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Legal Sidebar

Department of Justice Eases Control of Medical Marijuana

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On April 23, 2026, the Department of Justice (DOJ) issued a final order easing some controls of medical marijuana under the Controlled Substances Act (CSA). Specifically, the order provides that marijuana and its derivatives are now controlled in Schedule III under the CSA to the extent they are "included in [a Food & Drug Administration (FDA)]-approved drug product or are subject to a state-issued license to manufacture, distribute, and/or dispense marijuana or products containing marijuana for medical purposes." This Legal Sidebar provides an overview of the rescheduling order, then discusses the legal implications of the order and selected considerations for Congress related to marijuana regulation.

Background on Cannabis Regulation

Cannabis and its derivatives generally fall within one of two categories under federal law: *marijuana* or *hemp*. Unless an exception applies, the CSA classifies the cannabis plant and its derivatives as *marijuana* (some provisions of the statute use an alternative spelling, "marihuana"). The CSA definition of *marijuana* excludes (1) products that meet the legal definition of *hemp* and (2) the mature stalks of the cannabis plant; the sterilized seeds of the plant; and fibers, oils, and other products made from the stalks and seeds. Marijuana is a controlled substance under the CSA.

Currently applicable federal law defines *hemp* as the cannabis plant or any part of that plant with a concentration of no more than 0.3% of the psychoactive cannabinoid delta-9 tetrahydrocannabinol (THC). In November 2025, Congress enacted legislation changing the definition of *hemp* so that, among other things, it is defined based on *total THC concentration* rather than just the concentration of *delta-9 THC*. The new definition is scheduled to take effect in November 2026. Other CRS products discuss the legal and policy implications of that change. The non-psychoactive compound cannabidiol (CBD) falls within the legal definition of *hemp*. Hemp, including CBD, is not a controlled substance under the CSA.

The CSA establishes a unified legal framework to regulate certain drugs and other substances that are deemed to pose a risk of abuse and dependence. Substances become subject to the CSA through placement in one of five lists, known as Schedules I through V. The CSA grants the Attorney General (AG) the authority to schedule controlled substances via administrative rulemaking. The ordinary scheduling process proceeds via formal rulemaking and requires the AG to consider eight statutory factors related to the effects and public health risks of the substance. The CSA also authorizes temporary

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scheduling by the AG, via expedited procedures and with more limited factfinding, when "necessary to avoid an imminent hazard to the public safety." In addition, the CSA allows the AG to schedule a substance "[i]f control is required by United States obligations under international [drug control] treaties" to which the United States is a party. Such treaty-based scheduling may be conducted "without regard to the findings required . . . and without regard to the procedures prescribed" for regular administrative scheduling. The AG generally delegates CSA scheduling authority to the Drug Enforcement Administration (DEA) but also retains the authority to make scheduling decisions.

As an alternative to administrative scheduling, Congress can enact legislation to schedule, reschedule, or deschedule controlled substances. Congress is not required to comply with CSA procedures or factfinding requirements when it schedules substances via legislation.

Congress placed marijuana in Schedule I in 1970 when the CSA was enacted and also separately controlled THC in Schedule I. Several prescription drugs that are derived from cannabis or use cannabinoids as active ingredients have been rescheduled to Schedule II or III or descheduled.

A lower CSA schedule number carries greater restrictions, with controlled substances in Schedule I subject to the most stringent controls. Schedule I controlled substances have no currently accepted medical use in the United States under federal law. It is illegal to produce, dispense, or possess such substances except in the context of federally approved scientific studies, subject to CSA regulatory requirements designed to prevent abuse and diversion. DEA is required to set annual production quotas for Schedule I controlled substances manufactured for use in approved research.

Controlled substances in Schedules II-V have accepted medical uses and may be used for medical purposes, subject to CSA regulations designed to prevent abuse and diversion. Unauthorized activities involving controlled substances, including recreational use, are federal crimes that may give rise to large fines and significant jail time. In addition to the general schedule-based framework under the CSA, some provisions of the CSA apply specifically to marijuana. For instance, 21 U.S.C. § 841 imposes mandatory minimum prison sentences for persons convicted of criminal CSA violations involving set quantities of specific controlled substances, including marijuana. In addition, 21 U.S.C. § 823 imposes special registration requirements for those who manufacture marijuana for research purposes.

