



May 15, 2024

The Honorable Merrick Garland
Office of the Attorney General,
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

The Honorable Xavier Becerra
U.S. Department of Health and
Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Pete Buttigieg
U.S. Department of
Transportation
1200 New Jersey Ave S.E.
Washington, D.C. 20590

RE: Impact of Reported Marijuana Rescheduling on Public Safety and Safety-Sensitive Industries

Dear Attorney General Garland, Secretary Becerra, and Secretary Buttigieg:

On behalf of the American Trucking Associations (ATA), I write to bring to your attention significant concerns about the reported forthcoming regulatory action by the U.S. Drug Enforcement Administration (DEA) to reschedule marijuana, or cannabis, from a Schedule I to a Schedule III drug under the Controlled Substances Act (CSA). Absent an explicit allowance for continued employer marijuana testing of safety-sensitive workers, this change may have considerable negative consequences for highway safety and safety-sensitive industries.

While recent media reports surrounding DEA's potential reclassification create many uncertainties, ATA is alarmed by the possibility that certain industries could be prohibited from screening for drug use by workers performing safety-sensitive roles. If the trucking and broader transportation industries' ability to conduct drug testing is restricted, the risk of impaired drivers operating on our nation's roadways undetected would increase, endangering all who share the road. As the largest national trade association representing the interests of the trucking industry with more than 37,000 members, ATA remains focused on maintaining workplace and roadway safety through effective countermeasures like employer drug testing.

Recent news reports indicate DEA is seeking to reschedule marijuana from its current Schedule I to a proposed Schedule III status as set out by the CSA – effectively regrouping marijuana from the drug class considered having the highest “potential for abuse and the potential to create severe psychological and/or physical dependence,” alongside drugs like heroin and LSD, to a category of drugs considered “less dangerous” with low to moderate potential for abuse, such as ketamine or codeine. Although this purported change would not outright legalize marijuana at the federal level, it would largely deregulate marijuana for medical use, create ambiguity and confusion around state-level recreational marijuana legalization and use, and result in serious safety impacts to safety-sensitive industries.

ATA recognizes that the implications of the policy change DEA is reportedly considering cannot be fully understood in the absence of a formal rule, and at this time, judgments on what and how this may occur remain speculative. However, rescheduling marijuana could significantly affect the Department of Transportation's (DOT) responsibility and ability to ensure the safety of the national transportation network. As outlined in 49 CFR Part 40, DOT is required to conduct workplace drug and alcohol testing for federally regulated transportation industries.

DEA’s potential regulatory action has serious ramifications because it could altogether eliminate employers’ ability to conduct and report marijuana testing of DOT-designated “safety-sensitive” workers – including commercial truck and bus drivers, pilots, train operators, and other transportation workers – that are currently subject to DOT drug and alcohol testing regulations. Current DOT drug and alcohol testing requirements are governed – and therefore limited in their testing authority – by the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs, which allow regulated employers to test only for those drugs listed in Schedule I or II of the CSA.¹² Therefore, without additional action, deregulation or rescheduling of marijuana would have the likely consequence of precluding testing for all professional drivers and transportation workers as part of the DOT testing program.

ATA believes it is critical to the safety of our nation’s traveling public and all transportation industry members that any change in the law must be accompanied by an explicit allowance for the testing of marijuana use by DOT-regulated safety-sensitive groups. As of March 2024, marijuana represented around 60 percent of all positive employer drug tests of regulated CMV drivers reported to the Federal Motor Carrier Safety Administration’s (FMCSA) Drug and Alcohol Clearinghouse.³ While ATA acknowledges the prevalence and increasing societal acceptance of marijuana for medical and recreational purposes, absent an impairment standard, testing for marijuana use by safety-sensitive employees must remain in place. Just last year, the National Transportation Safety Board (NTSB) released research showing that marijuana and alcohol remain the most-detected drugs in impaired driving crashes resulting in serious or fatal injuries.⁴ A separate study published in the National Journal of Medicine revealed that state-level marijuana legalization “was associated with a 6.5% increase in injury crash rates and a 2.3% increase in fatal crash rates.”⁵

Last summer, a truck driver in Indiana fatally collided with a series of vehicles, killing seven; the driver’s toxicology report ultimately showed marijuana in his system at the time of the crash.⁶ And just this year, in Buda, Texas, a cement truck driver who admitted to ingesting marijuana the night prior – among other drugs in the preceding hours – veered head-on into a school bus carrying pre-K children, killing one child as well as the driver of another vehicle and injuring nearly a dozen others.⁷ Rescheduling marijuana without an explicit drug testing carveout for safety-sensitive workers could ultimately lead to more devastating tragedies like these and add to the ever-increasing death toll on our nation’s roadways.

