

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. 26-96**

PRELIMINARY ORDER

I am the Administrative Law Judge (ALJ) designated by the Administrator of the Drug Enforcement Administration (DEA or Agency) to hear this case. *See* 21 C.F.R. 1316.52. It is hereby **ORDERED** that all proceedings will be governed by the applicable provisions of the Administrative Procedures Act (APA), 5 U.S.C. §§ 553 and 556, by 21 C.F.R. §§ 1308.41-1308.45, and by 21 C.F.R. §§ 1316.41-1316.68.¹

I. Procedural History

On May 21, 2024, the United States Department of Justice (DOJ) through the DEA issued a notice of proposed rulemaking (NPRM) proposing to transfer marijuana from Schedule I of the Controlled Substances Act (CSA) to Schedule III. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 89 Fed. Reg. 44,597, 44,597 (2024). In an order dated August 29, 2024, then-DEA Administrator Anne Milgram determined that in-person hearing proceedings were appropriate and fixed a December 2, 2024 commencement date at the DEA Hearing Facility. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 89 Fed. Reg. 70,148, 70,148-49 (2024).

On October 31, 2024, then-Chief ALJ John J. Mulrooney, II, issued a Preliminary Order, docketing that matter as Hearing Docket No. 24-44 and setting out procedures for submitting proposed exhibits and preliminary submissions. *In re Schedules of Controlled Substances: Proposed Rescheduling of Marijuana*, Hearing No. 24-44, “Preliminary Order” (2024). Following a series of orders, briefs, and a prehearing conference, then-Chief ALJ Mulrooney granted a

¹ Additional helpful information regarding DEA administrative proceedings may be found at the OALJ website, <https://www.dea.gov/administrative-law-judges>.

request for interlocutory appeal, which stayed that matter pending review by the DEA Administrator. *In re Schedules of Controlled Substances: Proposed Rescheduling of Marijuana*, Hearing No. 24-44, “Order Regarding Village Farms International, Hemp for Victory, and OCO, *et al.*’s Motion to Reconsider” (2025).

Subsequently, on April 22, 2026, Acting Attorney General (AG) Todd Blanche issued a withdrawal of notice of hearing, which terminated Hearing No. 24-44. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 91 Fed. Reg. 22,778 (2026). Simultaneously, Acting AG Blanche issued a new notice of hearing (Notice of Hearing or NoH), directing DEA to begin new hearing proceedings relating to the NPRM. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 91 Fed. Reg. 22,777 (2026).

II. Issue

The Notice of Hearing stated the issue in this matter is “whether marijuana should be transferred to schedule III of the list of controlled substances.” 91 Fed. Reg. 22,778. For these purposes, the term “marijuana” is defined in 21 U.S.C. § 802(16)(A). *See also* 21 U.S.C. § 802(16)(B) (defining what the term “marijuana” does not include). Importantly, the scope of this hearing is not to discuss the rescheduling of medical products approved by the Food and Drug Administration that contain marijuana and of medical marijuana products already regulated by the states, which has already occurred. *See* 91 Fed. Reg. 22,714 (2026). Accordingly, no evidence or testimony will be received on that matter. The narrow issue in this matter is whether the remainder of marijuana, as defined in the CSA, should be transferred from its current place on schedule I of the list of controlled substances to schedule III. *See* 21 C.F.R. § 1308.11(d)(23) (current location of marijuana on the schedule I list of controlled substances).

The Government, as the proponent of the proposed rule, has the burden of proof. 5 U.S.C. § 556(d); 21 C.F.R. § 1316.56.

III. Designated Parties

The Notice of Hearing acknowledged the regulatory requirement that under the DEA regulations, an “interested person” is “any person adversely affected or aggrieved by any rule or proposed rule issuable under 21 U.S.C. § 811.” 91 Fed. Reg. 22,778 (internal quotation marks

omitted). The NoH instructed any person seeking to participate in the rescheduling hearing to submit a filing

- (1) Stat[ing] with particularity with interest of the person in the proceeding;
- (2) Stat[ing] with particularity the objections or issues concerning which the person desires to be heard; and
- (3) Stat[ing] briefly the position of the person regarding the objections or issues.

to the Administrator of the DEA. *Id.* The Administrator has since conducted an interested persons analysis and named seven qualifying interested persons who will participate in the hearing (hereinafter referred to as the Interested Parties). The list of Interested Parties as certified to this tribunal from the Administrator is as follows:

