# Exhibit #9

June 14, 2019

Petitioner's Request for Medical Cannabidiol Board to support federal exemption.

BEFORE THE IOWA MEDICAL CANNABIDIOL BOARD

Petition by Carl Olsen
for a Recommendation by the
Board to the Iowa Department
of Public Health (IDPH)

PETITION FOR
RECOMMENDATION

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## The Problem:

It could be argued that state medical cannabis programs are exempt from federal law. However, the common perception is that medical cannabis programs authorize violation of federal law or even violate federal law just by their existence.

## Examples:

Recently, Captain Marti Reilly of the Sioux City Police Department, a seasoned-law officer with years of experience investigating drug crimes said:

> **"each state legalizing it is breaking federal law"**

The Potential Impact of Expanded Medical Marijuana, March 27, 2019, KWIT FM 90.3 / KOJI FM 90.7, Siouxland Public Media, Western Iowa Tech Community College, 4647 Stone Avenue, Sioux City, IA 51106.

House Speaker Linda Upmeyer said the same thing in September of 2017 after signing her name to the bill that created Iowa Code Chapter 124E:

> "no matter what the Legislature had decided, the state still would have been in violation of federal law."

AG tells agency to halt part of Iowa's medical marijuana law, September 10, 2017, Des Moines Register, Des Moines, Iowa.

And State Representative John Forbes said the same thing in December of 2017 after he voted for the bill that created Iowa Code Chapter 124E:

> "we are violating federal law with a cannabis bill here in the state of Iowa"

Rep. John Forbes (D – Urbandale) and Gerd Clabaugh, December 22, 2017, Iowa Public Radio, Johnston, Iowa.

See the attached article from Rolling Stone, Why State-By-State Marijuana Legalization Is a Mess, May 8, 2019, which gives some examples.

Illinois provides another example. Cultivation Center FAQ – Illinois Department of Agriculture.

> "Growing cannabis for any purpose is still illegal under federal law."

77 Ill. Adm. Code 946.230(d)(4)

> "Growing, distributing or possessing cannabis in any capacity, except through a federally approved research program, is a violation of federal law."

## Legislative Intent:

Despite these various assertions, not one word in Iowa Code Chapter 124E implies the Iowa legislature intended to violate federal law or to authorize violation of federal law.

In the absence of explicit legislative intent to create positive conflict with federal law, it must be assumed the Iowa legislature intended Iowa Code Chapter 124E to be consistent federal law.

## Legal Analysis:

And, in fact, Iowa Code Chapter 124E is consistent with federal law because it creates an exemption to federal law like the existing exemption for the religious use of peyote. A copy of the federal exemption for the religious use peyote is attached to this petition. 21 C.F.R. § 1307.31 (2019). Peyote, just like cannabis, is a federal Schedule I Controlled Substance. And, they are also in Schedule I of the Iowa Controlled Substances Act. So, they are similarly situated substances as far as legal analysis goes.

Also, in Iowa Code Chapter 124E.12(4), the act creates exemptions from Iowa Code chapters 124 (Iowa Controlled Substance Act) and 453B (Excise Tax on Unlawful Dealing in Certain Substances). This is further evidence of legislative intent to create an exemption from both state and federal controlled substances acts.

Unlike Iowa law, federal law gives the Attorney General of the United States, who has delegated this authority to the United States Drug Enforcement Administration (DEA), the authority to add, remove, or reclassify controlled substances without further action by Congress. A copy of the federal law giving the agency complete authority over controlled substances is attached to this petition. 21 U.S.C. § 811(a) (2019).

Iowa Code Chapter 124E authorizes the cultivation of cannabis for the purpose of producing cannabidiol, so it includes both the cannabis plant and the products made from the extracted cannabinoids.

It could have been argued that religious use is exempt simply by existence of religion, that is not the example in the federal administrative code. Religious use of peyote is exempt by explicit language in DEA regulations, 21 C.F.R. § 1307.31 (2019). Current practice, therefore, is to add a written acknowledgement in a federal regulation. Iowa has created a religious exemption for peyote by statute, Iowa Code § 124.204(8) (2019). These

examples show that exemptions are codified, not simply left to chance. Illinois regulations hint at this when they say "federally approved" research. However, peyote is also "federally approved" by exemption.

## The Solution:

The Iowa Department of Public Health (IDPH) should notify the DEA of the exemption on behalf of our state and request acknowledgement from the DEA in writing, preferably in a regulation similar to the existing regulation exempting the religious use of peyote.

