

2628 Camden Drive
Ames, Iowa 50010
January 28, 2019

Drug Enforcement Administration
Attn: Diversion Control Division/DC
8701 Morrisette Drive
Springfield, VA 22152


**Re: Petition to Exempt State-Authorized Use of Medical Cannabis
Certified Mail Receipt No. 7017 2680 0000 3373 5200**

Dear Administrator:

Please find attached five copies of the Petition for Exemption for State-Authorized Use of Medical Cannabis for your review.

Thank you.

Sincerely,


Colin Murphy

CCM:cm
Encl.

cc: The Honorable Kim Reynolds
Governor of Iowa
1007 East Grand Ave.
Des Moines, Iowa 50319
Certified Mail Receipt No. 7017 2680 0000 3373 5217

The Honorable Tom Miller
Office of the Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines IA 50319
Certified Mail Receipt No. 7017 2680 0000 3373 5224

DRUG ENFORCEMENT ADMINISTRATION
Diversion Control Division/DC
8701 Morrisette Drive
Springfield, VA 22152

Petition for Administrative Rule)	PETITION TO EXEMPT
Pursuant to 21 C.F.R. § 1307.03)	THE STATE-AUTHORIZED USE
)	OF MEDICAL CANNABIS

COME NOW Petitioners, pursuant to 21 C.F.R. § 1307.03 (2019),¹ and for the Petition to Exempt the State-Authorized Use of Medical Cannabis state:

1. On May 12, 2017 Iowa Governor Terry Branstad signed into law House File 524, known as the “Medical Cannabidiol Act,” which is now codified at Iowa Code chapter 124E (2017) (the “**Act**”).²
2. The Act allows Iowa residents over the age of 18 (or their primary caregiver), who submit written certification by a health care practitioner that they are suffering from a certain debilitating medical condition, to apply to the Iowa Department of Public Health for a medical cannabidiol registration card.³
3. The registration card allows Iowans access to medical cannabidiol through a state-regulated system of manufacturers and dispensaries.⁴

¹ The regulation provides:

Any person may apply for an exception to the application of any provision of this chapter by filing a written request with the Office of Diversion Control, Drug Enforcement Administration, stating the reasons for such exception. See the Table of DEA Mailing Addresses in Sec. 1321.01 of this chapter for the current mailing address. The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

² 21 C.F.R. § 1307.03 (2019).

³ See generally IOWA CODE ch. 124E (2017). The administrative rules promulgated by the Iowa Department of Public Health to interpret and enforce Chapter 124E are found at IOWA ADMIN. CODE r. 641–154 (2019).

⁴ *Id.* § 124E.4 (2017).

⁵ Medical cannabidiol may be legally manufactured in Iowa by only two companies that hold Iowa manufacture licenses. It can be legally dispensed only at five locations across the state by companies that hold dispensary licenses available at http://idph.iowa.gov/Portals/1/userfiles/234/Files/IDPH%20Position%20Statement%20on%20CBD%20-%2012_1_2018.pdf. As of January 11, 2019 there are 1,197 patients and caregivers with active registration cards, who have been certified by 463 healthcare practitioners in the state, available at <https://idph.iowa.gov/cbd/Program-Data-and-Statistics>.

4. “Medical cannabidiol” is “any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa L.* or *Cannabis indica* . . . that has a tetrahydrocannabinol level of no more than three percent and that is derived in a form . . . adopted by the [Iowa Department of Public Health] pursuant to rule.”⁵

5. On December 1, 2018 medical cannabidiol first became available for purchase by Iowa patients.⁶

6. The lawful possession or use of medical cannabidiol by qualified patients and caregivers is exempt from the penalties provided under the Iowa’s controlled substance and tax-stamp acts.⁷

7. However, because the manufacture, possession and use of medical cannabidiol is *perceived* to be illegal under *federal* law, Iowa manufacturers, dispensaries, patients, primary caregivers and others remain vulnerable to federal interference, whether by arrest, prosecution, incarceration, forfeiture, taxation or denial of benefits, including, but not limited to:

- (a) the inability for medical cannabidiol producers and processors to deduct business expenses besides the cost of goods sold;⁸

⁵. IOWA CODE § 124E.2(6) (2017). Medical cannabidiol is *not* scheduled as a controlled substance under Iowa’s Uniform Controlled Substances Act (Chapter 124) despite the fact that it contains up to three percent tetrahydrocannabinol by dry weight (mg/g), and therefore, would otherwise fall under the definition of “*marijuana*,” which is listed as a schedule I controlled substance in the state. See IOWA CODE § 124.204(4)(m) (2017) (marijuana in Iowa schedule I); see also 124.124.101(20) (2017) (“[m]arijuana means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, *including tetrahydrocannabinols*. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized see of the plant which is incapable of germination”) (emphasis added).

This definition is virtually indistinguishable from the term “*marihuana*” under federal law. See 21 U.S.C. § 802(16) (2019) (defining term as “all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination).

⁶. *Iowa Medical Cannabidiol Dispensaries Opening December 1* (11/2/18) available at <https://idph.iowa.gov/News/ArtMID/646/ArticleID/158242/Iowa-Medical-Cannabidiol-Dispensaries-Opening-December-1-11218>.

⁷. IOWA CODE § 124E.16(1) (2017) (providing penalties under Iowa Code chapters 124 and 453B for possession or use of medical cannabidiol in violation of chapter 124E).

