



September 5, 2023

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

We are pleased to hear that you have recently received Health and Human Services's (HHS) recommendation to move cannabis to Schedule III. It's about time. This is an historic moment and we owe you and your Administration a debt of gratitude for your leadership on catching up with where the science is. Cannabis' current classification under federal law as a Schedule I drug is contradicted by the scientific evidence. The notion, as previously considered, that cannabis has no accepted medical use, a high potential for abuse, and no accepted safety standards even under medical supervision has been widely disproven, HHS's recommendation is evidence-based and a move in the right direction.¹ Considering the letter from Assistant Secretary of Health Levine to Administrator Milgram, it's apparent that HHS agrees with the conclusion that the current treatment of cannabis under the CSA is not valid. It is our expectation that DEA will expeditiously follow suit per your request and recommend that cannabis be re-scheduled to Schedule III.

While this was most welcome news from HHS, much work lies ahead. I am writing to offer my enthusiastic support as DEA promptly reviews and acts upon FDA's analysis in the coming weeks. I ask you to simultaneously consider a few next steps in the near future by showing your support for access to banking for the state-regulated marketplace, reduced criminal penalties for possession and distribution of cannabis, addressing immigration related consequences and enforcement discretion from FDA.

As the Governor of the State of Colorado, I oversee the very first—and one of the most successful—regulated cannabis marketplaces in the country. As a State, we have generated more than \$14.7 billion in regulated cannabis sales,² created 100,000 jobs in total,³ and steered many thousands of Coloradans away from addictive and deadly opioids by offering a safer plant-based

¹ See 21 U.S.C. § 812(b)(1) (setting out criteria for placement in schedule I).

² Colorado Department of Revenue, *Marijuana Sales Reports*, <https://cdor.colorado.gov/data-and-reports/marijuana-data/marijuana-sales-reports> (last visited Aug. 31, 2023).

³ Savannah Mehrtens, *Colorado marijuana sales tank in 2022 after pandemic-induced high*, Denver Gazette (Jul. 5, 2023), <https://denvergazette.com/news/marijuana/colorado-marijuana-sales-tank-in-2022-after-pandemic-induced-high> ("About 41,000 people work in plant-touching cannabis companies, according to [the executive director of The Marijuana Industry Group trade association]. Add in support and ancillary companies, that number rises to about 100,000 employees in Colorado[.].").

alternative.⁴ It's working here in Colorado, and we're also seeing positive results in 37 other states that have some form of legal cannabis. It's a generational shift that has brought over \$15 billion in tax revenue to states allowing them to better fund essential government functions,⁵ such as programs in improving mental health outcomes and building schools and community centers.

But the state-regulated industry is facing headwinds nationwide. As a result of antiquated, punitive tax policies attributable to Section 280E of the Internal Revenue Code ("IRC"),⁶ state-regulated cannabis companies are paying up to an effective 80% federal tax rate. This has proven unsustainable for those abiding by state laws. State-legal cannabis companies also can't readily access traditional banking services, requiring that transactions be made in cash, thus creating a danger to public safety.

Because of these federal difficulties, the illicit market and unregulated hemp-derived cannabinoid intoxicants continue to remain. Illegal products are being sold without testing, age verification, or packaging and labeling standards. As public servants who care about the public health and safety of all Americans, we need to put the full weight of our support behind a well-regulated marketplace.

The most efficient way to address these public health risks is to displace the illicit marketplace and replace it with a legal, safe, regulated, and age-verified system. But we can only do that by promoting federal policies that allow for profitability in these well-established state-regulated marketplaces. That equates to IRC Section 280E reform and access to traditional banking services.

I have been tirelessly pushing Congress to fix the banking problem for over a decade as both a Congressman and a Governor, and would welcome your assistance in encouraging Congress to provide access to banking and financial services for state-regulated cannabis-related businesses as well as reform IRS Section 280E to ensure continued success in the industry.

It is also necessary to address the criminal penalties associated with cannabis as disparities amongst Americans is prevalent. Most significantly, American cannabis policy choices have resulted in African American males being arrested at nearly four times the rate of their white counterparts despite using cannabis at similar rates.⁷ We must do better. While re-scheduling will not solve those problems, it will eliminate the prospect of criminal penalties for tax evasion, as removing cannabis from Schedule I and placing it in Schedule III would not allow for tax evasion prosecution in this context. I stand ready to work with your Administration on reforming criminal penalties for cannabis once scheduling reform is behind us. A signal from you

⁴ Colorado Department of Public Health & Environment, *Medical marijuana statistics and data*, <https://cdphe.colorado.gov/medical-marijuana-registry-data> (filter to "Reported medical conditions") (last visited Aug. 31, 2023) (showing 16,115 medical marijuana card holders in Colorado reported "In Lieu of Opioid" as their qualifying condition).

⁵ Marijuana Policy Project, *Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use*, <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/> (last visited Aug. 31, 2023) ("Through the end of 2022, states have reported a combined total of more than \$15 billion in tax revenue from legal, adult-use cannabis sales. In 2022, legalization states generated more than \$3.77 billion in cannabis tax revenue from adult-use sales. In addition to revenue generated for statewide budgets, cities and towns have also generated hundreds of thousands of dollars in new revenue from local adult-use cannabis taxes.").

