

# National Transportation Safety Board

Office of the Chair

Washington, DC 20594



July 19, 2024

US Drug Enforcement Administration  
Attn: DEA *Federal Register* Representative/DPW  
8701 Morrisette Drive  
Springfield, VA 22152

Re: Docket Number DEA-1362

Dear Sir or Madam:

The National Transportation Safety Board (NTSB) has reviewed the US Drug Enforcement Administration's (DEA) notice of proposed rulemaking titled "Schedules of Controlled Substances: Rescheduling of Marijuana," published at [89 Federal Register \(FR\) 44597](#) on May 21, 2024. The proposed rule would transfer marijuana from Schedule I of the Controlled Substances Act (CSA) to Schedule III of the CSA, consistent with the US Department of Health and Human Services' (HHS) August 2023 recommendation.<sup>1</sup>

Through our accident and incident investigations and transportation safety research, the NTSB has developed experience with marijuana use among noncommercial and commercial vehicle operators and other transportation safety-sensitive personnel. We recognize that marijuana is a prevalent drug with performance-impairing effects, that human performance is critical to the safe operation of transportation systems, and that most people interact with transportation systems multiple times per day. Consequently, we believe that interactions with transportation systems are among the most important ways in which the public may be exposed to risk from marijuana's effects. This perspective has informed our related recommendations to improve transportation safety. It is also why we believe transportation safety deserves prominence in the national conversation about marijuana rescheduling. Although the NTSB has not made any recommendation concerning marijuana's scheduling under the CSA, we appreciate this opportunity to share our perspective on marijuana-related transportation safety issues for the DEA to consider during this rulemaking process.

In commercial transportation operations, the NTSB is particularly concerned that the proposed rule would prevent testing for marijuana use by safety-sensitive employees who are subject either to the US Department of Transportation (DOT)

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<sup>1</sup> See HHS. [August 29, 2023, letter](#) from Rachel L. Levine, MD, Assistant Secretary for Health, HHS, to Anne Milgram, Administrator, DEA.

drug testing under Title 49 *Code of Federal Regulations (CFR)* Part 40, or (as is the case for many air traffic controllers) to federal workplace drug testing under HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine and Oral Fluid (HHS Mandatory Guidelines).<sup>2</sup> Currently, HHS Mandatory Guidelines authorize testing for Schedule I and II controlled substances only.<sup>3</sup> We urge the DEA to ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees.

We also have broader concerns related to the transportation safety effects of marijuana rescheduling that are not limited to drug testing in commercial operations. Marijuana rescheduling has a potential to affect everyone who interacts with transportation systems and infrastructure, from vehicle operators and passengers to pedestrians and bystanders. Anticipating and mitigating transportation safety risks of rescheduling marijuana will require diligent consideration of scientific evidence and expert insight. We urge the DEA to thoroughly examine issues of transportation safety when evaluating the public health risks of marijuana, and when accounting for the human and economic costs of the proposed rescheduling action.

### **NTSB's Experience with Marijuana in Transportation**

The NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant events in the other modes of transportation—railroad, transit, highway, marine, pipeline, and commercial space. We determine the probable causes of the accidents and events we investigate and issue safety recommendations aimed at preventing future occurrences. The NTSB is a public health authority for purposes of federal health information privacy laws; we conduct public health activities intended to prevent or control injury.<sup>4</sup>

The NTSB regularly reviews toxicological evidence in our investigations, including from DOT drug testing of commercial vehicle operators and other safety-sensitive transportation employees subject to such testing. The NTSB sometimes reviews evidence from workplace drug testing of safety-sensitive

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<sup>2</sup> Procedures for transportation workplace drug and alcohol testing programs are at [49 CFR Part 40](#) and include procedures for drug testing using urine and oral fluid. The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine are at [88 FR 70768](#). The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid are at [88 FR 70814](#). As of June 3, 2024, there were not yet any laboratories certified by HHS to conduct oral fluid testing (see [89 FR 47579](#)). The HHS has proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs using Hair ([85 FR 56108](#)); a revised version of those guidelines is under review by the Office of Management and Budget (according to information presented at a [June 4, 2024, public meeting](#) of the HHS Substance Abuse and Mental Health Services Administration Drug Testing Advisory Board).

