CLIENT ALERTS & INSIGHTS

Medical First, Recreational Later? DOJ's Cannabis Order and the Stakes Ahead

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Featured Industries: Cannabis

Key Takeaways

- DOJ's April 2026 order immediately moved FDA-approved and state-licensed medical cannabis to Schedule III, removing harsh tax penalties for medical operators, while leaving adult-use cannabis under stricter Schedule I controls pending further administrative review.
- This split approach creates a two-tier cannabis industry, with medical businesses gaining significant tax and regulatory relief, while adult-use operators remain exposed to higher taxes, compliance burdens and legal risks. The outcome of the upcoming administrative process will determine if broader reform-and relief-extends to the recreational market.
- Medical cannabis businesses should prepare for new federal compliance requirements and potential tax refunds, while adult-use operators and social equity licensees should consider state-level strategies to mitigate disparities until broader rescheduling is resolved. All industry stakeholders should monitor and participate in the administrative proceedings, as the decisions made will shape the future regulatory and tax landscape for both medical and recreational cannabis.

A Prediction, With a Necessary Course Correction

In March 2024, I wrote an article titled "Is There a Shortcut to Cannabis Reform?" exploring whether the Attorney General could rely on the UN Single Convention on Narcotic Drugs to reschedule cannabis without congressional action.[1] I returned to that theory on January 22, 2026, during an MJU On Point webinar where I was a panelist. At the time, the analysis focused on whether treaty authority could support broad rescheduling of cannabis as a whole.[2]

DOJ's April 23, 2026 Order[3] answers that question, but in a narrower and more strategic way than I originally envisioned. Rather than rescheduling marijuana across the board, the Attorney General used treaty authority to move medical cannabis immediately, while leaving adult-use cannabis to a restarted administrative process. That bifurcation explains much of what follows: the tax consequences, the registration framework, the equity tensions and the litigation risk.

What DOJ Did on April 23, 2026

On April 23, 2026, the U.S. Department of Justice (DOJ), acting through the Attorney General and the Drug Enforcement Administration (DEA), issued an order immediately placing two categories of products into Schedule III of the Controlled Substances Act (CSA): (1) FDA-approved drug products containing marijuana, and (2) marijuana products produced and sold pursuant to a qualifying state medical marijuana license. At the same time, DOJ withdrew a prior 2024 notice of hearing and restarted the administrative process to consider broader rescheduling of marijuana itself, with a new hearing scheduled to begin June 29, 2026.[4]

Together, these steps represent the most consequential federal cannabis action since marijuana was placed in Schedule I in 1970.

Immediate Rescheduling of Medical Cannabis

Schedule III status reflects accepted medical use and a lower potential for abuse than substances in Schedules I or II. By placing state-licensed medical marijuana into Schedule III, DOJ formally acknowledges what state programs have long asserted: that medical cannabis has accepted medical use when regulated under rigorous licensing, testing and tracking regimes.[5]

Importantly, the Order does not reschedule adult-use cannabis. That distinction is deliberate and legally significant.

The Treaty Path and Why It Produced a Medical-Only Outcome

The legal foundation for DOJ's action lies in 21 U.S.C. § 811(d)(1),[6] which authorizes the Attorney General to control or reschedule substances as necessary to carry out U.S. obligations under international treaties in effect as of 1970, including the Single Convention on Narcotic Drugs. The Single Convention permits cannabis for medical and scientific purposes under strict controls but does not clearly accommodate recreational use.[7]

As a result, treaty authority maps cleanly onto medical cannabis and far less cleanly onto adult-use markets. By invoking the Single Convention, the Attorney General could act immediately with respect to medical cannabis without first resolving the treaty and policy questions raised by recreational marijuana. The outcome is a bifurcated framework: medical cannabis moves now; adult-use cannabis proceeds through administrative rulemaking.

Adult-Use Cannabis and the Restarted Administrative Process

Adult-use cannabis remains subject to the CSA's traditional rescheduling process. DOJ and DEA have scheduled a new administrative hearing beginning June 29, 2026.[8] Parties wishing to participate must submit written comments and procedural filings in advance, and the evidentiary record developed in that proceeding will determine whether marijuana as a whole is rescheduled and whether relief currently limited to medical cannabis extends more broadly.

Tax Implications and the Medical/Recreational Divide

The removal of IRS Section 280E for medical cannabis is the most financially significant aspect of DOJ's action. For decades, 280E forced cannabis businesses to pay federal income tax on gross income rather than net income, producing extraordinary effective tax rates.[9] For large, vertically integrated medical operators, particularly in mature markets like Illinois-home to several of the largest multistate cannabis companies in the country-280E suppressed cash flow, distorted balance

sheets and valuations, constrained access to capital, and led in some cases to years of accrued tax liabilities, penalties and interest.

