Rescheduling Cannabis
Under the U.S. Controlled Substances Act
Selected Bibliography, Time Line, and Reference Materials

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Notes: Extensive reviews of scientific literature on cannabis by petitioners or the U.S. government will be noted as follows: [review]. Federal Register (FR) filings from 1994 on can be accessed at http://www.gpoaccess.gov/fr/search.html. The U.S. Code is available on-line at http://www.access.gpo.gov/uscode/uscmain.html. Court Decisions are available to many university communities by way of Lexus/Nexus Academic Universe; please consult with university librarians, if necessary, to access court decisions.

The rescheduling process consists of the following stages:

- Filing of Petition with DEA
- Acceptance of Petition by DEA
- Initial Review by DEA
- Referral to HHS
- Scientific and Medical Evaluation by HHS
- HHS Report to DEA
- Evaluation of Additional Information by DEA
- Publication of DEA Decision
- (Judicial Review by the US Court of Appeals)
- (Public Hearing on Disputed Matters of Fact)


Sec. 811. Authority and criteria for classification of substances [summary]

Under 21 USC 811 the Attorney General has the authority to add to, remove from, or transfer controlled substances between the regulatory schedules established by the Controlled Substances Act. This process is known as a rulemaking procedure and may be initiated by the Attorney General, the Secretary of HHS, or on the petition of any interested party. (21 USC 811 (a))

At the initiation of scheduling proceedings the Attorney General gathers the necessary data and requests from the Secretary of HHS a scientific and medical evaluation of all the available evidence as well as a recommendation on the appropriate scheduling for the drug or substance in question. (21 USC 811 (b))

This evaluation will consider 8 specific factors in making findings to satisfy the criteria for scheduling established in Section 812 regarding accepted medical use, safety for use, abuse potential, and dependence liability. In other words the factors listed in 811(c) are to be used to evaluate the scientific record to assess the criteria established for each respective schedule of the CSA.
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21 USC 811(c)   Factors determinative of control or removal from schedules. [text]

“In making any finding under subsection (a) of section 812 of this title, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(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.”

Sec. 812. Schedules of controlled substances. [summary]

There are five schedules of controlled substances known as schedules I, II, III, IV, and V. The findings required for each of the schedules involve the following issues: potential for abuse, currently accepted medical use in treatment in the United States, safety for use under medical supervision, and the drug’s dependence liability. Schedule I drugs are characterized by a high potential for abuse and a lack of accepted medical use. Schedule II drugs have a high potential for abuse but also have an accepted medical use. The remaining schedules all require an accepted medical use. Schedule III drugs have a lower potential for abuse and dependence liability than Schedule I and II drugs. Schedule IV drugs have a lower potential for abuse and dependence liability than Schedule III drugs, and Schedule V drugs have a lower potential for abuse than Schedule IV drugs. (21 USC 812)
II. Legislative History:


The legislative history includes a chart indicating fables and facts about marijuana (circa 1970) provided to Congress by the National Institute of Mental Health. (pg 4577-4578) The rescheduling process is reviewed on pages 4599 to 4605. The criteria required for scheduling related findings are defined on pages 4601-4603.

An important letter from Roger Egeberg of the the Department of Health Education and Welfare to Congress regarding the scheduling of cannabis is on pages 4629 – 30. This August 14, 1970 letter states:

"Some question has been raised whether the use of the plant itself produces “severe psychological or physical dependence” as required by a schedule I or even schedule II criterion. Since there is still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is that marihuana be retained in schedule I at least until the completion of certain studies now underway to resolve this issue. If those studies make it appropriate for the Attorney General to change the placement of marihuana to a different schedule, he may do so in accordance with the authority provided under section 201 of the bill.”
III. The legal and policy record.


- NORML v. Ingersoll 497 F.2d 654 (1974) NORML filed a rescheduling petition under provisions of the CSA. The government declined to initiate proceedings on the basis of their interpretation of U.S. treaty commitments. The Court ruled against the government and ordered them to process the petition.

- NORML v. DEA 559 F.2d 735 (1977) The government continued rely on treaty commitments in their interpretation of scheduling related issues concerning the NORML petition. In this decision the Court makes it clear that the CSA requires a full scientific and medical evaluation and the fulfillment of the rescheduling process before treaty commitments can be evaluated.

- NORML v. DEA Unpublished Disposition, 1980 U.S. App. LEXIS 13100, October 16, 1980. The Court orders the government to start the scientific and medical evaluations required by the NORML petition.


- Macdonald, Donald I. Acting Asst. Secretary for Health. Scientific and medical findings & recommendations on Nabilone. Letter to John Lawn. April 25, 1985. Nabilone is pharmacologically identical to THC. The review of Nabilone is interesting because it relies on different standards than the earlier reviews of THC and marijuana. An FDA advisory panel was utilized, and the panel debated whether Nabilone should be a schedule III or schedule IV drug. The panel recommended schedule III status. The Asst. Sec. of Health recommended schedule II for Nabilone because the panel had not recommended rescheduling for THC, a schedule II drug at that time.

