

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by Carl Olsen for the adoption of rules relating to Iowa Code Chapter 124	PETITION FOR RULE MAKING
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1. The petitioner petitions the department to create an application process for religious exceptions to the Iowa Uniform Controlled Substances Act (Iowa Code Chapter 124).

2. The authority for this rule making action is Iowa Code § 124.204(4)(p) (“Peyote, except as otherwise provided in subsection 8”).

3. Iowa has created an exception for the religious use of a controlled substance, peyote. A process should exist to accept applications for religious use of other controlled substances. Iowa has created an exception for the secular use of a controlled substance, cannabis. A process should exist to accept applications for the religious use of cannabis.

Existing Religious Exception

Iowa Code § 124.204(8) is a religious exception for the use of a Schedule I controlled substance in Iowa.

Federal regulations provide a process to apply for exceptions to the federal Controlled Substances Act. 21 C.F.R. § 1307.03. There is a federal regulation for religious use of peyote. 21 C.F.R. § 1307.31.

The listing of peyote in this subparagraph does not apply to non-drug use in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the Church are required to register and maintain appropriate records of receipts and disbursements of the article. FEDERAL REGISTER, Vol. 31, No. 54, Saturday, March 19, 1966, at page 4679; codified at 21 C.F.R. § 166.3(c)(3) (1968)

SEC. 2. Section three (3) of this Act shall not apply to the following: 12. Peyote used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church are required to register and maintain appropriate records of receipts and disbursements of the article. 1967 Iowa Acts, ch. 189 § 2(12)

Existing Secular Exception

Iowa Code Chapter 124E is a secular exception for the use of a Schedule I controlled substance without a prescription.

Although cannabis has “no legitimate medical use” in Iowa, *State v. Middlekauff*, 974 N.W.2d 781, 798 (Iowa 2022), Iowans can apply for the non-drug use of cannabis to treat qualifying medical conditions.

See health care practitioner certification, 641 IAC 154.2. “This document, the written certification in this case, is essentially a physical manifestation of the physician’s and patient’s First Amendment right to openly and candidly discuss appropriate medical treatments, including medical marijuana.” *State v. Middlekauff*, 974 N.W.2d 781, 800 (Iowa 2022).

Iowans that have a qualifying medical condition can apply for an exception to the Iowa Uniform Controlled Substances Act. Iowa Code § 124.401(5)(c) and Iowa Code Chapter 124E; 641 IAC 154.3(1)(d).

Iowans can petition to have new medical conditions added or petition for the addition of new forms of administration, 641 IAC 154.65. *Id.*

4. The petitioner is aware of two Schedule I controlled substances, both in the same subcategory as peyote (hallucinogens), that have documented religious use in the United States.

Cannabis

Cannabis is recognized in the county of Jamaica as a religious sacrament. Dangerous Drug Act Amendments of 2015.

The petitioner is a member of a religious organization in Jamaica that uses cannabis as its sacrament. *See, Town v. State, ex rel. Reno*, 377 So.2d 648, 649 (Fla. 1979) (“the Ethiopian Zion Coptic Church is not a new church or religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament.”). *Olsen v. State of Iowa*, United States District Court, S.D. Iowa, Central Division, Civ. No. 83–301–E, March 19, 1986, 1986 WL 4045 (“Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it.”).

Hoasca

Hoasca is recognized in the country of Brazil as a religious sacrament, and the use of hoasca is currently protected by federal regulations. Hoasca contains dimethyltryptamine (DMT), a hallucinogenic chemical. Under the federal Controlled Substances Act, DMT is a “Schedule I” controlled substance. *See, Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006). DMT is also a Schedule I controlled substance in Iowa. Iowa Code § 124.204(4)(j).

5. There is a religious organization in Iowa that uses hoasca. *See, Iowaska Church of Healing v. United States*, Case No. 21-02475, United States District Court for the District of Columbia (March 31, 2023); *Iowaska Church of Healing v. IRS*, Case No. 23-5122, United States Court of Appeals for the District of Columbia Circuit (July 3, 2023). *Iowa church wages four-year fight with IRS over hallucinogenic-drug ceremonies*, Iowa Capitol Dispatch, January 2, 2023

6. The petitioner requests a meeting provided for by rule 481—2.4(17A).

Dated this 26th day of September, 2023

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LINKS TO REFERENCES

<https://www.legis.iowa.gov/docs/code/2023/124.pdf>

<https://www.legis.iowa.gov/docs/code/2023/124.204.pdf#page=4>

<https://www.legis.iowa.gov/docs/code/2023/124.204.pdf#page=8>

<https://www.govinfo.gov/content/pkg/CFR-2022-title21-vol9/xml/CFR-2022-title21-vol9-sec1307-03.xml>

<https://www.govinfo.gov/content/pkg/CFR-2022-title21-vol9/xml/CFR-2022-title21-vol9-sec1307-31.xml>

<https://files.iowamedicalmarijuana.org/imm/federal/31FedReg4679-1996.pdf>

<https://files.iowamedicalmarijuana.org/imm/federal/21CFR166-1968.pdf#page=5>

https://files.iowamedicalmarijuana.org/imm/states/1967_Iowa_189.pdf#page=2

<https://www.legis.iowa.gov/docs/code/2023/124E.pdf>

https://scholar.google.com/scholar_case?case=2428980221906873954#p798

<https://www.legis.iowa.gov/docs/iac/rule/06-15-2022.641.154.2.pdf>

<https://www.legis.iowa.gov/docs/code/2023/124.401.pdf#page=4>

<https://www.legis.iowa.gov/docs/iac/rule/06-15-2022.641.154.3.pdf>

<https://www.legis.iowa.gov/docs/iac/rule/01-31-2018.641.154.65.pdf>

<https://ethiopianzioncopticchurch.org/pdfs/TheDangerousDrugsAmendmentAct2015GazetteFactSheetIncluded.pdf>

https://scholar.google.com/scholar_case?case=11054659781636731591#p649

<https://ethiopianzioncopticchurch.org/pdfs/olsen-83-301-E-1986.pdf>

https://scholar.google.com/scholar_case?case=7036734975431570669

<https://iowacapitaldispatch.com/2023/01/02/iowa-church-wages-four-year-fight-with-irs-over-hallucinogenic-drug-ceremonies/>