By moving qualifying medical cannabis to Schedule III, the order eliminates the statutory trigger for 280E going forward for the sale of medical cannabis. Equally significant, the Order expressly encourages the Secretary of the Treasury to consider providing retroactive tax relief.[10] For operators that paid taxes subject to Section 280E in prior years, this raises the prospect of amended returns and refunds. For those that accrued liabilities without paying, it could also materially alter their financial and compliance posture. Even the credible possibility of retroactive relief represents a fundamental shift in the financial outlook for companies that sell medical cannabis.

Adult-use-only cannabis businesses, by contrast, remain subject to Section 280E unless and until broader rescheduling occurs, a disparity that flows directly from the treaty-based bifurcation.

For cannabis companies holding both medical and recreational licenses, there is an open question about tax relief. That question began to take shape almost immediately. Within hours of the Order's release, the U.S. Department of the Treasury and the IRS issued a joint statement signaling that forthcoming guidance is expected to confirm two critical points. First, for businesses engaged in multiple lines of activity, Section 280E will apply only to activities involving Schedule I or II controlled substances, permitting the apportionment of expenses between medical and non-medical operations. Second, Treasury indicated that rescheduling generally will be treated as taking effect, for tax purposes, as of the first full taxable year that includes the effective date of the Order, meaning relief would apply prospectively rather than retroactively, at least absent further guidance. While Treasury stopped short of issuing binding rules, the statement strongly suggests that vertically integrated operators will be permitted to segregate medical and adult-use activity for Section 280E purposes, even as broader rescheduling remains under administrative review.[11]

DEA Registration, FDA-Approved Products and Federal Control Mechanisms

One subtle but critical feature of the Order is DOJ's pairing of FDA-approved marijuana (and marijuana-derived) drugs with state-legal medical cannabis. This pairing is not incidental, nor does it arise from the number of FDA-approved marijuana drugs currently on the market. Rather, the pairing of the two groups of marijuana products anchors the rescheduling decision in long-standing federal practice. FDA-approved cannabinoid drugs-most notably Epidiolex (a plant-derived cannabidiol product)[12], as well as synthetic THC products such as dronabinol[13]-have long been regulated under the Food, Drug, and Cosmetic Act and distributed pursuant to DEA registration. By emphasizing these products, DOJ underscores that marijuana has already been treated as medicine within the federal regulatory system, and also creates a conceptual and legal bridge between the existing federal regulatory system and state-legal regulatory frameworks. Extending DEA registration and federal oversight to state medical programs is framed not as radical reform, but as an expansion of existing regulatory structures. The Order's praise of state compliance systems makes it possible to incorporate those systems into federal registration requirements rather than displacing them altogether with something else.[14]

Import, Export and Government Supply Authority

The Order's discussion of import/export permits and government purchase or supply authority is best understood as treaty and research scaffolding rather than a commercial roadmap.

For FDA-approved cannabinoid drugs, import and export under DEA permits is already routine and necessary for manufacturing, clinical trials and international distribution. For state-licensed medical cannabis, however, the Order does **not** authorize interstate or international commerce. Instead, DOJ preserves these authorities to ensure compliance with the Single Convention and to avoid leaving Schedule III cannabis without the full set of statutory control mechanisms already contemplated by federal law.

With respect to the much-discussed purchase and sale back of medical cannabis by the DEA, while there is a colorable argument that state-licensed medical cannabis entities have to comply, I do not read the Order this way. The Order specifically says that "compliance with Article 23 of the Single Convention…, **Part 1318 shall not apply to entities holding valid licenses** under this subsection." [15] Throughout the Order, references to "licenses" and "registrations" serve distinct but complementary functions. "Licenses" refer to state-issued medical marijuana licenses that authorize the cultivation, manufacture, distribution and dispensing of medical cannabis under state law. By contrast, "registration" refers to federal DEA registration under the CSA, including the new expedited registration pathway created in 21 CFR § 1301.13(k) for state-licensed medical marijuana entities. Under the Order, a state medical marijuana business remains fundamentally authorized by its state license, while DEA registration operates as a federal compliance overlay that permits continued operation under Schedule III and ensures satisfaction of U.S. treaty obligations.[16] This distinction explains why the Order repeatedly treats state licensure as conclusive evidence of lawful medical activity, while separately imposing registration-based federal controls without converting state-licensed medical marijuana into FDA-approved drug products.[17]

Anticipated Litigation, Equity Concerns and Standing

DOJ plainly anticipates litigation. Footnote 39 of the Order discusses severability and reflects an expectation that challengers may argue the Attorney General exceeded statutory or treaty authority or failed to comply with administrative law requirements.[18] The Order is structured to try to preserve medical cannabis relief even if portions are challenged.