<sup>3</sup> See [88 FR 70768](#) and [88 FR 70814](#).

<sup>4</sup> See [79 FR 28970](#) and [49 CFR 831.9\(b\)\(2\)](#).

transportation employees of the federal government, particularly air traffic controllers employed by the Federal Aviation Administration (FAA). DOT and federal workplace postaccident and postincident drug testing data provide information about use of potentially impairing drugs by individuals whose performance may have contributed to an accident or incident. Additionally, DOT and federal workplace drug testing data, including from pre-employment and random drug testing, are useful for evaluating the safety practices of transportation employers involved in our investigations. DOT and federal workplace drug testing procedures include required testing for marijuana use.<sup>5</sup>

Well-established scientific evidence shows that marijuana impairs the abilities needed to safely operate a vehicle and to perform other safety-related tasks. Marijuana can adversely affect performance by slowing reaction time, altering perception, and impairing sustained attention, planning, decision-making, and risk assessment.<sup>6</sup> In our investigations, the NTSB has repeatedly identified toxicological findings indicative of marijuana use by noncommercial and commercial vehicle operators.<sup>7</sup> Identifying whether marijuana's effects contributed to an event can be

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<sup>5</sup> See [49 CFR 40.82](#); [49 CFR 40.85](#); [49 CFR 40.91](#); [88 FR 70768](#), section 3.4; and [88 FR 70814](#), section 3.4.

<sup>6</sup> Compton, R. 2017. [Marijuana-Impaired Driving: A Report to Congress](#). DOT HS 812 440. Washington, DC: National Highway Traffic Safety Administration.

<sup>7</sup> Some of the NTSB-investigated events that have occurred since 2022, for which dockets have been published, and for which at least one vehicle operator toxicology test was positive for the primary psychoactive substance in marijuana or one of its metabolites, include the following:

- *Aviation Investigation Final Report, Bay Minette, Alabama, March 11, 2022* ([ERA22FA153](#))
- *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*, [HIR-24-04](#) ([HWY22FH008](#))
- *Aviation Investigation Final Report, Sausalito, California, May 6, 2022* ([WPR22FA172](#))
- *Aviation Investigation Final Report, Valdez, Alaska, July 11, 2022* ([ANC22FA053](#))
- *Collision between Amtrak Passenger Train and Union Pacific Railroad Roadway Maintenance Machine, Oakland, California, July 15, 2022*, [RIR-23-11](#) ([RRD22FR011](#))
- *Aviation Investigation Final Report, Seguin, Texas, July 22, 2022* ([WPR22FA264](#))
- *Collision between US Coast Guard Cutter Winslow Griesser and Center-console Boat Desakata, Atlantic Ocean, Near Dorado, Puerto Rico, August 8, 2022*, [MIR-23-14](#) ([DCA22PM034](#))
- *Aviation Investigation Final Report, Hanna City, Illinois, August 13, 2022* ([CEN22FA383](#))
- *Aviation Investigation Final Report, Watsonville, California, August 18, 2022* ([WPR22FA309](#))
- *Aviation Investigation Final Report, Scio, Oregon, August 21, 2022* ([WPR22FA312](#))
- Ongoing highway investigation, Goodyear, Arizona, February 25, 2023, see the "[Medical Factual Report](#)" ([HWY23FH008](#))
- Ongoing highway investigation, Woodlawn, Maryland, March 22, 2023, see the "[Medical Factual Report](#)" ([HWY23FH010](#))

The [public dockets](#), and in some cases final reports, for these events can be viewed using the [CAROL Query](#). Together, these events resulted in 28 fatalities, plus additional injuries. This list is not intended to be comprehensive, nor were marijuana's effects necessarily causal or contributory in the listed events.

challenging, because toxicological evidence of marijuana use does not directly predict impairment. Despite this challenge, the NTSB has found sufficient evidence to cite marijuana's effects in the probable causes of multiple events, including in our recent report on a March 2022 intersection crash between a passenger car and a combination vehicle in Tishomingo, Oklahoma, in which six teenagers died.<sup>8</sup>

