



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

# Memorandum

**DATE:** July 22, 2024

**TO:** Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW

**FROM:** Michigan Cannabis Regulatory Agency

**SUBJECT:** **Comments on the Proposed Rescheduling of Marijuana  
21 CFR Part 1308  
Docket No. DEA-1362; A.G. Order No. 5931-2024  
Schedules of Controlled Substances: Rescheduling of Marijuana**

Michigan's Cannabis Regulatory Agency (CRA) is responsible for implementing and regulating Michigan's medical marijuana/patient-caregiver program, commercial medical marijuana program, and commercial adult-use medical marijuana program. The CRA submits these comments in response to the Drug Enforcement Administration's (DEA) notice of proposed rulemaking.

The comments below are twofold: First, we are providing information and statistics about Michigan's Medical Marijuana Program to assist the DEA in its understanding of whether marijuana has a currently accepted medical use as determined using the Department of Health and Human Services (HHS) two-part inquiry. Second, we are providing a list of considerations the DEA and other federal agencies should evaluate when determining whether to reschedule marijuana and how rescheduling should be implemented.

## **Information and Statistics on Michigan's Medical Marijuana Program**

In 2008, Michigan voters approved a citizen-initiative to create the Michigan Medical Marijuana Program which authorizes medical patients to grow and possess marijuana. Under the program, qualifying patients who have been diagnosed by a physician with a debilitating medical condition and caregivers who assist patients by cultivating marijuana may apply for the patient-caregiver registry. Inclusion on the registry and possession of a registry card provides protection from prosecution for those in possession of an amount of marijuana that does not exceed the limits established in the law.

In 2018, voters approved another citizen-initiative that legalized adult-use marijuana for recreational consumption. While the registry cards are no longer required to protect from prosecution, many patients still see value in maintaining their registry cards. At its peak in 2018, there were nearly 300,000 patients and more than 40,000 caregivers participating in the program. The charts below provide the most recent data for patients and caregivers participating in the program.

In Fiscal Year 2023 (ending Sept. 30, 2023), 54,557 Michigan patients filed applications for registry cards through the medical marijuana program.

	Original Applications			Renewals			Grand Total
	Paper	Online	Total	Paper	Online	Total	
October	1,461	2,900	4,361	453	1,273	1,726	6,087
November	1,036	2,758	3,794	336	987	1,323	5,117
December	941	2,450	3,391	246	726	972	4,363
January	945	2,617	3,562	275	878	1,153	4,715
February	804	2,338	3,142	284	731	1,015	4,157
March	1,062	2,836	3,898	368	1,056	1,424	5,322
April	851	2,340	3,191	294	779	1,073	4,264
May	913	2,347	3,260	357	748	1,105	4,365
June	853	2,272	3,125	400	720	1,120	4,245
July	875	1,939	2,814	318	627	945	3,759
August	1,067	2,197	3,264	380	752	1,132	4,396
September	814	1,937	2,751	340	676	1,016	3,767
<b>FY 2023 Total</b>	<b>11,622</b>	<b>28,931</b>	<b>40,553</b>	<b>4,051</b>	<b>9,953</b>	<b>14,004</b>	<b>54,557</b>

There are currently 129,099 qualifying patients and 11,554 primary caregivers approved by the CRA. The breakdown per county is as follows:

County	Patients	Caregivers	County	Patients	Caregivers
Alcona	232	29	Lake	95	13
Alger	367	38	Lapeer	1,639	223
Allegan	2,525	254	Leelanau	696	34
Alpena	493	27	Lenawee	1,448	169
Antrim	812	68	Livingston	2,163	168
Arenac	518	60	Luce	44	4
Baraga	121	10	Mackinac	124	9
Barry	928	103	Macomb	13,629	1,350
Bay	2,441	156	Manistee	189	17
Benzie	766	57	Marquette	152	22
Berrien	1,935	274	Mason	184	16
Branch	829	168	Mecosta	124	17
Calhoun	1,088	133	Menominee	210	49
Cass	685	116	Midland	1,251	120
Charlevoix	201	14	Missaukee	102	7
Cheboygan	378	31	Monroe	2,205	204
Chippewa	440	37	Montcalm	988	166
Clare	804	156	Montmorency	60	15
Clinton	1,465	139	Muskegon	1,369	137
Crawford	600	52	Newaygo	721	99
Delta	355	48	Oakland	20,527	1,566
Dickinson	251	58	Oceana	488	88
Eaton	1,509	161	Ogemaw	237	24
Emmet	85	8	Ontonagon	53	10
Genesee	4,913	542	Osceola	172	36
Gladwin	16	4	Oscoda	119	7
Gogebic	190	41	Otsego	56	5
Grand Traverse	1,064	60	Ottawa	1,684	115
Gratiot	148	20	Out of State	-	4
Hillsdale	441	70	Presque Isle	67	5
Houghton	190	15	Roscommon	301	19
Huron	316	14	Saginaw	1,642	168
Ingham	1,146	139	Saint Clair	2,158	227
Ionia	138	21	Saint Joseph	314	50
Iosco	88	3	Sanilac	420	32
Iron	75	15	Schoolcraft	18	6
Isabella	297	30	Shiawassee	1,258	125
Jackson	2,389	216	Tuscola	1,629	215
Kalamazoo	1,498	147	Van Buren	798	113
Kalkaska	211	23	Washtenaw	6,023	397
Kent	4,171	267	Wayne	25,807	1,580
Keweenaw	121	9	Wexford	695	90
<b>Total</b>	<b>129,099</b>	<b>11,554</b>			

The nature of the debilitating medical conditions of the qualifying patients is as follows (totals exceed 100% because patients may choose more than one):

<b>Condition</b>	<b>Percent of Total</b>
Agitation of Alzheimer's Disease	0.03
AIDS	0.04
Amyotrophic Lateral Sclerosis	0.02
Arthritis	19.54
Autism	0.57
Cachexia or Wasting Syndrome	0.28
Cancer	3.21
Cerebral Palsy	0.10
Chronic Pain	62.98
Colitis	0.37
Crohn's Disease	0.61
Glaucoma	1.12
Hepatitis C	0.50
HIV Positive	0.34
Inflammatory Bowel Disease	0.98
Muscle Spasms	7.55
Nail Patella	0.01
Obsessive Compulsive Disorder	1.59
Parkinson's Disease	0.12
Post-Traumatic Stress Disorder	7.45
Rheumatoid Arthritis	1.42
Seizures	1.53
Severe and Chronic Pain	41.52
Severe Nausea	5.41
Spinal Cord Injury	0.70
Tourette's Syndrome	0.10
Ulcerative Colitis	0.29

## **Considerations the DEA and Other Federal Agencies Should Evaluate when Determining Whether to Reschedule Marijuana and How Rescheduling Should be Implemented.**

Thousands of Michiganders rely on marijuana as part of their medical care. Additionally, Michigan is home to one of the largest commercial adult-use marijuana markets in the country, with annual sales exceeding \$3 billion. Rescheduling marijuana from schedule I to schedule III can have profound impacts on both the medical and adult-use markets, potentially transforming how these markets operate and are perceived, but will do little good—and could potentially wreak havoc on Michigan’s existing programs—without clear guidance from all areas of the federal government explaining the effects of rescheduling.

The CRA understands each federal agency has their own scope of responsibilities and the DEA does not exercise control over those agencies, but if rescheduling is going to have a meaningful, positive effect, the federal government must take a whole-of-government approach to implementation, messaging, and enforcement. Federal agencies should coordinate to publish as much information as possible to ensure a positive path forward in the legal marijuana space. The CRA has identified a number of areas that are affected by marijuana’s current status as a schedule I drug and for which specific guidance should be provided if marijuana is rescheduled to schedule III.