In contrast to the stringent federal control of marijuana, in recent decades nearly all the states have changed their laws to permit the use of marijuana or other cannabis products for medical purposes. Twenty-four states and the District of Columbia have removed certain state criminal prohibitions on recreational marijuana use by adults. As the Supreme Court has recognized, states cannot fully legalize marijuana because the states cannot change federal law, and the Constitution's Supremacy Clause dictates that federal law takes precedence over conflicting state laws. So long as marijuana is a controlled substance under the CSA, all unauthorized activities involving marijuana are federal crimes anywhere in the United States, including in states that have purported to legalize marijuana. CRS uses the phrase "state-legal activities" to refer to activities that are permitted under state law but may violate federal law.

Congress has granted the states some leeway to allow the distribution and use of medical marijuana. In each budget cycle since FY2015, Congress has passed an appropriations rider barring DOJ from using taxpayer funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Courts have interpreted the appropriations rider to prohibit federal prosecution of state-legal activities involving *medical marijuana*, but it poses no bar to federal prosecution of activities involving *recreational marijuana*. The rider does not remove criminal liability; it merely limits enforcement of the CSA while the rider remains in effect. While official DOJ policy has varied somewhat across administrations, recent presidential administrations have not prioritized prosecution of state-legal activities involving medical or recreational marijuana.

Even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities in violation of the CSA—including participants in the state-legal marijuana industry who

violate federal law—may face collateral consequences arising from the federal control of marijuana. As one example, to the extent marijuana is controlled in Schedule I or II, Section 280E of the Internal Revenue Code renders marijuana businesses ineligible for certain federal tax deductions. In addition, cannabis and its derivatives, including products classified as either marijuana or hemp, may be subject to other federal and state laws. One key example is the Federal Food, Drug and Cosmetic Act (FD&C Act), which regulates consumer products such as food, pharmaceutical drugs, and dietary supplements.

April 2026 Rescheduling Order

On April 23, 2026, DOJ issued a final order signed by Acting AG Todd Blanche moving some medical marijuana from Schedule I to Schedule III under the CSA. The April 2026 order is not the first executive activity related to the status of marijuana under the CSA. In May 2024, DOJ issued a notice of proposed rulemaking (NPRM) proposing to move marijuana to Schedule III. That NPRM was issued pursuant to DEA's regular scheduling authority and would have applied to marijuana generally. As of the date of this Legal Sidebar, the NPRM had not been finalized. At the same time DOJ issued the final order rescheduling medical marijuana, it also announced that it was withdrawing a previous notice of hearing on the NPRM and would hold a new administrative hearing beginning June 29, 2026, related to full rescheduling of marijuana from Schedule I to Schedule III.

The April 2026 final order applies more narrowly than the NPRM would but takes effect immediately without the need to complete formal administrative rulemaking. The rescheduling order applies to

> (i) those FDA-approved drug products that contain Δ9-THC falling within the CSA's definition of marijuana, specifically FDA-approved drug products containing Δ9-THC derived from the plant Cannabis sativa L., other than the mature stalks and seeds; and (ii) marijuana subject to a state medical marijuana license.

Unlike the May 2024 NPRM, DOJ issued the April 2026 order pursuant to its authority to schedule substances as required under two international treaties, the Single Convention on Narcotic Drugs of 1961 (Single Convention) and the Convention on Psychotropic Substances of 1971, which respectively require signatories to impose controls on cannabis (and certain cannabis derivatives) and delta-9 THC. The rescheduling order begins by reviewing the United States' obligations under those treaties, including but not limited to restricting handling of covered drugs "exclusively to medical and scientific purposes"; imposing production quotas for covered drugs; requiring manufacturers, importers, and exporters of covered drugs to be licensed; requiring prescriptions for medical use of covered drugs; and prohibiting possession of covered drugs "except under legal authority." The final order also notes that the Single Convention imposes some requirements specific to marijuana, including but not limited to requiring signatory governments to purchase "all harvested crops of marijuana and monopolize the wholesale trade in harvested marijuana."

The rescheduling order briefly surveys state marijuana regulatory schemes. It then discusses a 2024 opinion of the DOJ Office of Legal Counsel that determined that "if marijuana is listed in schedule III, most of the Single Convention's obligations noted above will continue to be met by CSA statutory authorities and associated regulations" and "the controls available under schedule III are also sufficient to comply with the requirements of the Convention on Psychotropic Substances with respect to Δ9-THC." The key requirement of the Single Convention that would not be satisfied by Schedule III status is the requirement of a permit to import or export covered drugs. Accordingly, the order provides that "DEA must simultaneously amend the regulations to require a permit to import or export" FDA-approved marijuana products or marijuana subject to state-issued licenses. The requirement to purchase all harvested marijuana is to be implemented via a "nominal price purchase-and-resale mechanism," which is similar to procedures that apply to marijuana grown for research purposes.

