UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration

In the Matter of:	:	
Schedules of Controlled Substances	:	
Proposed Rescheduling of Marijuana	:	**DEA Docket No. 1362**
	:	**Hearing Docket No. 26-96**

POST HEARING BRIEF
FILED BY DESIGNATED PARTY
NATIONAL ALCOHOL AND DRUG SCREENING ASSOCIATION (NDASA

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I. PRELIMINARY STATEMENT [1]

a. The Court's Role as Stated by the Court TR Day 1 at 8:1-18, 22-25, 9:1-25, 26:12-24.

> Under the proposed rule, if the transfer of marijuana to Schedule III is finalized, the regulatory controls applicable to Schedule III controlled substances would apply, as appropriate, along with existing marijuana specific requirements and any additional controls that might be implemented, including those that might be implemented to meet U.S. treaty obligations.
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> If marijuana were transferred into Schedule III, the manufacture, distribution, dispensing, and possession of marijuana would remain subject to the applicable criminal prohibitions of the CSA. Any drugs containing a substance within the CSA's definition of "marijuana" would also remain subject to the applicable prohibitions in the Federal Food, Drug, and Cosmetic Act.
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> On April 22, 2026, Acting Attorney General Todd Blanche issued a final rule that, in relevant part, placed drug products containing marijuana that had been approved by the Food and Drug Administration, or FDA, and marijuana subject to state issued licenses, into Schedule III of the CSA. [2]
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> That same day, Acting Attorney General Blanche issued a new Notice of Hearing on this proposed rulemaking. That notice instructed that all potential, quote, "interested persons," as defined in 21 C.F.R. Section 1300.00(b), on the process of filing written notices of intention to participate in the hearing.

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[1] NDASA adopts the procedural arguments in the Joint Closing Argument and Post-Hearing Brief Filed By Designated Parties DUID Victim Voices and Kenneth Finn, M.D in DEA Docket No. 1362. Hearing Docket No. 26-96.

[2] The exclusion of these two categories does not reflect a considered scheduling determination on the merits. It reflects only the Acting Attorney General's Order of April 22. 2026, which placed FDA-approved marijuana-containing drug products and state-licensed medical marijuana into Schedule Ill. TR. Day 1 at 8:1-18, 22-25; 9:1-25. That Order is the subject of three pending petitions for review in the United States Court of Appeals for the District of Columbia Circuit; States of Nebraska, Indiana & Louisiana v. U.S. Department of Justice, No. 26-1130 (D.C. Cir. filed May 22, 2026); New Directions Addiction Recovery Services v. Trump, No. 26-1136 (D.C. Cir. filed May 28, 2026); and Smart Approaches to Marijuana v, U.S. Department of Justice, No. 26-1106 (D.C. Cir. filed May 4, 2026). Dr. Kenneth Finn, a Designated Party here, is a petitioner in No. 26-1136. The lawfulness of the April 22, 2026 Order is therefore unresolved, and nothing in this proceeding should be understood to treat that Order as a settled or validly reached determination that any form of marijuana has a currently accepted medical use.

On June 18, 2026, after reviewing the written notices of intention to participate, the DEA Administrator granted seven interested parties' participation requests. Those seven interested persons, and the Government collectively, constitute the designated parties who will participate in this hearing.

The issue in this hearing is to determine whether marijuana, as statutorily defined in the CSA at 21 U.S.C. Section 802A, other than the products already scheduled in Schedule III, should be moved to Schedule III of the CSA. TR Day 1 at 9:1-25, 8:1-18, 22-5

The hearing cannot be about whether the two part test used by HHS in determining currently accepted medical use is legally permissible. That decision has already been made. The United States Department of Justice's Office of Legal Counsel issued its opinion in 2024 that satisfying HHS's two part inquiry is sufficient to establish that a drug has CAMU, currently accepted medical use, even if the drug has not been approved by the FDA. That decision is binding on the Department of Justice, including the DEA and this Tribunal. TR Day 1 at 26:12-24.

b. The CSA Definition of Marijuana

21 U.S.C. 802 (16)(A) Subject to subparagraph (B), the terms "marihuana" and "marijuana"mean 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.
(B) The terms "marihuana" and "marijuana" do not include--
(i) hemp, as defined in section 1639o of Title 7; or
(ii) 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. TR Day 1 at 46 3-11

Marijuana is thus the dried buds and leaf material of the cannabis plant that contains a number of psychoactive components. The primary group of psychoactive components is tetrahydrocannabinols, commonly known as THC, and within that group delta-9 THC is included. Day 8 at 1841:1-5

There is no difference between recreational and "medical" marijuana as they can be used either way. TR Day 2 at 632:25 to 633:4.

In order to be a Schedule III under the above definitions, even marijuana grown at home by a user and used for recreation must have currently accepted medical use.

c. The requirements to be in Schedule III.

> Schedule III 21 U.S.C.A.812 (b)(3)
> (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. TR Day 1 at 108:17-21. Proposed Government Prehearing DEA Exhibit No.1 Notice of Proposed Rulemaking, published May 21, 2024. DEA Dkt. No.1362 and Hearing Docket No. 24-44

d. The Eight Part Test for Scheduling

However, the two part test is not the first consideration in deciding scheduling. There must first be an 8 part consideration. 21 U.S.C. 811 currently requires the Attorney General to consider eight medical, scientific, and law enforcement factors regarding scheduling of a drug:

1. Its actual or relative potential for abuse.

2. Scientific evidence of its pharmacological effect, if known.

3. The state of current scientific knowledge regarding the drug or other substance.

4. Its history and current pattern of abuse.

5. The scope, duration, and significance of abuse.

6. What, if any, risk there is to the public health.

7. Its psychic or physiological dependence liability.

8. Whether the substance is an immediate precursor of a substance already controlled under this subchapter. TR Day 2 at 422:24 to 433:6. Prehearing DEA Exhibit No. 1 Notice of

Proposed Rulemaking, published May 21, 2024. DEA Dkt. No. 1362 and Hearing Docket No. 24-44

e. According to the HHS, the CAMU analysis has two parts.