Further, an accurate and reliable standard and test for determining *impairment* – rather than intoxication – from marijuana consumption (like the blood alcohol content measure used to detect alcohol impairment) does not yet exist. While perceived intoxication may only last a few hours, cognitive impairment from marijuana – impacting core motor skills, coordination, perception, and peripheral vision that are critical to safe, focused driving – has been found to last up to 24 hours in some instances.⁸ Thus, in the absence of

¹ Under current law, DOT must “incorporate the Department of Health and Human Services scientific and technical guidelines” (i.e., the Mandatory Guidelines. 49 U.S.C. § 31306(c)(2)) “for laboratories and testing procedures for controlled substances.” See also Mandatory Guidelines for Federal Workplace Drug Testing Programs, 88 Fed. Reg. 70,768, 70,780 (Oct. 12, 2023), which limits federally mandated workplace drug testing authority to Schedule I and Schedule II drugs.

² 88 Fed. Reg. 70,768 (Oct. 12, 2023).

³ FMCSA Drug and Alcohol Clearinghouse February 2024 Monthly Report, U.S. Department of Transportation. https://clearinghouse.fmcsa.dot.gov/content/resources/Clearinghouse_MonthlyReport_Feb2024.pdf.

⁴ National Transportation Safety Board, “Alcohol, other drug, and multiple drug use among drivers.” <https://www.nts.gov/safety/safety-studies/Documents/SRR2202.pdf>.

⁵ Charles M. Farmer, Samuel S. Monfort, and Amber N. Woods, “Changes in Traffic Crash Rates after Legalization of Marijuana: Results by Crash Severity,” *Journal of Studies on Alcohol and Drugs* 83, no. 4 (July 2022): 494–501, <https://doi.org/10.15288/jsad.2022.83.494>.

⁶ “Truck Driver Sentenced in Fatal Indiana Toll Road Crash for Driving While on Marijuana,” WVPE, September 5, 2023, <https://www.wvpe.org/wvpe-news/2023-09-05/truck-driver-sentenced-in-fatal-indiana-toll-road-crash-for-driving-while-on-marijuana>.

⁷ “Texas school bus crash: Concrete truck driver admits to using drugs before fatal crash, report says,” Fox 4 KDFW, March 29, 2024, <https://www.fox4news.com/news/hays-cisd-bus-crash-jerry-hernandez-cocaine-marijuana-use>.

⁸ Lauren Eadie et al., “Duration of Neurocognitive Impairment with Medical Cannabis Use: A Scoping Review,” *Frontiers in Psychiatry* 12 (March 2021), <https://doi.org/10.3389/fpsy.2021.638962>.

an impairment standard, it remains critically important that employers retain the ability to test for marijuana use in safety-sensitive contexts like trucking.

While we recognize the speculative nature of our concerns until the DEA releases a formal rule, ATA believes that it is vitally important that your agencies ensure an ongoing allowance for marijuana testing of safety-sensitive workers to avoid deterioration of highway safety. If this rulemaking is permitted to move forward without appropriate regulatory review, oversight, and deliberation, ATA is concerned that it will severely curtail the ability of motor carriers and other employers of safety-sensitive positions to maintain a safe working environment, threatening the safety of all road users.

Thank you for your consideration of an issue vital to safety and for continuing to take steps toward reducing fatalities on our nation's roadways. ATA welcomes the opportunity to answer any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Dan Horvath". The signature is written in a cursive, slightly slanted style.

Dan Horvath
Senior Vice President, Regulatory Affairs and Safety Policy
American Trucking Associations