Please recommend that the IDPH notify the DEA that Iowa Code Chapter 124E creates an exemption, either by joining the current federal petition initiated by the petitioner on January 28, 2019, or by filing a similar application with the DEA. See the attached Petition to Exempt State-Authorized Use of Medical Cannabis, January 28, 2019.

Thank you!

Signed this 14th day of June, 2019.

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cc: Lucas Nelson, MedPharm, Iowa
State Senator Rich Taylor
State Senator Brad Zaun
State Senator Charles Schneider
State Senator Jack Whitver
State Representative Linda Upmeyer
State Representative Jarad Klein

https://www.rollingstone.com/culture/culture-features/marijuana-weed-states-federal-legalization-829933/

May 8, 2019 3:04PM ET

# Why State-By-State Marijuana Legalization Is a Mess

## Sure, get excited about legal pot — but until it's decriminalized by the feds, it's still bringing harm to countless Americans

*By*
Amanda Chicago Lewis

**Spoiler: It's not the rich cannabis investors who are ending up in handcuffs.**
**AP/REX/Shutterstock**

A majority of the United States has legalized cannabis in some way, and it's very exciting, I get it. Fewer people are being arrested, more people are getting off opioids, and accurately dosed pot chocolates might be the best thing to happen to weekends since the invention of television. But this state-by-state legalization thing that we're doing is kind of a mess, mostly because federal prohibition hampers the whole thing from the get-go. And, since absurd restrictions still disproportionately affect vulnerable populations, as long as pot remains illegal on the federal level, your relationship to weed will continue to be, primarily, a function of your power.

Let's start with the people who simply want to smoke a little pot, in a legal state like Washington or Michigan. Recall that there is no breathalyzer that can tell if someone is stoned: the best technology available will show use within the past three days. That means that "testing positive" for marijuana means you have used it recently, not that you were intoxicated at the time. Now consider all of the different ways that having weed in your system can still mess up your entire life if you are living in a so-called "legal" state: Your landlord can evict you for the joint you hit at a friend's house. Your employer can fire you for the low-dose edible you tried on a Saturday night. Your gun rights could be taken away. You could be taken off an organ donation list. You can be kicked out of or denied public housing. You can lose your student loans, your food stamps, your Medicaid — any kind of federal benefits.

And what if you've heard about the so-called Green Rush, and are looking to invest or get a job in state-legal marijuana? Pot is the fastest growing industry in America, with nearly a quarter million workers. Investments in 2019 already dwarf the numbers from last year: $3.3 billion raised in North America in the first ten weeks of the year, a billion more than the same period in 2018. But even a low-level gig at a marijuana business can hurt your chance at a mortgage, affect your immigration status, and put your assets at risk. In one case, in Colorado, a lawful permanent resident with no criminal history was denied citizenship simply because he worked for a state-licensed marijuana company.

It's hard to sympathize with Elon Musk, but the fact that the Tesla mogul may lose his security clearance for smoking pot on Joe Rogan's podcast is indicative of the kinds of problems faced by federal employees and contractors everywhere. Folks

at the Department of Defense and the Air Force recently panicked over the possibility that the security clearances necessary to do their jobs could be at risk over participation in certain retirement plans designed for federal employees, because the plans had started to include investments in both legal cannabis companies and mainstream companies with ties to cannabis, such as Marlboro cigarette parent company Altria. (The Department of Defense said they were looking into it.)

For anyone with grander ambitions, trying to create the ultimate marijuana chocolate bar or open up a legal dispensary, federal prohibition makes running a pot company far from safe, or easy. Marijuana businesses cannot legally use the banking system — forcing everyone into a shadowy, cash-dominant environment. The consequences of this banking issue cannot be overstated. Robberies are rampant. Obscured transactions and ownership are the norm. And only people with family money or good connections have access to enough capital to get off the ground.

In this way, federal prohibition exacerbates the persistent and cruelly ironic racial inequities in who controls the $40 billion marijuana market. After centuries of discrimination in education, housing, banking and employment, most people of color do not have the six-figure start-up sums necessary for a legal weed business just lying around. Progressive places like Oakland, New Jersey and Illinois are attempting to legislate economic opportunities for the communities most harmed by the war on drugs, but the fact that pot businesses can only be funded by private wealth is undermining the goals of these programs in a major way.

“The current laws make it nearly impossible to obtain financing if you don’t have a trust fund, or a quiet established relationship with a bank because of your friends’ business relationships,” says Massachusetts Cannabis Control Commissioner Shaleen Title, a leading advocate for equitable marijuana policies. Massachusetts has been rather ahead of the rest of the country in terms of designing and implementing a social justice-oriented marijuana policy, but as of late February, only two of the 112 pot businesses that had received cannabis business licenses in the state were minority-owned.

