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Legal Sidebar

State Marijuana "Legalization" and Federal Drug Law: A Brief Overview for Congress

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State marijuana laws have changed significantly in recent years, and federal law appears poised to change in the coming months. At the state level, many states have enacted laws authorizing the use of marijuana for medical purposes. A smaller but growing number of states have also amended their laws to legalize or decriminalize marijuana use. At the federal level, in April 2024, news outlets reported that the Drug Enforcement Administration (DEA) planned to change the status of marijuana under the Controlled Substances Act (CSA) by moving it from Schedule I to the less restrictive Schedule III. Under current law, many cannabis-related activities that comply with state law may nonetheless violate the federal CSA. Moving marijuana to Schedule III would not bring state-legal marijuana markets into compliance with federal law.

In light of recent and proposed changes to state and federal marijuana regulation, this Sidebar provides an overview of the divergence between federal and state marijuana law. It then briefly discusses the legal consequences of the divergence and outlines certain related considerations for Congress.

Classifying Cannabis Under Federal Law

The plant Cannabis sativa L. and products derived from that plant have a number of uses and may be subject to several overlapping legal regimes. Some of the chemicals found in cannabis, known as cannabinoids, produce a psychoactive effect. Thus, varietals of cannabis containing significant amounts of those chemicals, particularly the psychoactive cannabinoid delta-9 tetrahydrocannabinol (THC), may be used as a recreational drug. Cannabis and cannabis derivatives—including the non-psychoactive cannabinoid cannabidiol (CBD)—may also be used for medical purposes. In addition, low-THC varietals of cannabis, often called hemp, have varied commercial and industrial applications including use in building materials, fibers, and personal care products.

Cannabis generally falls within one of two categories under federal law: *marijuana* or *hemp*. Unless an exception applies, the CSA classifies the cannabis plant and its derivatives as *marijuana*. However, the CSA definition of marijuana excludes (1) products that meet the legal definition of hemp (discussed below) and (2) the mature stalks of the cannabis plant; the sterilized seeds of the plant; and fibers, oils, and other products made from the stalks and seeds.

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Federal law defines *hemp* as the cannabis plant or any part of that plant with a THC concentration of no more than 0.3%. Cannabis that contains such low levels of THC is not psychoactive and does not produce the "high" associated with marijuana. Notwithstanding the lack of psychoactive effect, until late 2018 most cannabis, including hemp, was legally classified as marijuana regardless of THC content, making it subject to regulation under the CSA. In December 2018, Congress enacted the 2018 farm bill, which amended the CSA to provide that hemp that meets the foregoing legal definition is not a controlled substance. Although hemp is no longer a controlled substance under the CSA, it remains subject to federal regulation. For instance, the Department of Agriculture regulates hemp production, and the Food and Drug Administration (FDA) regulates some hemp-derived consumer products.

Marijuana Under the CSA

If a substance falls within the CSA's definition of marijuana, it is a Schedule I controlled substance under the statute and is subject to the most stringent federal substance controls.

As background, the CSA imposes comprehensive regulatory controls on drugs and other substances that pose a risk of abuse and dependence. The CSA applies to both medical and recreational drugs and aims to protect public health from the dangers of controlled substances while also ensuring that patients have access to pharmaceutical controlled substances for legitimate medical purposes. Substances become subject to the CSA through placement in one of five lists, known as Schedules I through V. Either Congress (by legislation) or DEA (by rulemaking) can alter the status of a substance under the CSA by adding a substance to one of the schedules, moving it to a different schedule, or removing the substance from control altogether.

A lower schedule number carries greater restrictions, meaning that controlled substances in Schedule I are subject to the most stringent controls. Placement in Schedule I reflects a finding that a substance has a high potential for abuse, no currently accepted medical use, and "a lack of accepted safety for use … under medical supervision." Because Schedule I controlled substances have no accepted medical use, they may not legally be dispensed by prescription. By contrast, controlled substances in Schedules II through V have accepted medical uses and pose progressively lower risks of abuse and dependence. Unlike substances in Schedule I, those substances may be dispensed by prescription for medical purposes.

