



S3 Conference

Screening ❖ Safety ❖ Strategy

Hosted by DISA Global Solutions

From Risk to Ready: Your 2026 Drug Testing Plan



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01

Cannabis



TRENDS

- ❖ Positivity rates increasing in states with recreational cannabis
- ❖ Percentage of drug test panels including cannabis decreasing, particularly in recreational states



Positivity Rates*

Year	Percentage
2015	2.4%
2016	2.5%
2017	2.6%
2018	2.8%
2019	3.1%
2020	3.6%
2021	3.9%
2022	4.3%
2023	4.5%
2024	4.5%

% tests including marijuana*

Year	Percentage
2015	99.6%
2016	99.5%
2017	98.9%
2018	98.1%
2019	96.6%
2020	94.5%
2021	88.2%
2022	80.6%
2023	74.8%
2024	70.1%

* Quest Diagnostics Drug Testing Index, general workforce, urine



% tests including marijuana by state status*

Year	Recreational States	Medical States	Neither	U.S. Territories	Total
2015	99.5%	99.7%	99.7%	99.6%	99.6%
2016	99.1%	99.7%	99.6%	99.9%	99.5%
2017	98.2%	99.3%	99.3%	99.6%	98.9%
2018	97.0%	98.8%	98.7%	99.2%	98.1%
2019	95.0%	97.7%	97.8%	98.8%	96.6%
2020	91.9%	96.3%	96.4%	96.3%	94.5%
2021	82.7%	91.7%	92.2%	93.2%	88.2%
2022	73.7%	84.6%	85.5%	88.9%	80.6%
2023	66.9%	80.6%	81.0%	82.8%	74.8%
2024	60.0%	76.7%	78.7%	80.1%	70.1%

* Quest Diagnostics Drug Testing Index, general workforce, urine



Marijuana is still a Schedule I drug (and is illegal) under the Controlled Substances Act ("CSA") (21 U.S.C. § 812)

- ❖ Hemp legalized under 2018 Farm Bill

HHS and DOT do not accept marijuana, CBD, or Hemp usage as a reasonable medical explanation for federal drug testing



Jan. 2025: Proposed rescheduling of marijuana to Schedule III process stalled

July 4, 2025: Medical marijuana protections were excluded from “One Big Beautiful Act”

- ❖ Protections had been included in appropriations riders since 2014 (Rohrabacher-Farr/Rohrabacher-Blumenauer Amendment)

Nov. 12, 2025: Congress revised definition of hemp (effective 11/12/26)

Dec. 18, 2025: Executive Order on marijuana issued



2018 Farm Bill: Legalized/removed “hemp” and THC from hemp from the definition of marijuana (*i.e.*, not subject to the CSA) if produced consistent with Farm Bill

- ❖ Hemp defined as cannabis and cannabis products with **delta-9 THC concentration** of not more than 0.3% on a dry weight basis
 - The Farm Bill “loophole”: market flooded with products extracted and synthesized from CBD found in hemp (e.g., delta-8 THC, delta-10 THC)
 - Court decisions interpreting Farm Bill: e.g., *AK Futures LLC v. Boyd Street Distr. LLC*, No. 21-56133, 2022 U.S. App. LEXIS 13526 (9th Cir. May 19, 2022) (ruling hemp-derived delta-8 THC is legal under Farm Bill)



Rescheduling must be done either by Congress (via legislation) or through administrative rulemaking process of 21 U.S.C. § 811

Under CSA, the Attorney General has the authority to schedule, reschedule, or decontrol drugs, which generally must be done through public rulemaking (21 U.S.C. § 811(a))

- ❖ A drug is not rescheduled until the formal rulemaking process is complete and a final rule is issued and goes into effect

CONTROLLED SUBSTANCES ACT: Schedule I vs. Schedule III Controlled Substances



Schedule I

- ❖ Drugs have “no currently 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 (21 U.S.C. § 812(b)(1))
- ❖ Manufacture, distribution, dispensation, and possession prohibited except for federally approved research studies
- ❖ Examples:
 - Heroin, LSD, ecstasy, marijuana (currently)(21 C.F.R. § 1308.11)

