DRUG POLICY ALLIANCE.

FEDERAL MARIJUANA RESCHEDULING EXPLAINER

MAY 2026

KEY TAKEAWAYS

- The Attorney General partially rescheduled marijuana by placing (1) FDA-approved drugs containing marijuana and (2) marijuana covered by a state medical marijuana license under Schedule III of the Controlled Substances Act (CSA) ("rescheduling") at the federal level.
- In doing so, the federal government has finally acknowledged that marijuana has accepted medical use and does not have a high potential for abuse.
- Rescheduling will bring tax relief for state-licensed medical marijuana businesses because a federal tax penalty called 280e only applies to drugs on Schedules I and II of the CSA.
- However, all other forms of marijuana, including adult-use marijuana from state-licensed stores, remain completely illegal at the federal level.
- A hearing will take place beginning on June 29, 2026, to consider the broader rescheduling of marijuana from Schedule I to Schedule III."
- Crucially, rescheduling does not release people currently incarcerated for marijuana, expunge records from previous marijuana arrests, or address barriers to housing and employment for people with previous marijuana arrests.
- Congress must still deschedule and decriminalize marijuana by removing it from the CSA entirely and address the harms of marijuana criminalization, which include arrest records that block people from jobs, housing, and SNAP food assistance.

BACKGROUND

Under the Trump administration, federal marijuana policy is undergoing a significant but limited shift. On April 23, 2026, the administration's Department of Justice (DOJ) and Drug Enforcement Administration (DEA) issued an order immediately placing both FDA-approved drugs containing marijuana and marijuana from state medical marijuana licensees in Schedule III of the Controlled Substances Act (CSA). The agencies also announced a new administrative hearing, scheduled to start June 29, 2026, to consider the 'broader rescheduling' of marijuana from Schedule I to Schedule III.

WHAT THIS MEANS

Marijuana has NOT been rescheduled or legalized.

Instead, the federal government has taken a partial approach that applies only to specific categories of marijuana products.

The DOJ and DEA order specifically notes "any form of marijuana other than that in a FDA-approved drug product or marijuana subject to a state medical marijuana license remains a Schedule I controlled substance, and those who handle such materials remain subject to the regulatory controls, and administrative, civil and criminal sanctions, applicable to Schedule I controlled substances set forth in the CSA and DEA regulations."

Congress must deschedule and legalize marijuana by removing it from the CSA.

Outside of the limited scope of FDA-approved products and state-licensed medical marijuana, **marijuana is still generally illegal under federal law.** Therefore, the need to end federal marijuana criminalization by removing it ("descheduling") from the CSA remains. Rescheduling marijuana to Schedule III will not release anyone incarcerated for marijuana, nor will it restore rights to those with previous marijuana convictions. As a result, people with previous marijuana convictions will still face barriers to employment, public benefits, and housing. For noncitizens, marijuana activity could still result in family separation and deportation.

To ensure meaningful marijuana reform, Congress must act by:

- Descheduling marijuana entirely to end federal criminalization;
- Providing relief to individuals with prior marijuana convictions;
- Reinvesting in communities disproportionately targeted by marijuana enforcement; and
- Establishing a national regulatory framework that promotes equity, public health, safety, and fair competition.

Additionally, Congress needs to develop a comprehensive, unified cannabinoid framework that standardizes regulation, enforcement, and public education across hemp and marijuana. This regulatory approach must ensure economic parity across cannabis markets and eliminate conflicting policies that treat similar cannabinoid products differently.

For additional information about this resource, please contact Cat Packer, Director of Drug Markets and Legal Regulation at the Drug Policy Alliance, at cpacker@drugpolicy.org

HOW WE GOT HERE

In October 2022, President Biden directed federal agencies to review marijuana's status under the CSA. In August 2023, after conducting its scientific and medical evaluation, the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) recommended that marijuana be moved from Schedule I to Schedule III. Biden's DOJ then issued a proposed rule in May 2024, triggering a 62-day public comment period. A record number of more than 43,000 public comments were submitted, nearly 70% of which called for descheduling.