Although some drugs subject to the CSA may colloquially be called "illegal drugs," the CSA does not fully ban any substances. It is legal to produce, distribute, and possess Schedule I substances in the context of federally approved scientific studies, subject to CSA regulatory requirements designed to prevent abuse and diversion. For example, DEA-registered researchers must maintain records of transactions involving controlled substances and establish security measures to prevent theft of such substances. If a registrant violates the CSA's requirements, DEA may take administrative enforcement action. In the event of a knowing violation, the Department of Justice (DOJ) may bring criminal charges.

Activities involving controlled substances not authorized under the CSA are federal crimes that may give rise to large fines and significant jail time. Penalties vary according to the nature of the unauthorized activity and the type and amount of the controlled substance at issue. With regard to marijuana specifically, unauthorized simple possession may prompt a minimum fine of $1,000 and a term of up to a year in prison, or a civil penalty for possession of a small amount for personal use. Illicit distribution of large quantities of marijuana carries a prison sentence of 10 years to life and a fine of up to $10 million for an individual or a fine of up to $50 million for an organization. Penalties increase for subsequent offenses or if use of the substance causes death or serious bodily injury.

If marijuana were moved from Schedule I to Schedule III, it could in theory be dispensed and used by prescription for medical purposes. However, prescription drugs must be approved by FDA. Although FDA has approved some drugs derived from or related to cannabis, marijuana itself is not an FDA-approved drug. If one or more marijuana products obtained FDA approval, manufacturers and distributors

would need to register with DEA and comply with regulatory requirements that apply to Schedule III substances in order to handle those products. Users of medical marijuana would need to obtain valid prescriptions from medical providers to comply with federal law.

Cannabis Under State Law

In addition to the federal CSA, each state has its own controlled substance laws. State substance control laws often roughly mirror federal law, and such laws are relatively uniform across states, because many states have adopted versions of a model statute called the Uniform Controlled Substances Act. However, there is not a complete overlap between drugs subject to federal and state control. States have sometimes opted to impose state law controls that are either more or less strict than those of the CSA.

One area where federal and state controlled substance laws diverge significantly is marijuana regulation. While every state once broadly prohibited the production, distribution, and possession of marijuana, in the past few decades many states have repealed or limited such prohibitions. As of May 2024, the District of Columbia, three territories, and all but three states have changed their laws to permit the use of cannabis for medical purposes. In addition, 24 states, three territories, and the District of Columbia have repealed prohibitions on recreational marijuana use by adults age 21 or older. State laws relaxing controls on cannabis vary in scope. Some states permit medical use of cannabis only for certain medical conditions or restrict the means of administration by, for example, limiting THC content or forbidding the use of smokeable cannabis for medical purposes. With respect to non-medical marijuana, some states have broadly repealed criminal prohibitions on adult use of marijuana and fostered a state-legal recreational cannabis industry. Other states have more narrowly decriminalized marijuana, removing some criminal prohibitions but maintaining civil penalties for marijuana-related activities. Following these changes to state law, medical and recreational cannabis businesses have begun operating openly in some parts of the United States.

The Federal-State Divide and Its Legal Consequences

Notwithstanding the foregoing state laws, any activity involving marijuana that is not authorized under the CSA remains a federal crime anywhere in the United States, including in states that have purported to legalize medical or recreational marijuana. The Supreme Court has held that state laws authorizing medical marijuana use do not affect the CSA's restrictions. Thus, when states "legalize" a federally controlled substance such as marijuana, the sole result is that the substance is no longer controlled *under state law*. As discussed in another Legal Sidebar, moving marijuana from Schedule I to Schedule III, without other legal changes, would have some impact on marijuana users and businesses but would not bring the state-legal medical or recreational marijuana industry into compliance with federal controlled substances law.

Activities that violate the CSA may give rise to federal criminal prosecution. As a practical matter, however, DEA and DOJ lack the resources to prosecute all violations of the CSA. DOJ guidance memoranda from the Obama Administration broadly affirmed federal authority to prosecute such activities but also indicated that DOJ would generally not prioritize prosecution of activities involving medical marijuana that complied with state law. Under the Trump Administration, DOJ rescinded that guidance, instead reaffirming the authority of federal prosecutors to exercise prosecutorial discretion to target federal marijuana offenses "in accordance with all applicable laws, regulations, and appropriations." DOJ has not issued formal guidance on marijuana policy during the Biden Administration, but Attorney General Merrick Garland has indicated that the agency will not prioritize prosecuting individuals for personal use of marijuana. Notwithstanding the changes in guidance, data from the U.S. Sentencing Commission indicate that the number of federal marijuana trafficking prosecutions decreased every year between FY2018 and FY2022.

