How can a substance that has accepted medical use in 47 states be classified as a substance with no accepted medical use in the states?

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WHERE DOES LAW COME FROM?

AND WHERE DO YOU FIND IT?

National law

1. There is no international law (one world government)

2. The highest law is the constitution

3. Three branches, legislative, executive, judicial

3. National statutes and treaties are approved by legislation

4. Law enforced by executive, questions resolved by judicial

State law is the same

The question of whether state law is preempted by federal law is called "federalism." The federal government is one of limited powers, with most powers retained by the states.

LAWS ARE NOT SELF-ENFORCING

LAWS ARE NOT PERFECTLY WRITTEN

LAWS ARE NOT PERFECTLY ENFORCED

How does a legal question get resolved by a court?

WHAT IS STANDING?

The current doctrine is that a person cannot bring a suit challenging the constitutionality of a law unless the plaintiff can demonstrate that he/she/it is or will "imminently" be harmed by the law. Otherwise, the court will rule that the plaintiff "lacks standing" to bring the suit, and will dismiss the case without considering the merits of the claim of unconstitutionality. To have a court declare a law unconstitutional, there must be a valid reason for the lawsuit. The party suing must have something to lose in order to sue unless it has automatic standing by action of law.

The Marijuana Tax Act of 1937 effectively made possession or transfer of cannabis illegal in the United States.

Mandatory sentencing and increased punishment were enacted when the United States Congress passed the Boggs Act of 1952 and the Narcotics Control Act of 1956. The acts made a first-time cannabis possession offense a minimum of two to ten years with a fine up to $20,000.

Harry Jacob Anslinger (May 20, 1892 – November 14, 1975) appointed as the first commissioner of the U.S. Treasury Department's Federal Bureau of Narcotics (FBN) on August 12, 1930.

Anslinger held office 32 years in his role as commissioner until 1962. He then held office 2 years as US Representative to the United Nations Narcotics Commission.

UN Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, May 25, 1967.

Richard Milhous Nixon (January 9, 1913 – April 22, 1994) was the 37th President of the United States, serving from 1969 to 1974.

Federal Controlled Substances Act, October 27, 1970

Uniform Controlled Substances Act, October 27, 1970

Iowa Uniform Controlled Substances Act, March 5, 1971

1971-1972 Commission on Marihuana and Drug Abuse

UN Convention on Psychotropic Substances, 1971, February 21, 1971.

Commission on Marihuana and Drug Abuse recommends decriminalization, 1971-1972.

Federal penalties were reduced from 10 years maximum to 1 year and from $20,000 maximum to $5,000 with deferred sentence, discharge, and expungement.

The history of Iowa's marijuana laws closely parallels the history of those in other states. Iowa was the ninth state to pass anti-marijuana legislation (in 1921) and, following the federal example, increased penalties sporadically until the late 1960s. In 1969 the trend was revised, and a law was passed that reduced the penalty for simple possession from a felony to a misdemeanor with up to 6 months imprisoment and a $1,000 fine. This penalty structure was included in the Uniform Controlled Substances Act adopted by Iowa in 1971.

There are currently 31 states with medical marijuana cultivation

Alaska	Arizona	Arkansas	California	Colorado
Connecticut	Delaware	Florida	Hawaii	Illinois
Iowa	Louisiana	Maine	Maryland	Massachusetts
Michigan	Minnesota	Montana	Nevada	New Hampshire
New Jersey	New Mexico	New York	North Dakota	Ohio
Oregon	Pennsylvania	Rhode Island	Vermont	Washington
West Virginia				

There are currently 15 states with marijuana extract (possession only)

Alabama	Georgia	Indiana	Kentucky	Mississippi
Missouri	North Carolina	Oklahoma	South Carolina	Tennessee
Texas	Utah	Virginia	Wisconsin	Wyoming

Three federal jurisdictions with medical cannabis laws

DC	Guam	Puerto Rico

The U.S. Drug Enforcement Administration says there is no accepted medical use of marijuana or marijuana extract in the United States.

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1996 - California

1998 - Alaska, Washington, Oregon

1999 - Maine

2000 - Colorado, Hawaii, Nevada

2004 - Montana, Vermont

2006 - Rhode Island

2007 - New Mexico

2008 - Michigan

2010 - Arizona, New Jersey, DC

2011 - Delaware

2012 - Connecticut, Massachusetts

2013 - Illinois, New Hampshire

2014 - Maryland, Minnesota, New York, *Alabama*, *Florida*, *Iowa*, *Kentucky*, *Mississippi*, *Missouri*, *North Carolina*, *South Carolina*, *Tennessee*, *Utah*, *Wisconsin*, Guam (states in italic legalized only marijuana extracts without providing access)