The proposed rule allowed stakeholders to request a public hearing. In August 2024, the DEA issued a hearing notice. By October 2024, it had appointed an administrative law judge (ALJ) and selected 25 witnesses. During a preliminary hearing in December 2024, the ALJ scheduled proceedings for January 2025. These were indefinitely postponed to allow for an appeal over alleged improper communications and concerns about witness selection, requiring 90-day status updates. On August 1, 2025, the presiding ALJ retired. This left the DEA without a judge to oversee the case or other pending matters and the appeal pending with no briefing schedule set.

On December 18, 2025, President Trump issued an executive order titled *"Increasing Medical Marijuana and Cannabidiol Research."* The executive order instructed the Attorney General (AG) to take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the CSA in the most expeditious manner in accordance with federal law, including 21 U.S.C. 811.

On April 23, 2026, the DOJ and DEA announced the issuance of an order immediately placing both FDA-approved drugs with marijuana and marijuana from state medical marijuana licensees in Schedule III and a new hearing to consider "broader rescheduling."

THE RESCHEDULING ORDER: WHAT IT DOES

The DOJ Partially Rescheduled Two Categories of Marijuana Products Using its Treaty-Based Authority

The DOJ order relies on 21 U.S.C. § 811(d)—the CSA's "treaty exception"—to bypass the standard rulemaking process. When a substance is subject to control under international treaties, this provision requires the Attorney General to place it in the schedule they deem most appropriate to carry out U.S. treaty obligations without following the CSA's usually required findings and procedures.

In doing so, the order explains that marijuana remains subject to the Single Convention on Narcotic Drugs and maintains U.S. compliance by narrowly rescheduling only FDA-approved marijuana drug products and marijuana produced under state medical marijuana licensees and implementing additional regulatory controls.

Two Categories of Products Have Been Moved From Schedule I to Schedule III

- FDA-approved drug products containing marijuana, and
- Marijuana in any form covered by a state medical marijuana license.

The following were explicitly excluded from the rescheduling:

- Unlicensed or "bulk" marijuana (Schedule I)
- Marijuana extracts (Schedule I)
- Delta-9 THC material used to make FDA-approved drugs (Schedule I)
- Synthetic THC (Schedule I)
- Hemp (The order notes that it does not affect the status of hemp, because hemp is excluded from the definition of marijuana.)
- Any drug product containing marijuana or THC that had previously been rescheduled out of Schedule I (Marinol remains in Schedule III while Syndros remains in Schedule II).

The final order did not reschedule state-regulated adult-use or recreational cannabis, nor does it specifically address or provide protections for personal cultivation, even for medical cannabis patients.

HOW THE ORDER WORKS: TWO REGULATORY PATHWAYS

The order establishes two distinct regulatory systems under Schedule III, each with different requirements and implications.

1. FDA-Approved Marijuana Drugs

Persons who handle marijuana exclusively in the form of an FDA-approved drug product are required to follow specific requirements that fall within the traditional regulatory framework of FDA approval and DEA oversight. Entities handling these products must register with the DEA and comply with standard Schedule III requirements, including those related to:

- Disposal of stocks
- Prescriptions
- Records and Reports
- Security
- Labeling & Packaging
- Inventory
- Manufacturing and Distributing
- Liability

2. State Medical Marijuana Licensees

The order also creates a new federal pathway for state-licensed medical marijuana businesses seeking DEA registration. This is intended to create a mechanism for federal compliance under the CSA, consistent with the requirements of the Single Convention, layered on top of state programs.

Registered State-Licensed Medical Marijuana Businesses Will Need to Comply with Additional DEA Requirements to Satisfy Schedule III Obligations

The order defines "state medical marijuana license" and provides that state-licensed medical marijuana businesses may apply for DEA registration under one of three categories: manufacturer, distributor, or dispenser. A single entity may obtain multiple types of registrations.

Registration is tied directly to state licensure, meaning it covers only activities authorized under state law and is automatically invalid if the underlying state license is suspended, revoked, or expires. Medical marijuana licensees may submit their existing state credentials as conclusive evidence of state-law authorization. DEA-registered entities may only conduct business with other DEA-registered entities.

The DEA is required to grant registration unless doing so would be inconsistent with the public interest or with U.S. obligations under the Single Convention, including any applicable quota requirements.

The order also establishes an expedited registration process, under which applications submitted within 60 days must be reviewed within six months, and early applicants may continue operating while their applications are pending.

