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One Small Step for State Medical Cannabis Licensees, But One Giant Leap for the Cannabis Industry

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Key Details:

- On April 22, 2026, Acting Attorney General Todd Blanche issued AG Order No. 6754-2026 ordering the immediate rescheduling to Schedule III of cannabis (a) used FDA approved drugs or (b) produced and sold in state-legal medical cannabis programs
- The status of adult use or recreational cannabis remains unchanged on Schedule I
- The Order expressly states that the punitive tax restrictions found in Section 280E no longer apply to rescheduled businesses
- The IRS has issued a press release indicating that guidance is forthcoming for rescheduled businesses, including for businesses serving both the adult use and medical cannabis industries
- Businesses with both adult use and medical operations should consult their counsel and tax advisor regarding the best way to take advantage of the tax relief available to medical operators
- State medical cannabis licensees have a 60-day window, beginning April 29, 2026 and ending June 28, 2026, to register with the DEA; application available here
- It is unclear what downsides may attach to DEA registration or whether DEA registration will prove a prerequisite to a business taking advantage of rescheduling
- Only time will tell what dominoes will fall as a result of rescheduling, but it could include improved access to banking, greater payment processing options, and even bankruptcy relief
- A DEA hearing will be held on June 29, 2026, which will consider the proposed rescheduling of cannabis more generally (e.g., for adult use sales)

Introduction

On April 22, 2026, the Department of Justice issued AG Order No. 6754-2026 (the "Order"), ordering the immediate rescheduling of certain cannabis from Schedule I to Schedule III of the Controlled Substances Act (the "CSA"). The 33-page Order is the culmination of decades of relentless fighting and social education by an industry of operators and advocates seeking to rectify the unjust classification of cannabis as a Schedule I substance. While undoubtedly the biggest cannabis policy development since the Cole Memorandum, the Order leaves much work to be done, as it impacts only FDA-approved drugs containing cannabis and cannabis covered by state licensed medical programs. A hearing scheduled for June 29, 2026 will address the possibility of the broader rescheduling of cannabis (i.e., in adult use programs) from schedule I to schedule III.

While this Order is exciting, it is important to temper that excitement with a healthy dose of reality. In the short term, nothing will change for adult-use operators (at least until after the June hearing).

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While many (understandably) warn of the impending encroachment of "Big Pharma" into the cannabis sector, those developments are still years away. Even state licensed medical cannabis operators have more questions than answers at this point.

Below is an analysis of the immediate changes taking effect, what remains unchanged, and how to navigate it all.

Who and What Products are Impacted

The Order applies to cannabis products generally, expressly referencing "marijuana as defined in the CSA, marijuana extracts, and delta-9 tetrahydrocannabinol and other compounds derived from the marijuana plant (other than mature stalks and seeds) that falls outside the definition of hemp" (Order at 1). It does not affect the status of hemp nor does it apply to synthetically derived THC products, both of which fall outside the CSA's definition of marijuana. (Order at 16-17). We will refer to cannabis and marijuana interchangeably, as the terms are synonymous.

The Order specifies that "FDA-approved drug products containing marijuana, as well as marijuana in any form covered by a state medical marijuana license, be placed in schedule III of the CSA." (Order at 14). A "state medical marijuana license" is defined as "a state-issued license to manufacture, distribute, and/or dispense marijuana or products containing marijuana for medical purposes." (Order at 1).

DEA Registration – the Key to Unlocking Rescheduling Benefits?

The Order creates an expedited pathway for medical operators who wish to obtain DEA registration. To enable state medical-cannabis licensee applicants to quickly move through the registration process, the Order specifies that "applicants holding state medical marijuana licenses may submit their existing state credentials as conclusive evidence of state-law authorization." (Order at 21). Notably, the Order requires the Administrator must "process applications submitted within 60 days of publication within six months." (Order at 22). The DEA Administrator "must" grant registration (with limited exceptions under the public interest) applicants "may lawfully operate under their state-issued licenses during the pendency of review" (Order at 22), which begs the question—if a state licensee does NOT apply for DEA registration, are they not lawfully operating?