So sure, go on and celebrate the proliferation of state-legal weed! It’s all very fun and cool. It’s just not for everyone.

way the disposal of controlled substances through procedures provided in laws and regulations adopted by any State.

[36 FR 7801, Apr. 24, 1971, as amended at 37 FR 15922, Aug. 8, 1972. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 47 FR 41735, Sept. 22, 1982; 62 FR 13967, Mar. 24, 1997]

### § 1307.22 Disposal of controlled substances by the Administration.

Any controlled substance delivered to the Administration under § 1307.21 or forfeited pursuant to section 511 of the Act (21 U.S.C. 881) may be delivered to any department, bureau, or other agency of the United States or of any State upon proper application addressed to the Office of Diversion Control, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. The application shall show the name, address, and official title of the person or agency to whom the controlled drugs are to be delivered, including the name and quantity of the substances desired and the purpose for which intended. The delivery of such controlled drugs shall be ordered by the Administrator, if, in his opinion, there exists a medical or scientific need therefor.

[75 FR 10678, Mar. 9, 2010]

SPECIAL EXEMPT PERSONS

### § 1307.31 Native American Church.

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

GENERAL INFORMATION



SCHEDULES



EXCLUDED NONNARCOTIC SUBSTANCES



EXEMPT CHEMICAL PREPARATIONS



EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS



EXEMPTED PRESCRIPTION PRODUCTS



EXEMPT ANABOLIC STEROID PRODUCTS



EXEMPT CANNABIS PLANT MATERIAL, AND PRODUCTS MADE THEREFROM, THAT CONTAIN TETRAHYDROCANNABINOLS



HEARINGS



AUTHORITY: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

SOURCE: 38 FR 8254, Mar. 30, 1973, unless otherwise noted. Redesignated at 38 FR 26609, Sept. 24, 1973.

to paragraph (2), the Attorney General shall establish by regulation a single-transaction limit of not less than 24 grams of ordinary, over-the-counter pseudoephedrine or phenylpropanolamine (as the case may be) for retail distributors, if the Attorney General finds, in the report under subsection (b), that—

''(A) there is a significant number of instances (as set forth in paragraph (3)(A) of such section 401(d) for purposes of such section) where ordinary, over-the-counter pseudoephedrine products, phenylpropanolamine products, or both such products that were purchased from retail distributors were widely used in the clandestine production of illicit drugs; and

''(B) the best practical method of preventing such use is the establishment of single-transaction limits for retail distributors of either or both of such products.

''(2) DUE PROCESS.—The Attorney General shall establish the single-transaction limit under paragraph (1) only after notice, comment, and an informal hearing.''

REGULATION OF RETAIL SALES OF CERTAIN PRECURSOR CHEMICALS; EFFECT ON THRESHOLDS; COMBINATION EPHEDRINE PRODUCTS

Pub. L. 104–237, title IV, § 401(d)–(f), Oct. 3, 1996, 110 Stat. 3108, which authorized the Attorney General to establish a single-transaction limit of 24 grams for pseudoephedrine, phenylpropanolamine, and combination ephedrine products for retail distributors, was repealed by Pub. L. 109–177, title VII, § 712(b), Mar. 9, 2006, 120 Stat. 264.

EXEMPTION FOR SUBSTANCES IN PARAGRAPH (41)

Pub. L. 101–647, title XIX, § 1903, Nov. 29, 1990, 104 Stat. 4853, as amended by Pub. L. 108–358, § 2(c), Oct. 22, 2004, 118 Stat. 1663, provided that:

''(a) DRUGS FOR TREATMENT OF RARE DISEASES.—If the Attorney General finds that a drug listed in paragraph (41) of section 102 of the Controlled Substances Act (as added by section 2 [1902] of this Act) is—

''(1) approved by the Food and Drug Administration as an accepted treatment for a rare disease or condition, as defined in section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb); and

''(2) does not have a significant potential for abuse, the Attorney General may exempt such drug from any production regulations otherwise issued under the Controlled Substances Act as may be necessary to ensure adequate supplies of such drug for medical purposes.

''(b) DATE OF ISSUANCE OF REGULATIONS.—The Attorney General shall issue regulations implementing this section not later than 45 days after the date of enactment of this Act [Nov. 29, 1990], except that the regulations required under section 3(a) [former 1903(a)] shall be issued not later than 180 days after the date of enactment of this Act.''