⁶ 26 U.S.C. § 280E.

⁷ ACLU, *The War on Marijuana in Black and White* at 47 (June 2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white> ("The Black arrest rate is 716 per 100,000; the white arrest rate is 192 per 100,000 (the national arrest rate is 256 per 100,000).").

indicating support for criminal justice reform would go a long way toward bringing young people to the polls in 2024.

As DEA begins their own scheduling review process, I'd like to highlight a few important points for the agency's consideration. Significant progress in the medical and scientific understanding of cannabis and advancements in the state-regulated cannabis industry over the past decade, including the existence of 38 state-regulated medical markets and public health imperatives, mandate ending the plant's Schedule I status.

The American people concur, with 88 percent of Americans agreeing that marijuana should be legal for medical or recreational use.⁸ A majority of medical professionals also acknowledge marijuana's medical uses and support removing it from schedule I.⁹ In addition, the cannabis industry's scale, economics, and positive impact would be ignored at our peril. Economically, the industry generated an estimated \$33 billion dollars in sales revenue in 2022 and is projected to generate over \$71 billion by 2030.¹⁰ A 2022 report estimated that, in its current form, the cannabis industry supports more than 428,000 full-time equivalent jobs.¹¹ Your Administration will soon be credited with saving hundreds of thousands of jobs and significant tax revenue for the states when DEA solidifies FDA's recommendation.

While federal prohibition continues, more than three-fourths of the states have legalized medicinal marijuana, and more than 20 have legalized marijuana for adult use.¹² The United States currently has 5.5 million medical marijuana patients,¹³ and a majority of doctors recognize a variety of medical uses for marijuana.¹⁴ The DEA itself has recognized that there have been zero overdose deaths on record attributable to marijuana use.¹⁵ Cannabis, therefore, does not have a high potential for abuse and clearly has currently accepted medical use in the United States. I'm sure that DEA will see it the same way. There is also no reason why international treaties should be an obstacle to scheduling reform. Thus, we expect that DEA will not try to use compliance with international treaties as a reason to push back on FDA's recommendation to move cannabis to Schedule III. Our country is already out of compliance by virtue of our

⁸ Ted Van Green, *Americans overwhelmingly say marijuana should be legal for medical or recreational use*, PEW RESEARCH CENTER (Nov. 22, 2022), <https://www.pewresearch.org/fact-tank/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use>.

⁹ Jared M. Weisman, & Marcus Rodriguez, *A systematic review of medical students' and professionals' attitudes and knowledge regarding medical cannabis*, 3 J. CANNABIS RES. 47 (Oct. 12, 2021), <https://pubmed.ncbi.nlm.nih.gov/34641976>.

¹⁰ Press Release, BDSA, *BDSA Reports Global Legal Cannabis Sales to Reach \$59.6 Billion in 2027* (Feb. 22, 2023), <https://www.globenewswire.com/news-release/2023/02/22/2613335/0/en/BDSA-Reports-Global-Legal-Cannabis-Sales-to-Reach-59-6-Billion-in-2027.html>.

¹¹ A.J. Herrington, *New Cannabis Jobs Report Reveals Marijuana Industry's Explosive Employment Growth*, FORBES (Feb. 23, 2022), <https://www.forbes.com/sites/ajherrington/2022/02/23/new-cannabis-jobs-report-reveals-marijuana-industrys-explosive-employment-growth/?sh=32ec9bd23f2a>.

¹² New Frontier Data, *2023 U.S. Cannabis Report: Market Updates & Projections* at 3 (Mar. 2023), <https://newfrontierdata.com/product/2023-u-s-cannabis-report> (finding 39 states (inclusive of D.C.) operating state-legal medical marijuana markets and 22 states (inclusive of D.C.) with legalized adult-use markets).

¹³ Marijuana Policy Project, *Medical Cannabis Patient Numbers* (May 27, 2021), <https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers>.

¹⁴ Weisman & Rodriguez, *supra* n. 5.

¹⁵ U.S. Drug Enf't Admin., *Drugs of Abuse: A DEA Resource Guide* at 75 (2017), https://www.dea.gov/sites/default/files/drug_of_abuse.pdf ("No deaths from overdose of marijuana have been reported.").

state-regulated programs, as is Canada. It's time for us to re-negotiate those treaties, rather than hide behind them.

Finally, to protect the sanctity of the well-equipped state markets that we have built over the past decade, we must also develop and publish FDA enforcement guidance to minimize economic disruption, promote state-federal collaboration, and protect the public's health. To provide clarity, we hope that you will press FDA to develop and publish guidance outlining their enforcement discretion and priorities with respect to the state-regulated cannabis industry. Specifically, an enforcement discretion policy should articulate that FDA will not bring a compliance action against companies whose products and activities are authorized by state medical and recreational marijuana laws, so long as they are abiding by state law and not making health claims, marketing in interstate commerce, or marketing to children.

Let's celebrate this progress and work together to finish the job.

We greatly appreciate your leadership, and please come visit Colorado again soon.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis
Governor of Colorado