> Part 1: There exists widespread, current experience with medical use of the substance by HCPs operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine. Part 1 of this approach is supported by factors such as the following (with none being dispositive):
> (a) Whether a substantial number of HCPs have gained clinical experience with at least one specific medical use of the substance under existing and implemented state authorized programs;
> (b) Whether a substantial number of entities that regulate the practice of medicine recognize at least one specific medical use of the substance; and
> (c) Whether an HCPs' clinical experience with the medical use of the substance is of sufficient extent and duration to help evaluate potential clinical uses and longer-term toxicities and potential harms of the substance when used under medical supervision.
> Part 2: There exists some credible scientific support for at least one of the medical uses for which Part 1 is met. Proposed Government Prehearing Exhibit No. 5: HHS, Basis for Recommendation to Place Marijuana in Schedule III of the Controlled Substance Act, dated August 29, 2023.DEA Dkt. No. 1362 and Hearing Docket No. 24-44, page 80

f. The Damaging Public Safety and Public Health Consequences of Rescheduling Marijuana to a Schedule III

Under the proposed rule, if the transfer of marijuana to Schedule III is finalized, the authority of the Federal government to test for it will end. The Department of Health and Human Services (HHS) only has authority to test for Schedule I and II Controlled Substances due to Executive Order 12564 (E.O. 12564) and subsequent Congressional authority to implement E.O.12564. Therefore, HHS only has authority to certify laboratories to test for Schedule I and II Controlled Substances. Congress has required the United State Department of Transportation (DOT) to follow HHS for the scientific and technical aspects of drug testing, including the substances for which DOT test, and only HHS-certified laboratories can conduct DOT drug testing. Consequently, this limits DOT to only testing for Schedule I and II Controlled

Substances. Rescheduling to Schedule III would move marijuana beyond the reach of HHS, federal agencies, and the US DOT to test for use of it. Important safety and critical security personnel the federal government would no longer be subject to testing, including air traffic controllers, Secret Service, and Federal employees with security clearances. The list of DOT safety sensitive employees who perform commercial transportation duties in the private sector, who would no longer be subject to marijuana testing would include: airline pilots, airline mechanics, locomotive engineers, school bus drivers, truck drivers, transit operators, Coast Guard mariners, and pipeline operators. DOT drug testing for marijuana began in about 1988, after a series of marijuana related accidents in several of these sectors. The prevention and deterrence that the American public has encountered for almost years would be lost if marijuana is moved to Schedule III. NDASA Exh.1-3. TR Day 4 at 1028:2-13; 1030:9-23; 1031:22-23; 1031:14-23; 1033:17-20; 1036:15-22; 1036:17-20; 1061:1 to 1062:20; 1063:17 to 1064:4; 1085:8-22; 1108; 1118 [3]

g. NDASA's Interests

NDASA's membership includes a majority of transportation safety professionals, including DOT-regulated employers and the service agent who provide drug testing services (e.g., laboratories, third party administrators, collectors, Medical Review Officers (MROs) and others), as well as transportation trade associations, consultants, and other safety advocates.

NDASA's primary concern, as expressed in the Preliminary Statement above, is that HHS

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[3] Remarks on Signing an Executive Order on Increasing Medical Marijuana and Cannabidiol Research and an Exchange With Reporters, The American Presidency Project (Dec. 18, 2025), https://tinyurl.com/3229zz3p.

will lose the ability to set the scientific and technical guidelines and certified laboratories to test for marijuana, if it is moved to Schedule III. Once HHS loses that authority, DOT's regulated drug testing must come to an immediate end because Congress requires that it can only take place through HHS-certified laboratories and in accordance with the scientific and technical guidelines of the HHS, which are applicable to federal agency testing. As described in Patrice Kelly's testimony during the hearing, DOT drug testing was implemented because of a series of marijuana-related accidents. With marijuana remaining the DOT's number one positive test result among transportation industry safety-sensitive employees, NDASA is certain that the removal of marijuana testing will result in widespread use of marijuana by the people we are relying on for commercial transportation safety. With that use will come marijuana-related accidents. NDASA has a strong interest in not seeing the mistakes of the past happen again. Exh.1-3. TR Day 4 at 1028:2-13; 1030:9-23; 1031:22-23; 1031:14-23; 1033:17-20; 1036:15-22; 1036:17-20; 1061:1 to 1062:20; 1063:17 to 1064:4; 1085:8-22; 1108; 1118

In addition, NDASA is concerned with item 6 of the above DEA eight part test regarding risk to the public and employee health caused by safety sensitive transportation personnel being high on marijuana or effected by marijuana use when flying planes, operating trains and school buses and trucks. TR Day 4 at 1008:6-11; 1009:25 to 1010:23

NDASA also represents Medical Review Officers and employers who are concerned about Part 1.C of the HHS two part inquiry potential harms of marijuana even when used under medical supervision. TR Day 4 at 1013:16 to 1014:6; 1073:23 to 1074:10;1085:23 to 1086:24

> (c) Whether an HCPs' clinical experience with the medical use of the substance is of sufficient extent and duration to help evaluate potential clinical uses and longer-term toxicities and potential harms of the substance when used under medical supervision.

NDASA is greatly concerned that MROs who review marijuana positives in non-Federal testing will be left with serious difficulties in determining whether an employee who tests positive for marijuana has used Schedule III marijuana from a legitimate source. When MROs verify a positive test result and the donor states that they have a prescription for the controlled substance for which they tested positive, the MRO would contact the pharmacy. If marijuana is moved to Schedule III and is outside the normal pharmacy distribution structure for Schedule III Controlled Substances, the MRO will have no way to actually verify the source of the marijuana and thereby downgrade at the test result to a negative for legitimate medical use.

h. CIVEL's Letter # 3 Marijuana Use Damages Our Economy and Is a Threat to the Safety of Our Workplaces DEA Exh 2D

In considering the above risks the Court should consider the following information provided in the DEA Dkt. No. 1362 and Hearing Docket No. 26-96, Proposed Government Prehearing Exhibit No. 2D: Comments Received in Response to Notice of Proposed Rulemaking: d. Attachment to Comment by Cannabis Industry Victims Educating Litigators (CIVEL) pages [4]

§ 1:18. Effects of marijuana use--Pharmacological, psychological, mental, physiological, and side effects. DEA Exh. 2D page 5.

§ 1:18.30. Marijuana and employer concerns about driving, job performance and safety. DEA Exh. 2D page 43.

§ 1:18.50. Marijuana urine test results, pharmacokinetics and interpretation of blood concentrations. DEA Exh 2D page 55.

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[4] The Government's copy is very blurred so the relevant original sections of DEA Exh 2D are provided here.

§ 1:18.83. Effects of Marijuana on Driving and Operating Machinery. DEA Exh. 2D page 82

§ 1:39. Drugged driving- Marijuana and other drugs. DEA Exh. 2D page 85

§ 1:40. Drugged driving - Effect of Marijuana Legalization. DEA Exh. 2D page 89.

II. A STATEMENT OF SUPPORTING REASONS FOR THE PROPOSED FINDINGS AND CONCLUSIONS THAT THE RESCHEDULING OF MARIJUANA WILL CAUSE DOT TO CEASE TESTING FOR MARIJUANA.

a. Proposed Findings and Conclusions

Fact 1: The number of employees and annual tests conducted under the DOT's regulated testing program make it the largest regulated testing program in the world. TR Day 4 at 1028: 2-10.

Fact 2: The DEA's Notice of Proposed Rulemaking (NPRM) failed to address the unintended safety impact that rescheduling marijuana would have on transportation safety, the largest regulated drug testing program in the world was left out of the DEA's NPRM. TR Day 4 at 1028:11-13. "this is the most profound action that has happened in drug and alcohol testing since the Chase, Maryland crash." TR Day 4 at 1024: 25-25 to 1050:1.

