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# U.S. DOJ Proposes Moving Marijuana from Schedule I to Schedule III; Approval Would Ease Criminal Penalties

**The proposed rule would shift marijuana from Schedule I to Schedule III, reducing federal criminal penalties and acknowledging its medical use**

Federal / **Published On May 16, 2024 02:22 PM /**

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The U.S. Justice Department announced today that the Attorney General Merrick Garland has submitted a notice of proposed rulemaking to the Federal Register, initiating a formal process to consider rescheduling marijuana from a Schedule I to a Schedule III drug under the Controlled Substances Act (CSA). This rescheduling would significantly alter marijuana's legal status, reducing federal criminal penalties associated with its use and acknowledging its accepted medical use in treatment within the United States.

Marijuana has been classified as a Schedule I drug since Congress enacted the CSA in 1970. On October 6, 2022, President Joe Biden requested that the attorney general and the secretary of Health and Human Services (HHS) conduct a scientific review of marijuana's classification under federal law. Following HHS's recommendations last August, the Garland sought legal advice from the Justice Department's Office of Legal Counsel (OLC) on relevant questions. Considering HHS's medical and scientific determinations and the OLC's legal advice, the Office of the Attorney General initiated the rulemaking process to reschedule marijuana to Schedule III.

Rescheduling a controlled substance involves a formal rulemaking procedure that requires public notice, an opportunity for comment, and an administrative hearing. This proposal begins the process where the Drug Enforcement Administration (DEA) will gather and consider information and views from the public to make a determination about the appropriate schedule. During this process, marijuana remains classified as a Schedule I controlled substance.

The current rulemaking follows a history of attempts and legal challenges regarding the classification of marijuana. Initially, marijuana was placed in Schedule I in 1970, signifying it had a high potential for abuse, no currently accepted medical use in treatment, and a lack of accepted safety for use under medical supervision. Over the years, various petitions and legal challenges have sought to reschedule marijuana, but DEA has repeatedly denied these requests based on its five-part test for determining a drug's "currently accepted medical use" (CAMU).

The recent HHS recommendation to reschedule marijuana was based on a two-part inquiry. Part 1 of the inquiry assessed whether licensed healthcare providers have "widespread current experience with medical use" of the drug. Part 2 evaluated if there is "some credible scientific support for at least one of the medical uses." HHS concluded that marijuana meets these criteria, justifying its rescheduling to Schedule III.

The potential rescheduling raises several legal and regulatory questions. According to an April 2024 memorandum from the OLC, DEA's current approach to determining CAMU is considered impermissibly narrow. The OLC opined that HHS's two-part inquiry is sufficient to establish CAMU and emphasized that DEA must consider HHS's scientific and medical determinations significantly during the rulemaking process.

Additionally, the memorandum addressed the impact of the Single Convention on Narcotic Drugs and the CSA's requirements. It concluded that neither the Single Convention nor the CSA mandates that marijuana be placed in Schedule I or II. DEA can comply with international obligations by placing marijuana in Schedule III while imposing additional regulatory controls as needed.

The rulemaking process will involve public participation, with opportunities for comments and a hearing before a final decision is made. The outcome will determine whether marijuana's classification changes, potentially affecting its legal status and availability for medical use across the United States.