### § 803. Repealed. Pub. L. 95–137, § 1(b), Oct. 18, 1977, 91 Stat. 1169

Section, Pub. L. 91–513, title II, § 103, Oct. 27, 1970, 84 Stat. 1245, authorized Bureau of Narcotics and Dangerous Drugs to add, during fiscal year 1971, 300 agents, together with necessary supporting personnel, and provided for appropriations of $6,000,000 to carry out such addition.

## PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

### § 811. Authority and criteria for classification of substances

#### (a) Rules and regulations of Attorney General; hearing

The Attorney General shall apply the provisions of this subchapter to the controlled substances listed in the schedules established by section 812 of this title and to any other drug or other substance added to such schedules under this subchapter. Except as provided in subsections (d) and (e) of this section, the Attorney General may by rule—

(1) add to such a schedule or transfer between such schedules any drug or other substance if he—

(A) finds that such drug or other substance has a potential for abuse, and

(B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed; or

(2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of title 5. Proceedings for the issuance, amendment, or repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.

#### (b) Evaluation of drugs and other substances

The Attorney General shall, before initiating proceedings under subsection (a) of this section to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) of this section and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a) of this section.

**(c) Factors determinative of control or removal from schedules**

In making any finding under subsection (a) of this section or under subsection (b) 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.

**(d) International treaties, conventions, and protocols requiring control; procedures respecting changes in drug schedules of Convention on Psychotropic Substances**

(1) If control is required by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 812(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section.

(2)(A) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary of Health and Human Services who shall publish it in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the scientific and medical evaluations which he is to prepare respecting such drug or substance. The Secretary of Health and Human Services shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization respecting the drug or substance with respect to which a notice was transmitted under this subparagraph.

(B) Whenever the Secretary of State receives information that the Commission on Narcotic Drugs of the United Nations proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary of Health and Human Services of such information who shall publish a summary of such information in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the recommendation which he is to furnish, pursuant to this subparagraph, respecting such proposal. The Secretary of Health and Human Services shall evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

(3) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification or receives notification (referred to in this subsection as a ''schedule notice'') that existing legal controls applicable under this subchapter to a drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] do not meet the requirements of the schedule of the Convention in which such drug or substance has been placed, the Secretary of Health and Human Services after consultation with the Attorney General, shall first determine whether existing legal controls under this subchapter applicable to the drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act, meet the requirements of the schedule specified in the notification or schedule notice and shall take the following action:

(A) If such requirements are met by such existing controls but the Secretary of Health and Human Services nonetheless believes that more stringent controls should be applied to the drug or substance, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply to such controls.

(B) If such requirements are not met by such existing controls and the Secretary of Health and Human Services concurs in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

(C) If such requirements are not met by such existing controls and the Secretary of Health and Human Services does not concur in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall—

(i) if he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section, to apply such additional controls;

(ii) request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to paragraph 7 of article 2 of

the Convention, to the Secretary-General of the United Nations;

(iii) request the Secretary of State to transmit a notice of qualified acceptance as prescribed in clause (ii) and request the Secretary of State to ask for a review by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention, of the scheduling decision; or

(iv) in the case of a schedule notice, request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove the drug or substance from the schedules under the Convention or to transfer the drug or substance to a schedule under the Convention different from the one specified in the schedule notice.

(4)(A) If the Attorney General determines, after consultation with the Secretary of Health and Human Services, that proceedings initiated under recommendations made under paragraph [1] (B) or (C)(i) of paragraph (3) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General, after consultation with the Secretary and after providing interested persons opportunity to submit comments respecting the requirements of the temporary order to be issued under this sentence, shall issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this subchapter which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. In the case of proceedings initiated under subparagraph (B) of paragraph (3), the Attorney General, concurrently with the issuance of such order, shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations pursuant to paragraph 7 of article 2 of the Convention. A temporary order issued under this subparagraph controlling a drug or other substance subject to proceedings initiated under subsections (a) and (b) of this section shall expire upon the effective date of the application to the drug or substance of the controls resulting from such proceedings.

