis, tax policy, and research.

- **Medical Use:** Rescheduling underscores the importance of medical cannabis use. This recognition may help reduce the stigma associated with cannabis, encouraging more practitioners to acknowledge and utilize it as a potential treatment option.
- **Industry Participation and Taxation:** Businesses currently involved in the cannabis industry cannot deduct standard business expenses due to Section 280E of the Internal Revenue Code, which applies to Schedule I and II substances. Rescheduling cannabis to Schedule III would remove this restriction, allowing the cannabis industry to deduct business expenses such as payroll, rent, and marketing. This action has the potential to make licensed cannabis operators more competitive with the unregulated market which does not adhere to New York's cannabis safety regulations or pay product taxes – undermining community reinvestment and the public health and safety goals of legalization.
- **Research:** Researchers are routinely unable to secure federal grants for studies involving Schedule I substances. State institutions have tried to fill the gap, but concerns exist that engaging in cannabis research, even if solely state-funded, could jeopardize those institutions' federal funding. This limits the scope of research to mostly privately funded initiatives, which can be sporadic and insufficient. Rescheduling to Schedule III would alleviate these barriers by easing research regulations and broadening funding opportunities.

Rescheduling cannabis to Schedule III signals federal intent for substantial policy and practice change and opens the door for additional federal guidance to support state-run cannabis programs. Of several issues that persist, however, are federal criminalization of adult-use cannabis, limited interstate commerce, persistent banking challenges, and continuity of care for medical cannabis patients. While rescheduling may open pathways for prescription drug models, ambiguity remains for many adult-use cannabis products. In addition, the federal government should consider addressing and eliminating criminal penalties associated with the possession, cultivation, manufacture, and distribution of cannabis, in line with states' frameworks. Further considerations should aim to expand equitable financial access and resources and solicit feedback from states on approaches whereby the federal government can best support state-regulated adult-use cannabis programs.

III. Considerations for Further Comprehensive Federal Cannabis Action

OCM recommends that the DOJ and DEA consider the following:

- Establish National Standards for Agricultural Chemicals in the Cannabis Supply Chain:** Rescheduling presents an opportunity for the federal government to establish health and safety standards, tolerances, and permissible exposure limits for pesticides and other agricultural chemicals throughout the cannabis supply chain—from exposure during cultivation to exposure during cannabis consumption. The federal government has established such standards for the hemp industry,² however the use of agricultural chemicals in cannabis currently relies on a patchwork of variable state standards. Consistent, evidence-based standards will support the health and safety of workers, consumers, and the environment and facilitate compliance for the industry. Federal-state partnerships can support research into both the health and safety standards themselves as well as the impact of regulation of agricultural chemicals in the cannabis industry.
- Ensure Access to Financial Services and Products:** Access to financial services and products is crucial for the sustainability and growth of the cannabis industry, especially for small businesses and social equity programs. Reforms allowing cannabis businesses to use traditional banking would eliminate the need for cash-only operations, which pose security risks and complicate financial management. Without traditional banking, cannabis businesses will continue to struggle in securing capital, building credit histories, and accessing essential financial support. Comprehensive cannabis banking reform would support public health and safety by encouraging consumers to purchase from regulated businesses, facilitate financial transparency, provide grants, low-interest loans, and business development resources to entrepreneurs from communities impacted by prohibition to foster a fair and equitable market.
- Standardize Data Collection and Support Monitoring of Cannabis-Related Outcomes:** State cannabis legalization has far-reaching effects and requires diverse data sources to assess its impact on public health and safety. A robust monitoring plan incorporating population-based surveys, healthcare data, and motor vehicle crash data is crucial for evidence-based policy. Resources are needed to address limitations in existing data systems to accurately quantify cannabis's role in outcomes and differentiate between regulated and unregulated cannabis impacts. For example, the Fatality Analysis Reporting System (FARS) includes drug testing results, but a positive cannabis test does not necessarily indicate impairment. Similarly, cannabis-related ICD-10 codes identify use or dependence in healthcare encounters without indicating causality. Professional organizations like the Council of State and Territorial Epidemiologists are working to standardize definitions of cannabis-related emergency visits and hospitalizations, however further analysis is needed to ensure accurate data presentation and help state regulators understand the impacts to create further cannabis policy. Statewide data collection is expensive, and these costs can be a barrier to data collection in some states. Federal funding support and data standardization would ensure states have access to better, more comparable data for national analysis to monitor public health and safety trends across jurisdictions.
- Enhance Cannabis Research Accessibility:** Allowing researchers to access commercially available cannabis products from state-licensed operators would enable the scientific investigation and data collection of real-world products utilized by consumers. Expressly permitting academic institutions,

² U.S. Environmental Protection Agency. (2020). *Pesticide Products Registered for Use in Hemp*. https://19january2021snapshot.epa.gov/pesticide-registration/pesticide-products-registered-use-hemp_.html

particularly if their programs are supported by federal monies, to conduct these studies without concern of losing federal benefits, will be a significant step in advancing cannabis research.

- **Address the Regulation of Cannabis and Intoxicating Hemp Products:** The current misalignment of the treatment of cannabis and hemp-derived intoxicating products is untenable for state regulators. States require clarity to set product quality control standards for all cannabis products, regardless of whether they were originally derived from hemp or cannabis. This is a major public health concern as similar products are operating under different regulatory frameworks creating significant confusion for regulators, businesses, and cannabis consumers.
- **Remove Cannabis from the Controlled Substances Act:** Removing cannabis from the Controlled Substances Act would eliminate federal criminalization, reduce barriers to cannabis research, and create a pathway for states that have enacted laws to authorize the production, distribution and possession of cannabis to continue to do so. Establishing evidence-based definitions for "potential for abuse"³ and "currently accepted medical use"² based on contemporary research^{1,2} will help to ensure cannabis is regulated according to its actual risks and benefits, promoting evidence-based drug policy.
- **Establish a Federal Cannabis Community Reinvestment and Research Fund:** Allocating federal funds to research the potential therapeutic benefits of cannabis, as well as financing and providing business development resources to entrepreneurs disproportionately impacted by cannabis prohibition is necessary for advancing the scientific understanding of cannabis and supporting social equity cannabis programming across the country.

In conclusion, the State of New York strongly supports rescheduling cannabis from Schedule I to Schedule III. In addition, OCM urges the federal government to provide clear guidance to protect state-level adult-use cannabis programs, improve financial access and resources, and expand the health and safety opportunities of cannabis study. These measures will ensure a thriving, equitable cannabis market that works in benefit of consumers, businesses, researchers, and local communities in kind.

Kind regards,



Felicia A. B. Reid, Esq.
Acting Executive Director / Executive Deputy Director

OFFICE OF CANNABIS
MANAGEMENT

³ U.S. Code. (1970). Controlled Substances Act, 21 U.S.C. § 801 et seq.