

Legal Sidebar

DEA Will Not Reschedule Marijuana, But May Expand Number of Growers of Research Marijuana

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The Drug Enforcement Administration (DEA) recently released [three important documents](#) relating to the treatment of marijuana under federal law. Most prominently, the DEA [determined](#) that marijuana should remain a Schedule I drug and not, as a group of petitioners had requested, be moved to a lower, less restrictive schedule of control. However, in a potential victory for proponents of increased research on marijuana, the DEA also decided to [expand](#) the cultivation of marijuana for approved research purposes and to [clarify](#) legal requirements for those seeking to cultivate industrial hemp.

DEA Rejects Petition to Reschedule Marijuana

As previously discussed in this [Sidebar](#), the DEA has the authority administratively to move marijuana to a lower schedule or remove it entirely from control under the [Controlled Substances Act](#) (CSA). Generally speaking, the lower the schedule, the fewer legal barriers there are on access to the drug. That rescheduling decision is not, however, made by the DEA alone, but instead also [requires](#) the participation of the Food and Drug Administration (FDA) in the form of a binding “scientific and medical evaluation.” After a five-year process, the DEA, in conjunction with the FDA, recently announced that it had rejected a petition submitted by various state governors to move marijuana to a less restrictive schedule. Consistent with [past](#) practice, the [rejection](#) was based on a conclusion by both the FDA and the DEA that marijuana continues to meet the criteria for inclusion on [Schedule I](#), namely that that drug has a high potential for abuse, no currently accepted medical use, and a lack of an accepted level of safety for use under medical supervision.

In reaching its determination the DEA relied heavily on the FDA evaluation, which although [suggesting](#) that “research with marijuana has progressed,” concluded that enough was not yet known about the drug. For example, the agency noted that “the drug’s chemistry is not known and reproducible; there are no adequate safety studies [and] there are no adequate well-controlled studies proving efficacy.” In addition, DEA gave weight to the fact that there are no FDA approved marijuana products nor “is marijuana under a New Drug Application (NDA) evaluation at the FDA for any indication.”

The DEA decision preserves the status quo. Marijuana will remain a Schedule I drug, and all the prohibitions and restrictions that attach as a result of that classification will remain in force under federal law.

Expanding Growers of Research Marijuana

The FDA [noted](#) in its recommendation that “more research is needed” before marijuana could be removed from Schedule I. In an effort to “support” and “facilitate” additional research on the drug, and in response to increased demand for research grade marijuana from approved researchers, the DEA issued a new [policy](#) intended to “increase the number of entities registered...to grow (manufacture) marijuana to supply legitimate researchers.” Currently, the University of Mississippi is the only entity authorized, pursuant to a contract with the [National Institute of Drug Abuse](#) (NIDA), to grow marijuana for research purposes. Some [commentators](#) have identified this “NIDA monopoly” on cultivation as a major barrier to marijuana research.

The DEA policy statement concludes that it would be “beneficial for research to allow additional marijuana growers outside the NIDA-contract system.” As a result, the DEA is now willing to license additional growers to “operate independently, provided the grower agrees (through a written memorandum of agreement with DEA) that it will only distribute marijuana with prior, written approval from DEA.” In addition, under the new policy, these growers will only be permitted to supply marijuana to DEA-registered researchers, whose “protocols have been determined by the Department of Health and Human Services (HHS) to be scientifically meritorious.” This new approach, DEA states, will allow persons to obtain a DEA cultivation registration “not only to supply federally funded or other academic researchers, but also for strictly commercial endeavors funded by the private sector and aimed at drug product development.” Given that the FDA and the DEA both identified the lack of research as a significant factor in denying the rescheduling petition, to the extent that this policy may increase the amount of marijuana research conducted, the change could contribute to making future rescheduling more likely.

The DEA decision to expand approved growers of marijuana to entities that are not directly bound by a contract with NIDA raises some questions in regards to compliance with the United States’ treaty obligations. Under the [CSA](#), the DEA may only issue a registration to grow marijuana for research purposes if the registration is “consistent with...United States obligations under international treaties.” Under the [Single Convention on Narcotic Drugs](#), a signatory country that permits the cultivation of marijuana “shall establish...and maintain, one or more government agencies to carry out the functions required under the article.” Among other things, those functions include the requirement that “[a]ll cultivators...shall be required to deliver their total crops of [marijuana] to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.” The DEA [asserts](#) that the new policy complies with these requirements, noting its belief that “it would be consistent with the purposes of [] the Single Convention for DEA to register marijuana growers outside of the NIDA-contract system to supply researchers, provided the growers agree that they may only distribute marijuana with prior, written approval from DEA.”

Notwithstanding the DEA position, a variety of bills have been introduced in the 114th Congress that would require either that marijuana be [removed](#) from control under the CSA, or [moved](#) to a less restrictive schedule.

Clarifying the Legal Status of Industrial Hemp

The Department of Agriculture, in conjunction with the DEA and FDA, also released a [“Statement of Principles on Industrial Hemp”](#) in an effort to clarify the application of a [2014 Farm Bill](#) provision that legalized the cultivation of industrial hemp for research purposes by state agriculture departments and state institutions of higher education in states that have legalized such conduct under state law. The statement clarified legal aspects of state industrial hemp pilot programs operating under that 2014 law, including questions relating to the definition of industrial hemp, registration and certification of growers, and legal restrictions on the importation of viable seeds.

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