(B) After a notice of qualified acceptance of a scheduling decision with respect to a drug or other substance is transmitted to the Secretary-General of the United Nations in accordance with clause (ii) or (iii) of paragraph (3)(C) or after a request has been made under clause (iv) of such paragraph with respect to a drug or substance described in a schedule notice, the Attorney General, after consultation with the Secretary of Health and Human Services and after providing interested persons opportunity to submit comments respecting the requirements of the order to be issued under this sentence, shall issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention in the case of a drug or substance for which a notice of qualified acceptance was transmitted or whichever the Attorney General determines is appropriate in the case of a drug or substance described in a schedule notice. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this subchapter which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. If, as a result of a review under paragraph 8 of article 2 of the Convention of the scheduling decision with respect to which a notice of qualified acceptance was transmitted in accordance with clause (ii) or (iii) of paragraph (3)(C)—

(i) the decision is reversed, and

(ii) the drug or substance subject to such decision is not required to be controlled under schedule IV or V to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention,

the order issued under this subparagraph with respect to such drug or substance shall expire upon receipt by the United States of the review decision. If, as a result of action taken pursuant to action initiated under a request transmitted under clause (iv) of paragraph (3)(C), the drug or substance with respect to which such action was taken is not required to be controlled under schedule IV or V, the order issued under this paragraph with respect to such drug or substance shall expire upon receipt by the United States of a notice of the action taken with respect to such drug or substance under the Convention.

(C) An order issued under subparagraph (A) or (B) may be issued without regard to the findings required by subsection (a) of this section or by section 812(b) of this title and without regard to the procedures prescribed by subsection (a) or (b) of this section.

(5) Nothing in the amendments made by the Psychotropic Substances Act of 1978 or the regulations or orders promulgated thereunder shall be construed to preclude requests by the Secretary of Health and Human Services or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention, for review of scheduling decisions under such Convention, based on new or additional information.

**(e) Immediate precursors**

The Attorney General may, without regard to the findings required by subsection (a) of this section or section 812(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the Attorney General designates a substance as an immediate precursor and places it in a schedule,

[1] So in original. Probably should be ''subparagraph''.

other substances shall not be placed in a schedule solely because they are its precursors.

**(f) Abuse potential**

If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

**(g) Exclusion of non-narcotic substances sold over the counter without a prescription; dextromethorphan; exemption of substances lacking abuse potential**

(1) The Attorney General shall by regulation exclude any non-narcotic drug which contains a controlled substance from the application of this subchapter and subchapter II of this chapter if such drug may, under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], be lawfully sold over the counter without a prescription.

(2) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this subchapter unless controlled after October 27, 1970 pursuant to the foregoing provisions of this section.

(3) The Attorney General may, by regulation, exempt any compound, mixture, or preparation containing a controlled substance from the application of all or any part of this subchapter if he finds such compound, mixture, or preparation meets the requirements of one of the following categories:

(A) A mixture, or preparation containing a nonnarcotic controlled substance, which mixture or preparation is approved for prescription use, and which contains one or more other active ingredients which are not listed in any schedule and which are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse.

(B) A compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

(C) Upon the recommendation of the Secretary of Health and Human Services, a compound, mixture, or preparation which contains any anabolic steroid, which is intended for administration to a human being or an animal, and which, because of its concentration, preparation, formulation or delivery system, does not present any significant potential for abuse.

**(h) Temporary scheduling to avoid imminent hazards to public safety**

(1) If the Attorney General finds that the scheduling of a substance in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, he may, by order and without regard to the requirements of subsection (b) of this section relating to the Secretary of Health and Human Services, schedule such substance in schedule I if the substance is not listed in any other schedule in section 812 of this title or if no exemption or approval is in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]. Such an order may not be issued before the expiration of thirty days from—

(A) the date of the publication by the Attorney General of a notice in the Federal Register of the intention to issue such order and the grounds upon which such order is to be issued, and

(B) the date the Attorney General has transmitted the notice required by paragraph (4).

(2) The scheduling of a substance under this subsection shall expire at the end of one year from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings under subsection (a)(1) of this section with respect to the substance, extend the temporary scheduling for up to six months.

(3) When issuing an order under paragraph (1), the Attorney General shall be required to consider, with respect to the finding of an imminent hazard to the public safety, only those factors set forth in paragraphs (4), (5), and (6) of subsection (c) of this section, including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(4) The Attorney General shall transmit notice of an order proposed to be issued under paragraph (1) to the Secretary of Health and Human Services. In issuing an order under paragraph (1), the Attorney General shall take into consideration any comments submitted by the Secretary in response to a notice transmitted pursuant to this paragraph.

(5) An order issued under paragraph (1) with respect to a substance shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under subsection (a) of this section with respect to such substance.

(6) An order issued under paragraph (1) is not subject to judicial review.

