

DEA's Cannabis Rescheduling Comments Close: Future Steps

Uncertainty Looms Over DEA's Next Steps Following Cannabis Rescheduling Comment Period

The U.S. Drug Enforcement Administration (DEA) has closed the public comment period for the marijuana rescheduling proposal, which aims to move cannabis from Schedule I to Schedule III. As of mid-day on the final submission day, the agency had received nearly 37,000 comments from the public. What happens next in this process, however, is uncertain, as the DEA has significant discretion in how quickly or slowly it moves forward.

Significant Public Engagement

The public comment period, which concluded on Monday, saw a substantial number of submissions from various stakeholders. As of mid-day, the DEA had already received just under 37,000 comments, with expectations of more last-minute submissions. This high level of public engagement reflects the widespread interest and varying opinions on the proposed rescheduling of cannabis.

Next Steps for the DEA

Attorney Shane Pennington, who has closely studied the rescheduling procedure, explains that the DEA's immediate task is to review all the comments. The agency will need to determine if any comments raise "significant" legal or factual questions that must be addressed. This process will likely involve issuing responses to certain comments based on their legal implications.

Potential for an Administrative Hearing

Before the DEA can publish a final rule in the federal register, it must decide whether to hold an administrative hearing. Pennington emphasizes that the timing of this decision is uncertain, and a hearing could significantly delay the rescheduling process. "At any point before there's a final rule, they could issue a notice that they're going to have a hearing. They also might not. No one knows, outside of the government," he said.

Impact of Administrative Hearings

If the DEA decides to hold an administrative hearing, the timeline for rescheduling could extend significantly. Pennington notes that hearings generally take a while, and a big fight could push the process past the upcoming election. Even without a hearing, there are no guarantees that the rescheduling will be completed before the election due to various factors.

Legal Challenges and Litigation

Once a final rule is published in the federal register, there will be a 30-day period for opponents to file lawsuits against the rescheduling decision. Pennington suggests that litigation from groups such as Smart Approaches to Marijuana (SAM) could be a critical factor in the rescheduling's success or failure. Legal actions could request an order from the court to halt the effective date of the final rule, potentially delaying implementation for years.

Public Misconceptions and Realistic Expectations

Pennington warns against misinformation circulating online and on social media platforms about the rescheduling process. Some enthusiasts have suggested that the DEA could quickly process public comments using artificial intelligence or complete the rescheduling within a few weeks. However, Pennington insists that these assertions are unrealistic and that the DEA will likely review comments "the old-fashioned way" by reading them thoroughly.

Complex Legal Issues

The legal complexities of "standing" in administrative hearings and potential court actions are another source of misinformation. Pennington advises caution, noting that these legal questions are intricate and require experienced legal interpretation. Simplistic explanations from unqualified sources should be viewed skeptically.

Possible Influence of 2024 Election

The upcoming presidential election adds another layer of uncertainty to the rescheduling process. If former President Donald Trump wins the election, he could potentially cancel or alter the rescheduling policy. Trump has made few definitive statements on cannabis reform, leaving his potential actions open to speculation.

With the comment period over, the DEA's next steps in the marijuana rescheduling process remain unclear. The agency's discretion, potential administrative hearings, and possible legal challenges all contribute to the uncertainty. While the rescheduling proposal has garnered significant public interest and engagement, its completion is far from guaranteed. Stakeholders must navigate a complex and unpredictable landscape as they await the DEA's final decision.

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