In recent years, marijuana use in the United States has grown rapidly to historic levels, including striking growth in the number of users reporting daily or near-daily marijuana use, with 42% of past-month marijuana users reporting to the US National Survey on Drug Use and Health that they used marijuana for 21 days or more in the past month.<sup>9</sup> The DEA recently reported that the potency of delta-9-tetrahydrocannabinol (delta-9-THC), the primary psychoactive substance in marijuana, is at an all-time high in leafy marijuana.<sup>10</sup> Accordingly, the transportation safety risks of marijuana use have never been more relevant. The NTSB's 2022 safety research report, *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*, found that marijuana was the second-most commonly detected potentially impairing drug among study drivers, after alcohol.<sup>11</sup> A 2022 National Highway Traffic Safety Administration study of road users seriously or fatally injured in crashes also found evidence of a high prevalence of marijuana use among study drivers, with delta-9-THC or its psychoactive metabolite detected in blood from 25% of study drivers who had crash injuries resulting in a hospital trauma team alert, and 31.7% of fatally injured study drivers presenting to medical examiners.<sup>12</sup> Data published by the Federal Motor Carrier Safety Administration show that the tested-for nonpsychoactive metabolite of delta-9-THC is by far the most commonly detected tested-for substance

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<sup>8</sup> (a) NTSB. 2024. *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*. [HIR-24-04](#). (b) Additional cases in which the NTSB has cited marijuana's effects in the probable cause can be found by using the [CAROL Query Custom Search](#) and searching the "probable cause" field for "marijuana," "cannabis," or "tetrahydrocannabinol."

<sup>9</sup> Caulkins, J. P. 2024. "[Changes in Self-Reported Cannabis Use in the United States from 1979 to 2022](#)." *Addiction*.

<sup>10</sup> DEA. 2024. [National Drug Threat Assessment 2024](#). DEA-DCT-DIR-010-24. DEA Strategic Intelligence Section.

<sup>11</sup> See NTSB. 2022. *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*. [SRR-22-02](#). The safety research included data from four laboratories, each of which provided data from specific populations of drivers (such as drivers arrested for impaired driving, crash-involved drivers arrested for impaired driving, crash-involved fatally injured drivers, and drivers suspected of impaired driving in a crash that involved a fatal or serious physical injury). The safety research did not distinguish between commercial and noncommercial drivers.

<sup>12</sup> See Thomas, F. D., J. Darrah, L. Graham, A. Berning, R. Blomberg, K. Finstad, C. Griggs, M. Crandall, C. Schulman, R. Kozar, J. Lai, N. Mohr, J. Chenoweth, K. Cunningham, K. Babu, J. Dorfman, J. Van Heukelom, J. Ehsani, J. Fell, and C. Moore. 2022. [Alcohol and Drug Prevalence among Seriously or Fatally Injured Road Users](#). DOT HS 813 399. Washington, DC: National Highway Traffic Safety Administration. The study selected seven Level I trauma centers that served large geographic areas; medical examiners joined the study at four of these sites. The study did not evaluate impairment or risk associated with drug presence, and it did not distinguish between commercial and noncommercial drivers.

on DOT drug testing of commercial motor vehicle drivers, with 37,657 tests reported as positive for this marijuana metabolite in 2023.<sup>13</sup>

Although some states have passed laws permitting medicinal and recreational uses of marijuana, driving under the influence of marijuana is illegal in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.<sup>14</sup> In 2022, the NTSB made a recommendation to the District of Columbia, the Commonwealth of Puerto Rico, and the 21 states where cannabis use is legal but driving-related cannabis warning labels are not required or are inadequate, to require a warning label on marijuana products advising users not to drive after marijuana use due to its impairing effects.<sup>15</sup> Recently, as a result of our Tishomingo crash investigation, the NTSB made several recommendations and issued a safety alert aimed at increasing public awareness of the dangers and illegality of driving under the influence of marijuana.<sup>16</sup>

Laws against operating vehicles under the influence of marijuana are not limited to driving. Boating under the influence of marijuana is illegal in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico, and the US Coast Guard enforces federal law prohibiting boating under the influence.<sup>17</sup> Additionally, federal regulation prohibits piloting a civil aircraft while using any drug that affects faculties in a way contrary to safety.<sup>18</sup> In 2020, as a result of our safety research report, *2013–2017 Update to Drug Use Trends in Aviation*, the NTSB made a recommendation to the FAA to revise the *Aeronautical Information Manual* and the *Pilot's Handbook of Aeronautical Knowledge* to explicitly state marijuana's classification as an illicit drug per federal law and, thus, its prohibited use by pilots.<sup>19</sup> For commercial vehicle operators and other safety-sensitive employees subject to drug testing under DOT regulations for all transportation modes, the DOT has stated

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<sup>13</sup> (a) Federal Motor Carrier Safety Administration. 2024. "[Drug and Alcohol Clearinghouse: April 2024 Monthly Summary Report](#)." For more information see the "[Drug and Alcohol Clearinghouse](#)" web page. (b) Notably, in 2023 there were 12,680 drug test refusals for unknown reasons.

