

Preliminary Note Regarding Treaty Considerations

As the Controlled Substances Act (CSA) recognizes, the United States is a party to the Single Convention on Narcotic Drugs, 1961 (referred to here as the Single Convention or the treaty). 21 U.S.C. 801(7). Parties to the Single Convention are obligated to maintain various control provisions related to the drugs that are covered by the treaty. Many of the provisions of the CSA were enacted by Congress for the specific purpose of ensuring U.S. compliance with the treaty. Among these is a scheduling provision, 21 U.S.C. 811(d)(1). Section 811(d)(1) provides that, where a drug is subject to control under the Single Convention, the DEA Administrator (by delegation from the Attorney General) must "issue an order controlling such drug under the schedule he deems most appropriate to carry out such [treaty] obligations, without regard to the findings required by [21 U.S.C. 811(a) or 812(b)] and without regard to the procedures prescribed by [21 U.S.C. 811(a) and (b)]."

Marijuana is a drug listed in the Single Convention. The Single Convention uses the term "cannabis" to refer to marijuana.¹ Thus, the DEA Administrator is obligated under section 811(d) to control marijuana in the schedule that he deems most appropriate to carry out the U.S. obligations under the Single Convention. It has been established in prior marijuana rescheduling proceedings that placement of marijuana in either schedule I or schedule II of the CSA is "necessary as well as sufficient to satisfy our international obligations" under the Single Convention. *NORML v. DEA*, 559 F.2d 735, 751 (D.C. Cir. 1977). As the United States Court of Appeals for the D.C. Circuit has stated, "several requirements imposed by the Single Convention would not be met if cannabis and cannabis resin were placed in CSA schedule III, IV, or V."² *Id.* Therefore, in accordance with section 811(d)(1), DEA must place marijuana in either schedule I or schedule II.

Because schedules I and II are the only possible schedules in which marijuana may be placed, for purposes of evaluating this scheduling petition, it is essential to understand the differences between the criteria for placement of a substance in schedule I and those for placement in schedule II. These criteria are set forth in 21 U.S.C. 812(b)(1) and (b)(2), respectively. As indicated therein, substances in both schedule I and schedule II share the characteristic of "a high potential for abuse." Where the distinction lies is that schedule I drugs have "no currently accepted medical use in treatment in the United States" and "a lack of

¹ Under the Single Convention, "'cannabis plant' means any plant of the genus *Cannabis*." Article 1(c). The Single Convention defines "cannabis" to include "the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated." Article 1(b). This definition of "cannabis" under the Single Convention is slightly less inclusive than the CSA definition of "marihuana," which includes all parts of the cannabis plant except for the mature stalks, sterilized seeds, oil from the seeds, and certain derivatives thereof. See 21 U.S.C. § 802(16). Cannabis and cannabis resin are included in the list of drugs in Schedule I and Schedule IV of the Single Convention. In contrast to the CSA, the drugs listed in Schedule IV of the Single Convention are also listed in Schedule I of the Single Convention and are subject to the same controls as Schedule I drugs as well as additional controls. Article 2, par. 5

² The Court further stated: "For example, [article 31 paragraph 4 of the Single Convention] requires import and export permits that would not be obtained if the substances were placed in CSA schedules III through V. In addition, the quota and [recordkeeping] requirements of Articles 19 through 21 of the Single Convention would be satisfied only by placing the substances in CSA schedule I or II." *Id.* n. 71 (internal citations omitted).

accepted safety for use of the drug . . . under medical supervision,” while schedule II drugs do have “a currently accepted medical use in treatment in the United States.”³

Accordingly, in view of section 811(d)(1), this scheduling petition turns on whether marijuana has a currently accepted medical use in treatment in the United States. If it does not, DEA must, pursuant to section 811(d), deny the petition and keep marijuana in schedule I.

As indicated, where section 811(d)(1) applies to a drug that is the subject of a rescheduling petition, the DEA Administrator must issue an order controlling the drug under the schedule he deems most appropriate to carry out United States obligations under the Single Convention, without regard to the findings required by sections 811(a) or 812(b) and without regard to the procedures prescribed by sections 811(a) and (b). Thus, since the only determinative issue in evaluating the present scheduling petition is whether marijuana has a currently accepted medical use in treatment in the United States, DEA need not consider the findings of sections 811(a) or 812(b) that have no bearing on that determination, and DEA likewise need not follow the procedures prescribed by sections 811(a) and (b) with respect to such irrelevant findings. Specifically, DEA need not evaluate the relative abuse potential of marijuana or the relative extent to which abuse of marijuana may lead to physical or psychological dependence.

As explained below, the medical and scientific evaluation and scheduling recommendation issued by the Secretary of Health and Human Services concludes that marijuana has no currently accepted medical use in treatment in the United States, and the DEA Administrator likewise so concludes. For the reasons just indicated, no further analysis beyond this consideration is required. Nonetheless, because of the widespread public interest in understanding all the facts relating to the harms associated with marijuana, DEA is publishing here the entire medical and scientific analysis and scheduling evaluation issued by the Secretary, as well as DEA's additional analysis.

³ As DEA has stated in evaluating prior marijuana rescheduling petitions, “Congress established only one schedule, schedule I, for drugs of abuse with ‘no currently accepted medical use in treatment in the United States’ and ‘lack of accepted safety for use . . . under medical supervision.’ 21 USC 812(b).” 76 FR 40552 (2011); 66 FR 20038 (2001).