



VIA ELECTRONIC SUBMISSION

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, VA 22152

RE: Comments on Proposed “Schedules of Controlled Substances: Rescheduling of Marijuana” [Docket No. DEA-1362; A.G. Order No. 5931-2024]

Dear Attorney General Garland and Administrator Milgram,

The American College of Occupational and Environmental Medicine ([ACOEM](#)) appreciates this opportunity to comment upon the Department of Justice’s (DOJ) proposal to transfer marijuana from schedule I of the Controlled Substances Act (CSA) to schedule III of the CSA, “Schedules of Controlled Substances: Rescheduling of Marijuana”¹ (Docket No. DEA-1362; A.G. Order No.5931-2024) [Referred to as “NPRM” within]. Founded in 1916, ACOEM is the nation’s largest medical society dedicated to promoting worker health through preventive medicine, clinical care, research, and education. The College represents Occupational and Environmental Medicine (OEM) physicians and other healthcare professionals devoted to preventing and managing occupational and environmental injuries and exposures.

While ACOEM does not have a formal position on the legalization of marijuana, we are acutely concerned about the broad public health and safety consequences of the reclassification of marijuana on workers, workplaces, and the general public. We believe there are serious potential unintended consequences that may impact public safety if not addressed prior to any change in marijuana’s schedule under the Controlled Substance Act.

ACOEM agrees with other groups that additional research on the safety, efficacy, risks, and benefits of marijuana is needed. This must include how these may differ on many factors, including, but not limited to, the potency (concentration of the active ingredient(s) of the final product, the route of consumption, potential interaction with other medications or treatments, and the appropriate dose and dosing scheduling. It is not currently possible to provide information regarding the duration of impairment and safety incapacitation after use, given the lack of a well-established and agreed-upon threshold of impairment combined with widely varying doses in

¹ 89 Fed. Reg. 44597 (May 21, 2024).

products, various routes of administration, and in the case of oral use, varying rates of GI absorption.

Changes are needed that will facilitate the use of marijuana products currently in use in the general population to be available to research institutions. Marijuana, as currently available through state regulation, can vary in concentration of psychoactive ingredients, vehicle, and route of administration. Sufficient studies are lacking to direct health care providers on the appropriate dose and frequency to “prescribe” or recommend the use of marijuana for medical reasons. There are significant administrative, financial, and other obstacles in the conduct of academic and other clinical research regarding the clinical pharmacology of cannabis use and its potential adverse impacts on workplace performance and safety. Research is also needed into the development and validation of appropriate drug testing modalities that can offer a more appropriate window of detection for recent marijuana use, which may more closely align with impairment. More research is needed for prescribers to ensure that the substances they are prescribing are appropriate for that individual at the appropriate dose and frequency. Without research into appropriate use, which can lead to proper labeling, patients will not be able to know the correct dose of the product used and understand the potential side effects and warnings, as well as the duration of potential impairment.

As we stated in our 2023 statement on “Legalization of Cannabis – Implications for Workplace Safety, ACOEM unambiguously states that cannabis products have the capacity to negatively affect judgment, motor coordination, reaction times, and driving ability. The problem is that, to date, there is no consistent definition of a dose or blood concentration of cannabis at which impairment begins or ends. Taking that into account, urine testing is not a measure of impairment, it is only an indicator of past use. Although there are ways to measure impairment, well-validated tools are not readily available or easy to implement in the workplace, and at present, they are more useful in research settings. ACOEM is advocating for increased research and collaboration between all stakeholders in defining and/or measuring the impairment risks of cannabis product use as it relates to the workplace. This would include the development and implementation of scientifically based methods for monitoring and testing for impairment from any of the myriad of substances that can cause it (cannabis, alcohol, illicit drugs, opioids, or other medication, whether prescription or over-the-counter).”²

One unintended consequence of this proposal is the impact the change will have on federal drug testing, including for the Department of Transportation. DOT is required to follow the mandatory guidelines for controlled substance testing authorized under the Department of Health and Human Services (HHS). HHS does not have the authority to test for Schedule III drugs. If marijuana is moved to Schedule III, under current criteria, it could no longer be part of the Department of Transportation testing panel, as are other Schedule I and Schedule II substances (such as codeine, morphine, and hydrocodone). This important connection to the rescheduling of marijuana and transportation safety was not addressed in the NPRM. As a result, DOT immediately would no longer be able to test for marijuana. If marijuana becomes a Schedule III

