



September 21, 2023

INDUSTRY BULLETIN: 23-06

RE: HHS Recommendation to Reschedule Marijuana

Dear Interested Parties:

The intention of this bulletin is to address the recent United States Department of Health and Human Services (HHS) recommendation to the federal Drug Enforcement Administration (DEA) to *reschedule* marijuana from Schedule I to Schedule III of the Controlled Substances Act.

What did the HHS recommend?

Last week, the HHS issued a recommendation that the DEA consider *rescheduling* marijuana from Schedule I to Schedule III of the Controlled Substances Act, based on information and studies the federal Food and Drug Administration (FDA) conducted at the direction of President Biden and his administration. Under Schedule III there could be expanded opportunities for marijuana research, access to medical marijuana, and could possibly lead to tax relief related to IRS Code Section 280E, which was decoupled in Colorado allowing licensed businesses to claim “normal” tax deductions on state taxes.

What are the anticipated next steps?

The next step is for the DEA to take HHS’ recommendation into consideration as the agency evaluates whether it agrees with the recommendation. Once DEA makes its own final recommendation, then the Attorney General will release a final scheduling conclusion. If DEA does agree with the recommendation to reschedule (whether to Schedule III or otherwise) and that is the Attorney General’s conclusion as well, then the DEA could file a notice of rulemaking in the Federal Register, initiating the formal process to effectuate that change. This process, similar to the Division’s rulemaking process, will include opportunities for public comment and interfacing with the federal agency(ies).

What does this mean for Colorado Licensees?

In case you missed it, Governor Polis sent a [letter of support](#) on September 5, 2023 to President Biden.

The announcement of HHS’ recommendation should not alter how Colorado Regulated Marijuana licensees conduct their daily operations, and licensees should remain diligent in complying with the state’s Regulated Marijuana Code and Rules. This is yet another opportunity for the licensed community in Colorado to demonstrate the effectiveness and value of the commercial regulated system we have worked together to establish and once again show Colorado to be the worldwide market leader.

The Division remains committed to leveraging the diversity of our stakeholder perspectives to enhance our regulatory program, keep pace with federal efforts and industry innovation, and streamline regulations. This also means we must continue to prioritize compliance efforts and enforcement actions as necessary to promote public safety and offer a blueprint for responsible regulation at a federal level. The Division will continue to track, in coordination with the Governor’s Office and our state agency partners, the progress and process of our federal colleagues with an eye towards sharing information, insights, and perspectives as we learn more information about what rescheduling may look like for states with well-established regulatory markets, like Colorado.