- Schedules of Controlled Substances: Rescheduling of Synthetic Dronabinol in Sesame Oil and Encapsulated in Soft Gelatin Capsules from Schedule I to Schedule II. DEA 50 FR 42186-87 October 18, 1985 Notice of Proposed Rulemaking

- Schedules of Controlled Substances: Rescheduling of Synthetic Dronabinol in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule I to

Schedule II; Statement of Policy. DEA 51 FR 17476-78 July 13, 1986 Final Rule and Statement of Policy

- Schedules of Controlled Substances; Proposed Placement of Nabilone into Schedule II. DEA 51 FR 22085-86 June 18, 1986 Notice of Proposed Rulemaking


- Grinspoon v. DEA. 828 F.2d 881 (1987) While this case did not concern marijuana the Court noted that scheduling under the CSA does rely on the relative abuse potential of listed substances.


- Marijuana Scheduling Petition; Denial of Petition. DEA 54 FR 53767-53785. December 29, 1989. In this filing the DEA formally rejects Judge Young’s recommendations. [review]

- Alliance for Cannabis Therapeutics v. DEA. 930 F.2d 936 (1991). The Court ruled that two of the criteria used by DEA in making their findings were unreasonable.

- Marijuana Rescheduling Petition; Denial of Petition, Remand. DEA. 57 FR 10499 March 26, 1992. DEA formally rejects Judge Young’s findings without using unreasonable criteria. [review]

- Alliance for Cannabis Therapeutics v. DEA. 15 F.3d 1131 (1994). The Court upholds DEA’s rejection of Judge Young’s recommendations.

Petition #2 was an extensive catalog of research and other data specified in 21 USC 812 that emerged after the record was closed in the prior proceedings before Judge Young. Petition #2 focused primarily on challenging whether cannabis has the high potential for abuse required for schedule I status.

- Petition for Rescheduling Cannabis filed July 10, 1995 [review]
- Petition referred to HHS on December 17, 1997.

Notice of Denial of Petition. DEA 66 FR 20037 – 20076 April 18, 2001. This filing contains the complete HHS and DEA scientific reviews of all relevant contemporary literature to the scheduling of cannabis (marijuana), as well as their reasons for declining to reschedule cannabis. [review]

Appeal to the U.S. Court of Appeals. No. 01-1182, United States Court Of Appeals For The District Of Columbia Circuit, March 19, 2002, Argued, May 24, 2002, Decided. After briefs were filed by petitioners and DEA regarding judicial review of the DEA refusal to reschedule cannabis the Court asked for briefs on the issue of the petitioner’s standing to seek relief in the federal courts.

Gettman v. Drug Enforcement Administration. 290 F.3d 430 (2002). May 24, 2002. The Court decided that petitioners did not have standing to subject DEA’s denial of the petition to review by the Federal Courts because the petitioners were not injured parties. The other issues raised in the legal briefs were not addressed by the Court.

c. Petition #3 filed by the Coalition for Rescheduling Cannabis in 2002.

Petition #3 was filed by coalition of patient advocacy groups and while repeating the argument of Petition #2 it also asserts that marijuana now has accepted medical use in the United States.

- Petition for Rescheduling Cannabis filed on October 9, 2002. [review]
- Petition accepted by DEA on April 3, 2003.
- DEA asks for supplemental information on June 12, 2003.
- DEA receives supplemental information on September 9, 2003.
- DEA refers petition to HHS for scientific and medical review: [July 2005]
d. Other selected rescheduling cases.

Buprenorphine. 67 FR 62354. October 7, 2002. Buprenorphine is a semi-synthetic injectable pain killer that was approved for marketing in 1981 and placed in Schedule V in 1985. In December, 2002 HHS instituted proceedings to have the drug rescheduled into Schedule III based on a reevaluation of its abuse potential and consideration of new products about to hit the market.

Marinol. 64 FR 35928. July 2, 1999. Marinol is the synthetic THC pill. The DEA has decided that while THC remains a schedule I substance, THC encapsulated in sesame oil has a lower potential for abuse and in this notice DEA removes Marinol from schedule II and places it in schedule III. The rescheduling was in response to a petition filed by the manufacturer on February 3, 1995. Supplemental information was filed on December 11, 1996. The petition was referred to HHS on August 7, 1997 and HHS provided DEA with its report on September 11, 1998.

Fenfluramine. 62 FR 24620. May 6, 1997. Fenfluramine is a weight loss drug. The manufacturer filed a petition to have it removed from the schedules on March 18, 1991. DEA forwarded the petition to HHS for review on December 2, 1991. The drug was eventually removed from the schedules. NOTE: The FDA convened an advisory committee to review the possible removal of fenfluramine from the schedules, and this committee held open public hearings. See 60 FR 44036, which contains notices of several meetings.