Schedule III

- ❖ Drugs have “currently accepted medical use,” “a potential for abuse less than” Schedule I & II drugs, and abuse of drug “may lead to moderate or low physical dependence or high psychological dependence” (21 U.S.C. § 812(b)(3))
- ❖ Highly regulated, generally FDA approved, only legally available by prescription/DEA registration
- ❖ Examples:
 - Ketamine, anabolic steroids, Tylenol with Codeine[®], buprenorphine (Suboxone[®]) (21 C.F.R. § 1308.13)

Rescheduling Process: 21 U.S.C. § 811



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Oct. 6, 2022: Statement from Biden on marijuana reform

Directed Secretary of HHS and Attorney General to expeditiously review rescheduling of marijuana under federal law

DEA, HHS, or a petition from any interested party can initiate rescheduling process

Aug. 29, 2023: HHS issued letter to DEA recommending rescheduling marijuana to Schedule III

HHS provided its scientific and medical evaluation using 8 factors in its recommendation

HHS's recommendations as to scientific and medical matters are binding on Attorney General until a Notice of Proposed Rulemaking (NPRM) is published (OLC Opinion)

May 21, 2024: Attorney General published NPRM proposing to transfer marijuana to Schedule III (89 Fed. Reg. 44597)

DEA ultimately makes final determination whether to reschedule; must make required findings for Schedule III using 8-factor analysis

“DEA has not yet made a determination as to its views of the appropriate schedule of marijuana” (89 Fed. Reg. 44597, 44601)

NPRM only first step of formal rulemaking process



“DEA believes that factual evidence (including scientific data) and expert opinions, including additional data regarding different forms, formulations, and delivery methods for marijuana, as well as evidence regarding the effects of marijuana at various dosages or concentrations, may be relevant” (89 Fed. Reg. 44597, 44601)

8 Factors* to be considered for rescheduling (21 U.S.C. § 811(c))



1. Marijuana's actual or relative potential for abuse
2. Scientific evidence of its pharmacological effect, if known
3. The state of current scientific knowledge regarding marijuana or other substance
4. Its history and current pattern of abuse
5. The scope, duration, and significance of abuse
6. What, if any, risk there is to the public health
7. Its psychic or physiological dependence liability
8. Whether marijuana is an immediate precursor of a substance already controlled

***The 8 factors do not include impact on other federal or state laws**



Public Rulemaking process

- ❖ Notice of Proposed Rulemaking and Comment period
 - NPRM received ~43,000 public comments
- ❖ Administrative review/hearings
 - Administrative hearing scheduled for January 2025 was postponed and proceedings were stayed pending resolution of legal challenges
 - Process still currently stalled
- ❖ Issue Final Rule



Dec. 18, 2025: The President issued an Executive Order *“Increasing Medical Marijuana and Cannabidiol Research”*

- ❖ Seeks to increase access to medical marijuana and CBD for research, resume marijuana rescheduling process, and address recent hemp changes

Rescheduling

Directs the Attorney General to “take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III . . . in the most expeditious manner in accordance with Federal law, including 21 U.S.C. 811” (Sec. 2(a))

Hemp and CBD products

Directs White House staff to work with Congress to update statutory definition of final hemp-derived cannabinoid products to allow access to “appropriate full-spectrum CBD products while preserving the Congress’s intent to restrict the sale of products that pose serious health risks” (Sec. 2(b))

Research

Directs HHS, FDA, CMS, and NIH to “develop research methods and models utilizing real-world evidence to improve access to hemp-derived cannabinoid products in accordance with Federal law and to inform standards of care” (Sec. 2(b))



What the EO does:

Provides administration's statement of marijuana policy

Directs the Attorney General to expedite rescheduling in accordance with law

Seeks to expand medical marijuana and cannabidiol research

Addresses CBD and hemp-derived products

What the EO does NOT do:

It does not reschedule marijuana or otherwise change federal law

It does not change required formal rulemaking process under the CSA

It does not change federal drug testing

It does not actually change anything today



Dec. 19, 2025: ODAPC issues DOT's Notice on Testing for Marijuana

- ❖ Reaffirms status of Marijuana as a Schedule I drug; DOT regulated drug testing will not change until rescheduling is complete
 - “Marijuana is still a Schedule I drug under the CSA until any rescheduling is complete. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.”
 - “Until the rescheduling process is complete, the Department of Transportation’s drug testing process and regulations will not change. Transportation employees in safety-sensitive positions will still be subject to testing for marijuana. Furthermore, the Department’s guidance on medical and recreational marijuana and CBD are still in effect.”
 - Laboratories, MROs, and SAPs must continue to follow 49 CFR Part 40. “There are no changes to your roles and responsibilities as they relate to marijuana.”



The DEA must still complete the rescheduling process:

(1) Complete administrative hearings

Jan. 5, 2026: joint status report on interlocutory appeal in stalled rescheduling proceedings that the appeal process remains pending

(2) Review comments and evidentiary record

(3) Take action

Issue Final Rule

Issue new or supplemental NPRM

Take no action

(4) Handle any legal challenges



Rescheduling ≠ availability

- ❖ If rule is finalized and goes into effect, federal regulatory controls of Schedule III apply:
 - Use of marijuana for medical purposes will be subject to FDA and DEA requirements regarding approval and regulation of controlled substances
 - Schedule III drug requires FDA approval and a prescription issued by a DEA registered health care provider and must be dispensed by licensed pharmacy
 - Botanical marijuana is not an FDA-approved drug and there is currently no process for marijuana “prescriptions” under federal law
 - Drug must undergo New Drug Application process
 - Preclinical research/studies, Investigational New Drug submission, multi-phase clinical trials (safety, efficacy, comparison), New Drug Application submission; FDA review

Increased research opportunities



Rescheduling ≠ de-scheduling or legalization

Production, processing, sale, and use of marijuana outside of CSA will remain illegal

Would not legalize recreational marijuana under federal law

Medical marijuana under state programs ≠ approved Schedule III drug under CSA

Schedule III drug requires prescription/DEA registrations

State “recommendation” for medical marijuana use ≠ “prescription”

State dispensaries ≠ licensed pharmacies under Federal law

Patchwork of state laws would not disappear

Employment protections and state-by-state analysis issues will remain

Collateral Effects of Rescheduling: Federal Employee Drug Testing (HHS)



Absent changes, NLCP labs would not be testing for cannabis

Executive Order 12564 (Sept. 15, 1986), titled “Drug-free Federal Workplace,” directs head of each executive agency to establish drug testing program for the use of “illegal” drugs (Sec. 3 & 7)

- ❖ Testing limited to Schedule I & II drugs
 - “For purposes of this Order, the term “illegal drugs” means a controlled substance included in Schedule I or II, as defined by [21 U.S.C. § 802(6)], The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.” (Sec. 7(c))
- ❖ Setup labs/authorizes guidelines:
 - “The Secretary of [HHS] is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.” (Sec. 4(d))





Omnibus Transportation Employee Testing Act of 1991 (“OTETA”), Pub. Law 102-143 (Oct. 28, 1991)

- ❖ Requires testing for “controlled substances”- not limited to Schedule I and II drugs
- ❖ Requires Administrator to incorporate HHS Mandatory Guidelines for laboratory and testing requirements
- ❖ Does not mandate use of NLCP labs, but current DOT regulations do
 - Under regulations, laboratory must be certified by HHS under the National Laboratory Certification Program (NLCP) for each specimen testing methodology performed required under Part 40, and must comply with all applicable HHS requirements (49 C.F.R. § 40.81)
 - DOT has authority to change regulations