Litigation risk also intersects with social equity concerns. In states such as Illinois, original medical licenses were issued years ago and are held by non-social-equity owners, while social-equity applicants entered later through adult-use programs focused on licensing those most harmed by the War on Drugs. As a result, treaty-based rescheduling disproportionately benefits legacy medical operators, while social-equity-owned companies remain subject to Schedule I, and the financial constraints caused by IRS 280E.

That disparity may narrow or disappear depending on the outcome of the administrative proceedings. If adult-use cannabis is ultimately rescheduled, 280E would fall away for social-equity operators as well, potentially affecting both the urgency of state-level fixes and the ability of certain groups to establish standing to challenge the current framework before the administrative process concludes.

Implications for the Broader Rescheduling of Recreational Cannabis

The Order's medical-only focus may also carry risk for the broader rescheduling effort. By grounding its action so explicitly in accepted medical use, treaty compliance and FDA-anchored regulatory

structures, DOJ has strengthened the legal case for Schedule III treatment of medical cannabis but may have simultaneously complicated the path for adult-use cannabis.

Opponents of marijuana reform have long argued that whatever scientific or medical consensus exists does not extend to recreational use. They also emphasize that, under the CSA, accepted medical use is not the sole determinant of scheduling. More specifically, a substance may have medical benefits yet still be deemed too prone to abuse or dependence to warrant placement in Schedule III. From that perspective, opponents are likely to argue that marijuana's increased potency and perceived habit-forming potential and patterns of non-medical use distinguish it from other Schedule III drugs, even if limited medical use is acknowledged. Anti-marijuana advocacy groups like Smart Approaches to Marijuana (SAM) have already demonstrated a willingness to litigate aggressively in both the previous administrative process under the Biden administration, and in adjacent contexts, including a recent challenge to CBD access under federal benefit programs. [19] Against this backdrop, similar arguments will no doubt be raised in the administrative record to support a finding that marijuana should remain in Schedule I for non-medical use, even where limited medical use is acknowledged.

If this Order and the administrative process were to result in a split outcome-recognizing accepted medical use while declining to reschedule marijuana more broadly-the consequences for the industry could be severe. Adult-use cannabis would remain subject to Schedule I treatment, including criminal exposure and Section 280E, while medical cannabis would move forward under a fundamentally different federal regime. That outcome would deepen the bifurcation DOJ has already created and could entrench a two-tier cannabis industry for years.

In that scenario, states, particularly those with explicit social equity mandates like Illinois and New York, may look for ways to mitigate the resulting disparities through their own licensing frameworks. One potential response would be to expand access to medical cannabis licensure for cultivation, manufacturing and dispensing, including by reopening or broadening medical licensing pathways for social-equity applicants. By allowing a wider and more diverse group of operators to participate in the medical market, states could partially offset the federal tax and regulatory advantages conferred on legacy medical licensees and reduce the gap between social-equity and non-social-equity operators.

Similarly, pro-marijuana advocates in states with only medical cannabis programs, like Pennsylvania and Florida, may seek to abandon efforts to legalize marijuana for adult-use and instead pivot their efforts to expanded access to medical cannabis cultivation, production and dispensing licenses.

Whether states pursue these approaches, and how they are implemented, could become important secondary policy levers if federal rescheduling remains bifurcated. As such, participation in the administrative proceedings will be critical. The evidentiary record developed to date, and in the future, beginning with the hearing on June 29, 2026, will shape not only whether marijuana is broadly rescheduled, but whether the federal government ultimately treats medical use as a bridge to more reform, or as a ceiling beyond which it is unwilling to go.

Implications for Hemp-Derived Cannabinoids

DOJ's Order does not directly reschedule or otherwise regulate hemp-derived cannabinoids, but it carries important indirect implications for the hemp market. The Order reflects and discusses recent

congressional action significantly narrowing the federal definition of “hemp,” with those changes scheduled to take effect on November 12, 2026.[20] As of that date, products that fall outside the amended hemp definition will be treated as Schedule I marijuana under federal law, with corresponding implications for enforcement and regulation.

Ironically, the federal framework now risks producing a counterintuitive result: beginning November 12, 2026, most full-spectrum, nonintoxicating CBD products currently sold as “hemp” will fall outside the revised federal definition and be treated as federally-illegal Schedule I marijuana with no medical use under the CSA, and thus prohibited from sale in general retail channels like grocery stores, corner stores, liquor stores and restaurants. At the same time, highly intoxicating medical cannabis products, when sold pursuant to state medical marijuana licenses, move to Schedule III based on an express federal finding of accepted medical use.

