Outlook

RE: public comment for june 4 CAC meeting - impact of rescheduling on small producers

From Campion, Jacqueline@Cannabis <Jacqueline.Campion@cannabis.ca.gov>
Date Fri 5/22/2026 4:50 PM
To Ross Gordon <ross@originscouncil.org>; cac@Cannabis <cac@cannabis.ca.gov>
Cc Genine Coleman <genine.coleman@mendomap.org>; Dempsey, Christina@Cannabis <Christina.Dempsey@cannabis.ca.gov>

Good morning Ross, confirming receipt. Thank you!

From: Ross Gordon <ross@originscouncil.org>
Sent: Friday, May 22, 2026 9:14 AM
To: cac@Cannabis <cac@cannabis.ca.gov>
Cc: Genine Coleman <genine.coleman@mendomap.org>; Campion, Jacqueline@Cannabis <Jacqueline.Campion@cannabis.ca.gov>; Dempsey, Christina@Cannabis <Christina.Dempsey@cannabis.ca.gov>
Subject: public comment for june 4 CAC meeting - impact of rescheduling on small producers

Good morning, we wanted to submit the attached report that Origins Council worked on with National Craft Cannabis Coalition regarding the accessibility of DEA registration under rescheduling for small medical cannabis producers.

We'll likely submit additional public comment ahead of June 4 but wanted to submit this as initial public comment for now.

Thank you, we really appreciate the CAC making space for this discussion.

NATIONAL CRAFT CANNABIS COALITION
MAY 12, 2026

Medical Cannabis in Schedule III: Should Small Producers Apply for DEA Registration?

On April 22, Acting Attorney General Todd Blanche signed a final rule, published and effective April 28, 2026, that moves FDA-approved drugs containing marijuana and state-licensed medical marijuana from Schedule I to Schedule III of the Controlled Substances Act.[1]

By limiting the scope of rescheduling only to medical cannabis, the order is able to make rescheduling effective immediately - without a formal hearing process - in order to conform to the U.N. Single Convention on Narcotic Drugs, an international treaty which has recognized medicinal uses for marijuana.[2]

The rescheduling order's unexpected inclusion of state-legal medical cannabis businesses creates uncertain and potentially significant consequences for licensed businesses and medical cannabis patients. In recent weeks, organizations such as Americans for Safe Access[3] and the Cannabis Regulators Association, [4] and many others have published thoughtful analyses of the order.

The goal of this analysis is to add to these existing commentaries by specifically considering the implications of the rescheduling order for small cannabis producers, including an analysis of potential practical risks and benefits associated with DEA Schedule III registration under the order's allowances. The rescheduling order includes a 60-day priority registration window which closes in late June, [5] putting the question to thousands of small producers on whether to submit an application over the next six weeks.

In general, we see potential benefits of rescheduling for medically-licensed small cannabis producers in areas including federal legitimation, 280E relief, interstate and international

[1] https://www.federalregister.gov/documents/2026/04/28/2026-08176/schedules-of-controlled-substances-rescheduling-of-food-and-drug-administration-approved-products
[2] https://www.unodc.org/pdf/convention_1961_en.pdf
[3] https://www.safeaccessnow.org/is_cannabis_legal_now
[4] https://static1.squarespace.com/static/5f7e577e23ad7c718c269776/t/69ef671deb38f3461212a4e9/1777297181494/Overview+of+April+23+DOJ+Final+Order+on+Rescheduling_Final.pdf
[5] The precise date that the registration window will close is unclear as of the date of this memo's publication. While the order cites a "sixty day" window, there is disagreement on what day the count starts and ends, and various sources have asserted that the window will close on June 22, June 26, or June 27. The DEA itself has not yet cited a specific date when the sixty day window closes.

commerce, and even, conceivably, direct-to-consumer shipping; but also substantial potential risks including legal liability with the DEA, DEA application denial, inaccessible barriers to operation, loss of ability to operate within state-legal markets, and the potential for unexpected policy change in the future.