The final order emphasizes that treaty-based scheduling is to be conducted without regard to the procedures and factfinding required for regular administrative scheduling. Nonetheless, the final order reviews an August 29, 2023, letter from the Secretary of Health and Human Services providing a scientific and medical analysis of marijuana that recommended placing marijuana in Schedule III before DOJ issued the May 2024 NPRM. In the April 2026 final order, the Acting AG states,

> because I believe there are several legally viable scheduling options that would satisfy the United States' obligations under the Single Convention based on OLC's 2024 opinion . . . , I exercise my discretion in determining the most appropriate schedule by choosing the option that most closely aligns to HHS's findings and best positions the United States to carry out its obligations under the Single Convention.

The final order states that it applies only to covered medical marijuana and is "maintaining unlicensed bulk marijuana in schedule I" and "does not apply to synthetically derived THC," such as delta-10 THC. It further states that it "does not affect the status of hemp," nor does it "reschedul[e] any drug product containing marijuana or THC that previously has been rescheduled out of schedule I (e.g., Marinol and Syndros)," or "impact the status of any previously scheduled synthetic cannabinoids." Thus, it appears that the rescheduling of FDA-approved marijuana products is intended to apply prospectively to products that FDA may approve in the future.

The final order summarizes Schedule III regulatory requirements that are to apply to FDA-approved marijuana products. These include but are not limited to requirements for entities handling those products (other than end users) to register with DEA, ensure that such drugs are dispensed only pursuant to a valid prescription, maintain certain records and make certain reports to DEA, and comply with CSA regulations related to security, labeling, and packaging.

With respect to entities holding state medical marijuana licenses, the final order states that the Acting AG

> has determined that incorporating state licensing systems into the federal registration framework represents the most effective and efficient means of achieving the CSA's objectives with respect to medical marijuana while promoting the medical benefits of marijuana and causing the least disruption for patients and existing state systems.

Accordingly, the final order amends applicable CSA regulations to "establish a new registration pathway for state-licensed medical marijuana entities seeking federal DEA registration as manufacturers, distributors, and/or dispensers." Among other things, the new process provides for expedited review of registration applications from applicants holding state medical marijuana licenses. In particular, the final order directs the DEA Administrator "to process applications submitted within 60 days of publication within six months" and provides that "early applicants may lawfully operate under their state-issued licenses during the pendency of review."

With respect to end users of state-legal medical marijuana, the final order provides that "[s]tate-authorized medical marijuana certifications or similar documents are sufficient to permit the dispensing of medical marijuana to users, provided they include the user's name and address, are dated and signed on the day of issuance, and identify the issuing practitioner."

With respect to marijuana researchers, the final order clarifies that "researchers who obtain marijuana or marijuana-derived products from a state licensee for use in scientific research shall incur no civil or criminal liability under the Controlled Substances Act solely by reason of having obtained such products from a state-licensed source" and shall not face adverse action against their registration.

Finally, the final order notes that "as a consequence of this rule, holders of state medical marijuana licenses will no longer be subject to the deduction disallowance imposed by Section 280E of the Internal Revenue Code," and states that the DEA Administrator "encourages the Secretary of the Treasury to consider providing retrospective relief from Section 280E liability for taxable years in which a state

licensee operated under a state medical marijuana license." The Department of the Treasury has announced that it plans to do so.

Legal Implications of Final Order

The April 2026 rescheduling order does not immediately bring the state-legal marijuana industry into compliance with federal law, but it appears to make it possible for some entities handling medical marijuana to come into compliance with the CSA. A key difference between Schedule I and Schedule III is that substances in Schedule III have an accepted medical use and may lawfully be used for medical purposes, while substances in Schedule I cannot. By moving FDA-approved marijuana and state-licensed medical marijuana to Schedule III, the rescheduling order opens the possibility that manufacturers, distributors, dispensers, and end users of covered marijuana products may be able to comply with the CSA. All entities that handle covered marijuana products, other than end users, will need to register with DEA in order to do so lawfully. The order directs DEA to establish expedited procedures to register holders of state medical marijuana licenses and to approve early applications within six months.

Once registered with DEA, entities handling medical marijuana will be required to comply with applicable regulatory requirements. As outlined above, entities handling FDA-approved marijuana products must to comply with general CSA Schedule III regulatory requirements, while it appears state license holders generally have to comply with state regulatory requirements.

