



July 22, 2024

Hon. Anne Milgram  
Administrator  
Drug Enforcement Administration  
US Department of Justice  
600 Army Navy Dr.  
Arlington, VA 22202

**RE: Schedules of Controlled Substances: Rescheduling of Marijuana (Docket No. DEA-2024-0059).**

Dear Administrator Milgram:

On behalf of the American Road & Transportation Builders Association (ARTBA) and our more than 8,000 members in the transportation construction industry, we respectfully offer the following comments regarding the Drug Enforcement Administration's (DEA) proposed rule to reclassify marijuana from a Schedule I to Schedule III controlled substance.<sup>1</sup> ARTBA respectfully requests that DEA fully and carefully consider the impacts to workplace safety prior to finalizing this rule. We ask that DEA consult with appropriate federal agency partners to ensure that employers need not compromise jobsite safety standards to comply with DEA policies.

### **Background**

ARTBA's membership consists of a diverse array of stakeholders within the transportation construction industry. This includes contractors, planning and design firms, consultants, state and local transportation agencies and officials, developers, research institutions, materials suppliers, and equipment manufacturers. Together, our members improve and repair essential infrastructure assets across all transportation modes.

Committed to safety, environmental stewardship, and the timely and cost-effective delivery of projects, our members are dedicated to maximizing the value of historic funding from the Infrastructure Investment and Jobs Act (IIJA). ARTBA's greatest priority is ensuring the safety and welfare of both roadway workers and users. A truly safe worksite demands workers free from any impairments that may impact their job performance.

DEA's proposal would reschedule marijuana from a Schedule I to a Schedule III controlled substance. According to the legal definition, Schedule III controlled substances have a low

---

<sup>1</sup> Schedules of Controlled Substances: Rescheduling of Marijuana, 89 Fed. Reg. 44597, (May 21, 2024).

potential for abuse, accepted medical uses, and abuse of the drug is unlikely to lead to a high psychological dependence.<sup>2</sup> Rescheduling marijuana will allow the drug to be obtained and consumed with a prescription from a licensed medical professional. Those states where marijuana is illegal can still enforce the laws within their state. It remains unclear what would happen if the drug were lawfully obtained in another state and brought across state lines.

### **Comments on the Proposed Rule**

Use of marijuana can adversely affect sensory awareness, memory, motor skills, balance, coordination and focus. At the same time, workers on transportation construction jobsites must maintain these competencies and sensitivities at all times. Any impairments can be hazardous – or even deadly – on a transportation construction site, where workers use heavy machinery and equipment and must keep close awareness of live traffic. Anyone under the influence of marijuana may endanger themselves, their fellow employees, and the public.

Moreover, accurately measuring the duration and extent of marijuana impairment is challenging. Unlike alcohol, marijuana's chemical residues remain in the body for an extended period, complicating drug testing protocols. Additionally, even with a legal prescription, variations in individual usage can affect the results. Different amounts can impact workers differently, making it difficult for an employer to determine impairment based on trace elements found in an employee's system. Therefore, ARTBA and its members have an acute interest in policies related to marijuana, as they can compromise job site safety and security.

Given these challenges, policies related to the use of marijuana must not compromise the safety of transportation construction work zones or workplaces to any extent... period. Regulations must preserve protections for employers who maintain drug-free policies for safety-sensitive positions. Additionally, as testing technologies or strategies improve, federal agencies should consider their relevance to jobsite safety protocols.

Furthermore, the complex landscape of conflicting public policies requires clear and consistent regulations. The Occupational Safety & Health Act's general duty clause<sup>3</sup> requires employers to protect employees from foreseeable harm, and US Department of Transportation (DOT) regulations<sup>4</sup> prohibit the use of marijuana by those in safety-sensitive positions. These regulations, along with federal and state drug-free workplace laws, must be harmonized with newer policies that offer varying degrees of legalization of marijuana, again without compromising safety principles.

