

# SENSIBLE MARKETS<sup>\*</sup>

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To: The Department of Justice, Drug Enforcement Administration

21 CFR Part 1308

Docket No. DEA-1362; A.G. Order No. 5931-2024

Re: Schedules of Controlled Substances: Rescheduling of Marijuana

We are the Alliance for Sensible Markets, a non-profit coalition of business and advocacy leaders committed to a safe, just, sustainable, and broadly beneficial legal Marijuana industry. We are thrilled that the DOJ and DEA are working to reschedule Marijuana from Schedule I to Schedule III, and wholeheartedly support that goal. Rescheduling to Schedule III recognizes that Marijuana is a legitimate medicine for people struggling with a variety of medical conditions.

We write today to ask for clarification on one issue.

While rescheduling recognizes the legitimate medical uses of marijuana, there is as of yet no federal framework for patients to access cannabis medicines, nor is one likely to be created and implemented anytime soon. But millions of Americans need or use marijuana medically now, and 38 states have regulatory frameworks in place for its distribution and to allow patient access. We would strongly urge that the rule be written to recognize the right of the various states to continue to establish and enforce regulatory systems for the legal distribution of marijuana for medical use until such time and to such extent as a future federal regulatory system may supersede them.

This should include the right of the states to choose to regulate the movement of these medicines between or among their legal markets in order to facilitate patients' access to the best, safest, most appropriate, and most cost-effective legal medicines available. This will enable thousands of patients to leave untested and broadly harmful unregulated illicit markets for safer, state-regulated markets.

Oregon (2019), California (2022) and Washington (2023) have all approved legislation allowing them to regulate interstate trade as soon as there is an indication from the federal government that such regulation would be tolerated by the US Department of Justice. States with legalization in place can easily and immediately serve as a patchwork framework for medical cannabis until the federal government creates one. Waiting for a federal framework to be established after rescheduling will cause significant, unnecessary delay in patients' access to

Marijuana for medical purposes. We believe that multiple states will choose to regulate such commerce in medical cannabis if the DOJ guidance indicates that regulated sales across state lines will not be criminally pursued. Allowing states to regulate such commerce will allow these medicines to reach patients in need more efficiently, as many legal states face a glut of product due to optimal growing conditions, while other states struggle to keep product on the shelves entirely<sup>1</sup>.

This would also discourage the illicit Marijuana markets that are still thriving in states with limited access to, or far greater expense for Marijuana due to unfavorable growing conditions<sup>2</sup>. State-regulated marijuana markets have emerged as operative, if ultimately temporary laboratories of cannabis policy whose experiences will help the Federal Government identify the best policies to pursue moving forward. Re-scheduling provides an important opportunity to lean into that approach, allowing those states that choose to do so to reduce the frictions (economic, quality, access) that still keep millions of patients stuck in untested, broadly dangerous illicit markets.

We ask that the coming rules include explicit guidance recognizing the rights of states to ensure and regulate patient access in the ways they see fit, and specifically address state-regulated interstate commerce in these important, and now federally-recognized medicines.

Thank you for your consideration.

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<sup>1</sup> (2007) *Appendix A. primary cannabis cultivation regions - domestic cannabis cultivation assessment 2007*. Available at: <https://www.justice.gov/archive/ndic/pubs22/22486/appa.htm>:

<sup>2</sup> Lavin, K. (2023) *Could banking reform minimize the illicit marijuana market?*, *MJBizDaily*. Available at:

<https://mjbizdaily.com/how-banking-reform-could-minimize-illicit-cannabis-market>:

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