The Order also draws a clear line against synthetic and chemically converted cannabinoids, emphasizing that such products are not protected by hemp exemptions.[21] That language is particularly relevant to hemp-derived THC products that rely on chemical conversion processes rather than naturally occurring delta-9 THC levels. Taken together, these provisions suggest that the federal government is moving toward a more restrictive, medically oriented view of lawful cannabinoid commerce-one that favors tightly regulated medical channels over broadly available consumer products.

In that sense, the Order reinforces the likelihood that hemp’s long-term viability will depend on a comprehensive federal regulatory framework; clearer separation between non-intoxicating hemp products and intoxicating cannabinoids; and/or carve-outs for specific categories, like hemp-derived THC beverages.

Conclusion

Nearly three years after asking whether international treaty authority offered a lawful shortcut to cannabis reform, the answer is now clear, but more nuanced than I originally imagined. DOJ’s Order demonstrates how treaty authority can be used surgically to deliver immediate relief to medical cannabis while leaving broader policy questions to administrative process and judicial review.

But this moment also carries a corollary. As the saying goes, “*with great power comes great responsibility.*” Schedule III status and DEA registration represent not just relief, but a fundamental shift. Medical cannabis companies long operating in tension with federal law are now being invited into a system overseen by the same agency that once enforced prohibition. Success in this next phase will require stronger compliance cultures, governance and internal controls. For companies prepared to meet those obligations, rescheduling offers a path to stability and growth. For those that are not, the burdens of federal legitimacy may prove inseparable from its benefits.

At the same time, the medical-only nature of DOJ’s action underscores the stakes of the ongoing administrative process: if accepted medical use becomes the endpoint rather than the starting point to broader reform, recreational marijuana could remain in Schedule I-a result that would preserve criminal exposure and IRS 280E for much of the industry and fundamentally reshape the market for years to come.

[1] A. Jubelirer, Is There a Shortcut to Cannabis Rescheduling? | Benesch - JD Supra (March 26, 2024)

[2] Remarks on speaker panel for MJU On Point webinar, "*Unpacking Schedule III*" (Jan. 22, 2026).

[3] https://www.justice.gov/opa/media/1437441/dl.

[4] *Id.*

[5] *Id.*

[6] 21 USC 811: Authority and criteria for classification of substances.

[7] *Id.*

[8] https://www.justice.gov/opa/media/1437441/dl.

[9] https://www.mpp.org/policy/federal/what-is-280e/.

[10] *Id.* at 23.

[11] *See* Treasury, IRS Announce Process for Tax Guidance Following DOJ Final Order on Medical Marijuana Rescheduling | U.S. Department of the Treasury.

[12] Epidiolex (Cannabidiol) Primer: Frequently Asked Questions for Patients and Caregivers - PMC.

[13] Dronabinol oral solution in the management of anorexia and weight loss in AIDS and cancer - PMC.

[14] *Id.* at 21.

[15] *Id.* at 30 (Section (6)(A) (emphasis added). § 1318.04 states "All registered manufacturers who cultivate cannabis shall deliver their total crops of cannabis to the Administration…The Administration shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest. …" 21 CFR 1318.04 ("*Specific control measures applicable to the bulk manufacture of marihuana.*")

[16] *Cf. Office of Legal Counsel, Marijuana Cultivation in Compliance with the Single Convention on Narcotic Drugs* (June 6, 2018) (discussing federal monopoly requirements in the context of registered marijuana manufacturers supplying research).

[17] *See also* 21 C.F.R. pt. 1318; 21 C.F.R. § 1301.13(k)(6). The Single Convention's "purchase and resale" requirement is directed at control of **bulk marijuana cultivation and first wholesale possession, not at finished drug products.** Consistent with that framework, DEA's buy-and-sell-back mechanism has historically applied to DEA-registered manufacturers producing marijuana crops for federally controlled purposes, such as research supply, and not to state-licensed medical marijuana operations. The Order preserves that distinction by expressly exempting entities operating pursuant to state medical marijuana licenses from Part 1318, while retaining the purchase-and-resale mechanism as a treaty-compliance backstop for registered manufacturers operating outside state medical licensing regimes. I do not read anything in the Order to mandate that state-licensed medical marijuana businesses must sell all medical cannabis plant material to the federal government and repurchase it as a condition of Schedule III status. Indeed,

instituting this requirement would upend the state-legal systems, which is expressly what the Order seeks to avoid by relying on the state-licensing frameworks for compliance purposes.

[18] *Id.* at 17, n. 39.

[19] SAM Lawsuit Over Medicare CBD Program Gets New May 1 Hearing After Amended Complaint Filed.

[20] https://www.justice.gov/opa/media/1437441/dl, p. 6 (with reference to Text - H.R.5371 - 119th Congress (2025-2026): Continuing Appropriations, Agriculture, Legislative Branch, *Military Construction and Veterans Affairs, and Extensions Act, 2026 | Congress.gov | Library of Congress*).

[21] *Id.* at 16.