Simpson Thacher

Memorandum

Acting Attorney General Re-Classifies Certain Marijuana Products Under the Controlled Substances Act and Establishes New Registration Pathway for State Medical Marijuana Licensees

April 29, 2026

On April 22, 2026, Acting U.S. Attorney General Todd Blanche issued an order (the "Order") [1] placing (1) products containing marijuana[2] that have been approved by U.S. Food and Drug Administration ("FDA") and (2) marijuana in any form that is covered by a state medical marijuana license[3] in Schedule III of the Controlled Substances Act (the "CSA").[4] To be clear, this Order neither legalizes marijuana at the federal level nor re-schedules recreational marijuana. The "Drug Enforcement Administration ("DEA") will hold a hearing on June 29, 2026, regarding rescheduling of other categories of marijuana not addressed by the Order. Additionally, the Order amends DEA regulations to require the DEA to establish an expedited registration pathway for entities holding qualifying state medical marijuana licenses.[5]

The Order follows President Trump's December 18, 2025, Executive Order titled "Increasing Medical Marijuana and Cannabidiol Research"[6], which directed the U.S. Attorney General to complete the Biden-era 2024 proposed rulemaking to reschedule marijuana from Schedule I to Schedule III of the CSA. Prior to the Order's rescheduling, marijuana products remained Schedule I controlled substances under the CSA. Schedule I is the CSA's most restrictive schedule and includes drugs with no current accepted medical use in treatment in the U.S., a high potential for abuse, and a lack of accepted safety for use under medical supervision. Schedule III drugs, in

[1] Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements, Att'y Gen. Ord. No. 6754-2026 (2026), available here.

[2] The Order applies to marijuana as defined in the CSA, marijuana extracts, and naturally derived delta-9-tetrahydrocannabinol ("THC") but excludes synthetically derived THC (because synthetically derived THC is not included in the CSA's definition of marijuana) and does not change the status of hemp (which is excluded from the CSA's definition of marijuana). The Order also excludes tetrahydrocannabinols that can be derived only through artificial synthesis, such as delta-10-THC. As a result, synthetic THC remains in Schedule I of the CSA, and previously-scheduled synthetic cannabinoids will stay in the same CSA schedule.

[3] A state medical marijuana license is defined under the Order as a license issued by a state entity (or by a District of Columbia entity or a federal territorial entity) authorizing the licensee to manufacture, distribute, and/or dispense marijuana or products that contain marijuana for medical purposes. 21 C.F.R. § 1300.01.

[4] All other forms of marijuana remain Schedule I controlled substances under the CSA, including unlicensed bulk marijuana, marijuana extract, and delta-9-THC material that is used to make FDA-approved drugs. 21 U.S.C. § 821(c)(10). Unlicensed bulk marijuana, marijuana extract, and delta-9-THC are also subject to applicable production quotas under 21 U.S.C. § 826, a statute through which the Attorney General establishes production quotas for each basic class of controlled substances in Schedule I and manufacturing quotas for registered manufacturers.

[5] The Order also amends the list of non-narcotic controlled substances requiring an import and export permit.

[6] Exec. Order No. 14370, 90 Fed. Reg. 60541 (Dec. 23, 2025), available here.

contrast, are those for which a finding has been made that the drug has a currently accepted medical use and less potential for abuse than the drugs in Schedules I or II.

Schedule III controlled substances must still be prescribed by doctors and dispensed by pharmacies, each of which must be DEA-registered to do so; persons manufacturing, distributing, dispensing, or engaging in certain other conduct involving Schedule III controlled substances must register with the DEA. Manufacturing, distributing, or dispensing a Schedule III controlled substance without a DEA registration is unlawful; unauthorized activity involving a Schedule III controlled substance is a violation of the CSA and can result in criminal penalties. Violations of the CSA can serve as a specified unlawful activity under the federal money laundering statute. Marijuana-related businesses in the U.S. that do not hold appropriate DEA registrations will not be operating in accordance with federal law and face significant challenges accessing the U.S. financial system, even if their conduct may be legal under state law.

With respect to entities holding a state medical marijuana license[7], the Order amends[8] existing DEA regulations to require the DEA to establish an expedited DEA registration pathway for entities holding state medical marijuana licenses which seek DEA registration as a marijuana manufacturer, distributor, and/or dispenser. The Order takes the unusual step of incorporating state licensing systems into the DEA regulatory framework and notes that the Acting Attorney General determined that this was "the most effective and efficient means of achieving the CSA's objectives with respect to medical marijuana while promoting the medical benefits of marijuana and causing the least disruption for patients and existing state systems"[9]. Under the regulation, an applicant holding a state medical marijuana license can submit that state license to the DEA as conclusive evidence that the applicant is authorized under state law to engage in the activity for which DEA registration is sought. The Order directs the DEA Administrator to process, within six months, any applications submitted within 60 days of the new DEA regulation's publication in the *Federal Register* and indicates that early applicants may lawfully operate under their state-issued licenses while their DEA application is under review. Under the regulation, the DEA must grant registration based on existing state medical marijuana licensure unless doing so would be inconsistent with the public interest or obligations under the Single Convention on Narcotic Drugs.

