

# the buzz:

## Cannabis News & Policy Update

July Edition

### FEDERAL UPDATES

#### Federal Rescheduling

At the end of June, the Internal Revenue Service issued a [news release](#) reminding taxpayers that marijuana is still a Schedule I controlled substance and cannabis businesses are not entitled to refunds of taxes paid related to Section 280E of the Internal Revenue Code unless and until the [rulemaking process](#) to reschedule marijuana is fully completed.

The deadline to [submit public comments](#) on the proposed rescheduling rules is Monday, July 22, at 11:59 pm ET. The DEA is expected to hold Administrative Law Judge hearings on the proposal that may take about 30–60 days. After The DEA publishes its final rule, any aggrieved party will have 30 days to seek judicial review.

Anti-cannabis groups are reportedly raising funds to support a legal challenge of the proposed rules, so litigation over rescheduling is widely anticipated, and this would extend the timeline for a final rule to be issued.

Rescheduling could be impacted by the presidential race if the process is not finalized before the January 20 inauguration and there is a change in administration.

Discussion is also swirling about potential implications for rescheduling now that substantial agency deference (“Chevron Deference”) has been eliminated by the US Supreme Court in its recent *Loper Bright Enterprises v. Raimond* decision. It’s a complex issue and much is unknown, but most experts believe rescheduling will not be derailed.



#### IRC Section 280E News

Many cannabis businesses reportedly filed amended tax returns seeking refunds after the rescheduling announcement based upon legal theories that Section 280E may not apply to state-legal cannabis businesses. Some of the companies requesting refunds may have been motivated by Trulieve’s public announcement earlier this year that it [received \\$113 million in tax refunds](#) related to Section 280E. As we told MJBizDaily [at that time](#) (and wrote in [an earlier op-ed](#)) there is a lot we don’t know about Trulieve’s refund announcement—including whether the IRS will claw back any of the refunds issued. We recommend working closely with your tax adviser before taking a no-280E position on any return or refund claim.

### LICENSING OPPORTUNITIES

**Kentucky:** Kentucky is the 38th and latest state to legalize medical cannabis. Applications for initial medical cannabis business licenses are now being accepted by the Office of Medical Cannabis. Licenses for 48 dispensaries, 10 processors, and 16 cultivators will be issued through a lottery in October, and prospective licensees have until August 31 to submit applications. Licenses for safety compliance facilities, which will be responsible for testing raw plant material and products, will not be issued by lottery because there is no initial limit on the number of licenses available.

The Kentucky Medical Cannabis Program published a [Business Licensing Application Guide](#), which offers step-by-step guidance on how to submit an application through its online portal, as well as a [video series](#). More information about the program, including the licensing timeline, lottery process, application and licensing fees, and regulations, is available on the [program website](#).

**Ohio:** The [Division of Cannabis Control](#) began issuing provisional dual-use licenses to existing medical cannabis businesses that intend to participate in the state’s new adult-use market. Provisional licensees must pass an inspection process and demonstrate compliance with operational requirements before they can begin operations.

Provisional dual-use licenses have been issued to 128 dispensaries, all 22 existing Level I cultivators, 12 of the 14 existing Level II cultivators, and 40 processors. The DCC has reportedly received nearly 200 applications for new dispensaries known as 10(B) licenses. Adult-use sales are expected to begin sometime this summer, making Ohio—the seventh most populated state—one of the nation’s largest adult-use markets.

## NEW MARKETS

**Delaware:** The Office of the Marijuana Commissioner introduced updated rules for implementing the adult-use market. The [new proposed regulations](#) change packaging and labeling; transportation vehicle requirements; advertising and audience composition requirements; and allowable co-location of manufacturing and retail facilities. Public Comments will be accepted until July 31.

At the end of June, the General Assembly passed a Bill [HB 408](#) that would expedite adult-use sales by allowing existing medical cannabis businesses to convert months earlier than the current timeline. Once it is officially presented to Gov. John Carney, he will have 10 days to sign, veto, or allow the bill to become law without his signature.

