CANNRA

CANNABIS REGULATORS ASSOCIATION

OVERVIEW OF DOJ FINAL ORDER ON MARIJUANA RESCHEDULING
April 27, 2026

Background:

- December 18, 2025: The President issued an Executive Order calling on the DOJ and the DEA to expeditiously reschedule marijuana to Schedule III. The Executive Order included reference to a pathway under 21 USC 811(d) – a section of the Controlled Substances Act (CSA) that authorizes the Attorney General to issue a final order placing a substance in the schedule the Attorney General deems most appropriate, while bypassing the procedures described by other subsections of the CSA in order to comply with international treaty obligations.
- April 23, 2026: The Acting Attorney General issued a final order under section 811(d), rescheduling U.S. Food and Drug Administration (FDA)-approved drug products containing marijuana, and marijuana that is "in any form covered by a state medical marijuana license" to schedule III of the CSA.

What does this Final Order do?

- This order moves only medical marijuana – in the form of FDA approved marijuana drugs and state-licensed medical marijuana from Schedule I (which is federally illegal) to Schedule III (which recognizes and allows for medical use). **The Final Order creates federal legality for medical marijuana products from U.S. Drug Enforcement Administration (DEA) approved licensees. The order does not legalize marijuana federally.**
- Unlicensed bulk marijuana and marijuana extract, and delta-9 THC material used to make FDA approved drugs will remain in Schedule I.
- The final order does not apply to synthetic marijuana, which is not part of the CSA's definition of marijuana.
- The final order does not affect the status of hemp because hemp is excluded from the definition of marijuana. Hemp is not scheduled. It should be noted that the federal definition of hemp is set to change in November and will be limited to industrial products and low THC products with <0.4mg total THC per container.

Who is most affected by this Final Order?

Businesses manufacturing, distributing, and dispensing state-licensed medical marijuana in states.

- Medical marijuana products and the companies that make them are no longer subject to the federal tax provision 280E, which has prohibited businesses from deducting common business expenses and operating costs if they are involved in trafficking a Schedule I or II controlled substance. The order indicates that the 280E tax burden is removed for state medical marijuana licensed businesses, regardless of whether they pursue a DEA license.
- The order encouraged the Secretary of Treasury to consider providing retrospective relief from 280E liability for taxable years in which the licensee held a state medical marijuana license.
- The US Department of Treasury has already issued notice that they will be issuing forthcoming tax guidance related to the final order.
- The order makes it clear that non-medical, recreational marijuana is still Schedule I. This means those businesses would *not* be eligible for full business tax deductions – 280E would still apply.

Researchers trying to research marijuana.

- Researchers will no longer need a Schedule I license from the DEA to do research with marijuana. They will still need to get a Schedule III license – which is an easier process and lowers some of the storage and reporting requirements.

- The order states that researchers who are registered with the government to conduct marijuana research with controlled substances will not incur civil or criminal liability under the CSA or face any adverse actions against their federal research registration if they obtain marijuana from a DEA-registered state licensee for use in scientific research. However, those products will still need FDA approval that they are safe to use in human research.

What does this mean for states?

State medical marijuana marketplaces will likely remain largely unchanged.

- The order recognizes that state regulatory regimes for medical marijuana already do a lot to comply with the UN Single Convention on narcotic drug use. The order accordingly leverages the "robust infrastructure" of these state regulatory regimes as an efficient and effective way to comply with many treaty obligations while, "promoting the medical benefits of marijuana and causing the least disruption for patients and existing state systems."
- The order notes that state authorized medical marijuana certifications or similar documents will be sufficient to permit dispensing of medical marijuana to users, provided they have the user's name and address, are dated and signed, and include the name of the issuing practitioner and their address and state license number.
- The order notes that DEA registrants can rely on state-law for labeling, packaging, disposal, and physical-security requirements in lieu of any federal requirements, subject to a warning label that is required by 21 USC 825(c). This warning must state that it is a crime to transfer the drug to any person other than the patient for whom it was prescribed.

There will be a federal registration and licensing system – as required under the UN Single Convention

- Manufacturers, Distributors, and Dispensers in state-regulated programs who want to participate will need to register with the DEA. The order creates an expedited review process under which applicants holding state medical marijuana licenses may submit their existing state credentials as evidence of state-law authorization. Applications submitted within 60 days of the publication of the rule will be processed within 6 months, and early applicants can operate lawfully under their state licenses during DEA review.
- DEA registration automatically suspends upon suspension, revocation, or expiration of the underlying state-issued license. It is unclear how the DEA will know about these state actions.
- To reduce the reporting and regulatory burden on compliant state licensed entities, state records will be accepted where possible to meet DEA's treaty reporting obligations.

The DEA will create a price purchase-and-resale mechanism to satisfy the UN Single Convention. This will require the DEA to purchase and resell marijuana crops.

- The UN Single Convention requires that a government agency serve as the exclusive purchaser of cannabis production. Accordingly, DEA licensees will sell marijuana crops to the DEA and purchase them back from DEA to fulfill the purchase-and-resale requirements. Registered manufacturers must store marijuana crops in a facility in which the DEA maintains access until the transaction is complete.

Interstate commerce and trade may occur.

- The order outlines import and export processes that could be used for commerce across governments. The order amends DEA regulations (21 CFR 1312.30) to add FDA-approved drug products containing marijuana and state-licensed medical marijuana to the list of nonnarcotic schedules III through V controlled substances that are subject to the import and export permit requirement. These products comply with 21 USC 811(d)(1) if imports and exports of products remain subject to the permit requirement.

What does not change?

- **Recreational marijuana and marijuana obtained outside of a DEA-registered, state regulated medical marijuana marketplace remains Schedule I.** There will be an administrative hearing process beginning June 29th to consider broader rescheduling of non-medical marijuana from Schedule I to III.

- **Application of the US Federal Food, Drug, and Cosmetic Act.** This order does not change the applicability of the U.S. Federal Food, Drug, and Cosmetic Act and FDA has not established a safety standard for cannabinoids in food outside of approved drugs and a small number of food products like hemp seed, that have a GRAS designation.
- **Criminal penalties for marijuana under federal law remain unchanged.** This does not change the criminal penalties for marijuana under federal law because those are set separately from the federal schedule. It also does not expunge federal criminal records related to marijuana.

What happens next?

- New related guidance could potentially be released from relevant federal agencies (e.g., the U.S. Department of Treasury, the Financial Crimes Enforcement Network (FinCEN) within Treasury, the U.S. Food and Drug Administration, etc.) to provide more implementation details related to a range of areas, including: taxes, banking, trade, and the application of the Federal Food, Drug, and Cosmetic Act.
- The DEA will be standing up a licensing and registration system that has timelines attached to it in the order (60 days for early applicants to apply for a DEA license, and a review period of no longer than 6 months). More details are needed about how DEA and states will communicate and coordinate for effective implementation.
- A new hearing process will begin June 29th to discuss scheduling for all the marijuana products that are not subject to state medical marijuana laws or FDA drug approval.
- It is unknown how this Schedule III state-regulated medical marijuana approach will interrelate with existing federal efforts to provide access to cannabinoid hemp products through a pilot under the Centers for Medicare & Medicaid Services (CMS).
- As of publication, no lawsuits have been filed challenging this order. However, experts believe litigation is likely.