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The National Congress of American Indians
Resolution #PSC-26-048

TITLE: Calling Upon the Department of Justice to Consult with and Recognize Tribal Governments in its Actions Regarding Rescheduling Cannabis-Related Products

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, through NCAI Resolutions #SEA-25-130, #SEA-25-114, #MN-23-009, #PHX-16-002 and #SD-15-047, NCAI's official policy has long supported Tribal Nations' sovereign ability to engage in and regulate cannabis products within their territories and called upon the federal government to formally recognize Tribal sovereignty within cannabis regulation; and

WHEREAS, the Tribal cannabis industry, comprised of Tribally-owned and Tribally-regulated cannabis enterprises engaged in cultivation, manufacture, distribution and dispensary of cannabis and cannabis products, has grown every year as more Tribes exercise their inherent sovereign authority to regulate cannabis and cannabis products; and

WHEREAS, on April 22, 2026, the Acting Attorney General, acting on behalf of the United States Department of Justice (DOJ) issued a Final Order, followed by publishing a Final Rule on April 28, 2026, rescheduling some drug products containing cannabis from schedule I of the Controlled Substances Act (CSA) to schedule III; and

WHEREAS, the Final Order rescheduling cannabis and cannabis products is limited only to cannabis and cannabis products approved by the Food and Drug Administration (FDA) and those subject to a state-issued medical license; and

WHEREAS, Tribes engaged with the DOJ during consideration of the Final Order, seeking the recognition of Tribally-regulated cannabis and cannabis products by specifically including Tribal licensure whenever state licensure is noted; however, the Final Order did not mention or recognize Tribes or Tribally licensed cannabis and cannabis products; and

WHEREAS, the DOJ failed to engage in Tribal consultation as required by the Executive Order 13175 and the Tribal Consultation Policy for the Department of Justice, and even noted in the publication of the Final Order that it did not engage in Tribal consultation because the Order does not have substantial effects on one or more Indian tribes, despite the scores of Tribes that engaged with the DOJ during the contemplation of the Final Order and that have exercised their sovereignty by regulating and licensing cannabis and cannabis products within their jurisdiction; and

WHEREAS, the Final Order does not specifically mention Tribes or Tribally regulated medical cannabis programs and by its limited terms may not cover Tribal cannabis products, despite the wide-ranging medical cannabis products subject to Tribal licensure; and

WHEREAS, Tribal consultation is an implementation of the government-to-government relationship, and the primary means for Tribal Nations to communicate on and influence decisions regarding government actions that implicate Tribal interests and/or sovereignty.

NOW THEREFORE BE IT RESOLVED, that NCAI demands the DOJ immediately initiate Tribal consultation with Tribes engaged in the cannabis industry to gain insight into the CSA scheduling of cannabis and cannabis products, and how actions the DOJ takes impact Tribes; and

BE IT FURTHER RESOLVED, that NCAI urges the DOJ to amend the Final Order to include Tribally licensed cannabis and cannabis products in the CSA rescheduling from schedule I to schedule III to ensure there is clarity in the Final Order's implementation for Tribally licensed medical cannabis and cannabis products, or, in the alternative, that the DOJ issue a new Final Order specifically rescheduling Tribally licensed cannabis and cannabis products from schedule I to schedule III; and

BE IT FURTHER RESOLVED, that NCAI calls on the DOJ to specifically include Tribes in any further administrative action it contemplates regarding cannabis and cannabis products, regardless of whether it involves the CSA or rescheduling, due to the number of Tribes that are actively engaged in the cannabis industry through the exercise of their inherent sovereign authority; and

BE IT FURTHER RESOLVED, meaningful consultation requires that agencies engage in actions that are in person, interactive, pre-decisional, informational and transparent when planning actions with Tribal implications and in line with Free, Prior and Informed Consent principles consistent with SEA-25-009; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2026 Annual Convention of the National Congress of American Indians, held October 18-22, 2026 in Palm Springs, California, with a quorum present.

Mark Macarro, President

ATTEST:

Christie Modlin, Recording Secretary