

Trump Administration Reignites Marijuana Rescheduling

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On December 18, President Trump signed an executive order directing federal agencies to expedite the rescheduling of marijuana under the Controlled Substances Act (CSA) and expand federal research on cannabis-derived products. The order does not legalize marijuana at the federal level.

Nonetheless, it represents a major potential shift in federal drug policy with implications for industrial hemp, medical research, and the cannabis industry as a whole. [Full order here.](#)

Executive Order and Medicare CBD Program

The executive order dictates the reclassification of marijuana from Schedule I of the CSA—reserved for substances with no accepted medical use and a high potential for abuse, such as heroin and LSD—to Schedule III, for drugs with recognized medical uses and a lower potential for dependence. Once enacted, marijuana would be grouped with drugs like ketamine and certain anabolic steroids.

The order focuses on the medical potential of cannabinoids and, beyond rescheduling, announced plans for the Centers for Medicare and Medicaid Services to launch a pilot program that would pay for treatments containing cannabidiol (CBD), the non-psychoactive cannabis compound. It also calls for coordination with Congress to update the statutory definition of “final hemp-derived cannabinoid products” after recent federal funding legislation imposed new THC thresholds on them. This includes potential guidance on THC limits per serving, per container thresholds, and CBD-to-THC ratio requirements. The Department of Health and Human Services, FDA, CMS, and NIH are tasked with developing research methodologies to inform standards of care and access.

The Billion Dollar Question: When?

The executive order instructs the attorney general to complete the rulemaking process necessary to reschedule marijuana to Schedule III “in the most expeditious manner” consistent with federal law. In any other administration, this would take years. However, this administration has shown a strong preference for speed over coalition building and formal process. The quickest option would be for the attorney general to abandon the Biden-era hearings and issue a final rule, which could happen as early as the first quarter of 2026. However, it should be noted that historically the attorney general has not exercised her authority under 21 U.S.C. § 811(d)(1) to issue a final rule, but has instead directed the DEA to issue a final rule based on the administrative rulemaking process. In the alternative, the administration could restart a formal rulemaking process. This latter approach would be a clear indication that the administration does not wish to put substantial political capital into this issue and is deferring to those (of which there are many) at DOJ, DEA, and in the President’s party who strongly oppose rescheduling. The coming weeks should be telling.

Cannabis Industry Impact

The executive order is not legalization, but assuming the administration follows through, it is difficult to understate what a momentous step forward this is for the state-licensed cannabis industry.

The largest and most obvious impact is that state-licensed businesses will no longer be subject to Internal Revenue Code Section 280E, allowing them to deduct ordinary business expenses such as rent and payroll. This has been a significant financial burden on the industry since its inception. Removing this hurdle will not only allow the cannabis industry to compete on the same playing field as all other legitimate businesses but is likely to bolster interest from new sources of capital.

At the same time, broader structural issues, including interstate commerce and access to traditional banking and liquidity events, remain unresolved and will require congressional action. Democrats have historically championed cannabis liberalization but have fallen short enacting meaningful federal legislation. Should the Republicans now seize the initiative, Congress may finally act.

Less immediate, but potentially larger in the long term, will be the impact of federally regulated medical cannabis products. The flood gates of medical research will not open right away. There are 75+ years’ worth of institutional policies and federal laws that will need updating to align with the intent expressed in the executive order. However, looking back 10 years from now, this order may be seen as the starting point for several transformative medical treatments.

Key Questions, Cannabis Operators Should be Thinking About

If your business already disregards 280E, it is a good time to revisit that decision, including the arguments on which you have relied. Those arguments and audit risks are changing. It may make sense to make proactive changes.

Similarly, businesses should reconsider their core strengths, intercompany agreements, and corporate structure. Vertical integration may not offer the same advantages post-280E. Executive teams will need to determine which assets are necessary for growth and which are holding them back.

The order is notably focused on medical cannabis. However, harmonization between state-licensed businesses and intoxicating hemp products will determine the future of the adult-use markets. The federal government is not going to reauthorize intoxicating hemp products in the way they currently exist, but the door to comprehensive legislation (even if done incrementally) is now open. When it comes to adult-use cannabis product, this is ultimately one industry and not two – the long-term viability of which depends on mature operators producing and selling safe and tested products to adults for their responsible enjoyment. How will your business fit into the future and how active will you be in shaping it?

On the opposite end of the spectrum, now is a good time to revisit what it means to be a “medical marijuana” business. Change on this front will not be immediate, but it is coming and it will require much different skill sets than state-regulated medical businesses. There will be a lot of opportunity in the coming shift.

Contact Us

Husch Blackwell attorneys are skilled at helping our clients navigate their most complex challenges. Our team has developed a unique set of tools to support the hemp and cannabis industries, and we continue to monitor changes nationwide. If you have questions about these changes, reach out to your Husch Blackwell attorney.