Under the CSA, a controlled substance that is a prescription drug may only be dispensed via a valid prescription. Generally, pharmaceutical controlled substances in Schedule III are prescription drugs, but marijuana is not. Under current medical practice, state-legal medical marijuana is not dispensed by prescription but instead based on a certification from a medical provider. The rescheduling order provides that such certifications are sufficient to permit dispensing of medical marijuana to users as long as the certifications satisfy certain requirements. Thus, the order appears to authorize end users to possess marijuana for medical use without a CSA-compliant prescription.

With respect to participants in the state-legal marijuana industry other than end users, the final order may make it possible for them to comply with the CSA, but may not bring them into full compliance with federal law. Under the FD&C Act, pharmaceutical drugs must be approved by the Food and Drug Administration (FDA), and it is unlawful to introduce an unapproved drug into interstate commerce. Although, as noted above, FDA has approved some drugs derived from or related to cannabis, marijuana itself is not an FDA-approved drug.

With respect to research, CSA registration requirements for Schedule III controlled substances are generally less stringent than the requirements for Schedule I controlled substances. The Medical Marijuana and Cannabidiol Research Expansion Act, enacted in 2022, created specialized procedures for DEA approval of marijuana research and manufacture of marijuana for research purposes. Substance-specific registration requirements continue to apply to marijuana following rescheduling, which might limit the impact of rescheduling on marijuana research. However, the final order appears to seek to facilitate marijuana research by allowing researchers to use state-legal marijuana rather than relying on existing DEA-registered sources.

Rescheduling medical marijuana does not directly alter the medical marijuana appropriations rider, but may render it redundant for state-legal medical marijuana businesses that register with DEA. To the extent those businesses now comply with the CSA, they do not need the rider to shield them from prosecution.

With respect to the manufacture, distribution, and possession of recreational marijuana, even if marijuana were completely moved to Schedule III, such activities would remain illegal under federal law and potentially subject to federal prosecution regardless of their status under state law. Some criminal penalties for CSA violations depend on the schedule in which a substance is classified. To the extent

marijuana is moved to Schedule III, applicable penalties for some offenses would be reduced. However, CSA penalties that apply to marijuana specifically, such as the quantity-based mandatory minimum sentences discussed above, would not change as a result of rescheduling. The CSA does not require DEA to set annual production quotas for Schedule III controlled substances, but the final order states that DEA will continue to apply quota requirements to marijuana as required by the Single Convention.

The prohibition on business deductions in Section 280E of the Internal Revenue Code applies to any trade or business that "consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted." Because the provision applies only to activities involving substances in Schedule I or II, to the extent marijuana is moved from Schedule I to Schedule III, marijuana businesses can deduct business expenses on federal tax filings. Other collateral legal consequences may continue to attach to marijuana-related activities to the extent they violate the CSA or other federal laws.

Considerations for Congress

As noted, either Congress or the executive branch has the authority to change the status of marijuana under the CSA. With the issuance of the final order, DOJ has rescheduled marijuana in part and expressed the intent to reschedule the substance completely in the future. If Congress seeks to change the legal status of marijuana, it has broad authority to do so before or after DOJ makes any final scheduling decision. Several proposals in the 118th and 119th Congresses would remove marijuana from control under the CSA or move the substance to a less restrictive schedule. If Congress moved marijuana to Schedule III by legislation, it could simultaneously consider whether to change any of the legal consequences of Schedule III status mentioned above. Congress could also legislate to move marijuana to another CSA schedule, which would subject it to controls more or less stringent than those that apply to Schedule III controlled substances. In addition, Congress might consider whether rescheduling marijuana in whole or in part necessitates amendments to other applicable legal frameworks, such as the FD&C Act.

While most recent proposals would relax federal regulation of marijuana, Congress could also seek to impose more stringent controls. One proposal in the 119th Congress would amend Section 280E of the Internal Revenue Code to specifically deny tax deductions for any trade or business that "consists of trafficking in . . . marijuana." A proposal in the 118th Congress would have withheld certain federal funds from states in which the purchase or public possession of marijuana for recreational purposes is lawful. A proposal in the 117th Congress would have prohibited the use of benefits under the Temporary Assistance for Needy Families block grant at any store that offers marijuana for sale. Other proposals in the 117th Congress sought to address the issues of workplace impairment or driving under the influence of marijuana and other substances.

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