2015 - *Georgia*, Louisiana, *Oklahoma*, *Virginia*, *Wyoming*, Puerto Rico (states in italic legalized only marijuana extracts)

2016 - Arkansas, Florida, North Dakota, Ohio, Pennsylvania

2017 - Iowa, West Virginia

(1) Schedule I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance **has no currently accepted medical use in treatment in the United States**.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance **has a currently accepted medical use in treatment in the United States** or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) Schedule III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance **has a currently accepted medical use in treatment in the United States**.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance **has a currently accepted medical use in treatment in the United States**.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance **has a currently accepted medical use in treatment in the United States**.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

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There are currently 8 states with non-medical marijuana

- Alaska
- California
- Colorado
- Maine
- Massachusetts
- Nevada
- Oregon
- Washington

One federal jurisdiction with non-medical marijuana

- DC

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Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987)

We add, moreover, that the Administrator's clever argument conveniently omits any reference to the fact that the pertinent phrase in section 812(b)(1)(B) reads "in the United States," (emphasis supplied). We find this language to be further evidence that the Congress did not intend "accepted medical use in treatment in the United States" to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.

Grinspoon v. DEA, 828 F.2d 881, 887 (1st Cir. 1987)

The CSA clearly provides that a substance may not be placed in Schedule I unless it lacks both a "currently accepted medical use in treatment in the United States" and "accepted safety for use . . . under medical supervision."

Grinspoon v. DEA, 828 F.2d 881, 887 (1st Cir. 1987)

Unlike the CSA scheduling restrictions, the FDCA interstate marketing provisions do not apply to drugs manufactured and marketed wholly intrastate. Compare 21 U.S.C. § 801(5) with 21 U.S.C. § 321 (b), 331, 355(a). Thus, it is possible that a substance may have both an accepted medical use and safety for use under medical supervision, even though no one has deemed it necessary to seek approval for interstate marketing.

Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991)

The difficulty we find in petitioners' argument is that neither the statute nor its legislative history precisely defines the term "currently accepted medical use"; therefore, we are obliged to defer to the Administrator's interpretation of that phrase if reasonable.

Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, 930 F.2d 936, 940 n.4 (D.C. Cir. 1991)

Petitioners also quarrel with the Administrator's decision that marijuana lacks "accepted safety for use." Since the Administrator based this determination on his decision that no medical uses are possible (and thus any use lacks "accepted safety"), we do not see that "safety" issue as raising a separate analytical question.

Docket No. 86-22, Marijuana Scheduling Petition, Drug Enforcement Administration, Final Order. 57 Fed. Reg. 10499, 10504 (Thursday, March 26, 1992) ("Safety cannot be treated as a separate analytical question").

1961 Single Convention	Medical Use	Abuse Potential
Schedule 1	Yes	1
Schedule 2	Yes	2
Schedule 3	Yes	3
Schedule 4	No	1

Schedule I - The substance is liable to similar abuse and productive of similar ill effects as the drugs already in Schedule I or Schedule II, or is convertible into a drug.

Schedule II - The substance is liable to similar abuse and productive of similar ill effects as the drugs already in Schedule I or Schedule II, or is convertible into a drug.

Schedule III - The preparation, because of the substances which it contains, is not liable to abuse and cannot produce ill effects; and the drug therein is not readily recoverable.

Schedule IV - The drug, which is already in Schedule I, is particularly liable to abuse and to produce ill effects, and such liability is not offset by substantial therapeutic advantages.