### *Requirements Applicable to Schedule III Drugs*

Schedule III drugs regulated under the Controlled Substances Act (CSA) are categorized based on their potential for abuse and medical use and are subject to stringent regulations intended to balance their medical benefits with the potential risks of abuse and dependence. These regulations aim to ensure safe and controlled access to these substances while preventing misuse and diversion for non-medical purposes. Examples of the regulations that apply to schedule III drugs include the following:

- Schedule III drugs require a prescription from a licensed healthcare provider (doctor, physician assistant, nurse practitioner, etc.) for legal use by patients.
- Prescriptions for Schedule III substances can generally be refilled up to five times within a six-month period from the date of issue.
- Pharmacies and healthcare providers must adhere to strict dispensing regulations when handling Schedule III drugs.
- These drugs often require more stringent record-keeping and reporting compared to lower schedule drugs to prevent diversion and misuse.
- Entities involved in the handling of Schedule III drugs must comply with CSA requirements to ensure accountability and prevent illegal diversion.
- States may impose additional regulations or requirements regarding the prescribing and dispensing of Schedule III drugs, which healthcare providers and pharmacies must also follow.

If marijuana is rescheduled, it is important for the federal government to clarify how the requirements that apply to schedule III drugs will apply to marijuana. Marijuana is unique in that 35+ states are already operating mature medical marijuana programs, none of which likely comply with the requirements for schedule III drugs. In addition, 24 states operate commercial adult-use marijuana programs; yet there are no adult-use programs for any other schedule III drugs.

A whole-of-government approach will be critical to successfully communicating with state regulators, marijuana businesses, patients, and consumers the expectations for how rescheduling will impact the market. The decisions made on this point will have far-reaching implications for the many other sectors that are impacted by marijuana's current status as a schedule I drug.

### *Banking and Taxation*

Rescheduling marijuana could be crucial for enabling legitimate marijuana businesses to access banking services and realize the benefits of business tax deductions and exemptions enjoyed in other industries. Currently, many federally regulated financial institutions refuse to provide services to marijuana businesses out of fear of violating federal law. This creates significant challenges for these businesses, forcing them to operate primarily in cash. The lack of access to banking not only hampers their ability to manage finances securely but also increases the risks associated with theft and money laundering.

In addition, rescheduling marijuana could facilitate proper taxation of marijuana businesses. With legal recognition at the federal level, these businesses could pay taxes like any other legal enterprise. Tax revenue from marijuana sales has the potential to contribute significantly to state and federal budgets, funding various public programs and initiatives.

Without clear guidance from the federal government, the tax system would remain convoluted and businesses would continue to face obstacles in claiming deductions and credits that are standard for other industries. By aligning federal and state laws through rescheduling and clear communication, the federal government can ensure transparency in financial reporting and maximize revenue generation from the burgeoning marijuana industry, benefiting both businesses and the broader economy. If marijuana is rescheduled, the U.S. Department of the Treasury should issue clear guidance about the implications of the rescheduling on commercial medical and adult-use marijuana businesses with respect to banking services and taxation.

### *Bankruptcy Protection*

Rescheduling could open the door for marijuana businesses to seek bankruptcy protection like any other legal business, allowing them to restructure debts, protect assets, and continue operations under court supervision. They could propose and implement debt repayment plans under Chapter 11 bankruptcy, which could be crucial for financially distressed businesses to reorganize and emerge from financial difficulties.

For marijuana businesses facing liquidation, rescheduling could permit clear guidelines on how assets derived from marijuana operations can be handled in bankruptcy proceedings. This would provide clarity and legal certainty for trustees and creditors involved in the liquidation process, ensuring compliance with federal law while maximizing asset recovery and distribution.

Rescheduling would be a significant step toward enabling marijuana businesses to access bankruptcy protections and relief under federal law. It could provide a framework for orderly bankruptcy proceedings, potentially preserving economic value and saving jobs within the industry while ensuring compliance with legal and regulatory requirements. If marijuana is rescheduled, the U.S. Trustee Program should issue clear guidance about the implications of

the rescheduling on bankruptcy filings by commercial medical and adult-use marijuana businesses.

### *Packaging, Labeling, and Advertising*

Each state with a marijuana program adopts its own standards for packaging, labeling, and advertising, resulting in a patchwork of requirements nationwide. Rescheduling could lead to the standardization and regulation of packaging, labeling, and advertising requirements for marijuana products across states where it is legal. This standardization could bring several important changes and benefits to the packaging, labeling, and advertising practices in the marijuana industry.