Generally Schedule III Requirements Defer to State Regulations with Additional Federal Requirements Where Applicable

Entities that register with the DEA must comply with Schedule III requirements as outlined in the order. The order states that it is designed to incorporate existing state licensing systems into the federal registration framework in a way that causes the "least disruption for patients and existing state systems," and includes several provisions intended to reduce regulatory burdens on compliant state-licensed businesses. As a result, state law generally governs areas such as labeling, packaging, recordkeeping, and security, with only limited specified exceptions.

Dispensing Permitted via State Medical Marijuana Certifications

The order directs that state-authorized medical marijuana certifications (or similar documents) are sufficient to permit dispensing of medical marijuana to users, provided they:

- Include the patient's name and address
- Are dated and signed on the day of issuance
- Include the authorizing practitioner's name, address and state license number

A Warning Label is Required to Remind Patients It Is Illegal to Transfer Their Medicine to Anyone Else

All products must include the statutory warning required by 21 U.S.C. § 825(c), stating that it is a crime to transfer the drug to any person other than the patient for whom it was prescribed.

DEA-Registered State Licensed Medical Marijuana Manufacturers Must Sell their Marijuana to the DEA, Then the DEA Will Sell it Back to Them

You read that right. To comply with the Single Convention, the DEA must buy marijuana crops from registered manufacturers. To effectuate this requirement, manufacturers must set a nominal price for their crops, after which the DEA purchases and resells them back at the same price, plus an administrative fee. DEA must have access to facilities until transactions are complete, may inspect facilities on demand, and registrations must specify permitted cultivation areas.

A Federal Permit Is Required to Import/Export

The order adds FDA-approved marijuana drug products and marijuana produced by qualifying state medical marijuana licensees to the list of substances that may only be imported or exported pursuant to a federal permit.

POLICY IMPLICATIONS

The order explicitly addresses tax and research implications, while raising a number of additional policy and market considerations.

All State-Licensed Medical Marijuana Vendors Are Now Eligible for Tax Relief — Regardless of Registration with DEA

The order has immediate implications for Internal Revenue Code Section 280E, which applies only to businesses trafficking Schedule I and II substances. Because products from state-licensed medical marijuana businesses are now placed in Schedule III, the businesses themselves should no longer be subject to 280E. As a result, all state-licensed medical marijuana businesses should be eligible for tax relief, regardless of DEA registration status, because tax treatment turns on the scheduling of the product—not the registration of the business. On April 23, 2026, following the announcement of the order, the Treasury issued a press release stating that it will publish guidance on related implications.

Researchers Must Register with the DEA but Will Be Able to Obtain Marijuana from State-Licensed Entities

Researchers will need a Schedule III DEA registration instead of a Schedule I registration, which should reduce reporting and security requirements. The order also clarifies that researchers will not face civil or criminal liability for obtaining marijuana from state-licensed entities (rather than DEA-registered bulk manufacturers), provided that the researcher holds a valid DEA registration and the supplying entity is properly registered at the time of transfer.

Beyond these areas, the order raises broader structural and policy implications as detailed below.

The Medical-Only Framing of the Order Leaves Uncertainty for Businesses Engaged in Both State-Licensed Medical and Adult Use Marijuana

The order applies only to medical marijuana, raising important structural questions in states with dual medical and adult-use licensing systems, as well as in jurisdictions with a single license covering both activities. It remains unclear how the DEA will address these differences from a registration, regulatory, or enforcement perspective.

Congressional Medical Marijuana Protections Remain in Effect amid Uncertainty Regarding DEA Enforcement

At this stage of implementation, it remains unclear what specific protections or benefits will extend to DEA-registered, state-licensed medical marijuana businesses operating under Schedule III. The order does not explicitly require DEA registration, suggesting that some businesses may continue operating solely under state law. As a result, the policy is likely to produce two parallel medical marijuana markets—one composed of DEA-registered entities participating in the federal Schedule III system, and another of state-licensed medical marijuana businesses operating outside of it. It is also unclear how federal enforcement will apply to businesses that do not register, or whether they will face increased risk relative to those within the federal framework. Notably, the Rohrabacher-Farr amendment that prohibits the Department of Justice, including the DEA, from interfering with state-authorized medical marijuana activity is still in effect.

