

(THIS COMMENT DISCUSSES WHY WE SEE THE CURRENT CLASSIFICATION OF MARIJUANA AS HARMING SMALL BUSINESSES AND WORKERS, AND WHY WE SUPPORT RESCHEDULING IN THIS PROCESS DESPITE LEGALIZATION BEING OUR GOAL.)

StoptheDrugWar.org is a primarily US-based organization that advocates on domestic drug policies and in the international sphere. We promote health and justice by seeking to end drug prohibition and its excesses, while positively impacting related issues. Our organization has supported efforts to end criminal prohibition of marijuana, or cannabis, since our 1993 founding.

In principle this means we support removing cannabis from the Controlled Substance Act (CSA) schedules, as a part of some form of legalization. We consider ending the ills of criminalization (which requires some form of legalization, hence descheduling) to be a foremost concern.

We recognize, however, that Schedule III is what is on the table, and that descheduling done in the absence of accompanying Congressional action would be highly likely to get blocked in the courts. If rescheduling has not been done first, that would mean that no improvement to the status of cannabis under federal law would take place, a tragic lost opportunity.

We therefore believe that reclassifying cannabis to Schedule III, as FDA has recommended, is the correct and advisable course of action for the executive branch at this time, absent accompanying congressional action. Following the achievement of Schedule III, if Congress continues to fail to act on larger cannabis policy reform, and should a future administration determine it does have authority under law to deschedule cannabis, it would at that time become appropriate to attempt descheduling administratively and see what the courts say.

We hold this view additionally due to a concern that disregarding FDA's recommendation, within an administrative process that is supposed to prioritize science while respecting international treaty obligations, would harm the agency's standing on issues relating to controlled substances – and perhaps the standing generally of science in policy, at a time when FDA and other health agencies are under attack. It would do this during a time in which FDA and other health agencies are more open than ever before to considering the benefits of cannabis, and in which even DEA is willing to acknowledge the medical value of cannabis for the first time in decades.

The impact of such a move, politically and on the administrative processes, could in turn risk complicating or even jeopardizing efforts to open up medical pathways for other substances that have been targets of the drug war, such as the current efforts on some psychedelics. Lastly, if this process were to ultimately fail, it could disincentive future administrations as well as federal and state legislators from engaging with cannabis policy reform. Should it fail due to what is perceived rightly or wrongly as an overreach, the disincentives would affect big-picture objectives like decriminalization or legalization most of all.

Reclassifying cannabis to CSA Schedule III, while falling short of our most key objectives in important ways, represents an important step forward on its own – more than is always recognized or acknowledged – and an important achievement of the Biden-Harris Administration.

THE CURRENT STATUS OF CANNABIS HARMS SMALL BUSINESSES AND THEIR WORKERS

There are a variety of reasons why reclassification of cannabis, to Schedule III or better, is important. But the one on which we are most prepared to provide unique comment is one whose importance has been minimized the most often in the debate. This is the fact that Schedule III or better would mean that state-legal cannabis businesses would no longer be subject to "280E," a Controlled Substances Act provision requiring federally illegal commerce in Schedule I or II substances be taxed based on most of a business's revenue, rather than net profits.

The prospect of ending 280E, while broadly recognized as having some importance, has sometimes been described merely as a tax benefit for businesses, or a reform that only helps business. In reality, the 280E situation is a debilitating one, in which businesses pay effective tax rates that often reach upwards of 70%.¹

The resulting industry financial woes are existential, with most cannabis businesses unprofitable and layoffs in the sector now widespread and commonplace.^{2 3} 280E is also one of two or three factors commonly cited as leaving a substantial portion of business in the illicit underground market, by making state-legal businesses unable to compete effectively for the customers. The more customers remain in or turn to the illicit market, and the more small businesses have to close their doors, the more the regulatory system and its future are jeopardized.

We believe 280E has a deleterious impact on worker safety, and on general public safety surrounding cannabis businesses. We came to this conclusion while researching armed robberies of state-legal cannabis stores. Our December 2022 study on this topic examined a surge of such robberies in Washington State that began in November 2021 and lasted 4 ½ months. This surge saw nearly 100 reported robberies affect approximately 80 stores, and cost three lives.⁴

While doing this research, we noticed that armed robberies of cannabis stores are far more common in western states, which is also the part of the country where the cannabis sector is in the worst financial circumstances.⁵ The obvious implication, which was borne out in turn through conversations with retail operators, is that stores in the west lack the financial resources needed to make effective security arrangements, or to do so consistently.

More than anything else, it is the 280E tax which drives those circumstances. So long as 280E applies to cannabis businesses, there will not be a good prospect for cannabis businesses to be able to consistently protect their employees from victimization, in the parts of the country where the industry's financial standing is at its worst.

Long-term unprofitability harms small businesses and their employees in more ways. For example, research finds when businesses are unprofitable, one of the first budget items they cut back on is investing in employees.⁶ A worker at an unprofitable cannabis store may be less likely, as a result of the 280E tax, to be sent to trade events or to spend paid time in training.

Layoff situations also reduce the opportunities work provides to workers, and the average value workers are able to provide to their employers, by costing the business the work of experienced employees with institutional memory, who might not return when jobs are on offer again.⁷ Another cost to workers specifically is that a portion of a business's lost or denied income tends to come out of what gets spent on worker pay.⁸

A small business that is struggling to survive an unprofitability situation may be less capable, despite the good intentions we hope they have, to fully come through on all regulatory requirements and suggested best practices. Regulators need their business partners to be on a firm financial footing, to be able to best accomplish the public's goals.

RESEARCH SHOULD BE FACILITATED, NOT STIFLED, AS MORE ADULTS USE CANNABIS

In less detail, we note that the requirements of Schedule I are frequently cited as a barrier to research. This is an issue, not so much perhaps for large-scale research that could qualify cannabis for FDA approval, as it is for the smaller-scale studies that could provide useful information related to cannabis and health.

As more people use cannabis, more knowledge rather than less would help to more precisely understand its benefits and its potential risks or harms, and to identify whether there is information of importance to subgroups of the population. Rescheduling, possibly together with related smaller steps, will facilitate having more such research take place.

Thank you for considering the views of the public in this process.

submitted by David Borden, Executive Director, StoptheDrugWar.org, Washington, DC

¹ <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>

² https://www.dropbox.com/scl/fi/myelzz1h0a1epabnc661y/Whitney-Economics-Business-Conditions-Survey-Report-2023.pdf?rlkey=7wkxb36svu4x6ozk015m3rjzn&inf_contact_key=1e683304d0747e2760ed9daa1eaba030&dl=0

³ <https://mjbizdaily.com/non-revenue-generating-cannabis-jobs-in-jeopardy>

⁴ <https://stopthedrugwar.org/files/delays.pdf>

⁵ <https://www.newsweek.com/us-marijuana-industry-all-time-high-jobs-sales-1891143>

⁶ <https://www.trainingjournal.com/2021/business-and-industry/ld-leadership-challenge-decreasing-budgets-and-increasing-expectations/>

⁷ <https://www.hks.harvard.edu/centers/mrcbg/programs/growthpolicy/hidden-costs-layoffs>

⁸ https://www.nber.org/system/files/working_papers/w20753/w20753.pdf