<sup>14</sup> See the Governors Highway Safety Association's "[Drug Impaired Driving](#)" web page concerning state laws.

<sup>15</sup> Overall, Safety Recommendation [H-22-42](#) was classified Open–Await Response on January 12, 2023. For more information, see NTSB. 2022. *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*. [SRR-22-02](#).

<sup>16</sup> (a) Safety Recommendations [H-24-12](#), [H-24-13](#), [H-24-14](#), [H-24-15](#), [H-24-16](#), [H-24-17](#), and [H-24-18](#) were classified Open–Await Response on July 18, 2024. (b) NTSB. 2024. *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*. [HIR-24-04](#). (c) NTSB. 2024. "Safety Alert–Parents: Protect Your Teen from Marijuana-Impaired Driving." [SA-093](#).

<sup>17</sup> (a) See the US Coast Guard's "[BUI Initiatives](#)" web page. (b) See [33 CFR Part 95](#).

<sup>18</sup> See [14 CFR 91.17\(a\)\(3\)](#).

<sup>19</sup> (a) Safety Recommendation [A-20-12](#) was classified Open–Acceptable Response on July 11, 2024. (b) NTSB. 2020. *2013–2017 Update to Drug Use Trends in Aviation*. [SS-20/01](#).

that it is unacceptable to use marijuana, regardless of the reason for its use, based on the drug's federal Schedule I status.<sup>20</sup>

### **Marijuana Scheduling Affects Transportation Employee Drug Testing**

DOT procedures for transportation workplace drug testing programs are codified in 49 *CFR* Part 40. These procedures are incorporated into drug testing requirements of numerous DOT-regulated modes, including highway, aviation, railroad, transit, and pipeline.<sup>21</sup> US Coast Guard regulations also incorporate 49 *CFR* Part 40 into drug testing requirements for merchant marine personnel and following serious marine incidents involving vessels in commercial service.<sup>22</sup> Generally, employees with a verified positive DOT drug test must be removed from safety-sensitive duties, and may return to those duties only after successfully completing a return-to-duty process.

The Omnibus Transportation Employee Testing Act of 1991 requires the DOT to conform its drug testing procedures with HHS guidelines for federal workplace drug testing, including using HHS-certified laboratories.<sup>23</sup> Executive Order 12564, which required federal executive agencies to develop drug-free workplace programs, including employee testing for illegal drug use, defines "illegal drugs" to include only Schedule I and II controlled substances.<sup>24</sup> The HHS Mandatory Guidelines authorize testing for Schedule I and II controlled substances only.<sup>25</sup>

The NTSB is concerned that the proposed rule to move marijuana to Schedule III of the CSA would, upon becoming effective, immediately prohibit continued testing of safety-sensitive transportation employees for marijuana use under 49 *CFR* Part 40 and HHS Mandatory Guidelines, because the HHS-certified laboratories used for such testing are not authorized to test for Schedule III controlled substances. This would mean that airline pilots, airline maintenance workers, bus and truck drivers, locomotive engineers, subway train operators, ship captains, pipeline operators, personnel transporting hazardous materials, and other safety-sensitive transportation employees would be prevented from being tested for marijuana use under 49 *CFR* Part 40. Testing of FAA-employed air traffic controllers, which is conducted under the DOT's Drug and Alcohol-Free Departmental Workplace

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<sup>20</sup> (a) DOT. 2012. "[DOT 'Recreational Marijuana' Notice](#)." Office of Drug and Alcohol Policy and Compliance. Issued December 3, 2012. (b) DOT. 2009. "[DOT 'Medical Marijuana' Notice](#)." Office of Drug and Alcohol Policy and Compliance. Issued October 22, 2009.