This analysis is not legal advice, and we encourage operators considering a DEA registration to consult with an attorney and thoroughly consider legal risks prior to engaging the DEA. Additionally, the current situation is extremely unclear and many analysts have drawn different conclusions about the order's consequences. The goal of this analysis is to provide some practical initial direction for navigating this uncertainty, rather than clarifying all of the potential effects and interpretations of the order. We expect that at least some information in this analysis will become outdated or irrelevant as further facts emerge. An appendix at the end of this document includes a list of pending questions that NCCC.

WHAT DOES IT MEAN TO MOVE STATE-LICENSED MEDICAL MARIJUANA TO SCHEDULE III?

The April 22 order establishes "a new registration pathway for state-licensed medical marijuana entities seeking federal DEA registration as manufacturers, [6] distributors, and/or dispensers." Medical marijuana itself, if produced by a state-licensed medical marijuana operator, appears to be Schedule III as of the rule's effective date; for this Schedule III activity to be lawful, however, operators are required to obtain registration with the DEA.

WHAT'S INVOLVED IN DEA REGISTRATION BY A STATE-LICENSED MEDICAL MARIJUANA BUSINESS?

The DEA has already launched a registration application portal[7] specifically for medical marijuana dispensaries, which opened on the morning of April 29. For dispensaries, the registration fee is set at $794. While the DEA has not advertised any specific registration portal for medical marijuana manufacturers or distributors, "manufacturers" and "distributors" in general have long been able to register with the DEA under Form 225. [8] It remains unclear whether Form 225 is intended for use by state-licensed medical marijuana businesses, or if the DEA intends to make a separate form available for these businesses. Under the existing Form 225, manufacturers must pay an annual fee

[6] Under federal law,"manufacturer" encompasses cultivation. See 21 U.S. Code § 802 (15) and (22),defining "manufacture" to include "production," and defining "production" to include "cultivation."https://www.law.cornell.edu/uscode/text/21/802
[7] https://mmapplication.diversion.dea.gov/
[8] https://www.deadiversion.usdoj.gov/drugreg/registration.html

of $3,699, and distributors must pay an annual fee of $1,850.[9]

The practicality of DEA registration for small producers is a separate question. While the text of the rescheduling order suggests that state-licensed medical marijuana businesses will generally be able to register with the DEA, the order also indicates that the DEA may deny an application that is "*inconsistent with the public interest under the 21 U.S.C. 823 factors or with the requirements of the Single Convention.*"

Under 21 U.S.C. 823(e)-(g), potential disqualifying factors include a prior conviction for controlled substances. Additionally, the section grants DEA broad discretion to deny an application based on factors including ″compliance with applicable State and local law, ″maintenance of effective controls against diversion,″ and ″such other factors as may be relevant to and consistent with the public health and safety.″[10] There is currently no clear direction as to whether and how DEA would invoke this discretionary authority.

WHAT OTHER FACTORS COULD RESULT IN DENIAL OF A DEA APPLICATION?

In addition to the factors discussed above, the order itself and the registration instructions posted by DEA suggest several other potential reasons for application denial.

POTENTIAL DISQUALIFYING FACTORS - DEA REGISTRATION APPLICATION

The posted DEA application for medical marijuana dispensaries includes several questions which indicate a potential for discretionary denial for reasons outside the explicit text of the rescheduling order itself. While this application is currently only for dispensaries - and it's not clear how the DEA would consider answers to these questions within the decisionmaking process - the questions themselves are notable given the broad discretion the DEA holds to deny a registration. Notable questions include the following:

- Does the firm have past experience in handling controlled substances?
- Has anyone who will be involved in the ownership or operation of the firm previously manufactured, distributed, and/or dispensed any controlled substance without a DEA

[9] https://www.ecfr.gov/current/title-21/chapter-II/part-1312/subject-group-ECFR171b7bbd5798513
[10] https://www.law.cornell.edu/uscode/text/21/823

registration authorizing such activity?