Partial Rescheduling Leaves Behind Most Small, Equity, and Minority-Owned Cannabis Businesses

The medical-only approach is likely to widen existing racial disparities within the cannabis industry. Due in part to the lasting impacts of criminalization and historically high barriers to entry, the medical marijuana market is disproportionately white-owned.[1] Many programs advancing participation for small businesses—including those led by Black, Latino, veteran, and women entrepreneurs—have been developed through adult-use legalization frameworks.

By limiting federal benefits such as tax relief to medical licensees, this framework risks leaving most small, minority-, and equity-owned businesses behind. Moreover, DEA registration requires disclosure of criminal history related to controlled substances and can be denied for such history in the name of the "public interest" or treaty compliance, which may create additional barriers to participation and reinforce inequities tied to past enforcement—disproportionately impacting Black and Brown communities.

The DOJ Order Could Have Interstate and Global Commerce Implications

The order raises important questions about the future of interstate and international cannabis trade. By placing certain marijuana products in Schedule III and establishing import/export permitting pathways, it signals potential movement toward broader commercial integration. At the same time, key legal and regulatory questions remain unresolved, including the applicability of the Dormant Commerce Clause, the role of federal law and agencies such as the CSA and the DEA and the Food, Drugs, and Cosmetics Act (FDCA) and the FDA, the extent of state authority, and how existing restrictions on interstate commerce may evolve.

Legal Challenges Could Delay Implementation or Modify the Applicability of the Order

The order and its implementation are likely to face legal challenges, which could delay or disrupt its effects, including through potential court-ordered stays. Areas of vulnerability include DOJ and DEA's reliance on the CSA's treaty exception (21 U.S.C. § 811(d)), which allowed the agencies to bypass traditional rulemaking procedures such as a full administrative hearing and related judicial and congressional review.

Additional challenges may arise under the Rohrabacher–Farr amendment, which restricts DOJ from interfering with state medical marijuana programs and could be implicated if aspects of the federal registration framework are viewed as burdening those systems. More broadly, questions around administrative authority, procedural compliance, and federal–state interaction are likely to be tested in court, creating uncertainty around implementation.

PRACTICAL IMPACTS BY STAKEHOLDER

Partial Rescheduling Could Expand Economic Opportunities for Some, While Continuing to Exclude Others—Widening Existing Market Disparities

The order provides greater clarity for FDA-approved drug developers, confirming that qualifying products will be placed in Schedule III. However, the underlying pathway remains costly, time-intensive, and relatively under-incentivized compared to lower barriers in state markets.

For state-licensed medical marijuana businesses, it creates a new pathway to operate in compliance with federal law through DEA registration and compliance with additional Schedule III obligations, reducing legal risk, enabling tax deductions and other potential benefits. It also ends the applicability of the federal law prohibiting the advertisement of Schedule I substances for operators advertising Schedule III marijuana products.

However, these benefits will not be distributed evenly: non-DEA registered businesses—including those operating in state-legal adult-use markets—remain federally illegal. In practice, this disproportionately excludes Black and Latino entrepreneurs, who are more likely to operate in adult-use markets due to historical barriers to entry in the medical sector.

Researchers Could Face Fewer Hurdles but Still Face Significant Barriers

The shift to Schedule III reduces certain administrative burdens and may expand sourcing options to include state-licensed entities under certain conditions.

However, significant barriers remain. Clinical trials involving the administration of marijuana to humans still require FDA approval through an Investigational New Drug (IND) application. As a result, the order does not fundamentally expand the ability to conduct FDA-regulated clinical research using commercially available cannabis products.

In addition, both the Medical Marijuana and Cannabidiol Research Expansion Act and the yet-be-implemented research provisions of the HALT Fentanyl Act include changes to marijuana research requirements under the Controlled Substances Act. It remains unclear how these reforms will interact with or be affected by the shift to Schedule III.

Patients Use of Medical Marijuana Products from DEA-Registered State-Licensed Medical Marijuana Businesses Should No Longer Be Criminalized Under The CSA

The order is primarily focused on entities seeking DEA registration for manufacturing, distributing and dispensing. However, the language in the order suggests that under certain conditions, patients may now be able to access marijuana in a manner that is consistent with federal law through state-licensed medical programs, reflecting a meaningful shift in federal recognition of marijuana as medicine. This suggests that patients and caregivers should no longer be treated as criminals under federal law for their cannabis use but only for FDA-approved drugs containing marijuana and products exclusively from state medical marijuana licensees.