- Interested Party 1: National Drug & Alcohol Screening Association
- Interested Party 2: Tennessee Bureau of Investigation
- Interested Party 3: Smart Approaches to Marijuana
- Interested Party 4: The States of Nebraska, Idaho, Indiana, and Louisiana
- Interested Party 5: DUID Victim Voices
- Interested Party 6: Kenneth Finn, M.D.
- Interested Party 7: Phillip A. Drum, PharmD

The Interested Parties, in addition to the Government, will be hereinafter referred to as the Designated Parties. The Government is herein **ORDERED** to file its formal notice(s) of appearance by no later than **June 22, 2026**.

IV. Method of Filing with Tribunal

For this matter, all filings will be made electronically unless otherwise noted. All electronic filings must be included as PDF attachments to emails. Electronic filings must be made via email to a unique DEA Judicial Mailbox (**ECF-NPRM@dea.gov**). All electronic filings made to the tribunal must indicate in the email that it was simultaneously served on the opposing party (*e.g.*, including the opposing party's email address in the cc: line). No substantive matter communicated through the body of a forwarding email will be considered by the tribunal. Unless otherwise directed by this tribunal, all electronic filings must be received by the Hearing Clerk in the unique DEA Judicial Mailbox by no later than **11:59 P.M. Eastern Time (ET)** on the due date. *See* 21 C.F.R. § 1316.45 (“Documents shall be dated and deemed filed upon receipt by the Hearing Clerk.”)

Interested Parties must ensure that all documents filed with the unique DEA Judicial Mailbox are simultaneously served on the general Government Mailbox at (dea.registration.litigation@dea.gov) and on all parties of record.

Any requests to modify email addresses of a party or counsel must be made on notice to this tribunal and on all parties of record.

V. The Hearing

a. Date and Location

The Notice of Hearing directed that “[t]he hearing will commence on June 29, 2026, at 9 a.m. ET at the DEA Hearing Facility, 700 Army Navy Drive, Arlington, VA 22202. The hearing will conclude not later than July 15, 2026.” 91 Fed. Reg. 22,777-78. Further, the NoH provided that “[t]he hearing may be moved to a different place and may be continued from day to day or recessed to a later date without notice other than announcement thereof by the [ALJ] at the hearing.” *Id.* at 22,778.

The Notice of Hearing provided public notice of the hearing in this matter to the public in accordance with 21 C.F.R. § 1316.53 on April 22, 2026. In accordance with the Notice of Hearing, the hearing on the merits in this matter will begin on **June 29, 2026, at 9:00 A.M. ET** and will proceed through July 15, 2026, ending daily at 5:00 P.M. ET, in the **North Courtroom** of the DEA Hearing Facility, 700 Army Navy Drive, Arlington, VA 22202. Having had adequate notice of the hearing date and location, it is **ORDERED** that all representatives of the Designated Parties are required to appear in person.² Witnesses may appear either in person or by video teleconference (VTC).

b. Procedures Governing the Hearing

Given the hearing timeframe enumerated in the Notice of Hearing, the hearing will be conducted on a strict schedule, with due consideration given to the Designated Parties, and will

² All representatives and witnesses must plan to arrive sufficiently early to allow security processing through the DEA Visitor Center, which is collocated with the DEA Hearing Facility at 700 Army Navy Drive, Arlington, Virginia, 22202. Screening at the DEA Visitor Center will occur daily. All those entering through the DEA Visitor Center must present a compliant REAL ID at the time of screening each day. For more information on REAL ID requirements, please see <https://museum.dea.gov/visit>.

only be rescheduled for good cause. Pursuant to 21 C.F.R. § 1316.52, it is hereby **ORDERED** that the following procedures shall control for the hearing:

