

Cannabis rescheduling arrives, with limits: What the DOJ's final order does and doesn't do

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On April 23, 2026, the U.S. Department of Justice (DOJ) and U.S. Drug Enforcement Administration (DEA) announced the issuance of a final order (Order) (<https://bit.ly/4tXaQIL>), signed by Acting Attorney General Todd Blanche, rescheduling two categories of cannabis from Schedule I of the Controlled Substances Act (CSA) to the less regulated Schedule III: (1) FDA-approved cannabis products; and (2) cannabis regulated under a state medical cannabis license.

A Notice of Proposed Rulemaking (NPRM) (<https://bit.ly/4wkXhEU>) also accompanied the Order, initiating an expedited administrative hearing process to consider the broader goal of rescheduling all cannabis (not just medical cannabis) from Schedule I to Schedule III.

The Order marks the most concrete shift in federal cannabis policy in decades. But it does not legalize cannabis. Nor does it fully resolve the conflict between state and federal cannabis laws. Instead, it introduces a partial rescheduling that may ease specific regulatory burdens for certain sectors of the industry (specifically, medical cannabis) while leaving the broader legal framework essentially unchanged for everyone else.

The two-track approach

The Order and NPRM sets out a two-track approach to reforming federal cannabis policy. Track one is the Order itself, which took effect upon publication in the Federal Register on April 28, 2026.

It moves to Schedule III: (1) all drug products containing cannabis that have received FDA approval (currently Epidiolex, Marinol, Syndros, and Cesamet); and (2) all cannabis that is subject to a state-issued license to manufacture, distribute, or dispense cannabis for medical purposes. Forty states now have such medical cannabis licensing regimes in place.

The DOJ issued the Order pursuant to its authority under Section 811(d)(1) of the CSA, which authorizes the Attorney General to reschedule substances to carry out U.S. treaty obligations under the 1961 Single Convention on Narcotic Drugs. That treaty-based pathway allowed the DOJ to bypass the traditional notice-and-comment rulemaking process and act immediately, a legally aggressive move that will almost certainly draw legal challenges.

Track two is a notice of proposed rulemaking and hearing, set to begin June 29, 2026, and conclude no later than July 15, to take evidence on whether all cannabis, including recreational cannabis, should be transferred from Schedule I to Schedule III. This is a fresh start.

As readers of this column know, the Biden Administration published its own proposed rule (<https://bit.ly/4uB8bVf>) to reschedule cannabis back in May 2024, drawing over 43,000 public comments and triggering a DEA administrative hearing that stalled in early 2025 amid procedural disputes and allegations of improper *ex parte* coordination between the DEA and anti-legalization groups.

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The DEA has now withdrawn (<https://bit.ly/4d6EZOD>) the prior notice and terminated those proceedings, following President Trump's December 2025 executive order directing the Attorney General to complete rescheduling as expeditiously as the law permits.

What this means for the cannabis industry

The practical consequences for state-licensed medical cannabis operators are immediate.

Since 1982, Section 280E of the Internal Revenue Code barred businesses trafficking in Schedule I or II controlled substances from deducting ordinary business expenses, which has been a significant financial burden for state-legal cannabis companies. The Order eliminates that burden for medical cannabis companies starting in tax year 2026.

The DOJ has also directed the IRS to consider retrospective relief from 280E liability for prior tax years, and on April 23 (<https://bit.ly/4u4OXYo>), the Treasury and the IRS announced plans to issue guidance, acknowledging that rescheduling will have “significant positive tax consequences” for the medical cannabis industry.

Importantly, this offers no relief to recreational operators holding adult-use licenses, which remain subject to Section 280E.

Another significant development is the Order’s treatment of state cannabis regulatory frameworks. The Order defines one of the qualifying categories for rescheduling by reference to state medical cannabis licenses — effectively ratifying state licensing regimes as the vehicle for federally compliant medical cannabis. For an industry that has spent years operating in the gap between state legality and federal prohibition, this is a profound change.

Schedule III status for state-legal medical operators is not automatic, however. Operators must affirmatively register with the DEA. Registrants must pay an annual \$794 fee and complete an application spanning seven sections covering business and ownership information, state license details, criminal and licensure history, and a detailed compliance section requiring disclosure of operating procedures for everything from ordering and storage to theft reporting and security measures.

The DEA opened its Medical Marijuana Dispensary Registration Portal on April 29. Operators who file applications within 60 days of the Federal Register publication date (by June 27) may continue operating under their state licenses while their applications are pending. As of early May, several leading multistate operators (MSOs) have already filed applications, including Trulieve Cannabis Corp., Green Thumb Industries Inc., and Glass House Brands Inc.

More broadly, it is important to keep in mind what the Order *does not* do. It does not legalize cannabis federally. It does not decriminalize possession. It does not expunge or modify any prior cannabis convictions. It does not open the doors of federally insured banks to cannabis businesses (which still must adhere to the Bank Secrecy Act’s anti-money-laundering framework), and the SAFE Banking Act still hasn’t passed.

About the authors



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Nevertheless, by moving medical cannabis to Schedule III, the Order reduces one layer of federal legal risk for medical operators. Critically, however, the Order does not have any effect on the status of state-legal recreational cannabis, which remains a Schedule I controlled substance.

What comes next

Legal challenges are coming. Attorney General Blanche’s novel use of the treaty-power provision of the CSA to bypass notice-and-comment rulemaking is untested. Opponents will almost certainly argue that this move violates both the Administrative Procedure Act and the CSA’s own procedural requirements.

Smart Approaches to Marijuana (SAM), one of the most prominent anti-legalization groups in the country, has already announced plans to sue and has retained former Attorney General Bill Barr (who served under the prior Trump Administration) to lead the effort. SAM Condemns President Trump’s Decision to Move Marijuana into Schedule III, sam.org, Dec. 17, 2025.

The Order’s severability provision, which seeks to keep the remaining provisions in effect in the event a court were to strike or stay part of the Order, suggests the DOJ expects pieces of it to be challenged and has attempted to structure it in a way to survive partial invalidation.

The broader rulemaking, meanwhile, is set to progress on a tight timeline. Notices of intention to participate in the hearing are due May 24. The DEA will select participants by June 22. The hearing is set for June 29 and, according to the NPRM, will conclude no later than July 15, 2026. If the timeline holds, a final rule could land by late 2026, though litigation will likely delay that.

The cannabis industry should be watching closely, and not just as spectators. The rulemaking will provide an avenue for rescheduling adult-use cannabis. The outcome could bring all cannabis into Schedule III or it could formalize a federal dividing line between medical and recreational cannabis that might persist for years.

Alexander Malyshev and Sarah Ganley are regular, joint contributing columnists on legal issues in the cannabis industry for Reuters Legal News and Westlaw Today.