

Historic Marijuana Rescheduling to Schedule III: The Football Just Moved Closer to the End Zone

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On Dec. 18th, President Trump signed an [executive order](#) directing the Attorney General to expedite the rescheduling of marijuana from Schedule I to Schedule III under the Controlled Substances Act. This represents the most significant federal policy shift on marijuana in decades, with far-reaching implications for the cannabis industry—particularly around taxation and business operations. This will result in a significant increase in marijuana cultivator and manufacturers profit margins if business practices are updated accordingly.

Background

Since the Controlled Substances Act was enacted, marijuana has been classified as a Schedule I drug, defined as having no accepted medical use, high abuse potential, and lacking safety for use under medical supervision. This classification has imposed substantial legal and financial burdens on state-legal cannabis businesses for decades.

That changed in 2023 when the Department of Health and Human Services recommended rescheduling marijuana to Schedule III, citing credible scientific evidence supporting its medical use for treating pain, anorexia related to certain conditions, and chemotherapy-induced nausea and vomiting. The Department of Justice followed with a proposed rescheduling rule in May 2024, which has been awaiting an administrative law hearing.

Today's executive order directs the Attorney General to complete this rulemaking "in the most expeditious manner in accordance with Federal law."

What does this mean for the Cannabis Industry?

1. Elimination of IRC Section 280E Tax Burden

This is the game-changer for cannabis businesses!

Under current law, Section 280E prohibits businesses trafficking in Schedule I or II substances from deducting ordinary business expenses. Cannabis companies can only deduct their Cost of Goods Sold, which has resulted in effective tax rates sometimes exceeding 70%. To put this in perspective, state-legal marijuana companies paid over \$1.8 billion in excess taxes in 2022 compared to other businesses.

Once rescheduling takes effect, cannabis businesses will finally be able to deduct standard expenses like:

- Rent and utilities.
- Employee wages (beyond production staff.)
- Advertising and marketing.
- Insurance premiums.
- Legal and professional fees.
- All other ordinary and necessary business expenses.

This will dramatically improve profit margins and financial viability across the entire industry—from cultivation to retail.

2. Banking and Financial Services Access

While Schedule III rescheduling doesn't eliminate marijuana's federal controlled substance status, it should meaningfully improve access to financial services. We expect:

- More banks and financial institutions willing to serve cannabis businesses.
- Reduced compliance concerns for financial service providers.
- Lower insurance costs and better access to capital markets.

- Easier access to traditional business services like credit card processing.

3. **Federal Recognition of Medical Use**

Perhaps equally important is the federal government's formal acknowledgment that marijuana has "currently accepted medical use in treatment in the United States." HHS found that over 30,000 licensed healthcare practitioners across 43 jurisdictions are authorized to recommend medical marijuana to more than 6 million registered patients for at least 15 medical conditions. Forty states plus D.C. already have medical marijuana programs.

This recognition should:

- Increase physician comfort in recommending medical marijuana.
- Improve patient-provider conversations about cannabis use.
- Open the door to future Medicare/Medicaid coverage discussions.
- Strengthening the legitimacy of state medical programs.

The executive order highlights that chronic pain affects nearly 1 in 4 U.S. adults and over 1 in 3 seniors, with 60% of medical marijuana users citing pain management as their primary reason for use.

Timeline

The executive order directs expedited completion of the rescheduling process, which requires finishing the pending administrative law hearing, publishing the final rule in the Federal Register, and allowing the typical 30-60 day period before the effective date.

If the Trump Administration diligently pursues this Executive Order, we could see rescheduling finalized within 3-6 months, though timing ultimately depends on how quickly the administrative process moves forward.

Recommended Actions

Financial Planning:

- Work with tax advisors now to prepare for post-280E treatment.
- Revisit financial projections and pricing strategies.
- Plan for improved cash flow from tax savings.

Strategic Positioning:

- Evaluate expansion or investment opportunities.
- Explore improved banking and financial service options.
- Consider how this affects business valuation and capital raising.

Documentation:

- Keep detailed records of all business expenses for future deductions.
- Document manufacturing processes and quality controls.

Important Limitations

Rescheduling does NOT change:

- Marijuana's status as a federally controlled substance.
- The prohibition on interstate cannabis commerce.
- Employers' ability to maintain drug-free workplace policies.
- Restrictions on federal employees and contractors.
- Immigration consequences related to marijuana activities.
- State laws and regulations.

Marijuana rescheduling to Schedule III is a watershed moment for the cannabis industry. The elimination of Section 280E alone will fundamentally transform the financial landscape, finally providing relief from the crushing tax burden that has limited profitability and growth for years.

The [Clark Hill Cannabis Industry Group](#) will provide periodic updates as the DEA and other agencies issue guidance. We'll be watching this closely and will keep you informed as the process unfolds.

To discuss with our attorneys how your business can take advantage of this change in federal policy please contact us at the following:

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