

Cannabis Stakeholders Navigate Fine Line in Rescheduling Hearing

Cannabis Stakeholders Navigate Legal Fine Line Ahead of Rescheduling Hearing

The cannabis industry is entering a critical phase in the years-long marijuana rescheduling process, as stakeholders prepare to participate in a Dec. 2 hearing that could pave the way for marijuana's potential rescheduling from Schedule 1 to Schedule 3 of the Controlled Substances Act. However, in order to engage in the process, participants must walk a fine legal line, balancing seemingly contradictory positions about how they would be harmed by the move.

Rescheduling Cannabis: A Delicate Balance

To participate in the upcoming hearing, cannabis advocates and business leaders must demonstrate how they would be "aggrieved" or negatively impacted by marijuana's rescheduling. This legal requirement has presented a unique challenge: while many stakeholders support rescheduling, they must also argue that the proposal, as currently written, could harm them in certain ways. This process demands that participants balance two contradictory ideas:

Keeping Cannabis as a Schedule 1 drug is untenable.

Rescheduling marijuana to Schedule 3 without additional regulations could have negative consequences.

This balancing act is essential for the 25 "designated participants" selected by the Drug Enforcement Administration (DEA), who must submit a brief outlining how the proposed rescheduling would harm them. These participants include a variety of cannabis industry leaders, advocacy groups, and stakeholders who are keen to ensure their voices are heard during this historic hearing.

The Legal Threshold: Standing and Aggrievement

DEA Chief Administrative Law Judge John Mulrooney has made it clear that anyone seeking to testify must show "standing" in the case, meaning they must explain in detail how they would be harmed by the rescheduling proposal. According to Eric Berlin, a lead cannabis attorney at Dentons, participants must provide specific evidence of how the rescheduling would adversely affect them. Simply stating general concerns will not suffice.

The deadline to submit these briefs is Nov. 12, with the Dec. 2 hearing serving as an opportunity for Judge Mulrooney to determine which individuals will be allowed to present evidence in subsequent hearings scheduled for January and February 2024.

Stakeholders Weigh In: Key Filings and Concerns

Several high-profile organizations have filed briefs ahead of the Nov. 12 deadline, outlining their positions and concerns. Among them is the **National Cannabis Industry Association (NCIA)**, which argues that rescheduling marijuana could lift restrictions on novel cannabinoids like delta-10 THC and THC-O, potentially creating a new set of regulatory challenges for the industry. Aaron Smith, executive director of NCIA, emphasized that rescheduling without additional controls could inadvertently harm small and medium-sized cannabis companies.

Other organizations, such as **The Commonwealth Project**, which advocates for medical marijuana as an opioid replacement for seniors, raised concerns that rescheduling could fail to account for the unique medical needs of older adults. The group has called for additional regulations to ensure that cannabis is safe and effective for elderly patients.

Village Farms International, a large cannabis producer operating in Canada, expressed concern that marijuana's continued Schedule 1 status prevents the company from entering the U.S. market. Although the company acknowledged that rescheduling to Schedule 3 wouldn't immediately solve the issue, it argued that such a move would reduce the perceived risks of doing business with marijuana companies, thereby opening the door for future market entry.

The Potential Impact on the Industry

For the cannabis industry, the stakes are high. The rescheduling of marijuana could lead to significant changes in how cannabis businesses operate, from research and development to banking and investment opportunities. Many stakeholders are hoping that rescheduling will help eliminate some of the burdens that come with marijuana's current status as a Schedule 1 substance, which is reserved for drugs deemed to have no medical use and a high potential for abuse.

However, the rescheduling process is fraught with uncertainty. The DEA could ultimately decide to move marijuana only to **Schedule 2**, which would still impose significant restrictions. In fact, Village Farms has argued that moving marijuana to Schedule 2 could harm its business prospects, as the more stringent classification would continue to deter investment and regulatory certainty in the industry.

The DEA's Role and Next Steps

As the DEA moves forward with the rescheduling process, the next steps will likely include a series of hearings and legal proceedings to address the concerns raised by stakeholders. The Dec. 2 hearing will likely serve as a critical moment for participants to make their case, with Judge Mulrooney determining which individuals will be permitted to provide testimony in future hearings.

For now, stakeholders are carefully crafting their arguments, weighing the potential benefits of rescheduling against the risks of moving too quickly without sufficient regulatory safeguards.

One Less Voice in the Hearing

While the rescheduling process moves forward, not all designated participants are taking part in the upcoming hearings. Dr. Chad Kollas, an oncologist and representative of the **American Academy of Hospice and Palliative Medicine**, was initially invited to testify but has since withdrawn from the process. The reasons for Kollas' absence remain unclear, but his departure leaves one fewer voice in the proceedings as the industry awaits the outcome of the rescheduling debate.

As the Dec. 2 hearing approaches, stakeholders continue to navigate the fine line between supporting rescheduling and addressing the potential consequences it could have on their businesses and the broader cannabis market. The outcome of this hearing could have profound implications for the future of cannabis

regulation in the United States.

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