- Each Designated Party will have an assigned day on which they will present their case-in-chief.
- Each Designated Party will be allotted fifteen (15) minutes for their opening statement. Opening statements will be given at the start of a Designated Party's case-in-chief.
- Each Designated Party may present up to two (2) witnesses. Each witness may testify on direct examination for no more than two (2) hours. Should a Designated Party elect to present only one witness, that witness may testify on direct examination for up to four (4) hours.
- Each Interested Party may cross-examine (each of) the Government's witness(es) for no more than one (1) hour. The Government may cross-examine each of the Interested Parties' witnesses for no more than one (1) hour. At the conclusion of all of cross examination of a particular witness, the party calling the witness may redirect for no more than one (1) hour. Interested Parties will not be permitted to cross examine one another's witnesses.
- Designated Parties will not be permitted to *voir dire* proposed expert witnesses prior to testimony. All expert determinations will be made following the hearing and objections to expert qualifications should be made in writing.
- Witnesses will not be permitted to be in the courtroom before or after their testimony.
- Objections to evidence or testimony will be heard during the hearing and should be made orally. When objecting, counsel will cite the rule for their objection and the reason for their objection, the proponent of the evidence or testimony may briefly respond, I will rule on the objection and the hearing will continue without further discussion. *See* 21 C.F.R. § 1316.60.
- Rebuttal testimony, if any, will be limited. The undersigned will make determinations regarding rebuttal testimony during the hearing as they arise.
- Time will not be allotted for closing arguments. Each party will be given an opportunity to file post-hearing briefs in accordance with 21 C.F.R. § 1316.64. More instructions on this will be provided at the conclusion of the hearing.

- Unless otherwise noted, Designated Parties may not surrender time in one area in exchange for more time in another area (*e.g.*, a party may not forgo redirect in exchange for more time in its direct).
- Only one representative from a Designated Party may address the tribunal at a time.

c. Attendance at the Hearing

Space and seating in the courtroom are limited. To ensure that courtroom space is maximized efficiently, it is **ORDERED** that the following attendance policies shall control:

- The Government is permitted to bring no more than four (4) total in-person attendees³ (not including witness(es)) at a time.
- Each Interested Party is permitted to bring no more than four (4) in-person attendees (not including their witness(es)) at a time. Once these four in-person attendees are established, they may not be changed; however, each established attendee need not be present for every day of the hearing.
- No later than **June 23, 2026**, each Designated Party shall file a short statement providing the following:
 - The list of names of their in-person attendees (including their witness(es), whether or not they will attend in person), as those names are listed on their REAL ID compliant or Federal Government-issued forms of identification; and
 - All of the times during the hearing window that the attendees and their witness(es) will be available to present their case.
- Using the information provided by the Designated Parties:
 - No later than June 24, 2026, this tribunal will issue a detailed hearing schedule outlining the times in which each party will present its case via a subsequent order. While availability will be considered, preferred times cannot be guaranteed. Failure to timely submit a statement of availability may result in that Designated Party receiving reduced consideration for their availability.
 - No later than June 26, 2026, the Hearing Clerk will electronically issue letters of admittance to each Designated Party bearing the full names of the in-person

³ “Attendees,” as it is used in this section, means any attorney, representative, assistant, or other person (not including witnesses).

attendees and their witness(es). These letters of admittance will grant the Designated Parties and their witness(es) expedited access to the DEA Visitor Center, and must be presented to security at the DEA Visitor Center, along with the person's REAL ID, on each day of attendance at the hearing. The name on the letters of admittance must match the name on the REAL ID presented to security in order to gain admittance.

- Because each Designated Party will have an assigned day on which they will present and because the Designated Parties will have the full detailed hearing schedule prior to the start of the hearing, the Designated Parties will not be required to attend every day of the hearing. Notwithstanding, the Designated Parties are welcome to attend each day of the hearing.
- For security purposes, no later than **12:00 P.M. ET on June 25, 2026**, the Designated Parties shall file an expected attendance schedule identifying the following:
 - The hearing dates on which that Designated Party expects to attend the hearing (attendance will be assumed for the date on which that Designated Party has been assigned to present); and
 - Whether that Designated Party's witness(es) will attend the hearing in person or by VTC.
- Based on the parties' submissions, DEA security shall maintain the list of expected attendance dates for each Designated Party. In addition to displaying a valid letter of admittance and a REAL ID compliant form of identification upon entry, Designated Parties must also be on the list of expected attendance in order to be admitted for that day of the hearing. Failure to provide an expected attendance schedule may result in the denial of entry.

d. Public Hearing Determination and Courtroom Decorum

National public interest in this issue predicates towards a policy of transparency, which must be weighed against the safety of those involved. Accordingly, it is **ORDERED** that:

- The hearing will be open to the public and members of the media in a limited capacity. Courtroom space will be reserved for court staff, Designated Parties, security, and a limited number of media members. All members of the public who wish to attend must

enter through the DEA Visitor Center, subject to the same requirements listed in footnote 2. Access will be on a first-come basis dependent on availability of seating for that day. No overflow seating will be provided.

