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## Rescheduling Medical Marijuana: Implications for Criminal and Collateral Consequences

In 1970, the Controlled Substances Act (CSA) classified marijuana and its derivatives as Schedule I controlled substances. Since then, this classification largely remained unchanged unless certain products or derivatives (such as hemp) were specifically exempted or listed in other schedules. In an April 2026 final rule, the Department of Justice (DOJ) reclassified medical marijuana and its derivatives to Schedule III under the CSA when they are “included in [a Food & Drug Administration (FDA)]-approved drug product or are subject to a state-issued license to manufacture, distribute, and/or dispense marijuana or products containing marijuana for medical purposes.” Recreational marijuana and its derivatives remain classified as Schedule I controlled substances, meaning their manufacture, possession, and distribution are illegal except for the purposes of federally sanctioned research. In May 2024, DOJ proposed to move marijuana from Schedule I to Schedule III under the CSA, and this full rescheduling process remains ongoing.

While many states have enacted laws allowing for marijuana use, and the federal government has generally not interfered with their implementation, violations of federal marijuana laws continue to have criminal and civil consequences. In addition to criminal penalties, past and current marijuana use or marijuana-related convictions may subject individuals and businesses to a number of consequences under various policies and federal laws.

Schedule III is less restrictive than Schedule I and allows for medical use of marijuana; however, many of the consequences of unlawful marijuana use or marijuana-related convictions are similar. This In Focus discusses those consequences, what is different due to the recent schedule change, and options for Congress.

### Criminal Penalties for Federal Marijuana Crimes

Federal marijuana crimes may subject individuals to a number of criminal penalties that vary depending on the circumstances of the case:

- a first offense of trafficking (i.e., manufacturing, distributing, or dispensing, or possessing with intent to manufacture, distribute, or dispense) 1,000 kg or more of marijuana or 1,000 or more marijuana plants carries a penalty of not less than 10 years in prison or more than life in prison and a criminal fine of not more than \$10 million if an individual and \$50 million if other than an individual (e.g., a drug trafficking organization);
- a first offense of trafficking 100 kg to 999 kg of marijuana or 100 to 999 marijuana plants carries a penalty of not less than 5 years or more than 40 years in prison and a criminal fine of not more than \$5 million if

an individual and \$25 million if other than an individual; and

- a first offense of trafficking less than 50 kg of marijuana or 1 to 49 marijuana plants carries a penalty of not more than five years in prison and a criminal fine of not more than \$250,000 if an individual or \$1 million if other than an individual.

These offenses carry more severe penalties if death or serious bodily injury occurs or if it is not the defendant’s first felony drug conviction.

In practice, most individuals (69% in FY2025) sentenced in federal court for marijuana trafficking convictions are sentenced to less than five years in prison. Over the last five years for which data are available (FY2021–FY2025), the number of individuals sentenced for marijuana trafficking in federal court has declined by 62%, from 995 per year to 383. This decline is even sharper when considering longer term trends. In FY2016, 3,381 individuals were sentenced in federal court for marijuana trafficking (more than eight times the number sentenced in FY2025). By contrast, the total number of individuals sentenced for all federal drug trafficking offenses, not just those involving marijuana, has declined more gradually over the past 10 years, from 19,222 in FY2016 to 16,144 in FY2025.

Unlawful simple possession of marijuana charged in federal court carries a penalty of up to one year in prison and/or a minimum fine of \$1,000 (maximum of \$10,000). Relatively few offenders are sentenced for marijuana possession in federal court, and the majority of cases originate from the Southwest border.

Federal crimes (and associated penalties) involving controlled substances, including marijuana, are not limited to the CSA and can be found in other areas of the *U.S. Code*. For example, laundering money from controlled substance violations (see 18 U.S.C. §1956) and smuggling controlled substances into the country via aircraft (see 19 U.S.C. §1590) carry sentences of up to 20 years in prison.

### Changes to Criminal Penalties

Many CSA penalties for marijuana violations are written specifically for marijuana and are not tied to its schedule classification. Those penalties remain the same even after the recent schedule change for medical marijuana. Many CSA and other federal offenses associated with marijuana’s general status as a controlled substance also remain the same.

