

Reid Stuart

26-June-2024

DEA Diversion Control Division
Attn: Liaison and Policy Section
8701 Morrissette Drive
Springfield, VA 22152

Re: Inquiry on the Legal Status of Oregon's Psilocybin Services Program

Dear DEA:

I would like to know the legal status of Oregon's psilocybin-services program. This program authorizes state-licensed "manufacturers" to cultivate psychedelic mushrooms. It authorizes state-licensed laboratories to test the mushrooms for potency and in some cases to extract the psilocybin as a pure chemical. It authorizes clients to consume these mushrooms and mushroom products in state-licensed facilitation centers. The Oregon law requires auditing paperwork that can document the chain-of-custody for the mushrooms from production to consumption, so these mushrooms cannot be diverted onto the black market. Therefore, the mushrooms are produced and consumed entirely within the State of Oregon.

Psilocybin is still on Schedule I under the federal Controlled Substances Act. I am under the impression that all current federal drug law is based on the U.S. Constitution's interstate-transit clause, with the possible exceptions of laws dealing with taxation or prescription medicines. Because the mushrooms used in Oregon's program never cross state lines, does this mean that federal jurisdiction does not apply? Or could some other legal argument be constructed to justify federal prosecution of mushrooms used in the Oregon program? I am curious about this situation, and I hope that you or the DEA's Office of Chief Counsel can share your legal expertise to clarify this issue.

Thanks and have a nice day.

Sincerely,
Reid Stuart



U. S. Department of Justice
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152

www.dea.gov

Reid Stuart



Dear Mr. Stuart:

This is in response to your letter dated June 26, 2024, to the Drug Enforcement Administration (DEA), regarding the status of the State of Oregon's Psilocybin Services Program (PSP). In your letter, you stated that the PSP authorizes "manufacturers" to "cultivate psychedelic mushrooms," authorizes "clients to consume these mushrooms and mushroom products in state-licensed facilitation centers," and "requires auditing paperwork that can document the chain-of-custody for all mushrooms from production to consumption." Based on your claim that "the mushrooms are produced and consumed entirely within the State of Oregon" and "never cross state lines," you inquired about the applicability of federal jurisdiction and potential federal prosecution regarding PSP mushrooms. DEA appreciates the opportunity to address your inquiry.

As a general matter, it is DEA's longstanding policy not to provide legal advice to outside parties. To comply with the Administrative Procedure Act and ensure fairness, DEA's interpretations of the law and regulations are published in the [Federal Register](#) and/or on DEA's [website](#), which allows all members of the general public to have equal access to such information. At the same time, DEA recognizes the importance of working with regulated entities and members of the public to help guide them toward compliance with the law and regulations. DEA's response to your inquiry must be limited to directing your attention to the pertinent provisions of the law, regulations, or other publicly disseminated documents issued by DEA. In that vein, DEA can provide general information. Please be advised that this is not meant to be an exhaustive list of every statutory provision or regulation that might apply to your inquiry.

To effectuate the goals of combating the international and interstate traffic in illicit drugs, conquering drug abuse, and controlling the legitimate and illegitimate traffic in controlled substances, "Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the [Controlled Substances Act (CSA)]." [Gonzales v. Raich, 545 U.S. 1, 12-13 \(2005\)](#); [21 U.S.C. 841\(a\)\(1\), 844\(a\)](#). This includes the intrastate manufacture and distribution of controlled substances because, according to Congress, "[f]ederal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic." [21 U.S.C. 801\(6\)](#); *see also id.* [801\(5\)](#) ("[I]t is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.").

Psilocybin and psilocin are schedule I controlled substances under the CSA and DEA's implementing regulations. [21 U.S.C. 812\(c\), schedule I\(c\)\(15\), \(16\)](#); [21 CFR 1308.11\(d\)\(29\), \(30\)](#). A person who seeks to handle (e.g., manufacture, distribute, engage in research, or possess) schedule I controlled substances must be properly registered with DEA. For example, if it is consistent with the public interest (as determined by considering specific factors defined by Congress) and with United States obligations under international treaties, DEA must register an applicant to manufacture schedule I controlled substances. [21 U.S.C. 823\(a\)](#). Unless it is inconsistent with the public interest (again considering specific factors), DEA must register an applicant to distribute a schedule I controlled substance. [21 U.S.C. 823\(b\)](#). Further, a schedule I controlled substance may be dispensed only by a practitioner registered with DEA to conduct research pursuant to an FDA-approved research protocol. See [21 U.S.C. 823\(g\)\(2\)](#); [21 CFR 1301.13\(e\), 1301.18](#).

When federal law or regulations differ from state law or regulations, the person involved must adhere to the more stringent aspects of both the federal and state laws and regulations. See [21 U.S.C. 903](#); see also *United States v. McIntosh*, 833 F.3d 1163, 1179 n.5 (9th Cir. 2016) (“Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits.”).

I trust this letter adequately addresses your inquiry. For information regarding DEA's Diversion Control Division, please visit <https://DEAdiversion.usdoj.gov/index.html>. If you have any additional questions on this issue, please contact the Diversion Control Division Policy Section at (571) 362-3260.

Sincerely,

MATTHEW STRAIT

Digitally signed by MATTHEW
STRAIT
Date: 2024.09.24 15:35:02 -04'00'

Matthew Strait
Deputy Assistant Administrator
Diversion Control Division

Reid Stuart
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26-October-2024

Matthew Strait
Deputy Assistant Administrator
DEA Diversion Control Division
U.S. Department of Justice
8701 Morrisette Drive
Springfield, VA 22152

Dear Mr. Strait:

I would like to thank you for your recent letter about the Oregon Psilocybin Services program. I was surprised that you gave me a very thoughtful, well-researched answer to my query. Over the past quarter century, I have exchanged at least two dozen letters with federal bureaucrats, mainly from the Department of Education but also the Department of Labor, and they have always exhibited a winning combination of sloth and evasiveness in artfully evading their duty to provide me with a coherent reply to any question that I have asked them, often using random non-sequitur cut-and-paste text to go through the motions of pretending to make a response, but succeeding only in providing me with an incoherent letter (sometimes unsigned to avoid culpability) that reads like nonsensical Dada poetry. Once again, thanks for giving me useful information.

Sincerely,
Reid Stuart