(Pub. L. 91–513, title II, §201, Oct. 27, 1970, 84 Stat. 1245; Pub. L. 95–633, title I, §102(a), Nov. 10, 1978, 92 Stat. 3769; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 98–473, title II, §§508, 509(a), Oct. 12, 1984, 98 Stat. 2071, 2072; Pub. L. 108–358, §2(b), Oct. 22, 2004, 118 Stat. 1663.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(8), (d)(3), (4)(A), (B), and (g)(2), (3), was in the original ''this title'', meaning title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the ''Controlled Substances Act''. For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(3) and (g)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables.

Schedules I, IV, and V, referred to in subsecs. (d)(4)(A), (B), and (h)(1), are set out in section 812(c) of this title.

The Psychotropic Substances Act of 1978, referred to in subsec. (d)(5), is Pub. L. 95–633, Nov. 10, 1978, 92 Stat.

3768, which enacted sections 801a, 830, and 852 of this title, amended sections 352, 802, 811, 812, 823, 827, 841 to 843, 872, 881, 952, 953, and 965 of this title and section 242a of Title 42, The Public Health and Welfare, repealed section 830 of this title effective Jan. 1, 1981, and enacted provisions set out as notes under sections 801, 801a, 812, and 830 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 801 of this title and Tables.

This subchapter and subchapter II of this chapter, referred to in subsec. (g)(1), was in the original ''titles II and III of the Comprehensive Drug Abuse Prevention and Control Act'', which was translated as meaning titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, 1285, as amended, to reflect the probable intent of Congress. Title II is classified principally to this subchapter and part A of title III comprises subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title notes set out under section 801 of this title and Tables.

AMENDMENTS

2004—Subsec. (g)(1). Pub. L. 108–358, § 2(b)(1), substituted ''drug which contains a controlled substance from the application of this subchapter and subchapter II of this chapter if such drug'' for ''substance from a schedule if such substance''.

Subsec. (g)(3)(C). Pub. L. 108–358, § 2(b)(2), added subpar. (C).

1984—Subsec. (g)(3). Pub. L. 98–473, § 509(a), added par. (3).

Subsec. (h). Pub. L. 98–473, § 508, added subsec. (h).

1978—Subsec. (d). Pub. L. 95–633 designated existing provisions as par. (1) and added pars. (2) to (5).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (d)(2), (3), (4)(A), (B), (5) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–358 effective 90 days after Oct. 22, 2004, see section 2(d) of Pub. L. 108–358, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–633 effective on date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95–633, set out as an Effective Date note under section 801a of this title.

### § 812. Schedules of controlled substances

#### (a) Establishment

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

#### (b) Placement on schedules; findings required

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

#### (c) Initial schedules of controlled substances

Schedules I, II, III, IV, and V shall, unless and until amended[1] pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers,

[1] Revised schedules are published in the Code of Federal Regulations, Part 1308 of Title 21, Food and Drugs.

2628 Camden Drive
Ames, Iowa 50010
January 28, 2019

Drug Enforcement Administration
Attn: Diversion Control Division/DC
8701 Morrissette Drive
Springfield, VA 22152

**Re: Petition to Exempt State-Authorized Use of Medical Cannabis**
**Certified Mail Receipt No. 7017 2680 0000 3373 5200**

Dear Administrator:

Please find attached five copies of the Petition for Exemption for State-Authorized Use of Medical Cannabis for your review.

Thank you.

Sincerely,

Colin Murphy

CCM:cm
Encl.

cc: The Honorable Kim Reynolds
Governor of Iowa
1007 East Grand Ave.
Des Moines, Iowa 50319
Certified Mail Receipt No. 7017 2680 0000 3373 5217

The Honorable Tom Miller
Office of the Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines IA 50319
Certified Mail Receipt No. 7017 2680 0000 3373 5224

DRUG ENFORCEMENT ADMINISTRATION
Diversion Control Division/DC
8701 Morrissette Drive
Springfield, VA 22152

| | | |
|---|---|---|
| Petition for Administrative Rule Pursuant to 21 C.F.R. § 1307.03 | ) ) ) | PETITION TO EXEMPT THE STATE-AUTHORIZED USE OF MEDICAL CANNABIS |

**COME NOW** Petitioners, pursuant to 21 C.F.R. § 1307.03 (2019),[1] and for the Petition to Exempt the State-Authorized Use of Medical Cannabis state:

1. On May 12, 2017 Iowa Governor Terry Branstad signed into law House File 524, known as the "Medical Cannabidiol Act," which is now codified at Iowa Code chapter 124E (2017) (the "**Act**").[2]

