

the buzz:

Cannabis News & Policy Update

August Edition

FEDERAL UPDATES

IRC Section 280E

Last week, Senior IRS Counsel Luke Ortner joined Holland & Hart Partner Jen Benda for a fireside chat during the [AICPA & CIMA Cannabis Industry Conference](#). Ortner said the IRS has been receiving tax returns from cannabis operators taking the position 280E no longer applies, but he confirmed the agency will continue applying and enforcing the provision until relevant legislative, regulatory, or judicial action is taken. Ortner cautioned taxpayers to consider the cases where the IRS has already defended constitutional challenges to 280E, reminding taxpayers that Congress' taxing power may be broad. Ortner could not directly comment on recent news reports that state-legal cannabis businesses have received tax refunds based on "no-280E" claims, or why refunds may have been granted. He commented that with many claim processors in different centers across the country it's a human process and errors are made, adding there are "a million different reasons why someone could get a refund claim."

Federal Rescheduling

More than 43,000 [comments](#) were submitted to the DEA during the 60-day public comment period following the publication of its [proposed rule](#) to move marijuana from Schedule I to Schedule III. Analyses of the comments found the [vast majority were in favor](#) of rescheduling, including a [substantial percentage](#) in favor of descheduling. [Supportive comments](#) were submitted by state and local agencies and officials, state and national trade associations, and advocacy organizations, including several state regulatory authorities and the governors of Colorado and Oregon.

Several groups submitted comments opposing to rescheduling and requests for administrative hearings. Opponents included national advocacy organizations, such as [Smart Approaches to Marijuana \(SAM\)](#); industry groups, such as the [National Drug and Alcohol Screening Association](#) and the [Drug Enforcement Association of Federal Narcotics Agents](#); and law enforcement agencies, such as the [Tennessee Bureau of Investigation](#). It is widely expected that administrative hearings will occur, and then the DEA will publish its final rule, which will be subject to judicial review. SAM has already started fundraising for anticipated legal action.

LICENSING OPPORTUNITIES

Delaware: The Office of the Marijuana Commissioner began [accepting applications](#) for its first adult-use cannabis business licenses earlier than originally planned. Applications will be accepted through September 30. Licenses will be issued via lottery, beginning with cultivators this November, followed by manufacturers in December, and retailers and testing labs in March 2025. Licenses are available for 60 cultivators, 30 manufacturers, 30 retailers, and five testing labs, with a portion of each lab reserved for social equity applicants.

Kentucky: The [Office of Medical Cannabis](#) will accept applications for its first medical cannabis business licenses through the end of August. In October, it will hold a lottery to issue licenses for 48 dispensaries, 16 cultivators, and 10 processors. The OMC also released emergency rules to [increase license renewal fees](#) and establish a new [provisional licensing process](#) for businesses that must change locations following the lottery if their municipality opts to prohibit cannabis businesses.

Minnesota: License preapprovals for [social equity applicants](#) will be awarded by lottery this fall for 38 retailers, 13 cultivators, 6 manufacturers, 100 microbusinesses, 25 mezzobusinesses, and several other license types. Those awarded preapproval to operate as a cultivator, microbusiness, or mezzobusiness can begin cultivating adult-use cannabis before final rules are adopted. The [first draft of adult-use rules](#) includes provisions on potency limits, operational requirements for licensees, and limits on the number of licenses individuals can hold. Public comments on the draft are due August 30. Another comment period will be initiated when the final rules are published later this year.

Missouri: The state's second round of microbusiness licenses were [awarded](#) to 24 microbusiness dispensaries and 33 microbusiness wholesalers. An additional 48 microbusiness licenses will be awarded through the next application/lottery window in 2025.

NEW MARKETS

Ohio: Adult-use sales started August 6 at 98 previously existing medical cannabis dispensaries that transitioned to dual-use facilities. Ohio is the seventh most populous state and may quickly become one of the largest adult-use markets in the country. The 10% sales tax on adult-use cannabis is projected to generate approximately \$200 million in state tax revenue in the first year of sales.

North Carolina: The Eastern Band of Cherokee Indians announced it will open North Carolina's first legal marijuana store for adults 21 and older on September 7. No bordering states allow adult-use sales, making the tribal dispensary the only legal adult-use retailer in most of the Southeast region. The store began selling medical cannabis this past April.

STATE POLICY UPDATES

Oregon: A measure qualified for the November ballot that would require cannabis retailers and processors to sign labor peace agreements in order to receive a new business license or renew an existing license.

Colorado: The Marijuana Enforcement Division issued emergency rules to implement Senate Bill 24-076, which took effect on August 7. Key changes include allowing cultivators to export cannabis genetic material and authorizing retailers to sell non-cannabis consumable products. Retailers interested in selling non-cannabis food and beverages should confirm whether their local jurisdictions allow such sales or require additional licenses. The rules make business license renewals biennial instead of annual but require up-front payment of the full two-year license fee. They also include a state-mandated inflationary fee increase of 5%.

New York: The Cannabis Control Board released new rules aimed at loosening zoning regulations on adult-use retailers. A proposed "public convenience and advantage waiver" would allow the CCB to waive existing distance requirements for new adult-use stores, which is 1,000 feet in many municipalities. Regulators will seek public input on what conditions should lead to these waivers being considered.

HEMP UPDATES

Missouri: Gov. Mike Parson issued an executive order prohibiting the sale of THC-infused food and drinks outside of the state-regulated marijuana market. The order, which takes effect September 1, cites public health concerns associated with the sale of synthetic and hemp-derived THC, such as delta-8 and THC-O.

Georgia: The state Department of Agriculture proposed regulations for consumable hemp products, including licensing requirements; standards for advertising, packaging, labeling, and testing; and servicing sizes and limits. Public comments are being accepted until September 6.

LITIGATION

Iowa and Wyoming: District courts in Iowa and Wyoming rejected hemp companies' claims that the 2018 U.S. Farm Bill preempts recently enacted state laws that impose restrictions on consumable hemp products. The cases highlight increasing state enforcement efforts aimed at regulating hemp-derived THC and prohibiting it from being used in products sold by state-regulated marijuana businesses.

Colorado: Legal actions involving hemp-derived products are also happening in Colorado. One licensed cultivator recently filed a lawsuit against another licensed operator, claiming it illegally infused products with hemp-derived THC and sold them to consumers without properly disclosing their contents. Earlier this summer, the Colorado Attorney General's Office launched its first industrial hemp enforcement action against Gee Distributors, doing business as CBDDY, alleging it illegally sold cannabis products containing up to 35 times higher THC levels than permitted and marketed as federally legal industrial hemp.

MJBizCon Save the Date

Wednesday, December 4th | Early Evening

We can't wait to "tee up" with you at our annual happy hour.
Stay tuned for more details!



visit us online