

United States Senate
WASHINGTON, DC 20510

August 12, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
Washington, DC 20530-0001

Dear Attorney General Garland,

I have long advocated for safe medical treatment options, which could include those derived from marijuana. To that end, Senator Feinstein and I introduced the Cannabidiol and Marijuana Research Expansion Act, which streamlined the registration processes to study the medical benefits of marijuana and became law last Congress. Health policy should be based on sound scientific data, which is why I write raising concerns the Justice Department bypassed traditional safeguards in its haste to reschedule marijuana.

In May, the Justice Department issued a Notice of Proposed Rulemaking (NPRM) transferring marijuana from Schedule I of the Controlled Substances Act to Schedule III.¹ The Justice Department pushed forward with the NPRM even though the “DEA has not yet made a determination as to its views of the appropriate schedule of marijuana.”² Additionally, the Department of Health and Human Services developed a novel two-part test to determine marijuana has a currently accepted medical use.³ The test ignored “that no professional medical organization currently recommends use of marijuana (and that one recommends against its use)...”⁴ In fact, the DEA requested additional scientific input to determine if marijuana has an accepted medical use, but Justice Department attorneys deemed the request “impermissibly

¹ Lindsay Whitehurst, *Justice Department Formally Moves to Reclassify Marijuana as A Less Dangerous Drug in Historic Shift*, Associated Press (May 16, 2024), <https://apnews.com/article/marijuana-rescheduling-drug-policy-biden-15b43441670757b0c2bfa36731e47d07#>

² Schedules of Controlled Substances: Rescheduling of Marijuana, 88 FR 44597, at 44501 (proposed May 21, 2024) (to be adopted at 21 CFR 1308).

³ 88 FR 44597, at 44617.

⁴ Memorandum Opinion for the Attorney General, Questions related to the Potential Rescheduling of Marijuana, at 4 (Apr. 11, 2024), <https://www.dea.gov/sites/default/files/2024-05/2024-04-11%20-%20AAG%20Fonzone%20-%20Marijuana%20Rescheduling.pdf> [hereinafter “Memorandum Opinion”]

narrow.”⁵ After apparently rejecting DEA’s concerns, you signed the NPRM instead of the DEA Administrator.⁶ This is a break from tradition.⁷

In a rush to reschedule, it appears the Justice Department disregarded at least ten additional categories of information relevant to—but missing from—the Justice Department’s rescheduling determination:

1. “DEA believes that factual evidence (including scientific data) and expert opinions, including additional data regarding different forms, formulations, and delivery methods for marijuana, as well as evidence regarding the effects of marijuana at various dosages or concentrations, may be relevant.”⁸
2. “DEA anticipates that additional data on seizures of marijuana by law enforcement, cannabis-related ED visits, as well as updated epidemiological survey data since 2022, may be appropriate for consideration.”⁹
3. “DEA believes that the lack of data indicating diversion of marijuana from federally sanctioned drug channels to the illicit market is not indicative of a lack of potential for abuse of the drug. DEA anticipates that additional data on diversion from State programs and DEA-registered manufacturers may aid in a determination of whether diversion is taking place.”¹⁰
4. “DEA believes that additional data [on marijuana seizures] may be appropriate for consideration in assessing marijuana’s actual or relative potential for abuse.”¹¹
5. “DEA believes that additional data on marijuana’s pharmacological effects may be appropriate for consideration in assessing this factor.”¹²
6. “DEA believes that additional data on marijuana’s pattern of abuse may be appropriate for consideration in assessing this factor.”¹³
7. “DEA also believes that additional information regarding the scope, duration, and significance of marijuana abuse may be appropriate for consideration in assessing this factor.”¹⁴

⁵ 88FR 44597, at 44501; Memorandum Opinion at 4.