Rescheduling could establish uniform guidelines for packaging materials, safety standards, and advertising requirements. This would ensure that marijuana products are produced and sold in ways that protect both consumers and producers alike. Additionally, standardizing requirements could simplify compliance and provide consumers with clearer and more consistent information about the contents, potency, and potential health risks associated with marijuana products while preventing misleading claims. This includes standardized warnings about potential side effects and recommended usage guidelines.

In addition, rescheduling could better protect children by prohibiting advertising that would appeal to that demographic and mandating child-resistant packaging for marijuana products, aligning with safety measures common in other industries. This would help prevent accidental ingestion by children and mitigate concerns over product accessibility. Uniform packaging, labeling, and advertising requirements would likely simplify compliance for marijuana businesses operating across multiple states, reducing costs associated with adapting to different state regulations and potentially promoting interstate commerce.

If communicated clearly, rescheduling could lead to standardized packaging, labeling, and advertising requirements, benefiting both consumers and businesses by enhancing product safety, consumer understanding, and regulatory compliance. If marijuana is rescheduled, the Food and Drug Administration or Drug Enforcement Agency should issue clear guidance about the implications of the rescheduling on commercial medical and adult-use marijuana businesses with respect to packaging, labeling, and advertising requirements.

### *Product Safety Standards*

Rescheduling has the potential to align and strengthen safety standards across the marijuana industry. Currently, safety standards can vary widely between states where marijuana is legal for medical or adult-use purposes.

One of the primary ways rescheduling could affect safety standards is by establishing comprehensive federal regulations for cultivation, processing, quality control and testing, and distribution of marijuana products. This would ensure that all marijuana products meet uniform safety and quality standards regardless of where they are produced or sold. Such standards could cover limits on pesticides, solvents, inactive ingredients, microbials, and metals; dosing amounts; and potency limits. This would enhance consumer safety by providing assurances that products meet specific quality benchmarks before reaching the market. Uniform safety

standards would also help facilitate nationwide consistency and reliability in product labeling, helping consumers make informed decisions about the products they purchase.

By harmonizing safety practices across the country, rescheduling could foster a safer and more trustworthy marijuana market. If marijuana is rescheduled, the Food and Drug Administration or Drug Enforcement Agency should issue clear guidance about the implications of the rescheduling on commercial medical and adult-use marijuana businesses with respect to product safety standards.

### *Transportation and Interstate Commerce*

Rescheduling would have several implications for transportation and interstate commerce. Under current federal law, marijuana cannot be transported across state lines, even if both states have legal marijuana programs. If marijuana is rescheduled, it could potentially allow for legal interstate commerce of marijuana products between states where marijuana is legal. This would enable licensed businesses to transport marijuana across state lines without facing federal legal repercussions, provided they comply with federal regulations and any specific guidelines for interstate commerce that may be established. It will be critical for federal agencies to issue clear guidance about the requirements and expectations for interstate commerce while recognizing that states have developed their own requirements for the cultivation, processing, transportation, tracking, and sales of marijuana.

Pilots and air carriers are currently prohibited from transporting marijuana on aircraft, even within states where it is legal. Additionally, transporting marijuana by watercraft across state or international waters is illegal under federal law. Rescheduling could lead to more clarity and potentially relaxed restrictions on the transport of marijuana products across state lines and on different modes of transportation, while still ensuring compliance with federal safety, security, and regulatory standards. If marijuana is rescheduled, the FAA and any other agency responsible for regulating air and water transport should issue clear guidance about the implications of rescheduling on the transportation of medical and adult-use marijuana by aircraft or watercraft.

### *Research*

State regulators remain acutely interested in research that can help guide policy and, in particular, research that can be conducted with products currently available on the state-regulated marketplaces. Among other things, such research could help regulators understand the risks and benefits of different products on the market. There is currently confusion among researchers and government officials about what will change with rescheduling in terms of research processes and protocols, and whether researchers will be permitted to use state-regulated products, with appropriate approval from FDA. Accordingly, federal guidance is warranted on how research processes and protocols will change with rescheduling and what products can be used for research purposes.

