

## Descheduling Cannabis

### Why Cannabis Should Be Removed from the Controlled Substances Act

The rigid scheduling framework of the Controlled Substances Act is at odds with the complexity of the cannabis plant and its range of applications as a medicinal treatment, its use as a wellness and leisure product for adults, and its presence in cosmetics, textiles, and industrial materials. To fully end federal prohibition and preserve existing state cannabis programs and the thousands of businesses and jobs the industry currently supports, cannabis should be removed entirely from the Controlled Substances Act. Federal cannabis regulation should shift to overseeing the safety and efficacy of cannabis products while splitting authority with states over the production and sale of medicinal and adult-use cannabis.

#### Cannabis and the Controlled Substances Act

The Controlled Substances Act ([CSA](#)) places certain drugs, substances, and precursor chemicals into one of five schedules based on their medical value and potential for dependence and abuse. Cannabis is classified as a Schedule I substance, the strictest classification reserved for substances believed to have no accepted medical use and a high potential for abuse. The Controlled Substance Act can be [amended](#) by Congress passing legislation or through the Executive branch via a lengthy review process involving multiple government agencies.

#### Impacts of Cannabis' Schedule I Status

Cannabis' Schedule I classification creates a number of serious financial and legal barriers for individuals, the cannabis industry, and local and state governments.

- **Federal-State Policy Gap**—Nearly every state has liberalized its cannabis policies to some degree, despite federal prohibition, creating a landscape of confusion and legal uncertainty for local and state governments with medical or adult-use cannabis programs. Federal prohibition also bans interstate commerce, preventing cannabis businesses from moving products beyond state borders.
- **Continued Criminalization**—Cannabis' Schedule I status is the [basis](#) for federal criminalization. Despite DOJ-issued memos and federal deference toward state cannabis policies, cannabis remains illegal federally and carries serious penalties for its possession and sale.
- **No Federal Safety Standards**—Due to federal prohibition, no national safety standards exist for the cultivation, manufacturing, and lab testing of cannabis products sold to consumers. Instead, each state develops its own regulations, leading to a patchwork of safety and lab testing standards.
- **Barriers to Research**—Before receiving approval to study cannabis, researchers must navigate several bureaucratic layers of registrations and approvals, as well as strict production and storage requirements. The regulatory [hurdles](#) to study a Schedule I substance drastically impede essential clinical cannabis research.
- **Lack of Banking for Cannabis Businesses**—Banks and other financial service providers are generally barred from working with any business involved with a Schedule I substance due to federal anti-money laundering and racketeering laws. Despite [guidance](#) from FinCEN on how banks can work with state-licensed cannabis businesses, most banks refuse to work with the cannabis industry due to the high risk and enhanced reporting and recordkeeping requirements.
- **Section 280E Tax Restrictions**—Section [280E](#) of the Internal Revenue Code prevents businesses involved in the “trafficking” of Schedule I or II substances from claiming any tax deductions or credits when paying federal income tax, significantly increasing the tax burden of licensed cannabis businesses.
- **Loss of Rights and Personal Liberties**—Violating federal cannabis laws, even for simple possession, can lead to a person losing their rights or eligibility to own a firearm, obtain a visa, apply for federal assistance, hold certain jobs, and more.

## Rescheduling vs. Descheduling

There are two options to amend cannabis' erroneous and outdated classification as a Schedule I substance—rescheduling or descheduling. Rescheduling would place cannabis into a lower, less stringent schedule, whereas descheduling would remove cannabis from the Controlled Substances Act altogether. Examples of other consumer products regulated outside the Controlled Substances Act framework include food, cosmetics, supplements, alcohol, and tobacco.

## Why Cannabis Should Be Descheduled

To preserve state cannabis marketplaces and allow the federal government to regulate cannabis more appropriately, cannabis should be completely removed from the Controlled Substances Act.

### **1. Because of its unique properties and multitude of non-pharmaceutical uses, cannabis is inappropriately placed in the Controlled Substances Act.**

While the Controlled Substances Act provides a useful framework for controlled substances based on their medical properties and potential for abuse, it is incompatible and inappropriate for cannabis regulation. Though cannabis (including the federally-legal "hemp") is widely used as a medicinal treatment, it is also popular as a wellness and leisure product for responsible adults and ubiquitous in cosmetics, textiles, industrial materials, and more. The federal government regulates numerous consumer products outside the Controlled Substances Act, such as alcohol, tobacco, supplements, cosmetics, and even food, and the same approach should apply to cannabis. Descheduling cannabis would allow the federal government to build out new regulatory infrastructure that creates minimum safety standards for cannabis, oversees all cannabis commerce in the United States, allows states to maintain control of cannabis within their borders, and encourages the development of isolated cannabinoid-based pharmaceuticals.

### **2. Descheduling would preserve existing state medical and adult-use cannabis programs.**

As of November 2022, 21 states have legalized adult-use cannabis, and 37 states have a medical cannabis program. There are tens of thousands of licensed cannabis businesses in the United States operating in good faith, supporting hundreds of thousands of [jobs](#), and generating billions in [tax](#) revenue annually for local and state governments. Removing cannabis from the Controlled Substances Act is the best option to minimize disruption to the legal cannabis ecosystem.

### **3. Descheduling would eliminate the policy gap between state and federal law and allow for the gradual harmonization of cannabis regulations and eventual interstate commerce.**

Today, all cannabis businesses violate the Controlled Substances Act, and the quasi-legality of cannabis businesses is only upheld by precedent set by since-rescinded DOJ [memos](#) and the President's discretion to not prioritize enforcement against state-licensed cannabis businesses. Rescheduling cannabis would still place cannabis businesses in a legal gray area, whereas descheduling would effectively legalize cannabis and remove all legal uncertainty for the cannabis industry.

### **4. Rescheduling would not remove the federal penalties for the possession, consumption, manufacturing, or sale of cannabis.**

The Controlled Substances Act is the primary basis for cannabis criminalization and federal prohibition, and moving cannabis to a lower schedule would not remove all federal penalties for cannabis. Rescheduling would still place individuals and cannabis businesses in a legal gray area, but removing cannabis from the Controlled Substances Act would federally decriminalize cannabis altogether.

### **5. Descheduling would eliminate 280E tax restrictions for cannabis businesses and enable financial institutions to work with the cannabis industry.**

Removing cannabis from the Controlled Substances Act would eliminate two of the biggest financial barriers facing the cannabis industry: IRC 280E tax restrictions and severely restricted access to banking and other financial services. With cannabis no longer a Schedule I substance, cannabis businesses could deduct ordinary and necessary business expenses from their federal tax liability, similar to any other business. Further, banks and other financial institutions would no longer be at legal risk for working with the cannabis industry.