

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of

**Schedules of Controlled Substances:  
Proposed Rescheduling of Marijuana**

**DEA Docket No. 1362  
Hearing Docket No. 24-44**

**ORDER REGARDING THE NATIONAL CANNABIS  
INDUSTRY ASSOCIATION'S MOTION FOR CLARIFICATION**

On December 13, 2024, the National Cannabis Industry Association (NCIA) filed a motion (Motion or Mot.)<sup>1</sup> with this tribunal seeking the following: (1) clarification from the tribunal regarding the scope of NCIA's ability to cross-examine other witnesses during the hearing; (2) leave to file a request to present an additional witness at the hearing on the merits; (3) authorization to utilize video teleconference (VTC) technology during their presentation; and (4) in-person access by several of NCIA's executives to the hearing on the merits.<sup>2</sup> Mot. at 1. The Motion was timely filed in conformity with directives set forth in a prehearing ruling issued on December 4, 2024 (the Prehearing Ruling or PHR).

On November 19, 2024, this tribunal issued an order (Standing Order or Stand. Ord.) regarding the Designated Participants' standing to participate in these hearing proceedings in accordance with the Administrative Procedure Act (APA). The Standing Order explained that based on NCIA's response to the preliminary order issued on October 31, 2024 (Preliminary Order Response or POR), NCIA established that it was "adversely affected or aggrieved" by the Notice of Proposed Rulemaking (NPRM), but (consistent with its litigation position) only in a narrow sense. Stand. Ord. at 38-40. On the last full page of its Preliminary Order Response, NCIA gave what could be fairly characterized as a single-paragraph glancing blow to the rescheduling aspect of the NPRM. POR at 6. The principal, detailed, thoughtful focus of its

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<sup>1</sup> NCIA's request to file out of time is **GRANTED** for the reasons proffered in the Motion.

<sup>2</sup> The Motion also seeks additional addressees on the distribution list. Mot. at 5-6. NCIA is currently represented by counsel, and that portion of its Motion is **DENIED**. Orders issued by the tribunal may be accessed by the public via <https://www.dea.gov/administrative-law-judge-orders>.

petition for standing as set forth in its POR centered on that aspect of the NPRM wherein the Department of Justice seeks to alter the definition of tetrahydrocannabinol (THC). *Id.* Specifically, NCIA argued, in pertinent part, that it “is an ‘interested person’ under DEA regulations because its member businesses would be ‘adversely affected or aggrieved’ by the DEA’s revisions to the definition of THC incorporated into its [p]roposed [r]ule.” *Id.* at 2. NCIA convincingly (and successfully) argued that the proposed re-definition of THC “would make one or more of [its] members’ businesses federally illegal for the first time.” *Id.* at 3. In support of the rescheduling, in its prehearing statement, NCIA noticed an affidavit and *curriculum vitae* of Dr. Jennifer Mitchell, Ph.D.,<sup>3</sup> an individual it now seeks to call as a witness. Mot. at 3.

While it is beyond argument that Dr. Mitchell’s qualifications are facially impressive, NCIA has provided no reason to consider the admission of her live testimony at this juncture in the proceedings. The decision to delay notice may have been motivated by a (prudent) tactical decision to put forth the strongest possible position regarding standing (or not). However, NCIA’s election to embark upon this strategy was/is not taken without the risk of being the victim of its own success. Accordingly, that aspect of NCIA’s Motion that seeks to present the in-person testimony of Dr. Mitchell is **DENIED**.

On the positive side of its tactical approach, NCIA’s Motion raises a valid point regarding cross-examination. The Administrative Procedure Act endows litigants with, *inter alia*, the right “to conduct such cross-examination as may be required for a full and true disclosure of the facts.” 5 U.S.C. § 556. Accordingly, NCIA’s petition to cross-examine the Government’s witnesses is **GRANTED IN PART**, to the extent that it may conduct cross-examination related to the narrow issue of the proposed THC definitional change incorporated into the NPRM and to the extent it is raised by any Government witness during direct examination.

The Prehearing Ruling explained that witnesses would be afforded the opportunity to provide their testimony via video teleconference technology should they file an appropriate request no later than December 13, 2024. PHR at 2. NCIA’s request to offer witness testimony via VTC was timely made, and (consistent with the terms of this order) is herein **GRANTED**.

The Motion also requests that NCIA’s three counsel be permitted to attend the hearings

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<sup>3</sup> Preh’g Stmtnt at 7.

when available to do so. Mot. at 6. That request is **GRANTED**. Additionally, the Motion seeks leave for three of NCIA's executives (the NCIA Leadership) to attend the hearing on January 21, 2025 and January 29, 2025, and one executive a day, every day thereafter for the duration of the hearing. *Id.* at 5-6. In general, due to the number of participants, as well as the Agency's decision to livestream all proceedings, courtroom attendance has been (and will be) limited to representatives and scheduled live witnesses. To the extent courtroom capacity allows, any Designated Participant presenting its case may be afforded some modest level of attendance flexibility on its scheduled presentation date. Additionally, it is expected that there may be some fluctuation in attendance over the course of the hearing. Inasmuch as January 21, 2025 will be the commencement of the Government's case on the merits, open courtroom seats may be a commodity in short supply, and no promises can be made to accommodate additional attendees. It does however seem reasonable to allow NCIA Leadership to appear on the date scheduled for its presentation. Accordingly, NCIA's attendance request is **GRANTED IN PART**, to the extent that the NCIA Leadership may attend on the organization's presentation day.

Dated: December 17, 2024

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JOHN J. MULROONEY, II  
Chief Administrative Law Judge

### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned, on December 17, 2024, caused a copy of the foregoing to be delivered to the following recipients: (1) Julie L. Hamilton, Esq., Counsel for the Government, via email at julie.l.hamilton@dea.gov; James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory, via email at AKline@perkinscoie.com; and Abdul

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Quinn Fox  
Staff Assistant to the Chief Judge  
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