



Congress of the United States
House of Representatives
Washington, DC 20515

MEMORANDUM

To: Cannabis Stakeholders

From: Congressional Cannabis Caucus Founder and Co-Chair (and 50+ year advocate for ending the failed war on drugs) Congressman Earl Blumenauer (D-OR)

RE: Schedule III and the Path Forward

Date: May 7, 2024

The Path Forward: Schedule III and Beyond

On April 30, the Department of Justice (DOJ) confirmed that they proposed marijuana be reclassified as a Schedule III substance. Marijuana was classified as a Schedule I substance more than 50 years ago for naked political advantage during Richard Nixon's failed war on drugs. This classification was justification to destroy the lives of hundreds of thousands of young Black men and decimated communities of color across the country.

Schedule III is not quite what we wanted – marijuana shouldn't be scheduled at all — but it is nonetheless a revolutionary step that sends a signal about the imperative of ending the failed war on drugs.

Cannabis reform is a winning issue. There are now 38 states with medical cannabis programs and 24 states with legal adult-use marijuana. More than half of the U.S. population now lives in jurisdictions with legal adult-use marijuana. Seven in 10 Americans think marijuana use should be legal, an increase reflecting historic support for an end to the draconian federal prohibition of cannabis.

It is clear the Biden-Harris Administration is listening to the unprecedented public demand for cannabis reform. President Biden has been much more engaged on the issue. He pardoned thousands of individuals, initiated this long-overdue review of scheduling, and opened a new chapter for reform. The Administration must move through the regulatory process as quickly as possible to reschedule cannabis. Meanwhile, federal agencies have numerous additional administrative opportunities to initiate further cannabis reforms.

Each year, I release a memorandum outlining the path forward to end the failed war on drugs and federal prohibition of cannabis. With the DOJ's announcement, this updated memo reflects my optimism for the path ahead and details the work that remains.

What Does Schedule III Mean for Cannabis Reform?

- ***Tax Reform:*** *Reclassifying marijuana to Schedule III will allow marijuana businesses to deduct their business expenses on their federal taxes like any other legal business. This is not merely tax reform. This is important financial stabilization for this growing industry. Current law prohibits state legal cannabis businesses from deducting their business expenses, effectively doubling or tripling their tax burden compared to that of other legal industries.*

Section 280E of the federal tax code prohibits anyone engaged in the purchase or sale of Schedule I or Schedule II substances from deducting their business expenses from their taxes. Due to marijuana's status as a Schedule I substance, businesses operating in states where cannabis is legal are not allowed to deduct ordinary expenses of running a small business, like rent, utilities, and payroll. This creates a disproportionate burden that can put small dispensaries out of business and prevents many from entering the industry in the first place. The undue tax burden disincentivizes compliance with state law, bolstering the illicit market.

Reclassifying marijuana to Schedule III removes it from the 280E prohibition, allowing marijuana businesses to deduct their business expenses on their federal taxes and significantly decreasing their effective tax rate. As businesses in legal states across the country struggle in a flooded market and in competition with bad actors in the illicit market, the tax reform attached to rescheduling will be a significant change for adult-use marijuana businesses. Critically, this accomplishes the aim of the Small Business Tax Equity Act, my bipartisan legislation to exempt marijuana businesses from the 280E prohibition.

- ***Accepted Medical Use:*** *HHS recognized that marijuana has an accepted medical use in the United States – a common-sense but critically overdue finding.*

Moving marijuana to Schedule III will allow marijuana-derived drug products approved by the Food and Drug Administration (FDA) to be prescribed. It will also increase access for research and drug development. By completing drug development and approval through FDA, medical marijuana providers could produce legal and prescribable marijuana-based products. However, this would not legalize existing medical use of marijuana or adult-use products. For veterans, this drug development will allow Department of Veterans Affairs (VA) providers to eventually prescribe FDA-approved marijuana-based treatments.

- ***Expanded Research Access:*** *Schedule III builds on the progress made with the enactment of my Medical Marijuana and Cannabidiol Research Expansion Act to expand access to marijuana for research purposes.*

Schedule I substances are subject to severe research limitations including possession caps

and overly burdensome and expensive security, disposal, and record submission requirements. Reclassifying marijuana as a Schedule III substance would remove many of these barriers and allow researchers to conduct studies following standard DEA registration procedures without supplemental and prohibitive protocols attached to Schedule I.

Researchers will still face some administrative hurdles and will not be able to use state-regulated adult-use marijuana in research, yet Schedule III would be a meaningful step forward for research on the substance. This is essential to understand the public health impacts of marijuana and unlock its therapeutic potential. Furthermore, expanded research will hasten the development of an impairment test so desperately needed as more states legalize adult-use of marijuana.