- Will your firm be handling or dispensing recreational marijuana?
- Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law?
- Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law?
- For each individual you anticipate having access to controlled substances:... Has this person been the subject of one or more federal, state, territorial, or tribal disciplinary actions? Has this person been convicted of any federal, state, territorial, tribal, and local offenses related to controlled substances?
- Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, restricted, denied, or placed on probation, or is any such action pending?
- If the applicant is a corporation (other than a corporation whose stock is owned and traded by the public), association, partnership, or pharmacy, has any officer, partner, stockholder or proprietor been convicted of a crime in connection with controlled substance(s) under state or federal law, or ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied, or ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?

POTENTIAL DISQUALIFYING FACTORS - SINGLE CONVENTION QUOTA REQUIREMENTS

The order states that the Single Convention requires the U.S. to "*limit growing of the marijuana plant for that required for legitimate domestic scientific, medical, and industrial needs, and for legitimate exports*" and further to "*establish the upper limit of marijuana that each grower may grow in a calendar year, as well as the total amount of marijuana that can be grown in the United States annually for legitimate needs*." Later, the order reaffirms that "*state-licensed marijuana will be required to meet the quota requirements of the Single Convention*."

The order therefore suggests that there will be a quota on the cumulative (and possibly per-operator) cannabis authorized for production under a DEA registration. While the order does not clarify what this quota will be or how it will be enforced, it's possible that a DEA producer

registration could be denied solely on the basis of the quota already having been met. If a small number of large productions submit early applications to the DEA, it's conceivable that the quota could be reached quickly, disqualifying any other applicants from registration.

POTENTIAL DISQUALIFYING FACTORS - SECURITY AND RECORDKEEPING REQUIREMENTS

The order also establishes a requirement for security and recordkeeping requirements consistent with federal and treaty law.

- For recordkeeping, the order states that the DEA "*shall accept state-required reports, records, and forms to the maximum extent permissible*," but implies that additional recordkeeping to meet federal and treaty standards may be necessary.
- For security, the order states that *"notwithstanding any other provision of these rules, a registrant under this paragraph has sufficient physical-security requirements if the registrant meets the requirements of state law."* In practice, however, the medical marijuana dispensary application asks for a comprehensive list of security measures, not all of which are currently required under state law for all operators. It is not certain whether the DEA would consider typical security standards associated with state-licensed outdoor cultivation adequate for their purposes.

WHAT RISKS COULD BE ASSOCIATED WITH FILING A DEA APPLICATION?

Given the uncertain legal environment and the DEA's history and mission, there are clear reasons for caution for medical operators considering DEA registration. For example, if the DEA chooses to deny an application for any reason, the applicant has flagged themselves to federal law enforcement as engaged in federally-unauthorized activity. Additionally, it is possible that application standards or materials will change over time, or that they will be required to change as a result of litigation against the order.

WHAT RISKS COULD BE ASSOCIATED WITH NOT FILING A DEA APPLICATION?

There is also a degree of risk associated with not pursuing DEA registration. State medical cannabis licensees remain federally unlawful under the order unless they receive a DEA registration. The order also establishes priority review for applications submitted within 60 days of the order, requiring them to be processed within six months of submission, and provides that "*early applicants may lawfully operate under their state-issued licenses during the pendency of review*." While not stated explicitly, it's possible that applications not submitted by state-licensed medical marijuana

businesses within this 60-day window would subsequently be denied on the grounds of prior operation without the required DEA registration.

DOES A DEA REGISTRATION ALLEVIATE IRS 280E TAX PENALTIES?

Schedule III status should eliminate the applicability of IRS 280E tax penalties for Schedule III operators. The IRS and Treasury Department have announced forthcoming guidance with additional details. [11] The rescheduling order also "*encourages the Secretary of Treasury to consider providing retrospective relief from Section 280E liability for taxable years in which a state licensee operated under a state medical marijuana license*," though it remains to be seen whether this will be implemented. Additionally, the details of how 280E relief applies to operators with both adult-use and medicinal cannabis authorizations remains unclear.