Fact 3: Executive Order 12564 has guided DOT's actions on drug testing since the 1980s. TR Day 4 at 1030:9-23.

Fact 4: Federal drug testing began because President Reagan's EO12564 recognized that drug use causes absenteeism, illness, workplace accidents and reduces reliability. TR Day 4 at 1040: 1-25.

Fact 5: There were marijuana-related commercial transportation accidents that caused the United States Department of Transportation (DOT) to take action in 1988 and Congress to

legislate in 1991. TR Day 4 at 1040:19-25 to 1041:1-23

Fact 6: Employee marijuana use caused deadly marijuana-related crashes in the late 1980s, which caused the DOT to create drug testing requirements and precipitated Congressional legislation known as the Omnibus Transportation Employee Testing Act.(OTETA). TR Day 4 at 1040:19-25 to 1041:1-23. As stated in the Prehearing Statement, all of these are cited in the Congressional Report for the Omnibus Transportation Employee Testing Act of 1991, Report of the Senate Committee on Commerce, Science and Transportation on S. 676, 102nd Congress, 1st Session, pages 5 - 6. NDASA- Prehearing Exhibit 1.

Fact 7: The 1987 Conrail train accident was the final impetus for DOT's establishment of drug testing. TR Day 4 at 1041:6-22.

Fact 8: Marijuana use by DOT- regulated safety-sensitive employees operating in commercial transportation has been subject to drug testing for marijuana for: Federal Aviation Administration, FAA, Federal Railroad Administration FRA, Federal Motor Carrier Safety Administration FMCSA, Federal Transit Administration FTA, Pipeline and Hazardous Materials Safety Administration PHMSA, and the US Coast Guard USCG. TR Day 4 at1061:1-12 to 1062:1-20.

Fact 9: Transportation safety sensitive employees include, but are not limited to: airline pilots, air traffic controllers, school bus drivers, subway and train operators, ferry operators, pipeline operators and truck drivers. In addition, the air traffic controllers employed by the Federal Aviation Administration would no longer be subject to the deterrence and detection ensured by Federal marijuana testing. TR Day 4 at 061:1-12 to 1062: 1-20;1063:17-25 to 1064:1-4.

Fact 10: The Attorney General has demonstrated a dangerous blind spot on the impact of moving marijuana to Schedule Ill. TR Day 4 at 1028:11-13; 1055:1-4.

Fact 11: The unintended consequences of such rescheduling would abruptly end the ability of DOT to conduct marijuana testing and achieve deterrence for transportation safety-sensitive employees. TR Day 4 at1031:14-23.

Fact 12: These safety-sensitive employees have been subject to testing for marijuana and other drugs since 1989. TR Day 4 at 1031:17-19; 1058: 23-25.

Fact 13 The rescheduling of marijuana to Schedule III would abruptly end DOT-regulated testing for marijuana and would have a profoundly detrimental impact on transportation safety in the United States. TR Day 4 at 1033:17-20.

Fact 14: The Omnibus Transportation Employee Testing Act of 1991 (OTETA), Public Law 102-143, 105 Stat. 917 (Oct. 28, 1991), codified at 49 U.S.C. §§ 5331 (transit industry testing), 20140 (railroad industry testing), 31306 (motor carrier industry testing), and 45101-45105 (aviation industry testing). NDASA- Prehearing Exhibit 2 requires the DOT to follow the Substance Abuse and Mental Health Services Administration of HHS for the science of drug testing, including the drugs to be tested and the drug metabolite cutoff levels, which are set forth in the HHS Mandatory Guidelines. TR Day 4 at 1036:15-22.

Fact 15: OTETA also requires DOT to use only HHS-certified laboratories for all drug testing required by DOT. TR Day 4 at 1033:1-16.

Fact 16: HHS does not have authority to test for Schedule III drugs. TR at 1031: 22-23. The authority of HHS to test for and to certify laboratories for testing is provided by Executive Order 12564 - Drug-free Federal Workplace of Sept. 15, 1986 (E.O. 12564). NDASA-

Prehearing Exhibit 3.

Fact 17: Under E.O. 12564, HHS is only authorized to test for drugs and certify laboratories to test for drugs that are in Schedule I or II of the Controlled Substances Act. TR at 1031:22-23. Reference: Specifically, E.O. 12564, Section 7(c) states: "For purposes of this Order, the term 'illegal drugs' means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code." Sections 3.2 (a) of both the HHS Mandatory Guidelines for Urine and the HHS Mandatory Guidelines for Oral Fluid state that an employee may be tested for "any drugs listed in Schedule I or II of the Controlled Substances Act."

Fact 18: If marijuana becomes a Schedule III substance, HHS would no longer be able to require testing for or to certify laboratories to test for marijuana. TR Day 4 at 1031: 22-23.

Fact 19: HHS certification and oversight of laboratories is thorough. TR Day 4 at 1032:1-16.

Fact 20: Non-regulated businesses follow the "standards" of DOT-regulated testing and often replicate the Federal testing panel used by both DOT for commercial transportation and HHS for Federal employee testing. TR Day 4 at 1037:17-24.

Fact 21: The U.S. DOT drug testing program creates safe working environments and protects the traveling public. While it is a safety program that deters and detects substance use and abuse, it also creates a pathway for employees to return to work after they have been evaluated by a Substance Abuse Professional. TR Day 4 at 1074: 24-25 to 1075:1-16.

Fact 22: Employee turnover costs businesses financially. Those who fail a drug test should be seen as the valuable human beings they are. The U.S. DOT drug testing program was designed

to support recovery for those who have developed substance use disorders. This model program is a best-practice for safety and for valuing human resources. TR Day 4 at 1074: 19-25 to 1076: 1-23.

Fact 23: As submitted into evidence in our prehearing statement the American Substance Abuse Professionals success rates for referral and treatment for workplace testing in return-to-duty and follow-up testing programs have demonstrated success with well over 50% of those employees failing a drug test for THC violations have been able to return to work. NDASA Prehearing Exhibit 7. TR Day 4 at 1077:1-18

Fact 24: Employee marijuana use causes harm, creates risk and poses a financial burden to employers via incased absence, loss of productivity, employee turnover, accidents, injuries and fatalities. U.S. employers are struggling to find employees who can pass a pre-employment drug test due to increased use of THC and this creates safety risks in the U.S. workforce. This was demonstrated in NDASA Prehearing Exhibit 4. TR Day 4 at 1077: 22-25 to 1078:1-12.

Fact 25: As demonstrated in the prehearing data from Quest Diagnostics Drug Testing Index and via personal experience, employees in mandatory drug testing programs are less likely to use drugs and have greater success rates for recovery than those who are not in a mandatory drug testing program. NDASA Prehearing Exhibits 5 & 6. TR Day 4 at1082:22-25 to1084: 1-21.