The CSA states that it is unlawful for any person knowingly or intentionally to possess a controlled substance *unless* such substance was obtained pursuant to a valid prescription from a medical practitioner or as otherwise

authorized by the CSA. While practitioners are still not permitted to prescribe marijuana (unless it is approved by FDA), the final rule provides that “state-authorized medical marijuana certifications or similar documents are sufficient to permit the dispensing of medical marijuana to users, provided they include the user’s name and address, are dated and signed on the day of issuance, and identify the issuing practitioner.” The order appears to authorize end users to possess marijuana for medical use without a CSA-compliant prescription.

Even though medical marijuana moved to Schedule III, this does not mean that all marijuana products are lawful to manufacture, distribute, or possess. The manufacture, distribution, dispensing, and possession of marijuana remain subject to applicable criminal prohibitions under the CSA (21 U.S.C. §§841-844). In addition, marijuana remains subject to applicable provisions of the Federal Food, Drug, and Cosmetic Act (FDCA).

Some CSA penalties for marijuana depend on its Schedule I classification. For example, CSA advertising offenses (21 U.S.C. §843(c)) are written specifically for Schedule I. It is unlawful knowingly “to place in any newspaper, magazine, handbill, or other publications, any written advertisement [that] has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance.” The penalties for doing so are up to four years in prison and/or a criminal fine. These penalties no longer apply for those marijuana products that have moved to Schedule III.

## Federal Tax Treatment

The Internal Revenue Code Section 280E states that

no deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business ... consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act).

Media reports indicate that the Internal Revenue Service has enforced Section 280E in audits of marijuana-related businesses by refusing to accept these businesses’ deductions.

### Changes to Federal Tax Treatment

With medical marijuana rescheduled to Schedule III, Section 280E is now inapplicable to marijuana businesses that deal in products that have been moved to Schedule III. These businesses would be able to deduct the costs of selling their product. Of note, some businesses sell both recreational and medical marijuana. Those businesses would still not be able to deduct the costs of selling their recreational marijuana.

## Collateral Consequences for Marijuana Use or Marijuana-Related Convictions

As with other controlled substances, past and current marijuana use or marijuana-related convictions may subject an individual to a number of collateral consequences under federal laws and policies. Aside from criminal penalties, these consequences include, but are not limited to

- ineligibility for or termination from employment (including federal employment and the military);
- inability to purchase and possess a firearm (for legal analysis of recent court decisions relating to this prohibition, see CRS Legal Sidebar LSB11104, *To Possess or Not to Possess: The Second Amendment and Unlawful Users of Controlled Substances*);
- ineligibility for federal housing and other social assistance programs;
- ineligibility for certain federal benefits, including the issuance of any grant, contract, loan, and professional or commercial license provided by a U.S. agency or by federal funds;
- ineligibility for certain visas and other immigration-related consequences; and
- a range of implications for postsecondary students and employees on college campuses, as institutions of higher education must implement a program to prevent use of illicit drugs and alcohol by students and employees.

Some of these consequences can be the result of past or current use of marijuana (or other controlled substances) as well as criminal convictions involving marijuana. These disqualifying circumstances come to light in a range of ways, including when an individual is filling out a form or application or undergoing drug testing, or when an organization conducts background checks.

### Changes to Consequences for Marijuana Use or Marijuana-Related Convictions

Most of the consequences for marijuana use or for marijuana-related convictions remain the same with the recent schedule change for medical marijuana; however, it remains to be seen how some restrictions might change. For example, 18 U.S.C. §922(g) makes it unlawful for a person to possess a firearm if that person “is an unlawful user of or addicted to any controlled substance.” The recent schedule change seemingly allows for lawful use of medical marijuana.

### Options for Congress

Congress may change the classification of marijuana and the consequences of its use in any number of ways. It could alter the schedule, declassify it as a controlled substance, or even create a new schedule classification. Further, Congress could seek to ease the criminal and collateral consequences of marijuana use and marijuana-related convictions, leave them as they are, or make them more severe.

Most marijuana-related bills introduced in the 119<sup>th</sup> Congress have sought to move marijuana to a lower schedule, declassify it as a controlled substance, or ease the collateral consequences of its use. However, some Members of Congress do not support easing marijuana-related prohibitions. One bill would maintain the prohibition on allowing any Section 280E deduction or credit associated with a business involved in trafficking marijuana regardless of any schedule change.

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