There is a case to be made that 280E tax relief will apply even for state-licensed medical marijuana businesses that do not hold a DEA registration. Because 280E applicability is determined by Schedule I or II status - not by legality - it can be argued that the April 22 order applies to all state-licensed medical marijuana as a Schedule III substance, even if that Schedule III substance is not produced *legally* under a DEA registration. However, this interpretation has not yet been formally affirmed by the IRS or Treasury Department.

DOES A DEA REGISTRATION AUTHORIZE INTERSTATE COMMERCE?

While the order does not explicitly mention interstate commerce, a logical reading of the order suggests that any DEA-registered medical cannabis business would be authorized to interact with any other DEA-registered medical cannabis business under the federal Controlled Substances Act, regardless of where in the United States they are located.

While these federal allowances would not automatically override state-level prohibitions on interstate commerce, states may consider changing their laws to accommodate new federal policy. In California, Oregon, and Washington, existing state laws give governors the authority to enter into interstate cannabis commerce compacts under the condition that this activity is tolerated or allowed under federal law. Additionally, the rescheduling order increases the likelihood of a legal challenge to state interstate commerce prohibitions on constitutional Dormant Commerce Clause

[11] https://home.treasury.gov/news/press-releases/sb0471

grounds. The Dormant Commerce Clause has long been theorized as a pathway to open interstate cannabis commerce by judicial order - even without state legislative action - and the legal case for this may be substantially strengthened by the rescheduling order.[12]

There are remaining questions regarding whether interstate cannabis commerce would technically be authorized under the FDA's Food Drug and Cosmetics Act (FDCA), even if otherwise allowed by the Controlled Substances Act and state law. However, the FDA has largely chosen not to enforce the FDCA in the context of interstate hemp commerce, suggesting that similar deference could be afforded for interstate cannabis commerce. Additionally, it could be argued that the FDCA's provisions apply differentially depending on product form factor (flower, oil, edible, beverage, etc).

DOES A DEA REGISTRATION LEGALIZE INTERNATIONAL TRADE?

Yes, it appears that it does, subject to appropriate permits. The order amends DEA regulations "to add FDA-approved drug products containing marijuana and state-licensed medical marijuana to the list of nonnarcotic schedule III through IV substances that are subject to the import and export permit requirement." Under CFR Part 1312, [13] international exporters are required to obtain an export permit through DEA Form 161, [14] and also to file DEA Form 236 for each shipment.[15]

DOES A DEA REGISTRATION AUTHORIZE DIRECT TO CONSUMER SHIPPING?

Likely not immediately, but it may open the door to it. Current USPS rules allow controlled substances to be mailed under two relevant conditions: either (1) both the sender and the receiver are DEA-registered or DEA-exempt, or (2) the item being mailed is a "prescription drug" meeting specified regulatory requirements.[16] While it's unclear whether medical cannabis under the DEA order meets these requirements, USPS rules could be updated to more clearly allow shipping from a DEA registrant to a certified medical patient. For comparison, in 2021, USPS issued a rule designating federally-legal hemp as mailable.[17] Additionally, even in a world where USPS

[12] https://yalelawandpolicy.org/inter_alia/sleeping-giant-how-dormant-commerce-clause-looms-over-cannabis-marketplace
[13] https://www.ecfr.gov/current/title-21/chapter-II/part-1312
[14] https://www.deadiversion.usdoj.gov/imp_exp/161/form-161.html
[15] https://www.deadiversion.usdoj.gov/imp_exp/236/form-236.html
[16] https://pe.usps.com/text/pub52/pub52c4020.htm
[17] https://about.usps.com/postal-bulletin/2021/pb22579/html/updt_002.htm

considered medical cannabis mailable, state policies would need to be amended to allow shipping activities by medical marijuana licensees.