Fact 26: The HHS Mandatory drug testing guidelines require that federal employees such as air traffic controllers and others in safety and security-sensitive positions submit to drug testing protocols, to include testing for THC. Rescheduling of marijuana will remove the ability to test for THC, as HHS is responsible for the lab certification program for both the HHS and DOT drug testing programs (all Federally mandated testing) and that program may only certify the labs to

test for drugs that are Schedule I or Schedule II. NDASA Prehearing Exhibit 15 to demonstrate this fact. TR Day 4 at1085:8-22

Fact 27: There will be significant impact to the Medical Review Officer process in the Federal drug testing program, as demonstrated by the NDASA Prehearing Exhibit 10, the American College of Occupational and Environmental Medicine (ACOEM). Medical Review Officers are the gatekeepers of safety, as they verify valid prescriptions for medications that may cause impairment while the employee is engaged at work. The MRO protocols are in jeopardy by working through validations of medical recommendations through a patchwork of state dispensary systems that are complex and difficult to navigate with a lack of guidance on a science-based framework for medical use. TR Day 4 at 1086: 3-25 to 1088:1-21; 1096: 6-17; 1099:15-20;1100:3-24.

Fact 28: HHS may not certify the labs to test for Schedule III marijuana which will directly impact public safety. TR Day 4 at 1121:16-20; 1136:24- 25 to 1137:1

Fact 29: Over 20 states require employers to follow DOT drug testing protocols. Eliminating THC from the DOT drug testing program will have an impact on the U.S. non-DOT workforce, as employers will have to make individual determinations on how to address safety concerns without proper MRO protocols and this will create questions on whether workplace safety policies are legally defensible. TR Day 4 at 1137:8-25 to 1138:1-14.

Fact 30: On December 18, 2025, President Donald J. Trump issued Executive Order No. 14370, titled "Increasing Medical Marijuana and Cannabidiol Research," 90 Fed. Reg. 60,541 (Dec. 23, 2025) (the "Executive Order"), which directed the Attorney General to "take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule

III of the CSA in the most expeditious manner in accordance with Federal law, including 21 U.S.C. 811." At the Oval Office signing ceremony, President Trump stated that rescheduling marijuana is "really something having to do with common sense" and predicted that "[t]his reclassification order will make it far easier to conduct marijuana-related medical research allowing us to study benefits, potential dangers and future treatments. It's going to have a tremendously positive impact." [5] TR Day 1 at 8:1-18, 22-25; 9:1-25

b. Procedural History

On April 22, 2026, Acting Attorney General Todd Blanche then issued a Final Order placing two categories of marijuana products into Schedule III of the CSA: (1) drug products containing marijuana that have been approved by the Food and Drug Administration ("FDA"), and (2) marijuana products subject to a qualifying state-issued license to manufacture, distribute, and/or dispense marijuana for medical purposes ("state medical marijuana license"). 91 Fed. Reg. at 22,714. The Final Order simultaneously amended DEA regulations at 21 C.F.R. 1312 to require import and export permits for the rescheduled products, and established an expedited registration process under 21 C.F.R. 1301 for entities holding state medical marijuana licenses. Id.

The Acting Attorney General purported to act under the authority of 21 U.S.C. 811(d)(1), the treaty-implementation provision of the CSA, claiming that this action was "required to satisfy the responsibility of the Administrator under the CSA to place a drug in the schedule he deems most appropriate to carry out United States obligations under the Single Convention on Narcotic

[5] Remarks on Signing an Executive Order on Increasing Medical Marijuana and Cannabidiol Research and an Exchange With Reporters, The American Presidency Project (Dec. 18, 2025), https://tinyurl.com/3229zz3p.

Drugs, 1961." Id. However, the Final Order is also intended to carry out the Executive Order. See 91 Fed. Reg. 22,777 22,778 (Apr. 28, 2026). TR Day 1 at 8:1-18, 22-25; 9:1-25

Fact 32: The Final AG Order was issued without prior notice-and-comment rulemaking under 5 U.S.C. 553, without a formal hearing on the record under 21 U.S.C. 811(a), without consultation of the recommendation of the Department of Health and Human Services ("HHS") on rescheduling, without consideration of the administrative process regarding rescheduling that was already in progress, and without compliance with the procedural requirements of 5 U.S.C. 56 557. The Attorney General avoided many of these procedural safeguards by issuing their rescheduling decision under Section 811(d). TR Day 1 at 8:1-18, 22-25; 9:1-25. The Final Order has immediate and sweeping consequences, including: 1.The elimination of the deduction disallowance imposed by 26 U.S.C. 280E for state-licensed marijuana businesses; 2.The creation of a novel, bifurcated federal scheduling framework never contemplated by Congress; 3.The effective federal endorsement of state medical marijuana programs that have never undergone FDA approval; and 4. The reduction of federal controls on marijuana products in a manner that will foreseeably increase marijuana availability and use. TR Day 1 at 8:1-18, 22-25; 9:1-25.

Simultaneously, the Department of Justice withdrew the prior Notice of Proposed Rulemaking (NPRM) to reschedule marijuana from Schedule I to Schedule III, 89 Fed. Reg. 44,597 (May 21, 2024) and terminated the ongoing administrative hearing proceedings before former Chief Administrative Law Judge John J. Mulrooney, II (DEA Docket No. 1362, Hearing Docket No. 24-44) (the "Administrative Hearing"), and issued a new Notice of Hearing for an expedited rescheduling hearing on the 2024 NPRM to commence June 29, 2026, and conclude by July 15, 2026. (DEA Docket No. 1362, Hearing Docket No. 26-96). Proposed Government

Prehearing Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024. DEA Dkt. No. 1362 and Hearing Docket No. 26-96 TR Day 1 at 8:1-18, 22-25; 9:1-25

As a result of the order, lawsuits have been filed in the DC Circuit Court of Appeals by physicians, drug prevention/treatment agencies and some states. See footnote 2.

c. History of DOT testing for marijuana

There were marijuana-related commercial transportation accidents that caused DOT to take action in 1988 and Congress to legislate in 1991. TR Day 4 at 1108, 1118, NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 5.

The DEA Notice of Proposed Rulemaking (NPRM) to reschedule marijuana from a Schedule I to a Schedule III failed to address the unintended safety impact that rescheduling marijuana would have on transportation safety. The deterrent effect of marijuana testing for DOT-regulated and non-regulated entities has been effective and has demonstrated success in averting catastrophic accidents of the nature we had seen in the 1980s, which we will detail below. Yet the NPRM failed to mention any of this. Proposed Government Prehearing Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024. DEA Dkt. No. 1362 and Hearing Docket No. 24-44; TR Day 1 at 8:1-18, 22-25; 9:1-25. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 5.

