



Report: Congress Needs To Reclassify Marijuana As A Schedule II Drug

By Jonah Bennett

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The next Congress doesn't have to completely legalize marijuana in order to solve a major marijuana problem. All it has to do, according to one researcher, is reclassify it.

The best idea for Congress and the states that legalized, says Jeffrey Miron, director of economic studies at the Cato Institute, is to reschedule marijuana as a Schedule II drug instead of a Schedule I drug.

According to the analysis from the Cato Institute, while legalization on the state level is a welcome move forward, the fact is that federal authorities can still (and often do) enforce federal law above state law, [and so a new report recommends](#) that Congress take steps to remedy marijuana's hazy legality.

"First, we chose Schedule II rather than Schedules III, IV, V, or nothing, simply because it's a better classification," Miron told The Daily Caller News Foundation. "The libertarian view is that marijuana prohibition should be repealed, but the recommendation here is purely motivated by political compromise. Drugs in Schedule II may be prescribed by physicians, and so state medical marijuana policies would all be legitimized."

Without any change in the law, the Drug Enforcement Administration may restart enforcement at the beginning of the next administration, since marijuana is illegal on the federal level and the status of the law as it applies to cross-border traffic between states is unclear.

One of the problems with Schedule II classification, highlighted by Tom Angell, chairman of the Marijuana Majority, is that marijuana businesses legal in their own states will be subject to [Section 280E](#) of the tax code, meaning that the same deductions any other business is able to take will not be available to marijuana businesses.

However, for Miron, the fact that a company operates with a Schedule II drug doesn't automatically mean that it can't make deductions. It depends on whether the uses under Schedule II are allowed by the federal government.

“As to Section 280E, the general view is that because marijuana is being prescribed very broadly, it would be hard for the federal government to enforce a narrow set of rules on what can be legally prescribed under Schedule II, should the reclassification process occur, but as long as the activities are fine, then Section 280E is not relevant. I think it’s an exaggeration,” Miron told TheDCNF.

In the meantime, the Obama administration has recently adopted a more explicit and positive tone regarding marijuana. In early February, U.S. Surgeon General Vivek Murthy [stated](#), “We have some preliminary data showing that for certain medical conditions and symptoms, that marijuana can be helpful. I think that we have to use that data to drive policymaking.”

Others agree, noting that it makes little sense for marijuana to remain under Schedule I when studies continue to show the medicinal value of marijuana.

“Reclassifying marijuana is absolutely warranted, just based on a plain reading of the criteria for Schedule I; cannabis clearly has medical value and doesn’t have a very high abuse potential,” Angell told TheDCNF.

Obama has also predicted in a [YouTube interview](#) that states will continue to legalize marijuana and the Department of Justice won’t get in the way, which led the White House to introduce subtle language in the recent budget allowing Washington, D.C. to use local funds to create a regulatory framework for decriminalized marijuana.

However, if the Obama administration moves on Murthy’s somewhat ambiguous recommendation, what a marijuana policy shift would look like or entail is unclear, although some have pointed out that the attorney general could kick off the reclassification process.

“Cato is too pessimistic in assuming that rescheduling is unlikely to happen administratively as opposed to requiring an act of Congress. If President Obama really believes what he has said about marijuana, he could and should direct his attorney general to begin the reclassification process immediately,” Angell stated.

“I am hopeful that as reformers notch more victories over the next two years, political pressure will mount sufficiently to warrant the administration’s attention and action.”

But Miron isn’t hopeful. Both the Obama administration and Congress appear resolute on the issue. “The attorney general has refused to start the process for over 6 years, just like every other attorney general,” Miron told TheDCNF. “I don’t have a detailed calculation of whether it’s politically likely or not, but they could have done it at any time, and they still may do it. But I don’t think it’s very likely that Congress will even do it, either.”