The reference to appropriations in the DOJ guidance is significant, because in each budget cycle since FY2015, Congress has passed an appropriations rider barring DOJ from using taxpayer funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The appropriations rider thus prohibits federal prosecution of state-legal activities involving *medical marijuana*. However, it poses no bar to prosecution of activities involving *recreational marijuana*. Moreover, the rider does not remove criminal liability; it merely prevents enforcement of the CSA in certain circumstances. As the U.S. Court of Appeals for the Ninth Circuit has explained, if Congress repealed the appropriations rider, DOJ would be able to prosecute violations of the CSA that occurred while the rider was in effect, subject to the applicable statute of limitations.

Even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities in violation of the CSA—including participants in the state-legal cannabis industry—may face collateral consequences arising from the federal prohibition of marijuana. Other federal laws impose legal consequences based on criminal activity, including violations of the CSA. For example, a financial institution handling income from an illegal marijuana business may violate federal anti-money laundering laws. The presence of income from a marijuana-related business may also prevent a bankruptcy court from confirming a bankruptcy plan (though courts have split on the issue). Likewise, marijuana businesses may be ineligible for certain federal tax deductions. (This restriction applies only to activities involving substances in Schedule I or II, so moving marijuana to Schedule III would allow marijuana businesses to deduct business expenses on federal tax filings.)

For individuals, participation in the state-legal marijuana industry may have adverse immigration consequences. Violations of the CSA may also affect individuals' ability to receive certain federal government benefits. In addition, federal law prohibits gun ownership and possession by any person who is an "unlawful user of or addicted to any controlled substance," with no exception for users of state-legal medical marijuana.

Considerations for Congress

Either Congress or DEA has the authority to change the status of marijuana under the CSA. DEA is currently considering whether to reschedule marijuana via formal rulemaking. DEA's proposal to move marijuana from Schedule I to Schedule III will be reviewed by the White House Office of Management and Budget and will then be released and subject to public comment, meaning that final action will likely take months after a proposed rule is published. Congress possesses broad authority to change the status of marijuana by legislation before or after DEA makes any final scheduling decision. If Congress seeks to regulate marijuana more stringently, it could, among other options, repeal the appropriations rider discussed above, increase DOJ funding to prosecute CSA violations, or limit federal funds for states that legalize marijuana. However, most recent proposals before Congress seek to relax federal restrictions on marijuana or mitigate the disparity between federal and state marijuana regulation. Some proposals would remove marijuana from regulation under the CSA entirely or move it to a less restrictive schedule. Other proposed legislation would leave marijuana in Schedule I but limit enforcement of federal marijuana law in states that elect to legalize marijuana. Additional proposals would seek to address specific legal consequences of marijuana's Schedule I status by, for example, enabling marijuana businesses to access banking services or removing collateral consequences for individuals in areas such as immigration, federally assisted housing, and gun ownership.

Changes to the status of marijuana under the CSA could raise additional legal questions. For instance, FDA regulates certain cannabis products under the Federal Food, Drug, and Cosmetic Act, so Congress might also consider whether to alter that regulatory regime. In addition, it is possible that relaxing the CSA's restrictions on marijuana could implicate the United States' international treaty obligations. For further information on proposed reforms and legal and policy issues related to marijuana's status under the CSA, see CRS In Focus IF12270, *The Federal Status of Marijuana and the Policy Gap with States*, by

Lisa N. Sacco, Joanna R. Lampe, and Hassan Z. Sheikh; CRS Legal Sidebar LSB11105, *Legal Consequences of Rescheduling Marijuana*, by Joanna R. Lampe; and CRS Report R45948, *The Controlled Substances Act (CSA): A Legal Overview for the 118th Congress*, by Joanna R. Lampe.

Author Information

Joanna R. Lampe
Legislative Attorney

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