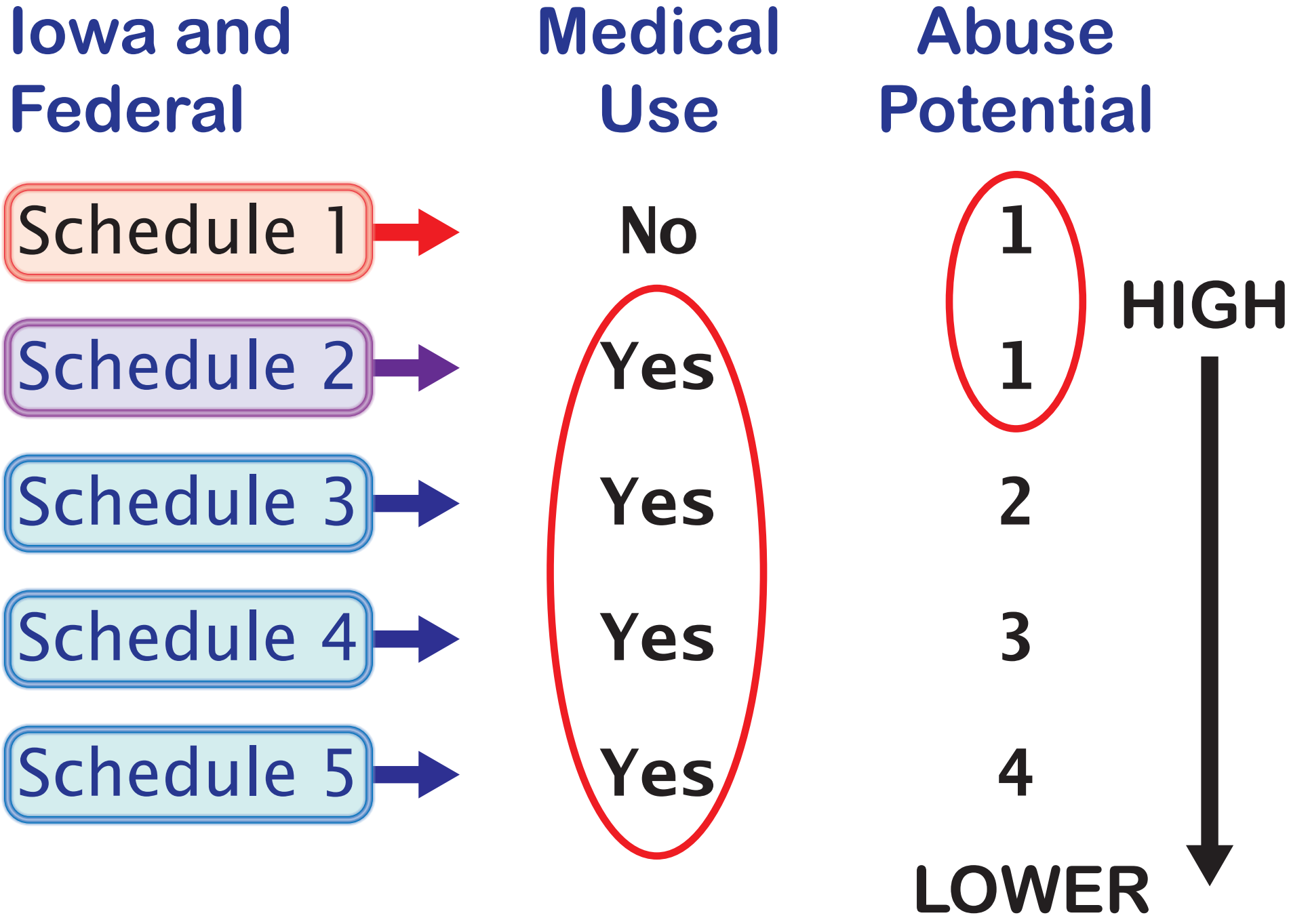
1971 Psychotropic	Medical Use	Abuse Potential
Schedule 1	No	1
Schedule 2	Yes	2
Schedule 3	Yes	3
Schedule 4	Yes	4

Schedule I - includes drugs claimed to create a serious risk to public health, whose therapeutic value is not currently acknowledged by the Commission on Narcotic Drugs.

Schedule II - includes stimulants of the amphetamine type, deemed to have limited therapeutic value, as well as some analgesics such as morphine.

Schedule III - includes barbiturate products with fast or average effects, which have been the object of serious abuse even though useful therapeutically.

Schedule IV - includes some weaker barbiturates and other hypnotics, hypnotic, and some weaker stimulants.


Iowa and Federal
Medical Use
Abuse Potential
Schedule 1
Schedule 2
Schedule 3
Schedule 4
Schedule 5
No
Yes
Yes
Yes
Yes
1
1
2
3
4
HIGH
LOWER

International Schedules (Single 1961 / Psychotropic 1971)

Opium	Single 1 / Psychotropic 2
Coca	Single 1 / Psychotropic 2
Marijuana	Single 1 and 4 / Psychotropic 1
Morphine	Single 1 / Psychotropic 2
Cocaine	Single 1 / Psychotropic 2
THC	Psychotropic 1 in 1971 Psychotropic 2 in 1991
Methamphetamine	Psychotropic 2

Iowa and Federal Schedules

Opium	2	1 is good for nothing 2 is most restrictive 3 is less restrictive
Coca	2	
Marijuana	1	
Morphine	2	
Cocaine	2	
THC	1 (1970) 2 (1986) 3 (1999)	
Methamphetamine	2	

Congress has entrusted scheduling changes under the CSA to the DEA, not to the courts for ad-hoc decisions in every federal drug prosecution. This is not merely a rational decision, but a decision pivotal to achieving the goals of the CSA, and the practical operation of the trial courts. It is hard to imagine any other process that would provide the flexibility needed to change scheduling in light of ongoing scientific development; the uniformity needed for national drug policy; and an orderly enforcement process necessary to prevent the Courts from grinding to a halt while re-litigating scheduling decisions in each and every drug case.