Employee marijuana use caused deadly marijuana-related crashes in the late 1980s, which caused the DOT to create drug testing requirements and precipitated Congressional legislation known as the Omnibus Transportation Employee Testing Act (OTETA). Specifically, marijuana-related crashes took place in: January, 1987 (Amtrak and Conrail crash in Chase, Maryland) in which two Conrail operators tested positive for marijuana (16 fatalities and 170

injuries); February, 1987 (Metro North crash in New York) in which the engineer tested positive for marijuana (30 injuries); in 1988 (Bronx, NY Metro-North commuter train crash) in which the engineer and 4 transit employees tested positive for marijuana and other drugs (1 fatality); in 1985 (Miami, FL collision involving two trains) in which one operator tested positive for marijuana and other drugs (16 injuries). All of these are cited in the Congressional Report for the Omnibus Transportation Employee Testing Act of 1991, Report of the Senate Committee on Commerce, Science and Transportation on S. 676, 102nd Congress, 1st Session, Since the inception of DOT-regulated testing in 1989, which was affirmed by OTETA, the National Transportation Safety Board has not declared marijuana to be the cause of any large commercial transportation crashes. In short, marijuana use by DOT- regulated safety-sensitive employees operating in commercial transportation has been deterred in the industries subject to drug testing for marijuana to include the Federal Aviation Administration, FAA, Federal Railroad Administration FRA, Federal Motor Carrier Safety Administration FMCSA, Federal Transit Administration FTA, Pipeline and Hazardous Materials Safety Administration PHMSA, and the US Coast Guard USCG. TR Day 4 at 1108,1118; 1060:24 to 1063:3. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 6

The Federal Railroad Administration (FRA) began drug testing almost immediately after the Chase, Maryland train crash and the rest of DOT-regulated testing began in 1989. For more than three decades since the inception of DOT-regulated drug testing, these protocols have effectively prevented marijuana-related fatalities in commercial transportation. Thus, the prevention resulting from DOT-regulated testing has created an outstanding record of safety that is at risk of being wholly undone by the rescheduling of marijuana. DOT-regulated drug testing

for transportation safety-sensitive employees has long been integral to maintaining safety standards within the domestic transportation sector, protecting American's traveling public, as well as non-regulated workplaces in the United States, which have mirrored the excellence that DOT look-alike policies have provided for employee safety. TR Day 4 at 1060:24 to 163:3. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 6

Concurring with the National Transportation Safety Board (NTSB), the unintended consequences of such rescheduling would abruptly end the ability of DOT to conduct marijuana testing and achieve deterrence for transportation safety-sensitive employees, creating a terrible safety gap that would detrimentally impact our nation. TR Day 4 at 1127:20.NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 7

Transportation safety sensitive employees include, but are not limited to: airline pilots, air traffic controllers, school bus drivers, subway and train operators, ferry operators, pipeline operators and truck drivers. In addition, the air traffic controllers employed by the Federal Aviation Administration would no longer be subject to the deterrence and detection ensured by Federal marijuana testing. These safety-sensitive employees have been subject to testing for marijuana and other drugs since 1989. TR Day 4 at1060:24 to 163:3. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 7

The connection between the rescheduling of marijuana and the impact on commercial transportation safety was never discussed in the NPRM and was an egregious oversight that affects the safety of the traveling public, transportation safety-sensitive employees, those on the roads, waterways, airways and land around and below their operational zones. This is a significant and dangerous oversight that impacts virtually every person in the United States. TR Day 4 at

1013:1-8

This important connection to the rescheduling of marijuana and transportation safety that was not addressed in the NPRM was created through the Omnibus Transportation Employee Testing Act of 1991 (OTETA), Public Law 102-143, 105 Stat. 917 (Oct. 28, 1991), codified at 49 U.S.C. 5331 (transit industry testing), 20140 (railroad industry testing), 31306 (motor carrier industry testing), and 45101-45105 (aviation industry testing). OTETA requires the DOT to follow the Substance Abuse and Mental Health Services Administration of HHS for the science of drug testing, including the drugs to be tested and the drug metabolite cutoff levels, which are set forth in the HHS Mandatory Guidelines. OTETA also requires DOT to use only HHS-certified laboratories for all drug testing required by DOT. TR Day 4 1060:24 to 163:3. NDASA Exhibits 1-3. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 8

HHS does not have authority to test for Schedule III drugs. The authority of HHS to test for and to certify laboratories for testing is provided by Executive Order 12564 Drug-free Federal Workplace of Sept. 15, 1986 (E.O. 12564). Under E.O. 12564, HHS is only authorized to test for drugs and certify laboratories to test for drugs that are in Schedule I or II of the Controlled Substances Act. Specifically, E.O. 12564, Section 7(c) states: "For purposes of this Order, the term illegal drugs' means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code". Sections 3.2 (a) of both the HHS Mandatory Guidelines for Urine and the HHS Mandatory Guidelines for Oral Fluid state that an employee may be tested for "any drugs listed in Schedule I or II of the Controlled Substances Act." NDASA Exhibits 1-3 TR at 1108, 1118. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 8.

If marijuana becomes a Schedule III substance, HHS would no longer be able to require testing for or to certify laboratories to test for marijuana. As a result, DOT immediately would no longer be able to test for marijuana because OTETA requires DOT to rely on HHS for the science of drug testing (the drug cutoff levels and scientific protocols), and DOT-regulated tests are required to be screened and confirmed at HHS certified laboratories. If a DOT-regulated safety-sensitive employee were to test positive for Schedule III marijuana, the testing would have occurred at a laboratory no longer certified by HHS and the test result would be legally unsustainable. Thus, the day after marijuana were to become a Schedule III drug, would be the day all mandated marijuana testing for safety-sensitive employees would legally cease. NDASA Exhibits 1-3. TR Day 4 at 1108, 1118. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 9

There are airlines, railroads, trucking companies, home improvement retailers, laboratories, collection sites, Medical Review Officers, and many very small businesses who utilize drug testing and/or who perform drug testing services. The financial impact on these businesses was never considered or estimated in this NPRM, nor was there a request for public comment on this issue. TR Day 4 at 1060:24 to 163:3.NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 9

Specifically, if marijuana becomes a Schedule III substance, employees responsible for public safety would be able to use marijuana on-the-job and outside work hours, including just prior to assuming their work duties. Even those who may incur testing for at-risk behaviors would receive a "negative" drug test result as the Medical Review Officers would be required to recognize state-issued medical marijuana cards as a legal, valid prescription with HIPAA

protections, giving the employer no clue their employee is operating under-the-influence, or whether the employee obtained the marijuana from a legitimate source thereby further opening a door to dangerous cross-contaminations (e.g., Fentanyl). Proposed Government Prehearing Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024. DEA Dkt. No. 1362 and Hearing Docket No. 24-44. NDASA Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 10

Many non-DOT regulated businesses follow the "standards" of DOT-regulated testing and often replicate the Federal testing panel used by both DOT for commercial transportation and HHS for Federal employee testing. Changing the panel to remove marijuana will impact the non-regulated workplace testing programs across the U.S. This will yield higher on-the-job accidents, injuries, worker compensation claims, and employer liability. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 10.

