Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Impact of Proposed Rescheduling of Marijuana on D.C. Regulatory Authority

June 28, 2024

In 2014, voters in the District of Columbia (the "District") approved Initiative 71, a ballot measure that, as a matter of local D.C. law, repealed the local prohibition on the recreational use of marijuana in the District within certain limitations. The initiative did not, however, repeal the prohibition on the *sale* of marijuana for recreational use. In response, Congress included in its annual appropriations bill a policy rider prohibiting the District from expending any funds to legalize or reduce the penalty associated with any Schedule I controlled substance under the Controlled Substances Act (including marijuana) or any "tetrahydrocannabinols derivative." Congress has included this provision in every subsequent appropriations bill funding the District.

Because this policy rider specifically references Schedule I controlled substances, the proposed rescheduling of marijuana by the Department of Justice and the Drug Enforcement Administration (DEA) from Schedule I to Schedule III would affect the legal authority of the District government to regulate marijuana. If the current appropriations policy rider were to remain, effect unchanged, the proposed rescheduling of marijuana would permit the District government, as a matter of local law, to authorize the commercial sale of recreational marijuana, establish market regulations, and levy marijuana taxes, among other policy options.

A previous CRS Insight outlined policy considerations related to rescheduling marijuana more broadly, and a prior Legal Sidebar examined the legal consequences of moving marijuana from Schedule I to Schedule III under federal law. This Legal Sidebar examines the current legal status of marijuana in the District and analyzes the specific effect that rescheduling marijuana would have on the District's regulatory authority over marijuana under the current appropriations rider. It concludes with considerations for Congress on how it could respond to the proposed rescheduling with respect to the District in particular, given Congress's unique role with respect to the District's governance.

Current Legal Status of Marijuana in the District

In the District, marijuana is regulated by both federal and local law, which define *marijuana* differently.

Under D.C. law, marijuana "includes the leaves, stems, flowers, and seeds of all species of the plant genus Cannabis, whether growing or not," but does not include (1) the plant resin or compounds of the plant

Congressional Research Service
https://crsreports.congress.gov
LSB11188

resin (which are legally defined as *hashish* and are separately unlawful to possess); (2) fibers from cannabis plant stalks; (3) oil from cannabis seeds; and (4) certain other specified cannabis derivatives. Initiative 71 authorizes a person 21 years of age or older to "possess, use, purchase, or transport marijuana weighing 2 ounces or less," transfer (but not sell) marijuana weighing one ounce or less, and grow in their principal residence up to six cannabis plants (with no more than three being mature). Congress passed an appropriations policy rider in response to Initiative 71 that prohibits the D.C. government from legalizing schedule I substances, but it did not retroactively repeal Initiative 71. Although the rider was enacted after Initiative 71 passed but before it went into effect, Initiative 71 was viewed as self-executing and became law without any further action from the D.C. government.

D.C. law also authorizes and regulates the use of marijuana for medical purposes. A separate appropriations policy rider prohibits the District from using federal funds to carry out its medical marijuana program but permits the use of local funds to do so.

Under federal law, it remains illegal to produce, dispense, or possess marijuana throughout the United States, subject to limited exceptions. The Controlled Substances Act (CSA) classifies the cannabis plant and its derivatives as *marijuana* (or the alternative spelling, "marihuana"), subject to two exceptions: (1) products that meet the legal definition of *hemp* 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. Federal law defines *hemp* as the cannabis plant or any part of that plant with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3%. The non-psychoactive compound cannabidiol (CBD) falls within the legal definition of *hemp*. Marijuana is a Schedule I controlled substance under the CSA, but hemp is not a controlled substance. Under the CSA, it is legal to handle Schedule I controlled substances only in the context of DEA-registered scientific research.

Because Schedule I substances are deemed to have no accepted medical use, medical marijuana is illegal under federal law. However, another annual appropriations rider, included in each budget cycle since FY2014, prohibits the Department of Justice from using appropriated funds to prevent states or territories "from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Courts have interpreted this provision to prohibit federal prosecution of state-legal activities involving medical (but not recreational) marijuana. The rider limits enforcement of the CSA while it remains in effect, but ultimately it does not amend the CSA or legalize any activity made illegal under the CSA.

Application of the Appropriations Rider If Marijuana Were Rescheduled

As currently enacted, a federal appropriations rider prohibits the D.C. government from using any funds, local or federal, "to enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act . . . or any tetrahydrocannabinols derivative for recreational purposes." Although the provision was enacted in response to Initiative 71, it did not retroactively repeal the initiative, instead leaving it in place while prohibiting further legalization of Schedule I controlled substances such as marijuana by the D.C. government in the future.