It is not yet clear whether DEA registration will prove the key to unlocking the benefits of rescheduling, including improved banking access, Section 280E relief, and even bankruptcy protection, each of which is discussed below. While the Order is written in such a way that DEA registration is permissible and not mandatory, it is possible that the U.S. Bankruptcy Court or the Internal Revenue Service will consider DEA registration as necessary evidence that state medical licensees are indeed operating compliantly under state-legal medical cannabis programs.

It is worth noting that on the same day that the portal opened, Trulieve Cannabis Corp.—whose leader Kim Rivers was instrumental in influencing this administration's policy shift towards

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cannabis—announced that they had already filed DEA registration applications for "certain" of their state-licensed medical marijuana operations.

But are there downsides to DEA registration, particularly for businesses operating in both the medical *and* adult use industries? As we will see below, it may prove challenging to untangle business operations at companies serving both adult use and medical consumers sufficiently to unlock the relief that rescheduling affords.

Section 280E

Until now, all cannabis operators have been subject to Section 280E of the Internal Revenue Code, which restricts businesses "trafficking in controlled substances (within the meaning of schedule I and II of the [CSA])" from taking any "deduction or credit" on their federal income taxes. (26 U.S.C. 280E). While many cannabis operators have disputed the applicability of 280E, the IRS has consistently taken the position that cannabis operators cannot deduct most business expenses for purposes of federal income tax calculations, subjecting them to eyewatering tax bills. Consequently, rather than reinvest their income into stabilizing and expanding their operations, prior to the Order, all cannabis operators were required to fork over inordinate amounts to the IRS. This not only harmed cannabis operators' bottom line, but also their chances of finding investors. It is, therefore, no wonder that the Order's declaration that "state licensees will no longer be subject to the deduction disallowance imposed by Section 280E of the Internal Revenue Code," are being widely celebrated throughout the cannabis industry (Order at 17).

Buried within the text of the Order is another tax-specific line that is just as, if not even more, impactful than the inapplicability of 280E. Speaking from the perspective of the DEA Administrator,[1] the Order "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." (Order at 23). This single line may prove to be worth millions (or perhaps, billions) to the cannabis industry. Though it is not quite clear what this "retrospective relief" will entail, the possibility of forgiveness for outstanding 280E payments may significantly increase the valuation of state-licensed medical cannabis operators, bringing much-needed capital into the cannabis industry. While it seems hard to believe that the IRS would issue a partial or full refund to qualifying taxpayers for past payments made under 280E, retroactive relief could take the form of forgiveness of 280E assessments not yet paid by medical licensees or tax credits for future tax bills for amounts paid pursuant to 280E. Operators who previously filed 280E Opinion letters (including the operators who were instrumental in effecting this policy change, such as Trulieve) may be in the best position to take advantage of retroactive relief.

[1] The Order curiously alternates between the Acting Attorney General directing the DEA Administrator to take certain actions (see e.g., "To facilitate a prompt transition, **the Administrator is directed to** process applications submitted within 60 days [...]" (Order at 22)) and the Order being written as though the author is the DEA Administrator (see e.g., "**The Administrator further 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 [...]" (Order at 23)).

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A day after the Order's initial release, the Treasury Department issued a press release, noting that Treasury guidance and a transition rule on the matter would be forthcoming. Acknowledging the predicament of dual operators with both medical and adult use operations, the Treasury Department's forthcoming guidance "is expected to clarify the ways in which, for businesses with multiple activities, section 280E applies only to those activities related to trafficking in Schedule I or II controlled substances (e.g., by apportioning expenses)." Notably, the press release does not touch on what the guidance may specify regarding retroactive relief.

While it is not yet known when this guidance will arrive, it is clear that any cannabis products and related operations that fall outside of the bounds of (i) FDA approved drugs or (ii) a state-legal medical marijuana framework, will not have access to 280E relief. Dual operators serving both the adult use and medical markets may want to segregate their adult-use and medical expenses, which will prove challenging in states which require that licenses be held in a single entity. State regulators in mixed medical/adult use states will need to act quickly to permit the movement of medical and adult use entities into separate corporate entities.