IS THE DEA REQUIRED TO PURCHASE CANNABIS FROM DEA-REGISTERED OPERATORS? IS THERE A REQUIRED ADMINISTRATIVE FEE PER POUND?

Yes. The order states that in order to meet the Single Convention's "wholesale monopoly" requirements, the order requires manufacturers (cultivators) to "establish a nominal price for the purchase of their marijuana crops" and sell these crops to the DEA. The DEA then sells the crops back to the manufacturer (cultivator), minus an administrative fee. Crops must be stored in a facility to which the DEA has access until the transaction is completed, and the DEA is authorized to inspect these facilities.

Notably, the order also exempts state medical licensees from 21 CFR Part 1318, a section of federal regulation which would impose more onerous purchase and resale requirements on manufacturers, including a requirement for the DEA to take physical possession of the cannabis.[18] The intent appears to be to ensure some form of purchase and resale to meet the requirements of the Single Convention, but to make these requirements relatively less onerous than they otherwise might be for state medical marijuana licensees.

This ″purchase-and-resale" mechanism is not new for the DEA and has been applied for several years in the context of Schedule 1 marijuana used legally for research purposes. The current administrative fee charged by DEA in this context is $113/kg, or $51.26/pound.[19] Because the fee is alculated based on DEA's administrative costs, however, and these costs would likely be affected by rescheduling, it's likely that this administrative fee will change.

HOW WOULD A DEA REGISTRATION AFFECT ADULT-USE CANNABIS AUTHORIZATIONS OR STATE-LICENSED TRANSACTIONS?

It remains unclear how a DEA registration could affect a concurrent state adult use cannabis license. If concurrent adult use and medical activity is tolerated by DEA, it's unclear what measures would be necessary to delineate adult use from medical cannabis, either physically or administratively.

[18] https://www.ecfr.gov/current/title-21/chapter-II/part-1318
[19] https://www.deadiversion.usdoj.gov/drugreg/marihuana.html

Presumably, medical cannabis produced or obtained under a DEA registration could only be sold or transferred to other DEA registrants, and not (for example) other state-licensed cannabis businesses which are not DEA registrants.

WHO QUALIFIES AS A MEDICAL CANNABIS PATIENT UNDER THE ORDER?

The order states that "*state-authorized medical marijuana certifications are sufficient to permit the dispensing of medical marijuana to users, provided they include the user's name and address, are dated and signed on the day of issuance, and identify the issuing practitioner*."

WHAT HAPPENS NEXT?

In the short term, the DEA is likely to continue implementing the April 22 order, including potential further clarification or specification of DEA registration standards. IRS and the Treasury Department have also indicated their intent to publish guidance on 280E.

As discussed previously, an administrative hearing process for rescheduling of botanical cannabis more broadly is scheduled from June 29-July 15.[20] This process could meaningfully alter or expand the currently-effective order and could become legally effective by the end of 2026.

Litigation on both the April 22 order, and rescheduling more broadly, is likely and potential outcomes are unclear. Either process could be halted or modified based on the outcome of litigation.

CONCLUSION: OPPORTUNITIES, RISKS, AND UNCERTAINTIES

The April 22 order can be framed either positively or negatively for small operators, and both framings are worth considering to help think through the potential costs and benefits of DEA registration.

An optimistic take would emphasize that the order provides a pathway for state medical cannabis licensees to become federally-authorized businesses under a DEA registration that largely defers to state-level medical cannabis rules. DEA-registered medical cannabis licensees will be able to take

[20] https://www.federalregister.gov/documents/2026/04/28/2026-08177/schedules-of-controlled-substances-rescheduling-of-marijuana

advantage of 280E tax deductions - potentially even retroactively - and may have an opportunity to access additional benefits including interstate commerce, international commerce, and potentially even direct to consumer shipping.