Because this provision limits the District's authority with respect to all Schedule I controlled substances and not to marijuana specifically, rescheduling marijuana to Schedule III would permit the District to (1) repeal, partially or in full, local prohibitions on possession or use of marijuana for recreational purposes beyond what is currently permitted by Initiative 71 and (2) repeal, partially or in full, local prohibitions on the distribution of marijuana, which includes its commercial sale for recreational use. This

change would also permit the District to regulate the commercial marijuana market more broadly, for example by establishing regulations and taxes on the commercial sale of marijuana.

Rescheduling marijuana would not change the appropriations rider itself, and it would still remain in effect in two significant ways. First, it would still prohibit the District from legalizing or reducing penalties related to other Schedule I controlled substances. Second, the prohibition on the District expending funds to legalize or reduce penalties for "any tetrahydrocannabinols derivative" would remain in place even if marijuana were rescheduled.

The continued prohibition on legalization of tetrahydrocannabinols derivatives by the District could lead to interpretive questions about whether a particular substance is legally marijuana, hemp, a tetrahydrocannabinols derivative, or something else. "Tetrahydrocannabinols derivative" is not defined in the CSA or under D.C. law. Certain synthetic tetrahydrocannabinols remain illegal for recreational use under D.C. law, but it is not clear whether these *synthetic* substances would constitute *derivatives*. In addition, although federal law defines *marijuana* and *hemp* to be exclusive of each other, a substance could conceivably be both a tetrahydrocannabinols derivative and marijuana or hemp as a matter of law.

Courts faced with disputes over the legal classification of a substance are likely to use typical methods of statutory interpretation to resolve these questions. As an example, one recent opinion from the U.S. Court of Appeals for the Ninth Circuit determined that products containing only delta-8 THC (a psychoactive compound naturally occurring in cannabis, albeit at much lower concentrations than the primary psychoactive component, delta-9 THC) are legally hemp. The court reached this result by analyzing the textual definition of hemp, which is defined in reference to delta-9 THC concentrations only. The court acknowledged that this conclusion might be counterintuitive from a policy standpoint, since both delta-8 THC and delta-9 THC are psychoactive, but concluded if "Congress inadvertently created a loophole legalizing vaping products containing delta-8 THC, then it is for Congress to fix its mistake." Although that case did not involve a dispute about a "tetrahydrocannabinols derivative," the court's reasoning may be instructive on similar questions of interpretation.

Considerations for Congress

Regardless of whether the DEA ultimately reschedules marijuana, when considering changes to the legal status of marijuana, Congress has the authority to legislate both nationwide and also with respect to the District in particular. Considerations about legislatively changing the status of marijuana nationwide under the CSA are examined more fully in a previous Legal Sidebar.

With respect to the status of marijuana under D.C. law, Congress retains its constitutional authority to legislate on matters involving the District. If the DEA reschedules marijuana from Schedule I to Schedule III and Congress wishes to continue to prohibit the District from making further changes to local marijuana laws, Congress would need to amend the current appropriations rider to apply specifically to marijuana. Congress could also achieve this result by passing a permanent law, rather than an annual appropriations rider, amending the local D.C. Code's marijuana provisions. (For a more in depth look at Congress's authority over the District, see this CRS Report.)

If Congress takes no action beyond maintaining the current appropriations rider, and if the DEA reschedules marijuana, the District likely will be able to repeal additional local prohibitions and regulate marijuana further, at least to the extent the regulated substances do not constitute "tetrahydrocannabinols derivatives." In that case, Congress could consider clarifying what substances constitute tetrahydrocannabinols derivatives, as opposed to marijuana or hemp.

Congress could also impose more stringent controls on marijuana in the District, such as repealing Initiative 71. Alternatively, Congress could lessen or eliminate federal restrictions on marijuana in the District. For example, the FY2025 appropriations bill approved by the Financial Services and General

Government Subcommittee of the House Appropriations Committee omits the D.C. marijuana rider. If this bill were enacted, the current appropriations rider restricting the D.C. government's authority would expire at the end of FY2024. The ultimate effect on the legal status of marijuana in the District would depend on what legislation, if any, the D.C. government subsequently enacted.

Author Information

Matthew D. Trout
Legislative Attorney

Disclaimer