2. The Act allows Iowa residents over the age of 18 (or their primary caregiver), who submit written certification by a health care practitioner that they are suffering from a certain debilitating medical condition, to apply to the Iowa Department of Public Health for a medical cannabidiol registration card.[3]

3. The registration card allows Iowans access to medical cannabidiol through a state-regulated system of manufacturers and dispensaries.[4]

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1. The regulation provides:

> Any person may apply for an exception to the application of any provision of this chapter by filing a written request with the Office of Diversion Control, Drug Enforcement Administration, stating the reasons for such exception. See the Table of DEA Mailing Addresses in Sec. 1321.01 of this chapter for the current mailing address. The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

21 C.F.R. § 1307.03 (2019).

2. *See generally* IOWA CODE ch. 124E (2017). The administrative rules promulgated by the Iowa Department of Public Health to interpret and enforce Chapter 124E are found at IOWA ADMIN. CODE r. 641–154 (2019).

3. *Id.* § 124E.4 (2017).

4. Medical cannabidiol may be legally manufactured in Iowa by only two companies that hold Iowa manufacture licenses. It can be legally dispensed only at five locations across the state by companies that hold dispensary licenses *available at* http://idph.iowa.gov/Portals/1/userfiles/234/Files/IDPH%20Position%20Statement%20on%20CBD%20-%2012_1_2018.pdf. As of January 11, 2019 there are 1,197 patients and caregivers with active registration cards, who have been certified by 463 healthcare practitioners in the state, *available at* https://idph.iowa.gov/cbd/Program-Data-and-Statistics.

4. "Medical cannabidiol" is "any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa L.* or *Cannabis indica* . . . that has a tetrahydrocannabinol level of no more than three percent and that is derived in a form . . . adopted by the [Iowa Department of Public Health] pursuant to rule."[5]

5. On December 1, 2018 medical cannabidiol first became available for purchase by Iowa patients.[6]

6. The lawful possession or use of medical cannabidiol by qualified patients and caregivers is exempt from the penalties provided under the Iowa's controlled substance and tax-stamp acts.[7]

7. However, because the manufacture, possession and use of medical cannabidiol is *perceived* to be illegal under *federal* law, Iowa manufacturers, dispensaries, patients, primary caregivers and others remain vulnerable to federal interference, whether by arrest, prosecution, incarceration, forfeiture, taxation or denial of benefits, including, but not limited to:

(a) the inability for medical cannabidiol producers and processors to deduct business expenses besides the cost of goods sold;[8]

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[5]. IOWA CODE § 124E.2(6) (2017). Medical cannabidiol is *not* scheduled as a controlled substance under Iowa's Uniform Controlled Substances Act (Chapter 124) despite the fact that it contains up to three percent tetrahydrocannabinol by dry weight (mg/g), and therefore, would otherwise fall under the definition of "*marijuana*," which is listed as a schedule I controlled substance in the state. *See* IOWA CODE § 124.204(4)(m) (2017) (marijuana in Iowa schedule I); *see also* 124.124.101(20) (2017) ("[m]arijuana means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, *including tetrahydrocannabinols*. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized see of the plant which is incapable of germination") (emphasis added).

This definition is virtually indistinguishable from the term "*marihuana*" under federal law. *See* 21 U.S.C. § 802(16) (2019) (defining term as "all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination).

[6]. *Iowa Medical Cannabidiol Dispensaries Opening December 1* (11/2/18) *available at* https://idph.iowa.gov/ News/ArtMID/646/ArticleID/158242/Iowa-Medical-Cannabidiol-Dispensaries-Opening December-1-11218.

[7]. IOWA CODE § 124E.16(1) (2017) (providing penalties under Iowa Code chapters 124 and 453B for possession or use of medical cannabidiol in violation of chapter 124E).

