

Rachel Gillette

Partner
303.295.8241
Denver
rkgillette@hollandhart.com

Is Reclassifying Marijuana as a Schedule III Drug the Right Move?

Insight — August 30, 2023

Based on a news report from Bloomberg earlier this morning, the Department of Health and Human Services (HHS) has recommended to the Drug Enforcement Agency (DEA) that marijuana be reclassified as a Schedule III drug under the Controlled Substances Act. The HHS recommendation to reschedule marijuana is a result of a focused study following a directive from President Biden last year to expediently review how marijuana should be scheduled.

The cannabis industry has been distressed in recent years after COVID-19. Following the announcement, many cannabis sector stocks rose by double digits. Is reclassifying marijuana as a Schedule III substance a light at the end of a tunnel for the industry? Will the reclassification legitimize an industry that has been operating under the specter of federal enforcement? Or is it a dodge around the real “right” solution—de-scheduling marijuana altogether and treating it like alcohol and tobacco?

What Do We Know?

Schedule I classification is used for drugs that have “no legitimate medical use.” With marijuana legalized for medical use in over 30 states, it appears HHS is (finally) recognizing this isn't the right classification. Schedule III drugs are defined as “drugs with a moderate to low potential for physical and psychological dependence,” and include ketamine and anabolic steroids.

The HHS recommendation is not binding on the DEA, which has the final authority to reclassify any drug. The DEA must now conduct its own review process and make a decision on reclassification. There is no current information about the DEA's timeline.

On the good news front, reclassifying to Schedule III will end the tax nightmare of §280E for the industry.

Many Unknowns

On its face, any move away from the existing Schedule I classification seems positive for the industry. However, it is possible that ripple effects from a reclassification to Schedule III may create as many or more problems as it solves. Some of the questions we're thinking about include:

- How will Schedule III classification impact or interfere with existing

state laws?

- Will reclassification to Schedule III replace the current industry participants with big pharma?
- If adopted, will reclassification open up legitimate banking and lending opportunities for the industry, including merchant services?
- Even if DEA adopts the HHS recommendation, what legislative action will be required and what's the timeline?
- Given cannabis isn't high on the list of Congress's priorities—particularly with the upcoming 2024 election—is any legislative action realistic?

We'll continue to monitor developments and report on significant updates.

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