<sup>21</sup> See [49 CFR Part 382](#), [14 CFR Part 120](#), [49 CFR Part 219](#), [49 CFR Part 655](#), and [49 CFR Part 199](#), respectively.

<sup>22</sup> See [46 CFR Part 16](#) and [46 CFR 4.06](#).

<sup>23</sup> Omnibus Transportation Employee Testing Act of 1991, [Public Law 102-143](#), 105 Stat. 952 (1991).

<sup>24</sup> See [51 FR 32889](#).

<sup>25</sup> See [88 FR 70768](#) and [88 FR 70814](#).

Program, would be similarly negatively affected, as would testing of other civilian air traffic controllers.<sup>26</sup>

As stated above, marijuana use is prevalent and increasing in the United States, and the drug is known to impair abilities critical to performing safety-sensitive functions. The NTSB therefore cautions the DEA that moving marijuana to Schedule III without taking steps to ensure that marijuana testing remains within the scope of pre-employment, random, reasonable suspicion, and postaccident/postincident drug testing would create a safety blind spot that could endanger the public. This blind spot for marijuana use would be particularly relevant because of the lack of a reliable toxicological test for marijuana-related impairment. Removal of marijuana testing from DOT and HHS drug testing panels for safety-sensitive transportation employees would remove a layer of safety oversight that employers have been managing for decades, and it would prevent DOT and HHS drug testing from acting as a deterrent to marijuana use by those employees. Additionally, the NTSB would no longer have DOT and federal workplace marijuana test results as evidence in our investigations.

We urge the DEA to ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees. If, to achieve this, additional measures are necessary beyond changes to the text of the rule, we urge the DEA to ensure that the rule does not become effective until such measures have been implemented.

Because marijuana has no currently accepted medical use in treatment in the United States (CAMU) under federal law, a physician's recommendation for the use of medical marijuana does not constitute a "legitimate medical explanation" for a positive DOT or federal workplace marijuana test result under 49 CFR Part 40 and HHS Mandatory Guidelines.<sup>27</sup> We additionally urge the DEA to scrutinize how its determination about marijuana having a CAMU might affect a safety-sensitive transportation employee's ability to present medical marijuana use as a legitimate medical explanation for a positive marijuana result on a DOT or federal workplace drug test. Of course, this consideration is valid only if the DEA ensures that the ability to test is preserved.

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<sup>26</sup> Under [14 CFR 120.1\(a\)](#), the drug testing requirements of 14 CFR Part 120, which incorporate the procedures of [49 CFR Part 40](#), apply to all air traffic control facilities not operated by the FAA or by those under contract to the US military.

<sup>27</sup> (a) See [49 CFR 40.137](#); [49 CFR 40.151](#); [88 FR 70768](#), section 13.5; and [88 FR 70814](#), section 13.5. (b) The NPRM defines CAMU as "currently accepted medical use in treatment in the United States"; see [89 FR 44599](#).

## Transportation Safety is a Public Health Issue

The NTSB is pleased that the DEA is considering driving safety as part of its evaluation of the public health risks posed by marijuana. Effects on driving safety are crucial to consider, as are other effects on transportation safety at federal, state, and local levels. We note that the driving-under-the-influence prevalence data cited in the HHS rescheduling recommendation reflect only a small portion of the large body of existing research on the epidemiology and consequences of marijuana use in transportation. We encourage the DEA to diligently examine the multifaceted transportation safety implications of marijuana rescheduling. Marijuana is a prevalent drug with performance-impairing effects, human performance is critical to the safety of transportation systems, and most people interact with transportation systems multiple times per day. For these reasons, transportation safety is a public health issue that deserves prominence in the national conversation about marijuana scheduling. This topic must be addressed in any responsible accounting of the public health costs, both human and economic, of the proposed rescheduling action.

As described above, the NTSB has made efforts through our recommendations and reports to increase public awareness of the fact that marijuana's potential to impair is proven, regardless of the drug's legal status. This will remain true if marijuana is rescheduled as proposed, or if it is not. Whether used legally or illegally for medicinal or recreational purposes, marijuana impairs abilities needed to perform safety-related tasks, and operating a vehicle while impaired by marijuana is dangerous and broadly illegal across the United States. The present rulemaking provides an opportunity to spotlight this message. We encourage the DEA to, in parallel with this rulemaking, proactively educate the public that marijuana rescheduling does not imply that driving or performing other safety-sensitive transportation tasks under the influence of marijuana is safe or legal. Without such public education, this rescheduling action has a potential to further cloud the transportation safety risks of marijuana use.