- The hearing will not be televised, livestreamed, or broadcasted in any way. Accordingly, with the exception of the function of the court reporter, permission is explicitly withheld from any attendee to use any video or audio recording device at any time while inside the courtroom or the adjoining lobby area.

It is further **ORDERED** that the hearing will be conducted with strict adherence to courtroom decorum. Excluding water, no food or drinks are permitted in the courtroom. While laptops are permitted for use by counsel of record and *pro se* Interested Parties, they must be muted. Unless otherwise directed, no cell phone use by anyone will be permitted in the courtroom during the hearing. Should a person need to use their cell phone, they should quietly exit the courtroom or request a brief recess to do so. Failure to adhere to decorum rules may result in that person being removed from the courtroom and, if a Designated Party, may result in the waiver of their opportunity to present. *See* 21 C.F.R. § 1316.51.

VI. Prehearing Statements

It is hereby **ORDERED** that no later than **June 24, 2026**, the Designated Parties shall file a brief prehearing statement, not to exceed twenty-five (25) pages⁴, identifying the following:

- The name, address, phone number, and general nature/principal mission of that Designated Party's practice, profession, or business;
- The name and current address of that Designated Party's witness(es), and whether that Designated Party will require a subpoena for their witness(es)⁵;

⁴ All filed documents, excluding proposed exhibits, must be double-spaced, utilizing 12-point characters and 1-inch margins.

⁵ If a subpoena is required, that Designated Party must simultaneously submit a subpoena form. The subpoena template can be found on the Office of Administrative Law Judges' website at <https://www.dea.gov/administrative-law-judges>. To the extent that a Designated Party seeks to present witness testimony through VTC, the following language should be utilized to compel testimony by virtual attendance in a subpoena: "At the Drug Enforcement Administration Hearing Facility, located at 700 Army Navy Drive, 2nd Floor, Arlington, Virginia, 22202, by **VIRTUAL APPEARANCE** through a link to be furnished by the requesting party n/l/t one (1) day prior to the date and time of your scheduled appearance and testimony. The testimony will be recorded verbatim through a reporting company under contract with the United States Government."

- A brief summary of what that Designated Party’s witness(es) will testify;
- A list noticing all documentary evidence, including affidavits and other proposed exhibits, intended to be offered into evidence, specifying the number of pages in each. Each proposed exhibit is to be numbered (“For Identification”) with the designation to be used at the hearing; and

Failure to file a timely prehearing statement may result in the waiver of the right to present certain testimony or evidence.

VII. Submission and Exchange of Proposed Exhibits

It is **ORDERED** that no later than **June 25, 2026**, the Designated Parties shall exchange their proposed exhibits with one another and shall file their noticed and proposed exhibits with this tribunal in the following manner:

- Electronically upload all proposed exhibits via the Department of Justice Enterprise File Sharing (JEFS) system, a secure commercial platform maintained by Box.com.⁶ Each Designated Party will receive an email invitation to join JEFS; a party seeking to offer evidentiary exhibits must obtain a (free-of-charge) Box.com/JEFS account in order to upload all proposed exhibits there.

It is further **ORDERED** that on the day that a Designated Party is assigned to present its case-in-chief, that Designated Party shall, prior to the beginning of the hearing for that day, hand deliver to the Hearing Clerk two sets of identical hard copies of all of its proposed exhibits.^{7, 8}

The submitted proposed exhibits (both hard copy and electronic) must conform to the following specifications:

- Proposed exhibits must be pre-marked for identification with a docket number (*e.g.*, Dkt. No. 26-96) and an exhibit number (*e.g.*, Gov’t Ex. 1 (ID)).

⁶ Audio/video recordings can be uploaded through JEFS.

⁷ If a Designated Party seeks to submit an audio/video recording, it must also be provided in the form of compact disc (CD). The tribunal cannot accept flash drives. No other types of exhibits may be included on a CD, unless otherwise directed by this tribunal.

⁸ The Notice of Hearing directed that “[c]omments on or objections to the proposed rule submitted under 21 CFR 1308.43(g) will be offered as evidence at the hearing.” 91 Fed. Reg. 22,778. Due to the voluminous comments in this matter, all public comments and objections submitted during the NPRM’s notice and comment period may be submitted in the form of a CD as the hard copy submission to this tribunal.

