

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>.

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.")

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.

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

- 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.

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

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DEREK C. JULIUS
Chief Administrative Law Judge