CLIENT ALERTS & INSIGHTS

Executive Order: A Game-Changer for Cannabis and Hemp

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Key Takeaways

- President Trump’s new Executive Order (EO) is historic, not only because it directs the rescheduling of cannabis from Schedule I to Schedule III, but because it also directs Congress to revise the “hemp ban” language in the 2026 FY Agriculture Appropriations Bill to carve out and protect access to full spectrum CBD and hemp-derived THC products, subject to potency limits and with consideration to cannabinoid ratios and serving size.
- The details and timeline for cannabis to officially be rescheduled remain uncertain given the stalled rescheduling hearings that began under President Biden. The impact on recreational cannabis is also still unclear. The timeline is more concrete for the hemp industry. They have less than a year to persuade legislators to change the language in the Appropriations Bill to avert a total collapse of the $28.4 billion hemp sector.
- Once the rescheduling process is complete, cannabis companies will no longer have to suffer under the weight of 280E; theoretically, this means higher margins, and better balance sheets. The move from Schedule I to III should also unlock additional research, and some incremental banking access.
- Cannabis and hemp businesses should closely monitor regulatory developments, prepare for new compliance standards and consider how rescheduling and product definitions and categories (medical vs. recreational) may affect their operations, tax status and market opportunities. Engaging with policymakers and industry groups will be key as the regulatory framework takes shape.

In April 2024, we wrote about the Biden administration’s cannabis rescheduling announcement, a milestone, but one that stalled for months amid delays, allegations of bias, and controversy. Fast forward to today: President Trump has issued an unexpected holiday gift-an Executive Order (EO) that not only directs cannabis to be rescheduled from Schedule I to Schedule III under the Controlled Substances Act (CSA) but also throws a lifeline to the hemp industry.

The crux of the EO, titled “Increasing Medical Marijuana and Cannabidiol Research,” is in Section 2, which addresses rescheduling cannabis in subpart (a) and redefining hemp in subpart (b). Below are our initial high level observations about what this EO means to the regulated cannabis and hemp industries.

Cannabis Rescheduling

Section 2(a) of the EO, titled Rescheduling Medical Marijuana and Improving Access to Cannabidiol Products, states:

"The Attorney General shall 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."

Notably, the EO emphasizes "Medical Marijuana" and its use for pain relief and treatment, as distinguished from recreational marijuana, which President Trump has said publicly that he does not support. The distinction matters. Tax relief from 280E might apply only to products considered "medical" and/or sold through licensed medical dispensaries (through a framework that has not yet been determined). It is unclear at this point.

What is clear is that by referencing 21 U.S.C. § 811, the EO does not seek to bypass the formal rulemaking process, inclusive of public notice, comment, hearings and scientific review by Health and Human Services (HHS). That said, the formal process was already underway, kicked off by the HHS recommendation to reschedule, and there is already a record of comments and hearings as a part of the past rescheduling proceedings. So, the question is whether the Attorney General can force a quick conclusion to this part of the process.

Once cannabis actually moves to Schedule III, it will be recognized as having an accepted medical use and lower abuse potential. This shift will provide much needed tax relief by lifting 280E restrictions from cannabis companies. The rescheduling should also unlock research opportunities (though there are some that argue this will not be the case); as well incremental additional banking access for operators.

That said, the path forward is anything but clear, not just in terms of the formal rule-making process and how long it could take (and putting aside potential lawsuits by anti-cannabis groups), but with respect to the applicability of tax relief to the entire industry (not just medical); IRS treatment of unpaid back taxes; and what the business of cannabis will look like generally when it becomes a Schedule III drug, sitting next to other drugs that are FDA approved and prescribable by doctors.

Hemp Industry Lifeline

As part of the appropriations legislation to reopen the government after a lengthy shutdown, a provision was added defining the term "hemp-derived cannabinoid product" with limitations and restrictions making almost every such product-from nonintoxicating CBD gummies all the way to highly intoxicating, entirely synthesized THC vapes-federally illegal Schedule I drugs under the CSA. This "hemp ban" is essentially a death sentence for the entire $28.4 billion hemp industry if implemented as written next year.

With this EO, President Trump has pulled hemp back from the abyss by directing Congress to "update the statutory definition of final hemp-derived cannabinoid products to allow Americans to benefit from access to appropriate full-spectrum CBD products while preserving the Congress's intent to restrict the sale of products that pose serious health risks." Essentially, the President called for a carve-out of appropriately regulated full-spectrum CBD products (which are nonintoxicating but

do contain detectable amounts of THC) from any larger federal ban on hemp-derived cannabinoid products.

The use of the word “final” in “final hemp-derived cannabinoid products” is also telling. It suggests an understanding that THC amounts in intermediate CBD products might exceed the allowable amounts in the final products but that this should not result in a blanket prohibition on CBD products altogether.

Next, the EO directs various agencies to create a regulatory framework for these products “including development of guidance on an upper limit on milligrams of THC per serving with considerations on per container limits and CBD to THC ratio requirements.” This means the EO is directing a carve-out for intoxicating hemp-derived THC products with appropriate cannabinoid ratios and potency limits per serving and per container.

Reading between the lines, the mention of “CBD to THC” ratio seems like a nod to edibles, which often have ratios like: 5:1 CBD to THC. The mention of serving size and containers seems like a nod to hemp-derived THC beverages, which might have two servings in one can, with 5mg THC per serving, and 10mg per container.

Ultimately, this EO was a directive to Congress to modify the “hemp ban” by carving out CBD and certain products containing responsibly formulated, tested and dosed hemp-derived THC. The EO also directs agencies to swiftly develop standards informed by real-world evidence specifically to improve access to hemp-derived cannabinoid products in accordance with Federal law and to inform standards of care.

Bottom Line

In one stroke, this EO could accelerate a cannabis rescheduling process that has completely stalled *and* save the hemp industry from impending doom. It is without a doubt a huge moment in the history of cannabis in the United States, not just because it came from the President - who publicly acknowledged the medical benefits of cannabis and hemp - but because it addresses both regulated cannabis and hemp in the same EO, bringing the plant together, as it should be. Progress! For cannabis and hemp stakeholders, this is more than a policy shift; it’s a lifeline. That said, it is not clear where the lifeline leads exactly. Schedule III drugs, like Ketamine and Vicodin for example, require prescriptions for access. If Vicodin was being sold without a prescription, it would be illegal. So, where does that leave cannabis when doctors cannot currently prescribe it to patients? And, how does rescheduling impact the recreational market? Will it all be business as usual day to day, or will dispensaries turn into pharmacies, with doctors prescribing cannabis as medicine? There are more questions than answers at this point, but one thing is for certain - two suffering industries on the brink just got some much-needed good news heading into the new year.