

The Schedule I Status of Marijuana

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The [Controlled Substances Act](#) (CSA) places various substances in one of five schedules based on their medical use, potential for abuse, and safety or risk for dependence. The [five schedules](#) are progressively ordered with Schedule V substances regarded as the least dangerous and addictive and Schedule I substances considered the most dangerous and addictive. Schedule I substances are considered to have a “high potential for abuse” with “no currently accepted medical use in treatment in the United States.” The CSA prohibits the manufacture, distribution, dispensation, and possession of Schedule I substances except for federal government-approved research studies.

Marijuana is listed as a [Schedule I controlled substance](#) under the CSA, and has been on Schedule I since the CSA was enacted in 1970 ([P.L. 91-513](#)). For background on how marijuana came to be placed on Schedule I, see CRS Report R44782, *The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap*.

The Schedule I status of marijuana means that the substance is strictly regulated by federal authorities. Yet, over the last several decades, [most states and territories](#) have deviated from across-the-board prohibition of marijuana, and now have laws and policies allowing for some cultivation, sale, distribution, and possession of marijuana.

On October 6, President Biden [announced reform to federal marijuana policy](#). First, he stated he would “pardon ... all prior Federal offenses of simple possession of marijuana.” Second, he urged all governors “to do the same with regard to state offenses.” Finally, he requested that the Department of Justice (DOJ) and Department of Health and Human Services (HHS) “initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.” He also noted that “important limitations on trafficking, marketing, and under-age sales should stay in place.”

Simple Possession of Marijuana

As a Schedule I controlled substance, the *simple possession* of marijuana is a [violation of the CSA](#); however, most convicted federal drug offenders are sentenced for violations of CSA drug *trafficking* laws rather than *simple possession*. In FY2021, 149 federal offenders were sentenced for marijuana possession, while 1,005 federal offenders were sentenced for marijuana trafficking, according to the [U.S. Sentencing Commission](#). In response to President Biden’s announcement, [DOJ stated](#) it would “expeditiously administer the President’s proclamation, which pardons individuals who engaged in simple possession of marijuana, restoring political, civil, and other rights to those convicted of that offense.”

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Select Issues Surrounding the Schedule I Status of Marijuana and the Policy Gap with States

There are a number of issues related to the Schedule I status of marijuana and the gap between federal and state marijuana policies, including how [financial institutions may provide banking services](#) to marijuana-related businesses and how the Schedule I status has [reportedly created difficulty for researchers](#) who seek to study marijuana. In addition, individuals in violation of federal marijuana laws, even when they are using marijuana consistent with state laws, can be potentially subject to consequences affecting their eligibility for [housing and food assistance](#), [gun ownership](#), [visas](#), and [employment](#). [President Biden cited](#) some of these factors as contributing to his decision to issue pardons for prior federal offenses of simple possession of marijuana.

Authority to Alter the Schedule I Status of Marijuana

Both Congress and the Administration have the ability to alter marijuana's status as a Schedule I substance. The Administration can make such changes on its own, though it is [bound by the CSA](#) to consider factors including a substance's medical utility and risk of abuse and dependence prior to altering its scheduling status. President Biden's announcement of federal marijuana policy reforms did not itself change the status of marijuana as a Schedule I substance. Instead, he directed DOJ and HHS to begin an expeditious review of its status. Congress can also alter marijuana's status by amending the CSA but without such confines. Of note, in [congressional hearings](#) and [other forums](#), some Members of Congress in [both major parties](#) have questioned the Schedule I status of marijuana while other Members have maintained that marijuana [should remain illegal](#). Those questioning its status have expressed support for, at minimum, moving it to a lower schedule. Some have gone further and supported its removal from the CSA altogether. Those continuing to support its Schedule I status express concern over negative implications of its widespread use.

Drug Enforcement Administration (DEA) Rejection of Petitions to Reschedule

Over the years, several entities have submitted petitions to the DEA to reschedule marijuana. In August 2016, after a five-year evaluation process done in conjunction with the Food and Drug Administration (FDA), the [DEA rejected two petitions](#)—one submitted by two state governors and the other submitted by a New Mexico health provider—to move marijuana to a less-restrictive schedule under the CSA. [Consistent with past practice](#), the rejections were based on a conclusion by both the FDA and DEA that marijuana continues to meet the criteria for inclusion on Schedule I—namely, that it has a high potential for abuse, has no currently accepted medical use, and lacks an accepted level of safety for use under medical supervision.

Options for Congress

Congress could choose to maintain the federal prohibition on marijuana, but if it wanted to address the Schedule I status, it could do a number of things: (1) amend the CSA to move marijuana to a less restrictive schedule; (2) create an entirely new schedule or other category for marijuana; or (3) remove it entirely from the CSA. If marijuana remains a controlled substance under the CSA *under any schedule*, that would maintain the [existing conflict between the federal government and states that have legalized recreational marijuana](#), though moving marijuana to a less restrictive schedule could help mitigate conflicts between federal law and state *medical* marijuana laws. The creation of a new schedule solely for marijuana would give Congress an opportunity to modify the criminality of marijuana under the CSA. If

Congress chose to remove marijuana from the CSA entirely, it could seek to regulate and tax commercial marijuana activities.

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