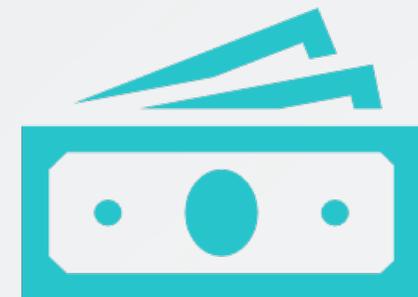


Impact to marijuana businesses

❖ IRS 280E deductions

- Internal Revenue Code Section 280E prohibits businesses from deducting/claiming tax credits for expenses incurred in connection with “trafficking” of Schedule I and Schedule II controlled substances
- If Schedule III, marijuana businesses could deduct rent, payroll, and other business expenses on federal tax returns

❖ Banking laws/reform?





Nov. 12, 2025: Congress enacted the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 to end the government shut down and amended the definition of hemp (Pub. L. No. 119-37)

- ❖ Amended/narrowed the definition of hemp to close the Farm Bill loophole and expands the substances that will be subject to the CSA (Sec. 781)
 - Imposes restrictions on THC limits and cannabinoids synthesized from hemp-derived CBD
 - Not effective until Nov. 12, 2026



Amended definition of hemp (section 781)

- ❖ Defines hemp to include cannabis and cannabis derivatives “with a **total [THC] concentration (including [THCA])**” of not more than 0.3% on a dry weight basis
 - Previously, based on concentration of delta-9 THC, not total THC concentration
 - Total THC concentration includes other cannabinoids, including delta-8 THC, delta-10 THC



Expressly **excludes** from the definition of hemp:

- ❖ Viable seeds that exceed total THC concentration of 0.3% on dry weight basis
- ❖ Any hemp-derived cannabinoid product (intermediate or final) that contains cannabinoids that:
 - (1) are not capable of being naturally produced by a cannabis plant; or
 - (2) are capable of being naturally produced and were synthesized or manufactured outside of the plant
- ❖ “Intermediate hemp-derived cannabinoid products” that contain more than 0.3% total THC and any other cannabinoids that have “similar effects” (or marketed to have similar effects) as THC (as determined by HHS)
 - “Intermediate hemp-derived cannabinoid product” means a product not yet in final form or that is intended/marketed to be added/mixed with another substance prior to use
- ❖ “Final hemp-derived cannabinoid products” that contain greater than 0.4 mg combined total per container of total THC and other cannabinoids that have “similar effects” (or marketed to have similar effects) as THC (as determined by HHS)



Directs the FDA to publish, within 90 days (approximately Feb. 12, 2026):

- ❖ A list of all cannabinoids known to FDA to be capable of being naturally produced by a cannabis plant
- ❖ A list of all naturally occurring THC cannabinoids
- ❖ A list of all other known cannabinoids with similar effects to, or marketed to have similar effects to, THC
- ❖ Additional information about the term “container”



02

Other Items



Since testing began, fentanyl positivity has increased for workplace specimens in the general workforce

- ❖ In 2024, sharp increase in fentanyl positives in random tests; >700% higher in random tests compared to preemployment tests in urine*
- ❖ In 2024, 60% of specimens that were positive for fentanyl were also positive for other drugs*

**Quest Diagnostics Drug Testing Index, general workforce, urine*



Fentanyl

- ❖ HHS: effective July 7, 2025, authorized panels now include fentanyl
- ❖ DOT: awaiting Final Rule
 - NPRM issued Sept. 2, 2025 (90 Fed. Reg. 42363), comments were due by Oct. 17, 2025

Oral Fluid

- ❖ Awaiting FDA cleared testing system
- ❖ Awaiting approval/certification of two laboratories for oral fluid testing

DOT Directly Observed Collections

- ❖ Awaiting Final Rule
 - SNPRM issued Oct. 1, 2025 (90 Fed. Reg. 47286 (Oct. 1, 2025)); comments were to be submitted by Nov. 15, 2025



THANKS!

Any questions?

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