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Insights

President Trump's Executive Order on Cannabis Rescheduling: What does it mean?

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On December 18, 2025, President Donald J. Trump issued an Executive Order (the "Order") directing the federal government to expedite administrative rescheduling of cannabis[1] from Schedule I to Schedule III under the Controlled Substances Act of 1970 (the "CSA").[2] The related White House Fact Sheet emphasizes expanding medical marijuana and cannabidiol (CBD) research, coordinating federal policy, and encouraging scientifically rigorous study of risks and potential therapeutic uses. Rescheduling is intended to reflect evolving research and medical understanding but does not legalize cannabis nationally or eliminate all regulatory constraints.

Background

For more than fifty years, federal law has classified marijuana as a prohibited substance under the CSA, reflecting a period of heightened criminalization that accelerated during the 1970s and 1980s and treated cannabis as having a high potential for abuse and no accepted medical use. Marijuana's placement in Schedule I—alongside substances such as heroin—has long been criticized as inconsistent with evolving medical research, state legalization trends, and public opinion. Presidential approaches to cannabis policy have shifted incrementally over time: President Obama publicly supported decriminalization at the state level and directed federal enforcement restraint through Department of Justice guidance, while stopping short of rescheduling or legalization; President Trump, during his first term, expressed support for states' rights and medical marijuana, endorsed congressional banking reform efforts, but did not pursue federal rescheduling; and President Biden initiated administrative review of cannabis scheduling and issuing pardons for certain federal marijuana possession offenses.

Against this historical and regulatory backdrop, the Order's directive to move marijuana from Schedule I to Schedule III under the CSA raises a number of practical legal and commercial considerations, particularly with respect to federal income taxation, access to banking, and ongoing regulatory compliance.

Federal Tax Implications — IRC §280E

Rescheduling marijuana from Schedule I to Schedule III under the Controlled Substances Act would remove state-legal cannabis businesses from the scope of Internal Revenue Code ("IRC") §280E. This section disallows deductions or credits for amounts paid or incurred in carrying on a trade or business that consists of trafficking in controlled substances listed on Schedule I or Schedule II of the CSA. As a result, state-legal cannabis businesses have historically been required to compute federal taxable income using a cost-of-goods-sold-only recovery model, often producing effective federal income tax rates substantially higher than those borne by similarly situated non-cannabis businesses.

Once cannabis is classified as a Schedule III substance, §280E would no longer apply, permitting cannabis producers, processors, distributors, and retailers to deduct ordinary and necessary business expenses under IRC §162, including payroll, rent, utilities, insurance, marketing, and professional fees. For many operators, the restoration of ordinary deductions could result in a material reduction in federal income tax liability, improved cash flow, and enhanced enterprise valuation.

Banking and Financial Services

The proposed rescheduling of cannabis to a Schedule III substance may reduce the perceived legal and regulatory risk associated with serving cannabis-related businesses, but absent Congressional action, these risks remain. Even as a Schedule III substance, cannabis will remain largely illegal federally, exposing financial institutions to liability in connection with services to cannabis-related businesses. Financial institutions remain subject to the Bank Secrecy Act ("BSA"), anti-money laundering ("AML") rules, and related regulatory guidance, which require banks to assess whether funds derived from cannabis activity constitute proceeds of unlawful activity under federal law.

Even if cannabis is reclassified as a Schedule III substance, it remains a federally controlled substance, and many state-legal commercial activities continue to exist outside traditional federal regulatory frameworks applicable to Schedule III drugs (such as FDA approval pathways, prescription-based distribution models, and DEA-registered supply chains). As a result, many banks are expected to continue applying enhanced due diligence, ongoing transaction monitoring, and Suspicious Activity Report ("SAR") filing protocols for cannabis clients, consistent with existing FinCEN guidance.

Other Compliance Considerations

Notwithstanding the anticipated benefits of rescheduling, cannabis would remain a federally controlled substance, and the Order does not eliminate federal enforcement authority or regulatory oversight under the CSA. Rescheduling also does not confer FDA approval or safe harbor for therapeutic or medical claims, and products marketed with disease-treatment or health-related claims remain subject to FDA jurisdiction, including potential enforcement for misbranding or unapproved drug claims. Finally, rescheduling is not expected to materially alter existing employment, workplace, or ancillary legal frameworks, including employer drug-testing policies, federal contractor requirements, immigration considerations, or other collateral consequences that continue to treat marijuana use and distribution differently from fully legalized substances.

Where Does Indiana Stand?

Indiana Attorney General Todd Rokita has publicly criticized the federal initiative to reschedule marijuana, asserting that marijuana should remain a Schedule I controlled substance and expressing concern that rescheduling could undermine public safety and state enforcement priorities.[3] Attorney General Rokita has indicated that Indiana will closely review the Order and related federal rulemaking to assess its legal and practical implications for the state. By contrast, Governor Mike Braun has not issued a formal public statement specifically addressing the Order. However, in prior public comments and campaign statements, Governor Braun has acknowledged growing public support for medical marijuana and has suggested a willingness to engage in legislative dialogue on narrowly tailored medical cannabis measures, while stopping short of endorsing broader legalization.[4] Together, these differing public positions underscore that, notwithstanding federal developments, any change to Indiana's cannabis laws would require affirmative action by the Indiana General Assembly, and state-level policy outcomes remain uncertain.

Action Items

Businesses operating in or adjacent to the cannabis industry should closely monitor the timing and scope of the DEA's rescheduling rulemaking, as the effective date will drive when any federal tax and regulatory changes take hold. In the interim, operators may wish to begin modeling potential post-§280E tax outcomes,

engaging proactively with banking and financial partners regarding evolving risk assessments, and reviewing compliance, labeling, and marketing practices in light of continued federal oversight. Companies with Indiana ambitions should also continue to track state legislative and regulatory developments, as any change in Indiana law will require affirmative action by the General Assembly and is not automatic as a result of federal rescheduling.

Krieg DeVault's attorneys will continue to monitor the implementation of the Executive Order, the DEA's rescheduling rulemaking, and related federal and state developments affecting the cannabis industry. Clients with questions regarding potential tax, banking, or compliance implications are encouraged to contact **Kendall Schnurpel**, or their regular Krieg DeVault attorney.

[1]The Controlled Substances Act uses the term "marihuana," reflecting the terminology in use at that time of its original criminalization. "Cannabis" is a modern, broader term commonly used in policy, industry, and state law. See e.g., 21 U.S.C. §812.

[2]Controlled Substances Act, Pub. L. No. 91-513, Title II, 84 Stat. 1236 (Oct. 27, 1970) (codified as amended at 21 U.S.C. §§801–971)

[3]Indiana AG pushes back after Trump's executive order to reschedule marijuana

[4]Indiana's Republican Governor Is 'Amenable' To Medical Marijuana Legalization Even As Top GOP Lawmakers Oppose It - Marijuana Moment

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