⁸. See 26 U.S.C. § 280E (2019) (“[n]o 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 (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted”). The implications here are massive. Cannabis businesses pay taxes on gross income. For example, if a cannabis business has gross revenue of

- (b) the inability of medical cannabidiol dispensaries to deduct any business expenses such as rent, advertising, labor costs, etc.;⁹
- (c) the refusal by medical providers with the Department of Veterans Affairs to provide veterans under their care with written certification to obtain a registration card;¹⁰
- (d) the prohibition against traveling with medical cannabidiol in carry-on or checked baggage;¹¹
- (e) the prohibition against purchasing or receiving a firearm by one who certifies on ATF Form 4473 that they are an “unlawful” user of substances containing marijuana;¹² and
- (f) the denial of admission by owners of federally assisted housing to any household with a member who the owner determines is, at the time of application for admission, illegally using marijuana.¹³

8. The State of Iowa is the sole authority to determine whether medical cannabidiol or any other form of cannabis, tetrahydrocannabinols and cannabis extracts have “accepted medical use in treatment” in the state.¹⁴

\$10 million, incurred another \$2 million in business-related expenses and cost of the cannabis was \$6.5 million (cost of goods sold), the taxable income is not \$1.5 million, *but instead \$3.5 million*. At a tax rate of 30%, this amounts to \$1.05 million in taxes for an *effective* tax rate (tax/income before tax) of 70%. This significantly restricts the owner’s ability to reinvest profits both back into the business and the local community.

⁹. *Id.* Several types of business expenses are scrutinized under section 280E including employee salaries, utility costs such as electricity, telephone and internet service, health insurance premiums, marketing and repairs and maintenance. Cannabis businesses have been allowed to make deductions on their non-cannabis business activities by capitalizing on indirect costs such as administrative (bookkeeping, legal, technology) and inventory (storage, depreciation) costs and amounts paid in state excise taxes, but it is anticipated these deductions will be challenged.

¹⁰. *Access to VHA Clinical Programs for Veterans Participating in State-Approved Marijuana Programs*, VHA Directive 1315 (Dec. 8, 2017) available at <https://www.va.gov/vhapublications/>.

¹¹. The Transportation Security Administration advises: “[p]ossession of marijuana and cannabis infused products, such as Cannabidiol (CBD) oil, is illegal under federal law. TSA officers are required to report any suspected violations of law, including possession of marijuana and cannabis infused products. TSA’s screening procedures are focused on security and are designed to detect potential threats to aviation and passengers. Accordingly, TSA security officers do not search for marijuana or other illegal drugs, but in the event a substance that appears to be marijuana or a cannabis infused product is observed during security screening, TSA will refer the matter to a law enforcement officer” available at <https://www.tsa.gov/travel/security-screening/whatcanibring/items/medical-marijuana>.

¹². Question 11(e) on the form asks “Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning: the use or possession or marijuana remains unlawful under Federal law, regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside,**” available at <https://www.atf.gov/file/61446/download> (emphasis in original). In answering the question truthfully, by checking yes, a patient’s application will be denied. That may also hold true for any license renewal involving a patient that has since received a registration card. If the patient does not answer question 11(e) truthfully, then he will be subject to federal criminal sanctions, including perjury and illegal firearm possession.

¹³. 42 U.S.C. 13662(a) (2019).

¹⁴. See Iowa Code §§ 124.203(1)(b), (2) (2017). The term “currently accepted medical use for treatment in the United States” is not defined under federal law. See 21 U.S.C. § 812(b) (2019). “Neither the statute, nor its legislative history precisely define the term.” See *Alliance for Cannabis Therapeutics*, 930 F.2d 936,

9. The Attorney General of the United States has rulemaking authority to fulfill his duties under the federal Controlled Substances Act, but he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment for patients that is authorized under state law.¹⁵


10. Federal law already recognizes an exemption for marijuana or other substances authorized by any state statute or agency in other contexts.¹⁶

11. Petitioners contend the fact that medical cannabidiol has been available for lawful use in Iowa since December 1, 2018 without objection by the Drug Enforcement Administration is tacit recognition of the federal exemption that has always existed for the authorized use of medical cannabis at the state level.

12. In order to harmonize the *perceived* conflict between Iowa and federal law, while simultaneously leaving both federal and Iowa schedule I intact regarding marijuana, Petitioners request the Drug Enforcement Administration formally acknowledge the existing exemption for the state-authorized use of medical cannabis and promulgate a new rule as follows:

21 C.F.R. § 1307.xx (2019). The listing of marihuana as a controlled substance in Schedule I does not apply to the authorized medical use of marihuana authorized by or under any State statute or by any State agency.

WHEREFORE, Petitioners respectfully request the Drug Enforcement Administration codify the requested exemption.



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939 (D.C. Cir. 1991) Congress did not intend the term to require a finding of recognized medical use in every state. See *Grinspoon v. DEA*, 881 F.2d 877, 886 (1987).

¹⁵. See *Gonzales v. Oregon*, 546 U.S. 243, 258, 126 S. Ct. 904, 916, 163 L. Ed. 748 (2006).

¹⁶. See 14 C.F.R. § 91.19(a)-(b) (2019) (“[e]xcept as provided . . . 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. [This] 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.”)