A pessimistic take would question whether DEA registration is practically accessible to small operators due to DEA discretionary denials or other barriers. A pessimistic take would also emphasize the uncertainties and potential legal risks associated flagging Schedule I activity to the DEA under a registration application which may or may not be approved, particularly when the current order may be altered or reversed by litigation or the administrative hearing process. Additionally, it's not yet totally clear whether a DEA registration would offer meaningful benefits in terms of interstate commerce, international commerce, or direct to consumer shipping; either because the legality of these mechanisms aren't themselves yet clear, or because their practicality has yet to be tested. Finally, if DEA registration limits applicants to only doing businesses with other DEA registrants, registration could conceivably limit - rather than expand - the opportunities available to state medical marijuana licensees.

The sixty day window for priority DEA registration creates pressure for state medical cannabis licensees to choose a path - to apply for a DEA registration, or not - by late June. Whether this window is meaningful is itself uncertain: applications after this date may be curtailed, or not. Overall, while we cannot make a recommendation on the basis of currently-known information, we encourage all small producers to educate themselves on this order and its consequences, and to continue tracking developments over the coming weeks and months.

APPENDIX: OUTSTANDING QUESTIONS ON APRIL 22 RESCHEDULING ORDER AND DEA REGISTRATION FOR STATE MEDICAL MARIJUANA LICENSEES

Based on known public information as of May 12, 2026, NCCC is working to pursue answers to outstanding questions on how the April 22 rescheduling order will be operationalized, including the following:

1. The rescheduling order establishes a sixty day priority application window for existing medical marijuana state licensees. How will policy change after this deadline? Will DEA enforce on state medical cannabis licensees which do not register with the DEA by the end of the sixty day window? Will the DEA grant registrations to medical cannabis licensees in operation that apply for registration after the window closes?
2. Many state-licensed medical cannabis businesses are concurrently engaged in state-licensed adult use cannabis activity. Will DEA register businesses that are involved in both state-licensed adult use and medical marijuana activities? If so, how should these businesses physically and administratively delineate their operations?
3. The following questions are contained in the DEA's existing application for medical marijuana dispensaries. Will DEA deny a registration for state-licensed medical cannabis business based on an affirmative answer to any of these questions?
    - The applicant has previously handled or sold controlled substances without a DEA registration.
    - The applicant or any individual associated with the application (e.g. an employee) with access to marijuana has a prior conviction for controlled substance.
    - The applicant handles or dispenses recreational marijuana.
    - The applicant has been subject to disciplinary action related to a controlled substance (including, e.g., disciplinary action by a regulator against a state cannabis license).
4. Thousands of businesses operating under state medical marijuana licenses are small, outdoor farmers cultivating well under an acre of medical marijuana. Does DEA intend to make registration accessible for these state licensees?
5. The order states that the U.N. Single Convention on Narcotic Drugs requires the U.S. to "limit growing of the marijuana plant for that required for legitimate domestic scientific, medical, and industrial needs, and for legitimate exports" and further to "establish the upper limit of marijuana that each grower may grow in a calendar year, as well as the total amount

of marijuana that can be grown in the United States annually for legitimate needs." However, further details are not specified. Will DEA implement a quota for cannabis cultivation on a single farm and/or cumulatively, and if so, how?

6. The rescheduling order states that in order to meet the Single Convention's wholesale monopoly requirements, manufacturers must "establish a nominal price for the purchase of their marijuana crops." The DEA would then sell the crops back to the manufacturer, minus an administrative fee. The order also waives 21 CFR Part 1318, suggesting that the DEA will not be required to take physical possession of cannabis under this system and instead will require only constructive possession. Can DEA confirm that physical transfer of medical marijuana will not be required under the "wholesale monopoly" provisions of the rescheduling order?
7. Interstate commerce is not mentioned in the text of the rescheduling order. Will DEA, FDA, or other federal agencies issue guidance on interstate commerce of schedule III medical marijuana?
8. Currently, under state laws, medical marijuana licensees are generally authorized to do business with any other state licensee. Under DEA registration, would registered state-licensed businesses only be authorized to transfer medical marijuana to or from other DEA registrants?