

GOP Lawmakers Question DEA Head Over Cannabis Rescheduling Proposal, Citing Broken Precedent

Two Republican congressmen are demanding that the head of the Drug Enforcement Administration (DEA) answer questions about why she broke “decades of precedent” by not signing a proposed marijuana rescheduling rule, instead having it approved by the attorney general. In a letter sent to DEA Administrator Anne Milgram on Wednesday, Reps. Andrew Clyde (R-GA) and Ben Cline (R-VA) expressed their “grave concern” about the official’s “refusal to respond to questions from multiple members” about the scheduling review at a recent House Appropriations subcommittee hearing earlier this month.

Legal Obligations and the APA

The lawmakers challenged the administrator’s position that it would be “inappropriate” to weigh in on that review under the Administrative Procedure Act (APA), arguing that there are exemptions built into the law that compel disclosures in a congressional committee setting. They argued, “You were legally compelled to testify and answer questions related to marijuana reclassification despite your refusal and your incorrect legal interpretation of the APA.”

Specific Questions from Lawmakers

Clyde and Cline demanded answers to the questions asked during the hearing, as well as responses to any written Questions for the Record (QFRs) from subcommittee members related to the issue. Rep. Andrew Clyde tweeted, “I’m demanding that DEA Administrator Milgram answer questions related to the Biden Administration’s recent marijuana reclassification—including why AG Garland broke precedent by signing the order rather than Milgram. Americans deserve transparency on this serious matter.”

Unprecedented Signing by AG Garland

At issue for the lawmakers is the fact that Attorney General Merrick Garland signed the proposed rule to move marijuana from Schedule I to Schedule III of the Controlled Substances Act (CSA). Conventionally, the DEA administrator signs off on scheduling proposals, and some have interpreted the break in precedent to mean DEA or Milgram disagreed with the rescheduling decision. However, it’s not clear that’s the case. Milgram did say at the subcommittee hearing this month that, “Stepping out of marijuana,” she was unaware of any instance where a DEA administrator hasn’t signed a scheduling order.

Congressional Deadline for Response

In the new letter, Clyde and Cline requested that the administrator answer two questions by June 5, so that they have at least one week to review the response before their subcommittee markup of the budget bill covering DEA:

In the FY25 DEA Budget Hearing, you testified that the DEA is the final authority to schedule, reschedule, or deschedule a drug under the Controlled Substances Act. So, why did you NOT sign the Notice of Proposed Rulemaking to reschedule marijuana released by the Drug Enforcement Administration on May 16, 2024?

Additionally, in the FY25 DEA Budget Hearing, you testified that you were not aware of any instance in which a rulemaking that schedules, reschedules, or deschedules a drug under the Controlled Substances Act is not signed by the Administrator of the DEA. So, did the Department of Justice provide the DEA with justification to break decades of precedent to have the Attorney General ultimately sign the Notice of Proposed Rulemaking? If so, please describe in detail the Department of Justice's justification to you or the DEA for this decision.

Additional Requests and Broader Implications

They also asked for a copy of a DEA response to the Justice Department's Office of Legal Counsel (OLC) that was cited in their analysis of the rescheduling issue and which seemed to signal DEA pushed back against certain justifications for the reform.

Administration's Stance and Future Actions

The Biden administration's drug czar said this week that the Justice Department's rescheduling determination is "based on science and evidence," adding that the change will ease research restrictions around the use of cannabis to treat "chronic illnesses, chronic pain and diseases like cancer." However, he appeared to have oversimplified what the change will mean for legal prescription access to medical marijuana.

Public and Legal Reactions

The proposed rule to federally reschedule marijuana was officially posted last week, kicking off a public comment period that's expected to elicit a major response from supporters and opponents of cannabis reform. Marijuana reform advocates and stakeholders have made clear that they intend to leverage the opportunity, with some planning to support the reclassification while others intend to call for descheduling cannabis altogether. Prohibitionists are expected to oppose the incremental policy change and seek to keep marijuana in Schedule I, and there's also a looming threat of litigation.

Economic Considerations and Public Comments

While the Department of Justice will take all public comments submitted by July 22 into consideration as it weighs the reform, it said in the notice that one of the topics it's especially interested in hearing about is the "unique economic impacts" of the rescheduling proposal given that state-level legalization has created a "multibillion dollar industry" that stands to benefit from possible federal tax relief under the reform.

Presidential Perspective on Rescheduling

When President Biden announced the administration's rescheduling action last week, he described it as consistent with his belief that nobody should be jailed over cannabis possession. As a statutory matter, that wouldn't necessarily apply with simple rescheduling because it would remain federally illegal. But the White House has not publicly commented on the economic impacts of the incremental reform.

Email: info@cannabisriskmanager.com | Phone: +415-226-4060

© Copyright 2025 Cannabis Risk Manager. All Rights Reserved