The Path Forward in Congress

While reclassifying marijuana to a Schedule III substance is a significant step toward ending the failed war on drugs, there is still significant work ahead for Congress. Most notably, that work includes ending the criminalization of marijuana. While Schedule III ends criminal penalties attached to Schedule I for marijuana offenses, it does not end mandatory minimums specific to marijuana as a controlled substance or other federal criminal penalties for possession, production, or distribution. While moving marijuana from Schedule I to Schedule III is an important step forward it is far from sufficient. Long overdue reforms include:

- *The Marijuana Opportunity Reinvestment and Expungement (MORE) Act* ([H.R. 5601](#)) (Nadler, Blumenauer, Lee, Jackson Lee, Velazquez) removes marijuana from the Controlled Substances Act altogether, expunges prior marijuana offenses, and taxes and regulates marijuana to invest in communities most adversely impacted by the failed war on drugs. The MORE Act passed the House of Representatives during the 116th and 117th Congresses. It is the only legislation to pass either chamber of Congress to deschedule marijuana.
- *The SAFE(R) Banking Act* ([H.R. 2891](#)) (Joyce, Blumenauer, Daines, Merkley) allows depository institutions to provide banking services to legitimate cannabis-related businesses, including loans and other financial services. This legislation has passed the House on seven separate occasions and for the first time made progress in the Senate, where it awaits further action. I am optimistic that we can enact this legislation this year.
- *The Blumenauer-McClintock-Norton-Lee Appropriations Language* prevents the Department of Justice from prosecuting against state- or Tribal-legal cannabis.
- *The Veterans Equal Access Act* ([H.R. 2431](#)) (Mast, Blumenauer) allows VA health providers to discuss state-legal medical cannabis and complete forms in compliance with state-legal medical cannabis programs. This legislation has passed in the House with broad bipartisan support as an amendment to the National Defense Authorization Act and the Military Construction, Veterans Affairs, and Related Agencies Appropriations bill on

multiple occasions.

The Path Forward for the Administration

There are also significant executive actions the Biden-Harris Administration should take across agencies to build on the momentum of rescheduling. These key steps include:

- **Pardons and Commutations:** President Biden has recognized that no one should be incarcerated for simple marijuana possession. Although rescheduling does not end the criminalization of marijuana offenses including simple possession, the Biden Administration should use further executive action to expand pardons and other commutations for marijuana offenses.
- **The Cole Memo:** The Biden-Harris Administration should reissue an improved Cole Memo, including Wilkison Memo provisions, to protect against the federal prosecution of individuals acting in compliance with their state's or Tribe's cannabis laws.
- **Veterans Equal Access:** The Department of Veterans Affairs (VA) should end its policy prohibiting VA providers from giving recommendations and referrals or completing forms in compliance with state medical marijuana laws.
- **Reform Truck Driver Impairment Testing:** The Department of Transportation should reform THC drug testing requirements for commercial drivers and develop an accurate test for impairment. The Department has acknowledged that, without this test, tens of thousands of qualified industrial truck drivers are excluded from these family-wage jobs for state-legal cannabis use. I have long led the call for Department of Transportation to meaningfully pursue testing requirements and evolve towards a real cannabis impairment test that accurately measures intoxication.
- **Banking Guidance Reform:** The Financial Crimes Enforcement Network (FinCEN) should update its discriminatory guidance on banking access for marijuana-related businesses as Senator Warren and I have called for. Specifically, FinCEN should end its unnecessary red flags on businesses whose owners have engaged in state legal marijuana activities or whose owners have convictions for marijuana activities that are now legal under their state's regulations.
- **Housing Access:** The Department of Housing and Urban Development should end the policy of evicting vulnerable Americans from public housing for state-legal marijuana activities like possession. We are facing a housing crisis across the United States, and keeping families housed is critical. No one should lose their housing for state-legal marijuana activities.
- **Education Access:** The Department of Education should take every action in its authority to restore education resources and access for those convicted of marijuana offenses. Denying individuals access to education only harms those individuals and their families

and should not be used as a lifelong punishment based on the discriminatory enforcement of marijuana prohibition.

- Expanding THC Waivers for Military Service: The Department of Defense should make permanent the successful waivers allowing otherwise eligible recruits to reapply if they are disqualified only for their initial THC drug test. These antiquated tests can be triggered for more than a month after state-legal cannabis use.
- Uniform Code of Military Justice Application: No one should lose their benefits from military service for using appropriate marijuana treatment options. Reflecting marijuana's reclassification to Schedule III in civilian law, the President should minimize procedural rules and punishments restricting servicemembers' access legal marijuana products in consultation with their health care providers.

Throughout the executive branch, the Biden-Harris Administration should consider the implications of marijuana prohibition and criminalization as they take steps to end discriminatory policies across branches and with every power available to them.

There is no doubt that critical work remains. However, we should celebrate this historic step forward, which is possible because of the tireless work my partners and I have put behind these reforms for more than 50 years. I am committed to building on this momentum to end the failed cannabis prohibition once and for all.