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Cannabis Rescheduling to Schedule III – Key Implications for Your Business

A recent presidential executive order directs the rescheduling of cannabis from Schedule I to Schedule III under the Controlled Substances Act. While the rescheduling process remains subject to administrative rulemaking and potential litigation, businesses in state-regulated cannabis and adjacent industries should understand the anticipated impacts on operations, taxation, and research opportunities.

The Rescheduling Process

Under current federal law, cannabis remains classified as a Schedule I controlled substance, meaning it is defined as having no accepted medical use. The proposed rescheduling would move marijuana to Schedule III, recognizing accepted medical uses based on credible evidence from state-authorized medical cannabis programs showing efficacy for conditions including anorexia and chronic pain.

The executive order directs the attorney general to engage in rulemaking through the Drug Enforcement Administration (DEA) and U.S. Department of Health and Human Services (HHS). The DEA may use either an expedited process or follow traditional notice-and-comment rulemaking. Either pathway will likely face litigation and challenges, so clients should not expect immediate implementation. Barring litigation, the expedited process could take six or more months, while the standard notice-and-comment rulemaking process can take years.

In an attempt by some members of Congress to block the rescheduling process, the U.S. House of Representatives approved a version of the 2026 federal spending bill that included language barring the use of federal funds to reschedule marijuana

under the Controlled Substances Act. However, the version passed by the Senate in mid-January has removed the anti-rescheduling language. The bill has been sent to the president's desk for signature.

Section 280E Tax Relief

Cannabis businesses operating under state law currently face effective tax rates of 70-90% due to Internal Revenue Code (IRC) Section 280E, which prohibits businesses trafficking in Schedule I or II controlled substances from deducting ordinary business expenses. Schedule III substances are not subject to IRC Section 280E, meaning successful rescheduling would decrease effective tax rates and allow standard deductions for rent, payroll, marketing, and other operating expenses.

Should rescheduling become effective, businesses should evaluate entity restructuring options, as classification choices between LLC, S-Corp, and C-Corp structures become more meaningful with normalized tax treatment. Employee Stock Ownership Plans would become economically viable, and M&A opportunities may emerge as companies seek to shed historical IRC 280E liabilities.

Limited Changes for Recreational Cannabis Operators

Rescheduling provides limited immediate operational changes for recreational operators because state regulation would continue unchanged, and Schedule III status does not create a legal federal pathway for recreational adult-use sales. If rescheduled, distribution of Schedule III substances would remain limited to FDA-approved cannabis drugs and state-regulated programs and could theoretically include interstate commerce.

Several operational challenges are expected to persist. While small, state-chartered banks may provide deposit services due to reduced federal compliance concerns, full banking integration, access to traditional capital markets, mainstream payment processors, and federal trademark registration will likely remain limited. Federal criminal penalties will see minimal technical changes, though practical enforcement is expected to shift significantly. We do not anticipate increased federal enforcement interest against state-compliant operations.

Conclusion

Cannabis rescheduling represents a significant policy shift, but practical impacts will unfold gradually through administrative rulemaking, litigation, and state-level responses. While rescheduling has yet to occur, now is a good time to consider potential industry changes that might be coming.

Businesses should understand that rescheduling solves some problems (e.g., tax burden, research barriers) while leaving others unresolved (e.g., banking access, interstate commerce). Aside from the favorable tax changes described above, the effects to the recreational market remain limited. Organizations positioned at the intersection of healthcare, research, and cannabis have unique opportunities to participate in groundbreaking research, but all industry participants should maintain robust compliance programs and monitor developments closely.

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