- The pages of each proposed exhibit must be numbered. In addition, the first page of each proposed exhibit must state the total number of pages contained therein.
- The electronic version of submitted evidentiary exhibits and the hard copy binder must also include a Table of Contents listing the number of each proposed exhibit, a brief description of each proposed exhibit, and the number of pages in the proposed exhibit.

Proposed exhibits submitted by hard copy must conform to the following additional specifications:

- Each binder must contain a cover page identifying the matter, the party submitting the exhibits, and which proposed exhibits are contained in that binder. Each binder must also contain a similar identifier on the spine (*e.g.*, a sticker or paper inserted in the spine sleeve).
- One set of hard copy exhibits must be labeled as “Judge’s Copy” and the other set must be labeled as “Record Copy.” These labels must be reflected on the cover page of the binder and on the spine of the binder.
- All proposed hard copy documentary exhibits must be supplied in a single-sided format and in an appropriately-sized three-ring binder.
- Both sets of hard copies must be identical (*e.g.*, if Judge’s Copy, Binder 1 contains Proposed Exhibits 1-9, then Record Copy, Binder 1 must contain the same proposed exhibits).

Failure to conform proposed exhibits to these specifications, absent a showing of good cause and leave from the tribunal, may result in the exhibits not being accepted.

Each Designated Party should ensure that it has its own copy of all proposed exhibits for its own use during the hearing. Further, the Designated Parties must ensure that prior to any approved VTC testimony, its witness has been furnished with a useable copy of any and all proposed exhibits (appropriately marked for identification) that may pertain to that witness’s testimony. Additionally, each VTC witness must be supplied with some capacity to be shown rebuttal or cross-examination exhibits as may become necessary during the hearing.

VIII. Admissibility of Evidence

Concerning the admission of evidence, this tribunal is governed by 21 C.F.R. §§ 1316.57-.61. Only evidence that is “competent, relevant, material and not unduly repetitious” will be

admitted. 21 C.F.R. § 1316.59(a). The Designated Parties are encouraged to submit affidavits as they see fit due to the limited testimony that can be received in this matter. *See* 21 C.F.R. §§ 1316.57 and 1316.58(b).

The Federal Rules of Evidence do not strictly apply to these proceedings, but the undersigned may use them as a guide where they do not conflict with the operative regulations. *See Trinity Pharmacy II*, 83 Fed. Reg. 7,304, 7,324 n.51 (2018); *Mireille Lalanne, M.D.*, 78 Fed. Reg. 47,750, 47,752 (2013).

Dated: June 18, 2026

DEREK C. JULIUS
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on June 18, 2026, caused a copy of the foregoing PRELIMINARY ORDER to be delivered to the following parties:

- (1) The Government, via email to
 - i. The DEA Government Mailbox at dea.registration.litigation@dea.gov;
- (2) National Drug & Alcohol Screening Association, via email to
 - i. M. Jo McGuire at jomcguire@ndasa.com;
 - ii. David Evans, Esq., at thinkon908@aol.com;
- (3) Tennessee Bureau of Investigation, via email to
 - i. Jacob Durst, Esq., at jacob.durst@ag.tn.gov;
- (4) Smart Approaches to Marijuana, via email to
 - i. Patrick F. Philbin, Esq., at pphilbin@torridonlaw.com;
 - ii. John M. McNichols, Esq., at jmcnichols@torridonlaw.com;
 - iii. Chase T. Harrington, Esq., at charrington@torridonlaw.com;
- (5) The States of Nebraska, Idaho, Indiana, and Louisiana, via email to
 - i. Zachary Pohlman, Esq., at zachary.pohlman@nebraska.gov;
 - ii. Michael Zarian, Esq., at Michael.Zarian@ag.idaho.gov;
 - iii. Blake Lanning, Esq., at Blake.Lanning@atg.in.gov;
 - iv. Zachary Faircloth, Esq., at FairclothZ@ag.louisiana.gov;
- (6) DUID Victim Voices, via email to
 - i. Ed Wood, at edwood27@icloud.com;
- (7) Kenneth Finn, M.D., *pro se*, via email at kfinn0731@gmail.com; and
- (8) Phillip A. Drum, PharmD, *pro se*, via email at phillipdrum@comcast.net

Grayson E. Phillips, Esq.
Attorney Advisor
Office of Administrative Law Judges