For example, the order explains that state medical marijuana certifications may satisfy federal requirements "to permit the dispensing of medical marijuana to users" so long as they include specified information. It also requires warning labels stating that it is unlawful to transfer marijuana to any person other than the patient for whom it was prescribed or recommended.

This suggests that while certain activities may be permitted under the CSA when compliant with Schedule III obligations, not all activities have been decriminalized for patients. It remains unclear whether corresponding protections—such as safeguards against federal penalties, loss of benefits, or discrimination in housing, employment, or healthcare—will be fully realized.

At the same time, individuals outside this newly recognized medical system, including adult-use consumers, remain subject to federal criminalization. Notably, the order provides no allowance for various types of state personal cultivation laws, which many patients rely on for legal and affordable access. The order is silent on health insurance coverage for medical marijuana expenses.

KEY TAKEAWAYS

The Good

The order represents a meaningful shift in federal posture by acknowledging that marijuana has medical value and poses lower risk than Schedule I substances. It is also significant that for the first time, DEA-registered state-licensed medical marijuana businesses that comply with additional federal requirements — and patients obtaining marijuana products exclusively from those businesses — may be able to operate and access medicine in compliance with federal law.

The Challenges

By narrowly limiting rescheduling to FDA-approved products and state-licensed medical marijuana, many of the harms of criminalization remain unchanged. It also risks deepening market inequities by favoring the medical sector, where ownership is disproportionately white, while excluding many Black and Latino entrepreneurs concentrated in adult-use markets.

The Unknowns

This is an early-stage policy shift, and its real-world impact will depend heavily on implementation. Clear guidance for regulators, businesses, researchers, and consumers will be critical to ensure the policy delivers meaningful benefits. Even if broader rescheduling occurs, it would still fall short of public support for full legalization.

THE ADMINISTRATIVE HEARING

In their April 23 announcement, DOJ and DEA stated that, in order "to move more efficiently toward the completion of marijuana's redesignation," the DEA cancelled the prior proceedings and hearing initiated under the Biden Administration.

In their place, DOJ and DEA have initiated a new administrative hearing process to consider the broader rescheduling of marijuana from Schedule I to Schedule III, describing it as a "timely and legally compliant pathway" to evaluate changes to marijuana's status under federal law.

The hearing will begin on **June 29, 2026 at 9:00 a.m. ET** at the DEA Hearing Facility in Arlington, Virginia, and is expected to conclude no later than **July 15.** The purpose of the proceeding is to receive factual evidence and expert opinion on whether marijuana should be more broadly transferred to Schedule III.

Participation is open to interested stakeholders, defined as any person adversely affected or aggrieved by the proposed rule. To participate, individuals or organizations must submit a written notice describing their interest, the issues they wish to address, and their position. Submissions must reference **Docket No. DEA-1362** and be filed electronically (via nprm@dea.gov) or by mail, with a deadline of **May 24, 2026** (or **May 20, 2026** if submitted by mail).

The DEA will review submissions and select participants, with notifications expected by **June 22, 2026**, and an Administrative Law Judge will be designated to preside over the proceedings.

What Happens After The Hearing

Following the hearing, the Administrative Law Judge (ALJ) should compile the full administrative record — including evidence gathered during the hearing and public comment process—and transmit it to the DEA Administrator.

After reviewing the record, the DEA Administrator should determine whether to proceed with fully or more broadly reclassifying marijuana as a Schedule III controlled substance under the Controlled Substances Act (CSA).

If the DEA chooses to move forward, the agency should publish a final rule in the Federal Register outlining the rule, as well as the findings of fact and conclusions of law supporting the decision.

Once a final rule is issued, any interested person aggrieved by the decision may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit, or in the circuit where their principal place of business is located, within 30 days of notice of the decision.

END NOTES

1. Doonan, S. M., Johnson, J. K., Firth, C., Flores, A., & Joshi, S. (2022). Racial Equity in Cannabis Policy: Diversity in the Massachusetts Adult-Use Industry at 18-months. Cannabis (Albuquerque, N.M.), 5(1), 30–41. https://doi.org/10.26828/cannabis/2022.01.004