Finally, the NTSB recognizes that the proposed changes to [21 CFR Part 1308](#) are preliminary. We also appreciate that 21 *CFR* Part 1308 must conform with the CSA, and that ongoing legislative efforts to clarify the CSA hemp exception implemented by the Agriculture Improvement Act of 2018 might yet affect the proposed rule.<sup>28</sup> Regardless, any final rule to reschedule marijuana would necessarily affect the definitions in 21 *CFR* Part 1308. We urge the DEA to seek specific expertise to avoid unintended consequences of changes affecting 21 *CFR* Part 1308 definitions,

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<sup>28</sup> (a) Agriculture Improvement Act of 2018, [Public Law 115-334](#), 132 Stat. 4490 (2018). (b) The Agriculture Improvement Act of 2018 implemented a definition of "hemp," excepted hemp from the CSA's definition of marijuana, and excepted "tetrahydrocannabinols in hemp" from control under Schedule I of the CSA. (c) See the Farm, Food, and National Security Act of 2024, [HR 8467](#), 118th Cong. (2023-2024) and the "[Amendment to HR 8467 Offered by Mrs. Miller of Illinois](#)." See also the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024, [HR 4368](#), 118th Cong. (2023-2024).



including the definitions of “tetrahydrocannabinols,” “marijuana extract,” and (as newly proposed) “naturally derived delta-9-tetrahydrocannabinols.” The DEA has a critical responsibility to ensure that those definitions are unambiguous in scope, so that the rescheduling action affects only the specific substance(s) for which a CAMU has been established, and for which the eight factors determinative of control, including public health risk, have been fully evaluated.<sup>29</sup> Imprecise definitions could affect restrictions on psychoactive substances not assessed for this rulemaking that pose a threat to transportation safety.

## Summary

In summary, as a public health authority and an independent federal agency that conducts safety investigations in all major modes of transportation, the NTSB has distinct experience with marijuana-related transportation safety issues. Based on this experience, the NTSB urges the DEA to do the following:

- Ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees. Such employees include airline pilots, airline maintenance workers, bus and truck drivers, locomotive engineers, subway train operators, ship captains, pipeline operators, personnel transporting hazardous materials, air traffic controllers, and others.
- Scrutinize how a DEA determination about marijuana having a CAMU might affect a safety-sensitive transportation employee’s ability to present medical marijuana use as a legitimate medical explanation for a positive marijuana result on a DOT or federal workplace drug test.
- Diligently examine the multifaceted transportation safety implications of marijuana rescheduling, which has a potential to affect everyone who interacts with transportation systems and infrastructure, from vehicle operators and passengers to pedestrians and bystanders.
- In parallel with this rulemaking, proactively educate the public that marijuana rescheduling does not imply that driving or performing other safety-sensitive transportation tasks under the influence of marijuana is safe or legal. Marijuana impairs the abilities needed to safely operate a vehicle and perform other safety-related tasks, and operating a vehicle under the influence of marijuana is dangerous regardless of marijuana’s scheduling under the CSA.

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<sup>29</sup> As noted in the NPRM, when determining whether a drug should be controlled (and if so, under which schedule), the US Attorney General must consider eight factors determinative of control set forth in [21 United States Code 811\(c\)](#). The sixth of these factors is risk to the public health.

- Seek specific expertise to avoid unintended consequences of changes affecting 21 *CFR* Part 1308 definitions, including the definitions of tetrahydrocannabinols, marijuana extract, and (as newly proposed) naturally derived delta-9-tetrahydrocannabinols.

Thank you for the opportunity to provide comments. As stated in my June 20, 2024, letter to DEA Administrator Milgram, an in-person hearing would facilitate the DEA's examination of the transportation safety effects of the proposed rule.<sup>30</sup> The NTSB will participate in the hearing process if given the opportunity.

Sincerely,

[Original Signed]

Jennifer Homendy  
Chair

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<sup>30</sup> NTSB. June 20, 2024, letter from Jennifer Homendy, Chair, NTSB, to Anne Milgram, Administrator, DEA.