[8]. *See* 26 U.S.C.§ 280E (2019) ("[n]o deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted"). The implications here are massive. Cannabis businesses pay taxes on gross income. For example, if a cannabis business has gross revenue of

(b) the inability of medical cannabidiol dispensaries to deduct any business expenses such as rent, advertising, labor costs, etc.;[9]
(c) the refusal by medical providers with the Department of Veterans Affairs to provide veterans under their care with written certification to obtain a registration card;[10]
(d) the prohibition against traveling with medical cannabidiol in carry-on or checked baggage;[11]
(e) the prohibition against purchasing or receiving a firearm by one who certifies on ATF Form 4473 that they are an "unlawful" user of substances containing marijuana;[12] and
(f) the denial of admission by owners of federally assisted housing to any household with a member who the owner determines is, at the time of application for admission, illegally using marijuana.[13]

8. The State of Iowa is the sole authority to determine whether medical cannabidiol or any other form of cannabis, tetrahydrocannabinols and cannabis extracts have "accepted medical use in treatment" in the state.[14]

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$10 million, incurred another $2 million in business-related expenses and cost of the cannabis was $6.5 million (cost of goods sold), the taxable income is not $1.5 million, *but instead $3.5 million*. At a tax rate of 30%, this amounts to $1.05 million in taxes for an *effective* tax rate (tax/income before tax) of 70%. This significantly restricts the owner's ability to reinvest profits both back into the business and the local community.

9. *Id.* Several types of business expenses are scrutinized under section 280E including employee salaries, utility costs such as electricity, telephone and internet service, health insurance premiums, marketing and repairs and maintenance. Cannabis businesses have been allowed to make deductions on their non-cannabis business activities by capitalizing on indirect costs such as administrative (bookkeeping, legal, technology) and inventory (storage, depreciation) costs and amounts paid in state excise taxes, but it is anticipated these deductions will be challenged.

10. *Access to VHA Clinical Programs for Veterans Participating in State-Approved Marijuana Programs*, VHA Directive 1315 (Dec. 8, 2017) *available at* https://www.va.gov/vhapublications/.

11. The Transportation Security Administration advises: "[p]ossession of marijuana and cannabis infused products, such as Cannabidiol (CBD) oil, is illegal under federal law. TSA officers are required to report any suspected violations of law, including possession of marijuana and cannabis infused products. TSA's screening procedures are focused on security and are designed to detect potential threats to aviation and passengers. Accordingly, TSA security officers do not search for marijuana or other illegal drugs, but in the event a substance that appears to be marijuana or a cannabis infused product is observed during security screening, TSA will refer the matter to a law enforcement officer" *available at* https://www.tsa.gov/travel/security-screening/whatcanibring/items/medical-marijuana.

12. Question 11(e) on the form asks "Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning: the use or possession or marijuana remains unlawful under Federal law, regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside**," *available at* https://www.atf.gov/file/61446/download (emphasis in original). In answering the question truthfully, by checking yes, a patient's application will be denied. That may also hold true for any license renewal involving a patient that has since received a registration card. If the patient does not answer question 11(e) truthfully, then he will be subject to federal criminal sanctions, including perjury and illegal firearm possession.

13. 42 U.S.C. 13662(a) (2019).

14. *See* Iowa Code §§ 124.203(1)(b), (2) (2017). The term "currently accepted medical use for treatment in the United States" is not defined under federal law. *See* 21 U.S.C. § 812(b) (2019). "Neither the statute, nor its legislative history precisely define the term." *See Alliance for Cannabis Therapeutics*, 930 F.2d 936,

9. The Attorney General of the United States has rulemaking authority to fulfill his duties under the federal Controlled Substances Act, but he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment for patients that is authorized under state law.[15]

10. Federal law already recognizes an exemption for marijuana or other substances authorized by any state statute or agency in other contexts.[16]

11. Petitioners contend the fact that medical cannabidiol has been available for lawful use in Iowa since December 1, 2018 without objection by the Drug Enforcement Administration is tacit recognition of the federal exemption that has always existed for the authorized use of medical cannabis at the state level.

12. In order to harmonize the *perceived* conflict between Iowa and federal law, while simultaneously leaving both federal and Iowa schedule I intact regarding marijuana, Petitioners request the Drug Enforcement Administration formally acknowledge the existing exemption for the state-authorized use of medical cannabis and promulgate a new rule as follows:

> *21 C.F.R. § 1307.xx (2019). The listing of marihuana as a controlled substance in Schedule I does not apply to the authorized medical use of marihuana authorized by or under any State statute or by any State agency.*

**WHEREFORE**, Petitioners respectfully request the Drug Enforcement Administration codify the requested exemption.

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939 (D.C. Cir. 1991) Congress did not intend the term to require a finding of recognized medical use in *every* state. *See Grinspoon v. DEA*, 881 F.2d 877, 886 (1987).

[15]. *See Gonzales v. Oregon*, 546 U.S. 243, 258, 126 S. Ct. 904, 916, 163 L. Ed. 748 (2006).

[16]. *See* 14 C.F.R. § 91.19(a)-(b) (2019) ("[e]xcept as provided . . . of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft. [This] does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.")