As to the ongoing DEA compliance obligations of state medical marijuana licensees, once registered with the DEA, the regulation seeks to balance existing state requirements with DEA requirements. The Order notes that the regulation contains provisions "designed to reduce regulatory burden on compliant state-licensed entities."

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[7] States have taken a variety of approaches with respect to medical marijuana licensing including (i) entirely legalizing marijuana, (ii) legalizing marijuana only for medical purposes, (iii) decriminalization of certain marijuana offenses, (iv) permitting some forms of cannabidiol and THC, or (v) some combination of the foregoing. Idaho, Kansas, South Carolina and Wyoming generally prohibit marijuana and its byproducts entirely.

[8] The Order indicates that the scheduling action for drugs required to be controlled by the United States' obligations under international treaties shall be issued by order, as opposed to scheduling by rule and, therefore, the DEA believes that the notice-and-comment requirements of the Administrative Procedure Act do not apply to this scheduling action.

[9] It is, however, unclear what the CSA's objectives are in this regard and any medical benefits and risks of marijuana products would be assessed by FDA through the new drug application process.

Specifically, the DEA regulation indicates that DEA will require that such registrants submit to the DEA only state-required reports, records, and forms "to the maximum extent permissible"; accept a certification that state law deems sufficient for medical marijuana to be dispensed to users for medical purposes, provided that certain requirements are met;[10] and exempt certain registrants from labeling, packaging, and sealing requirements provided the labeling, packaging, and sealing comply with state laws and the label includes a federally required warning that it is a crime to transfer the drug to any person other than the patient.[11] The regulation also permits DEA registrants to follow state physical security and disposal requirements for medical marijuana and products containing marijuana. State licensed medical marijuana manufacturers that seek DEA registration as a manufacturer (a) must establish a nominal price for the purchase of their marijuana crop and the DEA will then purchase the entity's crop at that price and sell the crops back to the entity or affiliated entity, at the same price with the addition of an administrative fee[12] and (b) must store marijuana in a facility to which the DEA will maintain access until the nominal price purchase and resale is complete and to which the DEA will have the right to inspect on demand. The regulation indicates that the DEA registration shall not exceed the scope of the holder's state medical marijuana license and the suspension, revocation, or expiration of the state medical marijuana license will result in the automatic suspension of the DEA registration.

Regarding FDA-approved marijuana containing products, it is not readily apparent which products will be rescheduled to Schedule III under the Order, as the Order states that certain drugs, such as Marinol and Syndros, will not be rescheduled. There are marijuana-derived pharmaceutical products on the market that are not Schedule I controlled substances, because they have currently accepted medical uses in treatment in the U.S. In 2018, for example, the FDA approved the cannabidiol drug Epidiolex for treatment of certain seizure disorders.[13] Notably, those handling marijuana exclusively in the form of an FDA-approved drug product must still register with the DEA and remain subject to all DEA regulations applicable to Schedule III controlled substances. These DEA requirements include establishing and maintaining effective controls against diversion, recordkeeping, conducting inventories, using proper ordering and transfer processes, reporting instances of theft and loss, and permitting inspections.

The DEA registration pathway for state medical marijuana licensees will help enable such licensees to operate in compliance with certain provisions of federal law. Once DEA registered, such businesses will potentially have a clearer path to accessing the U.S. financial system if they are operating in compliance with state medical marijuana requirements as well as the requirements under the new DEA regulations. Diligence regarding such compliance will be an essential step in any corporate transaction involving such businesses. We expect that

[10] The regulation says that a certification that state law deems sufficient for a user to obtain marijuana or marijuana products for medical purposes will be sufficient to permit dispensing of same so long as the certification is signed and dated as of the day when issued, bears the full name and address of the user, and contains the name, address, and state license number of the practitioner who signed the certification.

[11] 21 U.S.C. § 825(c).

[12] Note that the nominal price purchase and resale agreement mechanism is required to comply with the United States' obligations under Article 23 of the Single Convention on Narcotic Drugs.

[13] *See id.*; FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD) (July 16, 2024), available here.

medical marijuana businesses will likely be viewed as high risk by counterparties and financial institutions. Certain medical marijuana businesses previously ineligible for DEA registration might seek state medical marijuana licensure first and then have such state licensure recognized by the DEA as the basis for DEA registration. This new DEA registration pathway may expand the number of manufacturers, distributors, prescribers, dispensers, and marijuana products on the market. However, this Order does not provide a pathway for DEA registration for the recreational marijuana industry. Accordingly, recreational marijuana activities in the U.S. continue to present attendant risk of CSA violations and related anti-money laundering ("AML") risks and marijuana businesses that operate outside of state medical marijuana licensure programs, the DEA registration pathway, and FDA approval pathways may continue to violate the CSA and the Federal Food, Drug, and Cosmetic Act, and present related AML risks.

For further information regarding this memorandum, please contact one of the following authors:

WASHINGTON, D.C.

Vanessa K. Burrows
+1-202-636-5891
vanessa.burrows@stblaw.com

NEW YORK CITY

Daniel S. Levien
+1-212-455-7092
daniel.levien@stblaw.com

Jacob Madden
+1-212-455-3283
jacob.madden@stblaw.com

Brian Japari
+1-212-455-2580
brian.japari@stblaw.com