Hon. Robert J. Jonker, Filed 09/08/14
United States District Court (Western District of Michigan)
United States v. Shawn Andrew Taylor, et al.,
Case 1:14-cr-00067-RJJ, ECF Doc #502, Page 8 of 15

I know the government would like the Court to vacate the hearing. I've noted the filing. And let me just make perfectly clear if the Supreme Court had not dropped footnote 37 in the Raich case, maybe we would not be here. But at this point in time, the Court is prepared to proceed and deny once again that motion, but I understand the government's position.

Hon. Kimberly J. Mueller, Filed 11/03/14
United States District Court (Eastern District of California)
United States v. Bryan R. Schweder, et al.,
Case 2:11-cr-00449-KJM, ECF Doc #353, Page 8 of 115

Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005)

We acknowledge that evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I. See, e.g., Institute of Medicine, Marijuana and Medicine: Assessing the Science Base 179 (J. Joy, S. Watson, & J. Benson eds. 1999) (recognizing that "[s]cientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC [Tetrahydrocannabinol] for pain relief, control of nausea and vomiting, and appetite stimulation"); see also *Conant v. Walters*, 309 F.3d 629, 640-643 (CA9 2002) (Kozinski, J., concurring) (chronicling medical studies recognizing valid medical uses for marijuana and its derivatives). But the possibility that the drug may be reclassified in the future has no relevance to the question whether Congress now has the power to regulate its production and distribution. Respondents' submission, if accepted, would place all homegrown medical substances beyond the reach of Congress' regulatory jurisdiction..

Gonzales v. Oregon, 546 U.S. 243, 271-272 (2006):

Even though regulation of health and safety is "primarily, and historically, a matter of local concern," *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719, 105 S. Ct. 2371, 85 L. Ed. 2d 714 (1985), there is no question that the Federal Government can set uniform national standards in these areas. See *Raich*, supra, at 9, 125 S. Ct. 2195, 162 L. Ed. 2d 1. In connection to the CSA, however, we find only one area in which Congress set general, uniform standards of medical practice. Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, of which the CSA was Title II, provides that

> "[The Secretary], after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress." § 4, 84 Stat. 1241, codified at 42 U.S.C. § 290bb-2a.

This provision strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute.

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New York v. United States, 505 U.S. 144, 181 (1992)

The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.

Bond v. United States, ___ U.S. ___, ___, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269, 280 (2011)

Federalism secures the freedom of the individual. It allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power. True, of course, these objects cannot be vindicated by the Judiciary in the absence of a proper case or controversy; but the individual liberty secured by federalism is not simply derivative of the rights of the States.

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Single Convention on Narcotic Drugs, 1961

Article 36 Penal Provisions
Article 36(1)(a) "Subject to its constitutional limitations, …"
Article 36(2) "Subject to the constitutional limitations of a Party, its legal system and domestic law, …"

Convention on Psychotropic Substances, 1971

Article 22 Penal Provisions
Article 22(1)(a) "Subject to its constitutional limitations, …"
Article 22(2) "Subject to the constitutional limitations of a Party, its legal system and domestic law, …"

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Coats v. Dish Network, 350 P.3d 849, 850 (Colorado 2015):

> **Therefore, an activity such as medical marijuana use that is unlawful under federal law is not a "lawful" activity under section 24–34-402.5**

People v. Crouse, 388 P.3d 39, 43 (Colorado 2017):

> **Consistent with our holding in Coats, then, we again find that conduct is "lawful" only if it complies with both federal and state law**

10-144 Code of Maine Regulations Chapter 122
Governing the Maine Medical Use of Marijuana Program

Page 1-1, Purpose:
The activities described in these rules are considered a violation of federal law

Here is what the Iowa Department of Public Health has written on the owner certification form:

> **any activity not sanctioned by Iowa Code chapter 124E and proposed administrative rules may be a violation of state or federal law and could result in arrest, prosecution, conviction, or incarceration**

https://drive.google.com/file/d/0B-cZdbYdPoLGSnZRQWtBUnFTd2c/view

Title 14: Aeronautics and Space
PART 91—GENERAL OPERATING AND FLIGHT RULES
Subpart A—General
§91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

Pub. L. No. 113–235, § 538, 128 Stat. 2130, 2217 (2014) ("None of the funds made available in this Act to the Department of Justice may be used … to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana").

Pub. L. No. 114–113, § 542, 129 Stat. 2242, 2332–33 (2015) ("None of the funds made available in this Act to the Department of Justice may be used … to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana").

Pub.L. No. 114–254, § 101(1), 130 Stat. 1005, 1005-06 (2016) (extending the date to April 28, 2017).