

CSA and the DEA regulations and is consistent with the legislative history of the statute and regulations. Moreover, DEA believes that the analysis contained in the interpretive rule refutes all of the contrary legal arguments expressed in the comments. As the agency responsible for administering the CSA, it is DEA's obligation to ensure that the regulations clearly reflect what the agency believes are the purpose and intent of the Act.

#### *Comments as to Whether This Rule Constitutes a Rescheduling Action*

Some commenters expressed the view that this rule is a rescheduling action within the meaning of 21 U.S.C. 811 and that DEA should have gone through the procedures set forth in that section prior to issuing this rule.<sup>11</sup> These comments appear to be based on a misunderstanding of the nature of the procedures under section 811. By its express terms, section 811 applies only where DEA seeks to add a substance to a schedule or remove one from a schedule. For example, if DEA were seeking to move a controlled substance from schedule II to schedule III, the agency would be required to follow the procedures set forth in section 811. The final rule being published today, however, does not change the schedule of THC or any other controlled substance. To the contrary, when this final rule becomes effective, on April 21, 2003, THC will remain in the same schedule in which it has been since the enactment of the CSA in 1970: Schedule I.

Nor would engaging in the rescheduling procedures set forth in section 811 be consistent with the purpose of this rule. Section 811 sets forth the procedures to determine whether a particular substance meets the criteria for placement in a particular schedule. The purpose of this rule is not to determine whether THC meets the criteria for classification in schedule I; rather, this rule serves to clarify that the longstanding placement of THC in schedule I includes both natural and synthetic THC. There is no question about whether THC meets the criteria for placement in schedule I.<sup>12</sup> Even

those commenters who suggested that this rule should be issued under section 811 do not dispute that all THC (natural or synthetic) meets the criteria for placement in schedule I. As discussed above, the chemical THC has the identical physical and chemical properties, and produces the same psychoactive effects, regardless of whether it is natural or synthetic. For these reasons, section 811 is inapplicable to this rule.

#### *Comments Regarding Poppy Seeds*

Some of the commenters asserted that DEA should not take literally the plain language of the CSA: that "any material, compound, mixture, or preparation, which contains any quantity of \* \* \* Tetrahydrocannabinols [THC]" is a schedule I controlled substance. To read this provision literally, some commenters said, would mean that poppy seeds must be considered controlled substances if they contain trace amounts of opiates (such as morphine, codeine, or thebaine). This concern is unfounded because, under the CSA and DEA regulations, substances that contain opiates are controlled differently than substances that contain schedule I hallucinogens (such as THC). It is true that poppy seeds are excluded from the definition of opium poppy (21 U.S.C. 802(19)) just as sterilized cannabis seeds are excluded from the definition of marijuana. However, while it is the case that "any material, compound, mixture, or preparation, which contains any quantity of" an hallucinogenic controlled substance is a controlled substance (21 U.S.C. 812(c), schedule I (c); 21 CFR 1308.11(d)), it is not the case that any material, compound, mixture, or preparation which contains any quantity of an opiate is a controlled substance. Rather, naturally-occurring opiates found in substances of vegetable origin are subject to control under the CSA only if they are extracted from the substances of vegetable origin. 21 U.S.C. 812(c), schedule II(a); 21 CFR 1308.12(b)).<sup>13</sup>

#### *Comments Regarding the Single Convention on Narcotic Drugs*

Several commenters asserted that the proposed rule is impermissible in view of a certain provision of the Single Convention on Narcotic Drugs, 1961

use \* \* \* under medical supervision," and "a high potential for abuse." 21 U.S.C. 812(b)(1).

<sup>13</sup> Plant materials that are the source of narcotics, such as opium poppy, poppy straw, and opium, are specifically listed in schedule II. However, as stated above, the listing of opium poppy does not include poppy seeds, since the seeds are excluded from the definition of opium poppy.

("Single Convention"). The Single Convention, which the United States ratified in 1967, was designed to establish effective control over international and domestic traffic in controlled substances, and parties to the Convention are required to implement certain minimum measures. Article 28 of the Single Convention imposes on parties certain restrictions on the cultivation of the cannabis plant. However, paragraph 2 of Article 28 states that the Single Convention does not apply "to the cultivation of the cannabis plant exclusively for industrial purposes (fibre [sic] and seed) or horticultural purposes." Several commenters asserted that this provision means that the United States is prohibited from imposing any restrictions on "hemp." This assertion is incorrect.

The Single Convention sets minimum standards of drug control measures that the parties must apply—not maximum measures. Parties are free to impose whatever additional measures they believe are necessary to prevent the misuse, and illicit traffic in, controlled substances. Indeed, various provisions of the CSA go beyond the minimum measures required by the Single Convention. Congress's decision under the CSA to control anything that contains "any quantity" of THC is the decisive factor for purposes of this rule, regardless of whether a less restrictive rule would be permissible under the Single Convention.<sup>14</sup>

<sup>14</sup> To fully address the distinctions between the control of cannabis under the Single Convention and the control of marijuana and THC under CSA would require a lengthy discussion. Such a discussion is unnecessary here because this rule is based on how THC is controlled under the CSA. Thus, there is no need to address here whether the reference in the Single Convention (Article 28, paragraph 2) to cannabis grown for "industrial" or "horticultural" purposes includes cannabis grown to make foods or beverages, or whether such reference is limited to non-human-consumption items such as rope, paper, textiles, industrial solvents, and birdseed.

A full analysis of the international drug control treaties would also require discussion of the Convention on Psychotropic Substances, 1971 (Psychotropic Convention). THC is a substance listed in the schedules of the Psychotropic Convention. Accordingly, the United States, as a party to the Psychotropic Convention, has certain obligations thereunder with respect to the control of THC. However, it is unnecessary to examine the scope of those obligations in this document because Congress stated expressly in United States domestic law that anything that contains "any quantity" of THC is a schedule I controlled substance, unless listed in another schedule or expressly exempted. Adherence to this rule and the corresponding provisions of the CSA ensures that the United States meets its obligations under the Psychotropic Convention with respect to THC.

<sup>11</sup> Under 21 U.S.C. 811, to change the schedule of a controlled substance, DEA must first request from the Secretary of Health and Human Services a scientific and medical evaluation and scheduling recommendation and follow additional procedures set forth in section 811. However, as discussed above, section 811 is inapplicable where, as in this final rule, DEA is not changing the schedule of a controlled substance.

<sup>12</sup> The criteria for placement in schedule I are: "no currently accepted medical use in treatment in the United States," "a lack of accepted safety for