If there were a scientifically reliable method for determining actual marijuana impairment, this would likely be a different discussion. Of course, there is a reliable method for measuring alcohol impairment. However, impairment testing for marijuana has not been possible due to several complicating factors. An individual consuming marijuana is impacted much differently than a person consuming alcohol. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 10

There is substantial evidence that individuals are consuming marijuana in amounts sufficient to create a hazard to the safety of others and to the community. When HHS and DEA addressed this issue in 2016, they noted the abuse potential is complex when the substance varies in potencies and there is no single measure of abuse potential. Varied high potency THC products

such as extracts result in a wide array of unpredictable physiological impacts on individuals who use them, without any consistency between consumers. This demonstrates that marijuana is powerfully potent drug that has been modified to create a more acute psychoactive effect. These complex issues increase the risk of marijuana use for safety-sensitive employees rather than diminishing the potential harms, simply because of a schedule change. The 2024 Quest Diagnostics Drug Testing Index data shows significantly increasing marijuana positive drug testing results in both Federally regulated testing by 83% and non-regulated post-accident tests by 56% which is at a 25-year high. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 10. NDASA Exhibits 5-6.

It should also be noted that one of the successes of the DOT mandated drug testing program has been the Return-to-Duty and Follow-up testing protocols facilitated by qualified Substance Abuse Professionals when an employee fails a drug test, per 49 C.F.R. 40, Subpart O. According to American Substance Abuse Professionals, Inc. (ASAP) people in an employer-sponsored program have the highest rates of completion to recovery at 49%. Of the DOT marijuana cases handled by ASAP, 53% were attributed to marijuana test results. Without this successful intervention we will see risk mitigation, accountability and sustainable recovery compromised. American Substance Abuse Professionals, Inc. Summary Report and Data.NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 11.

There is significant diversion of marijuana from legitimate drug channels. The current state-based dispensary systems have little-to-no enforcement on the requirement for any medical histories and only payment is required to the medical provider who issues permission for access and purchase of marijuana for ostensible medical purposes, allowing for the system to be abused

by those with drug-seeking behaviors. Another issue compromising medical dispensing is that many states allow for in-home growth of marijuana plants, which is a breeding ground for diversion. Finally, the dispensing of marijuana as medicine by states that simultaneously offer the retail sale of recreational marijuana enforces the normalization of consuming medical products for recreational use. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 12

The NPRM claims state-run dispensary programs are sufficient to carry out the responsibility of managing a Schedule III substance. The DEA must be made aware that "medical practitioners" may include chiropractors, podiatrists, veterinarians, nurses, and even massage therapists, depending on how each state's regulatory oversight was framed. The lax definition of what constitutes a healthcare provider is furthermore confused by Federal law which may include therapists who are not qualified to prescribe medication and yet will be responsible for holding the safety of the transportation industry in their unskilled, untrained and unqualified hands. Once again, the NPRM failed to address any of this, thereby leading to an arbitrary and capricious outcome. Proposed Government Prehearing Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024. DEA Dkt. No.1362 and Hearing Docket No. 24-44. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 12

d. Marijuana's "Currently Accepted Medical Use (CAMU)

> 21 U.S.C.A. 812 Schedules of controlled substances defines a Schedule III drug:
> (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. NDASA, Prehearing Statement, Dkt. No.

1362 and Hearing Docket No. 26-96, page 13

The proposed NPRM new approach by DEA and HHS to deciding marijuana's "currently accepted medical use" (CAMU) is laid out in two parts. Proposed Government Prehearing Exhibit No. 5: HHS, Basis for Recommendation to Place Marijuana in Schedule III of the Controlled Substance Act, dated August 29, 2023.DEA Dkt. No. 1362 and Hearing Docket No. 24-44, page 80

Part 1 of that inquiry asks whether licensed health care providers have "widespread current experience with medical use" of the drug "in accordance with implemented state authorized programs, where the medical use is recognized by entities that regulate the practice of medicine." If so, Part 2 of the inquiry asks whether there is "some credible scientific support for at least one of the medical uses." NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 13. DEA Prehearing Exhibit No. 5: HHS, Basis for Recommendation to Place Marijuana in Schedule III of the Controlled Substance Act, dated August 29, 2023 Dkt. No. 1362 and Hearing Docket No. 24-44

This shoddy two-step "test" reflects certain aspects of the popular view of marijuana and its advocacy by some for its use for medical purposes, it does not comport with the more evidence-based and law-based tests used for decades by both HHS and the DEA to determine CAMU for drug scheduling purposes. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 13;.

Under the prior FDA rules, a drug would have a CAMU if it satisfied a five part test:

1. the drug's chemistry is known and reproducible;

2. there are adequate safety studies;

3. there are adequate and well controlled studies proving efficacy;

4. the drug is accepted by qualified experts; and

5. scientific evidence about the drug is widely available. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 14.

The DEA, in the prior 2024-25 DEA hearing used as their exhibit 4 a "Marijuana Scientific Data Review as it Relates to the Controlled Substances Act Prepared by Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration Washington, DC 20537." Hereinafter the "DEA Science Document." NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 24-44, page 14. DEA

e. Analysis of Currently Accepted Medical Use for Marijuana under the DEA Science Document NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 14.

> Traditionally, DEA and HHS have considered whether marijuana has a currently accepted medical use under Factor 3, State of the Current Scientific Knowledge Concerning the Substance, in addition to DEA's evaluation of whether the drug has a currently accepted medical use as one of the findings required for schedule placement under 21 U.S.C. 812(b).
>
> Historically, for substances that are not contained in an FDA-approved drug, DEA and HHS have applied a five-part test to determine whether the substance has a currently accepted medical use. Specifically, with respect to a drug that has not been approved by FDA, in order for that drug to have a currently accepted medical use in treatment in the United States, DEA and HHS have required that the substance demonstrate all of the five following elements: (1) The drug's chemistry must be known and reproducible, (2) there must be adequate safety studies, (3) there must be adequate and well-controlled studies proving efficacy, (4) the drug must be accepted by qualified experts, and (5) the scientific evidence must be widely available. Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131,1135 (CA DC 1994)
>
> On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion that, among other things, concluded that the existing five-part test is sufficient to determine that a drug has a currently accepted medical use, but that limiting the analysis to the five-part test is "impermissibly narrow." OLC concluded that DEA also must consider

"whether, at the present time, the medical community widely understands that a drug has a use in treatment in the United States.'"OLC specified that "there is no single right answer as to how specifically DEA should make this determination." [6]

The DEA document then goes on to explain the 5 part test and why marijuana does not currently meet those standards. For example for item 1 "chemistry is known and reproducible" it ends with:

> As per the Code of Federal Regulations (C.F.R.) in 21 C.F.R. 314.50(d)(l)(i), "adequate information regarding the chemistry, manufacturing, and control of a drug substance includes synthesis, purification, identity, strength, quality, and purity of the drug substance, as well as stability, sterility, particle size, and crystalline form of the drug product." There are limited data regarding these elements for marijuana.