Intellectual Property

Branding is everything, and cannabis is no exception. Just as consumers flock to their favorite detergent and cereal brands in the supermarket aisles, so too do they seek their preferred pre-roll and edibles at the dispensary. One of the truest testaments to the power of brands in the cannabis industry is the continuing use of intellectual property licensing agreements, whose prevalence only continues to grow as brand recognition becomes more powerful with the expansion of the cannabis industry.

Part and parcel with the implementation of these licensing relationships has been a complicated state and federal patchwork of intellectual property protection methods. Unlike the case with "normal" brands, which apply for federal trademark protection for their goods and services as related to a mark, the USPTO has long "refuse[d] registration when the identified [goods or] services in an application involve[] cannabis that meets the definition of marijuana and encompasses activates prohibited under CSA because such services […] violate federal law."(USPTO Examination Guide, May 2, 2019). Consequently, cannabis operators and brands have resorted to state trademarks for cannabis goods and services where possible and creatively applied for federal trademark protection for their brands as related to ancillary goods and services like clothing, accessories and websites.

The Order should remove the CSA as a roadblock for brands seeking federal trademark protection, at least for medical cannabis products. It is not yet clear what the path to trademark protection looks like for brands used for both adult-use and medical cannabis products. While adult use brands remain unprotectable under federal trademark law, arguably a brand used in commerce for medical cannabis products (which have been rescheduled by the Order) should be eligible for federal trademark protection.

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The importance of this new opportunity for federal IP protection is bolstered by the changes to federal hemp legislation, scheduled to take place in November 2026. Broadly speaking, as of November 12, 2026, the intoxicating hemp industry will become illegal. Whereas products with higher THC content could once seek federal trademark protection under the guise of hemp, after November 2026, the only path forward for THC products seeking federal trademark protection may be via medical cannabis.

Banking

Despite the strides that have been made in cannabis banking, as of April 21, 2026, one core tenet remained true: the introduction of funds from state-legal cannabis operations into the United States banking system could still give rise to exposure under money laundering laws, as a result of cannabis' categorization as a schedule I substance. This is reflected in the most comprehensive federal guidance on cannabis banking: the 12-year old, 7-page memorandum from the Department of Treasury, Financial Crimes Enforcement Network titled "BSA Expectations Regarding Marijuana-Related Businesses" (the "FinCEN Guidance"). The FinCEN Guidance provides a framework for depository institutions to provide services to state-legal cannabis businesses, under which enhanced due diligence and Suspicious Activity Report filings seek to ameliorate the risks of banking businesses that the federal government had long incorrectly labeled as drug dealers. These enhanced diligence and reporting requirements, coupled with the assumed risks of banking cannabis, has led to a select few institutions offering services to the cannabis industry, often at higher costs.

The rescheduling of medical cannabis products arguably removes the need for the FinCEN Guidance's requirements as related to medical cannabis licensees, as the enhancements resulting from the schedule I categorization no longer apply. In particular, marijuana-specific Suspicious Activity Reports, required on an ongoing basis for all state-legal cannabis operators (regardless of their track record of compliance), will arguably no longer be required for medical cannabis licensees' accounts, as these operations are no longer "illegal activities." It bears noting, however, that even as a schedule III substance, medical cannabis is still subject to a comprehensive patchwork of regulations and licensure, requiring, in turn, ongoing enhanced due diligence for these businesses.

Overall, while we will likely see more financial institutions dip their toes in the proverbial waters, medical cannabis operators will arguably continue to face more disclosure requirements from their banks than less heavily regulated businesses, with potentially higher costs. Until such time as cannabis is more broadly rescheduled, adult-use operators may not see many, if any, changes to their banking opportunities.

Payment Processing

Payment processing is perhaps one of the most practically important, and yet unevolved, issues facing the cannabis industry. Despite the efforts and ingenuity of the cannabis industry, traditional payment processing has been unavailable to cannabis operators because of cannabis's categorization as a schedule I substance. Specifically, no merchant category code has historically

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been applicable to cannabis, meaning that dispensaries and retailers have not had a means by which they can properly categorize cannabis sales. Any attempts to circumvent this issue largely constitute fraudulent and prohibited actions.