⁶ Joshua Goodman and Jim Mustian, *Top US Drug Agency A Notable Holdout in Biden’s Push To Loosen Federal Marijuana Restrictions* (May 20, 2024), <https://apnews.com/article/marijuana-pot-dea-legalization-biden-cb7869d3286094f0124de728320d89c1>

⁷ *Id.*

⁸ 88 FR 44597 at 44601.

⁹ *Id.* at 44602.

¹⁰ *Id.*

¹¹ *Id.* at 44603.

¹² *Id.* at 44605.

¹³ *Id.* at 44610.

¹⁴ *Id.* at 44613.

8. “DEA anticipates that additional data on public safety risks, risks from acute and chronic marijuana use via oral and inhaled administration routes, and the impact of Δ9-THC potency may be appropriate for consideration.”¹⁵
9. “DEA anticipates that additional psychic or physiological dependence liability may be appropriate for consideration.”¹⁶
10. “DEA welcomes additional information on [whether marijuana is an immediate precursor of a substance already controlled under the CSA].”¹⁷

The Justice Department deprived the DEA and the public of key categories of information, including by ending its own practice of evaluating the hazards of marijuana. For example, under the Biden-Harris Administration, the Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) program stopped publishing its annual report tracking the impact of recreational marijuana use in Colorado.¹⁸ Those reports had been released since 2013, so that others could “make informed decisions on the issue of marijuana legislation.”¹⁹ The last report, published in 2021, found a 138% increase in traffic deaths where drivers tested positive for marijuana and a 48% increase in seizures of black market marijuana.²⁰

Decisions to reschedule controlled substances should be well-reasoned and thoroughly vetted. So that the public and Congress can make informed policy decisions on a complete record, please provide the following information by September 12, 2024:

- 1) Why did the Attorney General, instead of the DEA Administrator, sign the proposed rule?
- 2) Why did the RMHIDTA stop publishing its annual report tracking the impact of recreational marijuana use in Colorado? If this information was sent somewhere else for publication, please provide those reports.
- 3) Please provide the 10 categories of information identified by DEA in the NPRM and reproduced above. If this information is not available, please explain why the Justice Department issued an NPRM before the information became available.
- 4) Please provide the agency submissions underlying the April 11, 2024, Memorandum Opinion for the Attorney General on “Questions Related to the Potential Rescheduling of Marijuana,” including:

¹⁵ *Id.* at 44614

¹⁶ *Id.* at 44615

¹⁷ *Id.* at 44615.

¹⁸ Rocky Mountain High Intensity Drug Trafficking Area, *The Legalization of Marijuana in Colorado: The Impact*, Volume 8 (September 2021), [4a67c3_b391ac360f974a8bbf868d2e3e25df3d.pdf \(rmhidta.org\)](https://rmhidta.org/4a67c3_b391ac360f974a8bbf868d2e3e25df3d.pdf)

¹⁹ Rocky Mountain High Intensity Drug Trafficking Area, *The Legalization of Marijuana in Colorado: The Impact*, Volume 8 (September 2021), [4a67c3_b391ac360f974a8bbf868d2e3e25df3d.pdf \(rmhidta.org\)](https://rmhidta.org/4a67c3_b391ac360f974a8bbf868d2e3e25df3d.pdf)

²⁰ *Id.* at 5.

- a. Memorandum for the Office of Legal Counsel from DEA (Jan. 30, 2024);
 - b. Memorandum for Gillian E. Metzger, Deputy Assistant Attorney General, Office of Legal Counsel, from Samuel R. Bagenstos, General Counsel, HHS; and
 - c. Single Convention Requirements for Cannabis and Scheduling Under the Controlled Substances Act (Feb. 12, 2024).
- 5) If marijuana is re-scheduled, please explain the Justice Department's plan for pursuing recourse against individuals who distribute marijuana products without Food and Drug Administration approval. Please detail the Justice Department's plan for removing those products from the market in the event that marijuana is rescheduled.

Sincerely,



Charles E. Grassley