For item 2 "adequate safety studies," it states:

> The considerable variation in the chemistry of marijuana results in differences in safety, biological, pharmacological, and toxicological parameters among the various marijuana samples. Based on criteria for an adequate and well-controlled study for purposes of determining the safety and efficacy of a human drug as defined in 21 C.F.R. 314.126, there are limited published studies in which safety or effectiveness of purified marijuana has been evaluated.

For item 3 "studies proving efficacy" it states:

> There are no adequate and well-controlled studies that determine marijuana's efficacy.
> For item 4 drug is "accepted by qualified experts;" it states:
> Currently, there is no consensus of opinion among experts concerning the medical utility of marijuana for use in treating specific, recognized disorders

For item 5 "scientific evidence about the drug is widely available" it states:

> The currently available data and information on marijuana is not sufficient to address the

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[6] NDASA Exhibit 8. CIVEL Prehearing Statement page. Detailed legal critique of the DOJ April 11, 2024 Office of Legal Counsel opinion "Questions Related to the Potential Rescheduling of Marijuana" OLC opinion is also attached.

chemistry, pharmacology, toxicology, and effectiveness. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 15

The DEA document was published after the HHS and DEA NRPM in 2024 and that the document is contrary to the government's case in several sections. In 2016 the DEA and HHS and FDA found that marijuana was properly scheduled in Schedule I. 9 NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 16

f. Concerns for Medical Review Officers (MRO)

An MRO Is:
4:253. Medical review officers In general
All Federal agency and federally regulated drug-testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug-testing Programs must use a Medical Review Officer (MRO) to review drug test results. These include all drug-testing programs required by the federal Department of Transportation such as those for motor carriers, airlines, maritime, railroads, pipelines, and mass transit. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 16; Drug Testing Law Technology and Practice, Medical Review Officer Manual for Federal Agency workplace Drug Testing Programs

The American College of Occupational and Environmental Medicine (ACOEM) states,

We are uncertain as to how an MRO (Medical Review Officer) would verify the validity of a medical prescription for marijuana, given the current patchwork of state regulations and systems that primarily rely on dispensaries." ACOEM has further concerns that should not be ignored because they are problematic for the validation of marijuana use in testing programs for safety-sensitive workers. As written, in relying on the state regulatory networks, the NPRM wholly ignores the lack of data on the potential side effects, contaminants, lack of prescriptive instruction, guidelines or standards, and adverse drug interaction with prescribed medications, not to mention the variability of potencies. [7]
NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 16 NDASA Exh. I0. ACOEM's Concerns Regarding DOJ/DEA's Notice of Proposed Rulemaking "Schedules of Controlled Substances: Rescheduling of Marijuana"

According to the HHS MRO Manual, an MRO must consider if prescriptions are valid.

7

4.5.3 Prescriptions
If the donor claims to have taken a prescribed medicine that contains either the drug reported positive or a substance that can metabolize to that drug, the donor should provide the medicine container with the appropriately labeled prescription (or the label from the container), a copy of the medical record documenting the valid medical use of the drug during the time of the drug test, or other information acceptable to the MRO. There is an additional concern in the case of invalid results. Certain antibiotics and nonsteroidal anti- inflammatory drugs (NSAIDs) are known to cause immunoassay interferences. In those cases of potential interference, the verification of prescriptions or medical records should be completed in the same manner as a positive test result.

When reviewing the positive test result, the MRO will take all reasonable and necessary steps to verify the authenticity of all prescriptions, medical records, and other medical information provided by the donor that may be relevant to determining whether a legitimate medical explanation for the positive drug test exists. Contact with the prescribing physician may be helpful for the MRO in coming to this decision if the donor has provided any consent that may be required.

If a donor does not possess a valid prescription that would supply a legitimate medical explanation for the positive drug test result, the specimen should be reported as positive. Drug Testing Law Technology and Practice, Medical Review Officer Manual for Federal Agency Workplace Drug Testing Programs; NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 17

The April 22, 2026 Order by the US Attorney General removes federal informational protections for physicians regarding prescriptions and patient information. See footnote 2. The Order on page 11 states: (5) Prescriptions. Notwithstanding Part 1306 or any other provision of these rules, a certification or other document (including an electronic document) that state law deems sufficient for a user to obtain marijuana or products containing marijuana for medical purposes shall be sufficient to permit dispensing of marijuana. TR Day 1 at 8:1-18, 22-25; 9:1-25. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 17

The AG's Order is telling the states to ignore federal law 21 C.F.R. 1306 the "Process and procedures for dispensing, by way of prescribing and administering controlled substances." The Order only requires limited information to obtain marijuana. There is no information about the drug that is

provided in a normal valid prescription or FDA package insert.

NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 17

21 U.S.C. 1306 authorizes the DEA to regulate the prescribing, dispensing, and administration of controlled substances. Under 21 C.F.R. 1306 the prescription must also include:

Drug Name

Strength

Dosage Form

Quantity Prescribed

Directions for Use

Number of Refills Authorized (if any). NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 18

g. FDA Patient Information Requirements

The AG's Order does not require the standard package inserts for state "medical" marijuana that provide details on medicines such as the FDA package inserts. Such information is necessary to guide MROs in deciding if a prescription is medically needed and to alert the MRO to any safety concerns. The required patient information is:

1. Indications and Usage
2. Dosage and Administration
3. Dosage Forms and Strengths
4. Contraindications
5. Warnings and Precautions
6. Adverse Reactions
7. Drug Interactions
8. Use in Specific Populations

8.1 Pregnancy

8.2 Labor and Delivery

8.3 Nursing Mothers

8.4 Pediatric Use
8.5 Geriatric Use
9. Drug Abuse and Dependence
9.1 Controlled Substance
9.2 Abuse
9.3 Dependence
10. Overdosage
11. Description
12. Clinical Pharmacology
12.1 Mechanism of Action
12.2 Pharmacodynamics
12.3 Pharmacokinetics
12.4 Microbiology
12.5 Pharmacogenomics
13. Nonclinical Toxicology
13.1 Carcinogenesis, Mutagenesis, Impairment of Fertility
13.2 Animal Toxicology And/or Pharmacology
14. Clinical Studies
14.1 [Text]
14.2 [Text]
15. References
16. How Supplied/storage and Handling
17. Patient Counseling Information 14 NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 18

h. No Dosing Guidance

There is no accepted dosing or patient information guidelines for "medical" marijuana, and this makes the entire prescription procedures very problematic for MROs to determine the legitimacy of prescriptions. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 19

The DEA Order does not define or require adequate and well-controlled studies. According to federal law 21 C.F.R. 314.126, adequate and well-controlled studies to decide what is a medicine are quite complicated and marijuana has not met these standards. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 19

There are a broad range of contemporary and dangerously high potency products within

the CSA's definition of marijuana. Since there are vast differences in the effects of marijuana based on THC levels and various methods of administration (e.g., smoking, vaping, dabbing, wax, edibles, etc.), our expert testimony and documentary evidence would provide a demonstration of how employers struggle to recognize marijuana use that is occurring during work hours with high potency products that are problematic for enforcing safety standards. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 20

Changing state laws have already created confusion about employer's rights and while the Federal testing program is preeminent to state laws, rescheduling without science-based evidence of the risks of high potency marijuana will have employers facing even greater challenges in understanding what types of boundaries may be enforced to protect workplace safety and the public they serve. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 20.