We therefore request that, prior to finalizing this rule, the DEA work with its counterparts at the US Department of Labor, DOT, and any other relevant federal agencies, to ensure that

---

<sup>2</sup> 21 U.S.C. §812 (3).

<sup>3</sup> Occupational Safety and Health Act of 1970 § 5(a)(1), 29 U.S.C. § 654(a)(1) (2020).

<sup>4</sup> See e.g., 49 C.F.R. § 40.85 (2023).

marijuana remains on the list of drugs subject to mandatory testing for safety-sensitive employees.

Moreover, employers must be able to maintain zero-tolerance policies, prohibiting use of these substances by employees working on an active job site. Without adequate data, information and testing procedures, responsible employers with safety-sensitive work sites – such as ARTBA members – have no other choice. The risks are simply too great.

Additionally, any future development of testing technologies or impairment measurement strategies should be explored and integrated into workplace safety policies. A unified approach from federal agencies will provide employers with the necessary tools to maintain a safe work environment while navigating the evolving legal landscape surrounding marijuana use.

### **Conclusion**

ARTBA appreciates the opportunity to provide comments on the proposed rule to reschedule marijuana from a Schedule I to a Schedule III controlled substance. We strongly encourage you to consult the safety professionals within ARTBA's membership, which our association can facilitate, to better understand the ramifications for this proposed change in policy. Please do not hesitate to contact Prianka Sharma at [psharma@artba.org](mailto:psharma@artba.org) for any further insights from the transportation construction industry.

Sincerely,

/s/

Prianka P. Sharma  
Vice President and Counsel for Regulatory Affairs  
American Road & Transportation Builders Association

Attachment: 2021 ARTBA Position Paper

**AASHTO-AGC-ARTBA Joint Committee**  
**2021 ARTBA Position Paper**  
**“Keeping Transportation Construction Workers Safe**  
**While Complying with Employment Law”**

All participants in transportation improvement projects continue to share safety as their most critical value. Unfortunately, conflicting public policies can make this objective more challenging. One current example is legalization of marijuana in many states for medical and/or recreational purposes.

Currently, 36 states and DC have legalized marijuana for medical use. Since 2012, 18 states and DC have legalized it for recreational use, representing nearly half the U.S. population.

However, while recreational use is now legal in these states, it is well-documented the drug can affect a user’s performance on the jobsite. Potential effects can relate to impaired sensory perception, short-term memory, motor performance, balance, coordination, attentiveness, alertness, performance of complex tasks, and more. Any of these impairments pose dangers on a transportation construction jobsite to the worker, their colleagues and potentially roadway users. Moreover, testing as to the duration and degree of impairment by cannabis is considered less reliable, although it is understood that the drug’s chemical components can remain in the user’s system significantly longer than alcohol, which presents challenges when testing for drug use.

Project partners have a moral and legal imperative to protect those in work zones, starting with their own employees. Yet, in seeking to prevent potential dangers caused by cannabis-impaired workers, the contractor and their partners must wade into a tangle of policies and laws, many of which appear to conflict. They include (but are not limited to):

- The Occupational Safety & Health Act’s general duty clause, intended to protect all employees from foreseeable harm.
- U.S. Department of Transportation regulations and other federal rules prohibiting use of marijuana by those in safety-sensitive positions.
- Federal and state drug-free workplace laws.
- Employment and medical laws such as the Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA) and Health Insurance Portability and Accountability Act (HIPAA).
- State anti-discrimination laws relating to use of medical marijuana.

Given these potential inconsistencies, and likelihood that additional states will legalize marijuana for various purposes, the AASHTO-AGC-ARTBA Joint Committee supports the following principles:

- No policies or practices relating to the use of medical or recreational marijuana should compromise the safety of transportation construction work zones or workplaces to any extent.
- Federal, state or local legislation in this area should include protections for transportation construction employers who maintain drug-free policies for safety-sensitive positions.
- Should testing technologies or strategies become available to measure impairment from the use of cannabis, appropriate federal agencies should explore their relevance to workplace policies.