² American College of Occupational and Environmental Medicine (ACOEM). Legalization of Cannabis – Implications for Workplace Safety. Aug. 2023. <https://acoem.org/acoem/media/PDF-Library/ACOEM-Position-Statement-Cannabis-8-31-2023.pdf>

substance, safety-sensitive transportation employees, including airline pilots, air traffic controllers, school bus drivers, subway and train operators, ferry operators, pipeline operators, and truck drivers, will no longer be subject to Federally regulated marijuana testing and employers would be severely limited in utilizing drug testing to determine if individuals are using marijuana, whether for medical or non-medical reasons while on or off duty. Drug testing in transportation was created as a deterrence program after high-profile crashes were found to be due to the use of marijuana by those in safety sensitive positions. The absence of marijuana testing for these safety sensitive transportation employees poses a significant risk to the safety of our roads, skies, waterways, pipelines, and rails.

Many of our members serve as Medical Review Officers under the Department of Transportation's drug testing program or Commercial Driver Medical Examiners under the Federal Motor Carrier Safety Administration's Medical Standards program. We share many concerns expressed to Secretary Buttigieg in the June 20, 2024, letter from the American Trucking Association.

“ATA respectfully seeks additional information on HHS and DOT's efforts to engage DOJ, HHS, and other federal partners to ensure that any change in the law regarding the status and legality of marijuana use is accompanied by an explicit allowance for the testing of marijuana use by DOT-regulated safety sensitive workers.” The letter goes on to state that – “ATA remains concerned about the ensuing impact that rescheduling may have on HHS's laboratory certification process and promulgation of testing procedures, specifically for marijuana. While ATA recognizes that scientific and laboratory certification processes intrinsic to employee drug testing fall outside DOT's scope, we nevertheless urge you to work with HHS and relevant lawmakers to ensure ongoing marijuana testing, guidance, and laboratory certification for the DOT programs.”

It is important to remember that urine drug testing for any substance does not equate with impairment, only with current use. It is true that chronic/frequent users of marijuana will have a longer window of detection. Metabolites of oxycodone and hydrocodone will also be found in the urine many days after the use of the parent compound. While a better method is needed for drug testing in a deterrence-based program, in those industries where working while under the influence would present a significant public health/safety risk, the current process should be replaced with a better process, not totally eliminated. There is a need to move forward with identifying and implementing better test modalities to shorten the window of detection for marijuana but retain the ability to test for this substance in federal and private safety sensitive drug testing programs employees.

ACOEM is concerned that if the final decision is to move marijuana to Schedule III, there will be major problems ensuring safety in the workplace (e.g., drug testing safety sensitive workers). ACOEM believes it is important that if marijuana is moved out of Schedule I, employers should be free to enact policies regarding allowing or precluding marijuana/cannabinoids in their workers in any safety sensitive work (including motor vehicle operation, other modes of transportation, forklift driving, overhead crane operation, heavy equipment operation, work with sharps, work with the risk of injury (e.g., heights) and tasks involving high levels of cognitive function).

Of the 8-factor analysis used to reschedule a drug, the only one where there is consistent, universally agreed sufficient research is that marijuana is not an immediate precursor of a substance that is already controlled. From ACOEM's perspective, the ability to conduct research into the appropriate placement of marijuana on the CSA and mechanisms to mitigate potential impacts on public safety are essential. Potential barriers to this research must be addressed to ensure that there is an acceptable risk to public health and safety.

Conclusion

On behalf of ACOEM, I would like to reiterate our appreciation for this opportunity to comment upon the Department of Justice's (DOJ) proposal to transfer marijuana from schedule I of the Controlled Substances Act (CSA) to schedule III of the CSA. We hope that DOJ and DEA will address the comments and issues raised above to ensure employers have the authority and ability to meet their legal responsibility to protect employees from workplace illness or injury. ACOEM strongly supports the need for employers to prohibit all workers employed in safety-sensitive positions from working impaired, whether under the influence of cannabis or any other potentially impairing substance. Please do not hesitate to contact Dane Farrell (Dane@cascadeassociates.net), ACOEM's Government Affairs Representative, with any questions.

Sincerely,

Tanisha Taylor, MD, MPH

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