III. CONCLUSION

Marijuana continues to maintain the high potential for abuse that HHS and DEA found in 2016. Also, the availability of marijuana and marijuana-derived products with extremely high levels of THC produce higher degrees of negative outcomes for the safety of those around the people who use marijuana. NDASA, Prehearing Statement, Dkt. No. 1362 and Hearing Docket No. 26-96, page 21

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Counsel for Designated Parties

IV. EVIDENCE OF RECORD, Including:

a. Specific and Complete Citations of Pages from the Transcript.
b. Citations of Exhibits.
c.. Citations of Authorities Relied Upon

a. Specific and Complete Citations of Pages from the Transcript

Pages per day
Day 1 is 1-296
Day 2 is 344-658
Day 4 is 1000-1139
Day 8 is 1775-1853

Citations of pages

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1013:16 to 1014:6
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422:24 to 433:6.
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61:1-12 to 1062:1-20
632:25 to 633:4.
8:1-18, 22-25
9:1-25

b. Citations of Exhibits.

NDASA Prehearing Exhibits TR Day 4 at:1108, 1118

Exhibit 1: Omnibus Transportation Employee Testing Act of 1991, Report of the Senate Committee on Commerce, Science and Transportation on S. 676, 102nd Congress, 1 st Session.

Exhibit 2. Omnibus Transportation Employee Testing Act of 1991 (OTETA), Public Law 102-143, 105 Stat. 917 (Oct. 28, 2991), codified at 49 U.S.C.§§ 5331 (transit), 20140 (railroads), 31306 (motor carriers), and 45101-45105 (aviation).

Exhibit 3. Exec. Order No. 12564 (Sep. 15, 1986), 51 FR 32889 (Sept. 15, 1986).

Exhibit 4. "Marijuana & Your Workplace Safety'Policies: What Every Employer Needs to Know" by Jo McGuire, BS, CSAP A, July 2024

Exhibit 5. NDASA Conference Presentation, May 2024, Hershey PA: "Quest Diagnostics Insights: Drug Testing Trends in the Workforce" Quest Employer Solutions

Exhibit 6. Quest Diagnostics Drug Testing Index Report 2024

Exhibit 7. American Substance Abuse Professionals, Inc. SummaryReport and Data (Report on success rates of referral and treatment for workplace testing Return-to-Duty and Follow-up programs)

Exhibit 8. CIVEL Prehearing Statement page [70 Pages] Detailed legal critique of the DOJ April 11, 2024 Office of Legal Counsel opinion "Questions Related to the Potential Rescheduling of Marijuana" OLC opinion is also attached.

Exhibit I0. ACOEM's Concerns Regarding DOJ/DEA's Notice of Proposed Rulemaking "Schedules of Controlled Substances: Rescheduling of Marijuana"

Exhibit 15 HHS Slides Executive Order 12564: Drug Free Workplace Program in Executive Branch agencies. Limits testing authority to Schedule I or II drugs in the Controlled Substances Act

DEA Exhibits DEA Dkt. No. 1362 and Hearing Docket No. 24-44 and 26-96

DEA Prehearing Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024. Hearing Docket No. 24-44

DEA Prehearing Exhibit No. 2 d: Comments Received in Response to Notice of Proposed

Rulemaking: d. Attachment to Comment by CIVEL. Hearing Docket No. 26-96

DEA Prehearing Exhibit No. 4: Marijuana Scientific Data Review as it Relates to the Controlled Substances Act Prepared by Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration Washington, DC 20537. Hearing Docket No. 24-44

DEA Prehearing Exhibit No.5: HHS, Basis for Recommendation to Place Marijuana in Schedule III of the Controlled Substance Act, dated August 29, 2023. Hearing Docket No. 24-44

c. Citations of Authorities Relied upon (E.g., Statutes, Regulations, Case Law)

Statutes

5 U.S.C. 556 and 557
6 U.S.C. 280E
21 U.S.C. 802 (16)(A)
21 U.S.C. 811(a)
21 U.S.C. 811(d)(1
21 U.S.C. 812 (b)(3)

The Omnibus Transportation Employee Testing Act of 1991 (OTETA), Public Law 102-143, 105 Stat. 917 (Oct. 28, 1991), codified at 49 U.S.C. §§ 5331 (transit industry testing), 20140 (railroad industry testing), 31306 (motor carrier industry testing), and 45101-45105 (aviation industry testing).

Executive Order 12564 - Drug-free Federal Workplace of Sept. 15, 1986 (E.O. 12564)

Executive Order. See 91 Fed. Reg. 22,777 22,778 (Apr. 28, 2026)

Executive Order No. 14370, titled "Increasing Medical Marijuana and Cannabidiol Research," 90 Fed. Reg. 60,541 (Dec. 23, 2025)

Regulations

21 C.F.R. 1301
21 C.F.R. 1306
21 C.F.R. 1312
21 C.F.R. 314.50(d)(l)(i)
21 C.F.R. 314.126

Drug Enforcement Administration, Department of Justice, Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana from Schedule I to Schedule III; Corresponding Change to Permit Requirements, 91 FR 22714-01, 2026 WL 1135003(F.R.), Tuesday, April 28, 2026, page 1

On April 22, 2026, Acting Attorney General Final Order placing two categories of marijuana products into Schedule III of the CSA, 91 Fed. Reg. at 22,714.

Notice of Proposed Rulemaking (NPRM) to reschedule marijuana from Schedule I to Schedule III, 89 Fed. Reg. 44,597 (May 21, 2024)

Case law

Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131,1135 (CA DC 1994)

States of NE, IN, LA v. United States Department of Justice, Todd Blanche, USCA Case #26-1130 Filed: 05/22/2026; New Directions Addiction Recovery Services, Dr. Ken Finn v. Donald Trump, Todd Blanche, USCA Case #26-1136 Filed: 05/28/2026; SAM and NDASA v. U.S. Department of Justice, Todd Blanche, USCA Case #26-1106.Filed 05/04/2026

Other Authorities

Drug Testing Law, Technology, and Practice, Thomson-Reuters, 1990

Drug Enforcement Administration, Department of Justice, Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana from Schedule I to Schedule III; Corresponding Change to Permit Requirements, 91 FR 22714-01, 2026 WL 1135003(F.R.), Tuesday, April 28, 2026, page 1

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on August 17, 2026, caused a copy the NDASA response to the foregoing July 16, 2026 ORDER FOR TRANSCRIPT CORRECTIONS AND POST-HEARING BRIEFS to be delivered to the following parties:

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