The rescheduling of medical cannabis to schedule III, however, arguably removes this roadblock for medical licensees. Given that cannabis is now no longer federally illegal in a medical capacity, select merchant category codes, such as code 5122 (drugs, drug proprietaries, and drug sundries) may now be applicable to medical cannabis sales. This, of course, requires the approval, or other guidance of the major card networks before it can actually be used. Additionally, even if permitted by the card networks, processing would still only be permissible for medical cannabis products, leaving adult use sales in the payment processing gray zone within which it currently exists.

Bankruptcy

Bankruptcy protection would be of particular assistance in this industry. It has generally been unavailable to cannabis operators because of cannabis' illegality and a trustee's inability to lawfully administer a cannabis operator's estate in the event of bankruptcy. A DEA registration arguably cuts against both of these issues, providing a key protection for registrants. Access to bankruptcy protection is critical, as it provides a structured, court-supervised process to stabilize operations, preserve enterprise value, and maximize recoveries in times of financial distress. Against that backdrop, the ability of DEA-registered operators to more credibly access bankruptcy relief could represent a meaningful shift in how distressed cannabis businesses navigate insolvency.

Investments

This analysis would be remiss without an analysis of the DOJ Order's expected effects on investments, which can be summarized as simply as triggering a deluge during drought. While the cannabis industry once held the promise of a modern-day goldrush, its status as a federally illicit substance akin to heroin has long deterred investors from being listed on or associated with a cannabis license, whether by choice or because professional, licensing, or investment restrictions made participation impossible. While rescheduling of medical cannabis arguably may not immediately dispel the social stigma concern, it does solve the illegality issue. Without a schedule I label, investors whose hesitation or inability stemmed from cannabis' illegality no longer have such a roadblock as an investment in a state-legal medical cannabis operator, especially one with a DEA registration, is arguably now akin to becoming a stakeholder in a pharmaceutical company.

Cannabis' designation as a Schedule I controlled substance has likewise prevented state-legal cannabis licensees from accessing U.S. public capital markets, including listing securities on major national exchanges such as the NASDAQ and the New York Stock Exchange. While companies providing ancillary services to cannabis operators have had better luck through complex opinions specifying the legality of their operations, public listings as a whole have been, at best, difficult for the cannabis industry. The rescheduling of medical cannabis now arguably opens to door for these licensees to the U.S. public capital markets, especially those with DEA registrations. Given the heightened value of medical cannabis companies as a result of rescheduling, access to the

public capital markets may prove quite advantageous for those operators in place to take advantage of this new possibility.

Prior to the Order, foreign investments in cannabis operations were stuck in a figurative Hotel California – plenty of opportunity, with companies able to declare dividends any time they'd like, but the money unable to ever leave the United States. Federal money laundering statute 18 U.S.C. § 1956 makes it a crime to transport, transmit or transfer funds into or outside of the Unites States, in part when the person doing so knows the funds represents proceeds of unlawful activities. Similar roadblocks exist in most receiving countries' laws, disallowing funds derived from unlawful activities to enter such countries' banking systems. As a schedule III substance, funds derived from state-legal medical cannabis operations and DEA registered cannabis operators are no longer proceeds of unlawful activities, allowing them to more easily exit the United States and, subject to the receiving country's laws, enter investor's pockets.

Takeaways

The DOJ's April 22nd Order categorizing medical cannabis to a schedule III substance will have continued effects, making those discussed here just the tip of the iceberg. As the Order's outcomes continue to come to light, it remains clear that capitalizing on the opportunities created by this Order will require organization, diligence and creativity from operators. Luckily, the cannabis industry has its roots in an amalgamation of these qualities. As we continue to discover the full spectrum of the Order's outcome, and perhaps grapple with broader rescheduling before year's end, it is important to remember that cannabis has arrived at this point because of the industry's ability to understand and creatively follow both the letter and spirit of the law, and that succeeding in a post rescheduling world will require that same resourcefulness.