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Cannabis Rescheduling (I to III): Truth v. Fiction | Update

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In a major move for the cannabis industry, the U.S. Department of Justice (“DOJ”) issued a [Final Order](#), effective April 22, 2026, through Acting Attorney General Todd Blanche, which kickstarts the process of rescheduling, or reclassifying, cannabis from its current designation as a Schedule I substance under the Controlled Substances Act (“CSA”) down to a Schedule III substance. While the 33-page DOJ Final Order does NOT provide for federal legalization or decriminalization of the plant, it does provide, in very brief overview, for the following:

- State licensed medical cannabis and any Food and Drug Administration (“FDA”) approved drug containing cannabis is immediately considered moved from Schedule I to Schedule III, under the CSA;
- State licensed medical cannabis operators are granted the option of an expedited federal DEA registration process based on their existing state license;
- An expedited administrative hearing process will begin on June 29, 2026 at the DEA to address a similar proposed move from Schedule I to III for all remaining adult-use cannabis.

As some background, it was August, 2023 when the Department of Health and Human Services (“HHS”) responded to then President Joe Biden’s request and proclaimed that cannabis has accepted medical benefits and should be rescheduled from its current Schedule I (for drugs with no medical use and high level of abuse, e.g. heroin, LSD) down to Schedule III (for drugs with accepted medical use and low likelihood for abuse, e.g., ketamine, Tylenol with codeine) under the CSA. There followed an unsurprising delay as the DEA began its administrative steps in the litigation-style procedure of rescheduling a controlled substance. That was about the time I pushed out a brief review, in advance, of what rescheduling cannabis from Schedule I to Schedule III really means...and what it does not mean. See, [Cannabis Rescheduling \(I to III\): Truth v. Fiction](#).

Shortly after the official administrative process for rescheduling began, in mid-2024, it stalled out after running into procedural challenges and other governmental priorities. But in a recent twist, which was not all that shocking to those familiar with how the cannabis industry progresses, President Trump in December 2025 took a very different approach and issued an Executive Order instructing the Attorney General to find and take whatever legal means available to finalize cannabis rescheduling expeditiously. That resulted in the DOJ Final Order of April 22, 2026, with a clear objective to prioritize medical purposes.

It only seems appropriate now to pull out that cheat sheet from [2 years ago](#) and revisit those primary issues, because while all of them were accurate, the industry is now almost three years older since HHS made its initial

recommendation that cannabis has accepted medical benefits and it behooves all of us to take note of what has just happened and consider, once again, the truths and fictions of rescheduling following the recent DOJ Final Order.

- **The DOJ Final Order concludes the cannabis rescheduling process. FICTION**

While the rescheduling process is suddenly much closer to being finalized, steps still remain before cannabis is legally considered a Schedule III substance. The Order does direct that existing medical licensed cannabis and DEA approved drugs are immediately moved to Schedule III, but that is only part of the story. All remaining cannabis, licensed adult use and non-licensed, will undergo further administrative process beginning June 29, 2026. While the [Notice of Hearing](#) directs the proceedings to conclude by July 15, 2026, the reality of how long that will take until fully concluded is unknown. There will also be litigation filed by opposition groups that could result in a stay of the effects of the Order and any final rule making procedure and cause another frustrating delay before it is officially concluded. Keep expectations realistic.

- **The elimination of the 280E tax burden is the primary benefit for medical licensed cannabis operators. TRUTH**

Section 280E of the Internal Revenue Code prohibits businesses operating in Schedule I and Schedule II substances from deducting their ordinary business expenses. That unworkable restriction will no longer apply to state licensed medical cannabis operations under Schedule III. Whenever the rest of the cannabis industry also moves to Schedule III following the administrative process will determine when 280E no longer applies to that group as well. Unless a court ordered stay is put in place, all Schedule III businesses will be able to immediately plan on greater cash flow and more access to capital as the immense tax burden is lifted for 2026 and beyond. But even though there is reference in the DOJ Order to a potential retroactive application to this tax relief, do not expect the IRS to openly agree with any refunds or retroactive application to be allowed for newly rescheduled companies.

- **The April 22 Order will make cannabis legal under federal law. FICTION**

Still NO. Schedule III substances are illegal under Federal law just as are Schedule I substances. Certain restrictions are lifted with rescheduling and the plant is now recognized as having legitimate medical benefits, but the ongoing issues with federal illegality will remain, such as, challenges to banking access, no rights to Federal Trademark or Bankruptcy laws, and ongoing interstate commerce restrictions.

- **Questions remain with implementation of the April 22 DOJ Order. TRUTH**

There is still much to learn about how the proposed next steps will take place: federal registration of state medical licensures, scope and format of the adult-use administrative hearing to begin June 29, retroactivity of 280E tax relief, effect of Schedule I adult-use operations on commonly owned state medical licenses applying for DEA approval, whether a court ordered stay will be put in place and how that may affect other steps to follow, and whether pharmaceutical companies will begin to participate more aggressively in the industry with the medical nod from the DOJ?

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