**Pennsylvania:** A new adult-use legalization bill was [filed](#) in the state House of Representatives by Reps. Aaron Kaufer (R) and Emily Kinkead (D). The bipartisan proposal would allow existing medical cannabis dispensaries to begin adult-use sales on January 1, 2025. Key features include: a pathway for social equity applicants to operate dispensaries by entering into charter agreements with existing operators; an 8% consumer sales tax; and an excise tax of 5% of the sales price on dispensing organizations. Key lawmakers have expressed mixed opinions on the likelihood of adult-use legalization passing this year. The bill's sponsors believe it still has a pathway, while Rep. Napoleon Nelson, chair of the Legislative Black Caucus, commented it would be complicated to pass this year due to the upcoming elections.

## STATE POLICY UPDATES

**Colorado:** The Marijuana Enforcement Division initiated its annual rulemaking process to review and update existing rules and propose new rules as necessary. It will also include implementation of [SB 24-076](#), the regulation streamlining bill enacted earlier this year. Emergency rules related to the Bill are expected in the coming weeks, and licensed marijuana stores should be prepared to implement some important operational changes by August 7, when the new law takes effect.

Notable changes include: the Tangible Educational Resource; warnings about pregnancy and marijuana use; and the sale of non-marijuana food and beverage products. The MED posted [2024 rulemaking information](#) and a schedule, which includes stakeholder meetings in August and September, and an anticipated permanent hearing October 1.

**Massachusetts:** The Cannabis Control Commission released a draft governance charter last week that aims to establish a more effective management structure with clear roles and responsibilities. This followed criticism from lawmakers, the governor, and the media following two years of leadership upheaval, including the resignations of inaugural Chair Steven Hoffman and Executive Director Shawn Collins, the suspension of Chair Shannon O'Brien, and the removal of many day-to-day operations from Acting Executive Director Debbie Hilton-Creek.

In early July, legislators considered a “nuclear option” proposal from Inspector General Jeffrey Shapiro to place the agency under receivership. In mid-June, Shapiro sent a [letter](#) to legislative leaders urging them to immediately appoint “a receiver with clearly delineated authority” to manage the day-to-day operations of the Cannabis Control Commission. He also recommended the legislature revise the Commission’s governance structure in the next session to provide a clear leadership hierarchy with defined duties and responsibilities.

## HEMP LITIGATION

**Nebraska:** State Attorney General Mike Hilgers [announced](#) the first two settlements in 11 lawsuits filed by his office last October against shops selling delta-8 THC products. The settlements prohibit the shops from selling any THC hemp products in the state, require all remaining THC hemp products to be turned over within 14 days for immediate destruction, and establish escalating financial penalties for each breach of the settlement.

**Iowa:** Eight hemp companies [filed a lawsuit](#) in the US District Court for the Southern District of Iowa at the end of June, challenging the constitutionality of [House File 2605](#) and [House File 2641](#), passed by the legislature earlier this year. Businesses argue the new law, which restricts levels of THC in consumable hemp products, is preempted by the 2018 Farm Bill and violates their due process rights because it requires them to follow regulations that will not be finalized before the law becomes effective.

Earlier in June, two hemp beverage companies sued the state over the same law in hopes of limiting enforcement of THC limits. After a federal court judge denied their request for an injunction, they filed additional arguments and joined the other eight companies at a hearing last week. While their contention that the law is unconstitutional is unlikely to prevail, the judge commented that there may be grounds for their claim that the state is applying the law in a discriminatory fashion.

**Wyoming:** Ten Wyoming hemp businesses and one individual hemp retailer filed a [lawsuit](#) in the US District Court for Wyoming, seeking a declaration that [SEA 24](#) is unconstitutional. The Bill prohibits hemp and hemp products from having synthetic or psychoactive substances. The companies argue the 2018 Farm Bill preempts SEA 24 because it attempts to change the definition of hemp and blocks interstate commerce.



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