### *Federal Enforcement*

Rescheduling could potentially lead to changes in how the U.S. Department of Justice (DOJ) and other agencies approach enforcement related to state-regulated marijuana programs. During the Obama Administration, Deputy Attorney General James Cole issued a memo, "The

Cole Memo,” which provided guidance to federal prosecutors on priorities for enforcing federal marijuana laws in states where it was legalized. This guidance emphasized focusing enforcement efforts on preventing distribution to minors, revenue from sales going to criminal enterprises, diversion of marijuana from legal states to illegal states, and other similar concerns. The Department of Justice could further deprioritize enforcing marijuana laws in these states, allowing states to govern the production, sale, and consumption of marijuana for recreational purposes. This could provide greater stability and predictability for businesses operating in the current medical and adult-use markets by reducing the risk of federal intervention.

Historically, there has been some differentiation in federal enforcement policies between medical and adult-use marijuana programs. The Cole Memo, for instance, suggested a more relaxed approach toward medical marijuana programs that were well-regulated and compliant with state laws. A new DOJ stance or memo post-rescheduling could potentially continue to differentiate between medical and adult-use marijuana programs in terms of enforcement priorities. If marijuana is rescheduled, current or future administrations should issue new guidance that outlines enforcement priorities regarding state-regulated medical and adult-use marijuana programs.

#### *Federal Regulatory Agencies that will Oversee Activities Related to Marijuana*

The DEA currently oversees the enforcement of controlled substances regulations, including those for Schedule III drugs. If marijuana were rescheduled to Schedule III, the DEA would likely continue to play a significant role in regulating its production, distribution, and dispensing. The FDA regulates pharmaceuticals and could potentially have a role in overseeing the safety, efficacy, and labeling of medical marijuana products. The FDA could ensure that marijuana products marketed for medical use meet standards for quality, purity, and potency. HHS, through its agencies such as the FDA and possibly the Substance Abuse and Mental Health Services Administration (SAMHSA), could be involved in setting guidelines and standards for the medical use of marijuana, including aspects related to patient safety, clinical trials, and public health.

While federal agencies could provide overarching regulatory frameworks, states should retain authority over aspects such as licensing, distribution, and implementation of regulations specific to their jurisdictions.

Rescheduling marijuana should integrate into the existing regulatory frameworks for controlled substances as seamlessly as possible, with oversight primarily by federal agencies like the DEA and FDA. This approach could leverage existing expertise and infrastructure while addressing the unique aspects of marijuana as both a medical treatment and a controlled substance.

#### *Conclusion*

Nationwide, millions of individuals consume marijuana to treat their health problems or enjoy its recreational benefits legally under state law. Rescheduling does little good to states with active medical and adult-use markets if the federal government fails to provide clear and robust whole-of-government guidance on the implications of the rescheduling.

The DEA should also proactively seek the advice of the state regulators who have worked diligently—some for more than a decade—to create safe and successful state marijuana markets that generate tens of billions of dollars in economic activity nationwide each year.



For more than half a century, efforts to change how the federal government views marijuana and treats those who grow and consume it fell on deaf ears. In the absence of federal action, states took it upon themselves to gain knowledge and expertise and to build robust regulatory programs that ensure consumers have access to safe products. The federal government now has a once in a generation opportunity to make a meaningful, paradigm altering change in how marijuana is viewed in this country. The CRA urges the DEA to act wisely and responsibly to ensure this opportunity is not lost.

*Contact Information*

*Executive Director Brian Hanna*  
*Policy and Legislative Specialist Derek Sova*  
*Public Relations Manager David Harns*  
Department of Licensing and Regulatory Affairs  
Cannabis Regulatory Agency  
P.O. Box 30205  
Lansing, MI 48909  
Phone Number: 517-284-8599  
Email: [CRA-AdminRules@michigan.gov](mailto:CRA-AdminRules@michigan.gov)