

STATE OF CANNABIS

**FEDERAL
LEGALIZATION**

**COMPREHENSIVE
REVIEW
2024-2025**



ABOUT

THE CANNABIS CHAMBER OF COMMERCE

The Cannabis Chamber of Commerce is a national non-profit trade association comprised of local market-based chapters, led by licensed operators and leading cannabis industry professionals. The Cannabis Chamber was formed to promote our common interests by facilitating introductions and creating opportunities for compliant B2B activities. Our driving purpose is to foster development in the compliant industry while helping unite retailers, manufacturers, cultivators, distributors, and testing labs with ancillary service providers and other resources that offer valued business opportunities for our members.

All cannabis businesses effectively operate at a local level in the markets they serve. The industry needs more quality events and channels for businesses to connect with potential new partners and find new opportunities- And the path to help support growth into new markets. The infrastructure we have developed creates unique opportunities for developing brands to benefit from our resources and national marketing, while taking advantage of our reach into the most important markets in the US. We are dedicated to supporting growth throughout the broader compliant cannabis industry with our local signature networking mixers, educational events, job fairs, industry training, and chamber resources. We combine the best benefits of regional & state organizations with the reach and influence of a national organization, to create an association that offers increased value for everyone.

The goal is to grow together for a greater opportunity for us all. We hope you will join our efforts and become a member to help us accomplish something greater for everyone involved in the developing cannabis ecosystem.



GUIDING PRINCIPLES & CORE VALUES

A. Mission Statement:

For Cannabis Industry Leaders, by Cannabis Industry Leaders

B. Vision Statement:

To be a meaningful asset to our members and the broader compliant cannabis industry by facilitating valuable business connections, delivering meaningful resources, and supporting quality business events, while advancing the compliant cannabis industry on the national and global stage.

C. Core Values:

- Integrity: We uphold honesty, ethical practices, and environmental responsibility in our involvement with our team, business partners, and industry connections.
- Leadership: The time to lead is now. We inspire each other to achieve and grow through a shared vision and passion.
- Service: We are here to serve. We serve our members, our communities, and the regulated cannabis industry.
- Community: We are in this together, and by working together we can "do better". The developing cannabis industry offers more than just opportunities for business, it presents a rare chance to create a better industry- An industry with a focus on sustainability, consciousness, justice, and recognition for the accomplishments of the members in our community.
- Compassion: We stand with our community, but also stand to support our community. This means supporting and caring for those who are suffering with medical needs that can be assisted with cannabis products, in addition to those who are working tirelessly to create cannabis products.

EXPERIENTIAL REGIONAL NETWORKING EVENTS



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www.TheCannabisChamber.com/events

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for the year

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PLATINUM
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\$5000 one-time payment
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INDIVIDUAL
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\$200 one-time payment
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Email introduction to Your Company in our New Member announcements	✓	✓	✓	
All Regions email introduction to Your Company in our New Member announcements			✓	
1 Post on all Social Media accounts (Instagram, Facebook, Twitter & LinkedIn)			✓	
Placement of Your Logo on Our Website	✓	✓	✓	
Free Access: All Events in Your Region (up to 4 guests)	✓	✓		
Free Access: All Events in All Regions (up to 4 guests)		✓		
Free Access: All Events in All Regions (up to 8 guests)			✓	
Free Access: Monthly Virtual Educational Workshops & Speed Networking	✓	✓	✓	✓
Local Government and Community Representation	✓	✓	✓	
Get access to and can be added in our exclusive Member Discounts Program	✓	✓	✓	✓
Your Company Bio, Logo, and Contact Information added to our Member Directory (optional)	✓	✓	✓	✓

WHAT DO YOU GET FOR YOUR MEMBERSHIP DOLLARS?

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Legal Disclaimer:

This white paper has been created by The Cannabis Chamber of Commerce and the aforementioned contributors as a way to support the broader cannabis community. Nothing in this document is intended to give legal advice and there is no representation intended by the report.

FOREWORD FROM THE CHAIR OF THE BOARD OF DIRECTORS

The world of cannabis is evolving. We are witnessing the last leg of the legacy cannabis marketplace weather a tough correction that is a phase of contraction in all emerging markets. The cannabis industry has never dealt with such challenge, but has also never offered so much potential. While this is a difficult time for many cannabis businesses, it's encouraging to see stabilized leaders that are profitable with positive cash flow.

It's a difficult time for most operators, but the hopes of federal legalization, access to banking, expansion of markets, and the removal of IRS rule 280e are offering a beacon of hope. Everyone has been waiting for the federal regulatory changes that we hope are coming in the next 1-2 years. This will bring new growth, expansion and renewed interest from investors. We are also about to enter a new phase of consolidation as larger industry leaders and new entrants in the form of PE & VC groups move to "roll-up" promising opportunities.

However, the prospect of Federal Legalization isn't the only force that is driving change, growth, and excitement in our industry. The recently realized potential on the hemp side of cannabis has carved a path to making & selling cannabis products that are seemingly federally legal nationwide. There is a lot of uncertainty around the future of these hemp based products, and even more uncertainty about how the hemp & regulated cannabis markets fit together. But it's clear that hemp will be a part of the marketplace in the future.

This white paper has been written to offer a comprehensive guide about how all of these changes will affect the participants in the regulated cannabis and hemp industries. As a leading national non-profit trade association in the cannabis industry, the Cannabis Chamber of Commerce was formed to create tangible economic value for the businesses in the cannabis ecosystem, while fighting for prudent regulation & enforcement. Our purpose is to foster business opportunities and a more successful cannabis environment for everyone. Built by leaders in the industry, our organization functions to support the broader community as a steward of the growing cannabis economy.

This white paper is our gift to the community we serve. We are thankful for the opportunity to serve you and the many other professionals & businesses in the cannabis sector. We hope this report will demonstrate the kind of industry leadership we offer, the type of organization we strive to be, and the value proposition we offer our members.

Sincerely,



Chris Boudreau
Chair of the Board of Directors

CONTRIBUTORS



Chris Boudreau

Founder & CEO

RipeMetrics

Chris has founded and built five successful cannabis businesses with operations in 5 states (3 multi-state), raised capital for all five, and achieved four successful exits (two that achieved high 7-figure revenue, and two that achieved 8-figure revenue, one of which he took public, and one he is still running). Chris is also the founder and volunteer chair of the board of The Cannabis Chamber of Commerce. He has additionally consulted for a range of cannabis clients, including a multi-national public company.

Chris is currently founder & CEO of the first AI Native customer experience solution that gives AI tools for customer service, marketing and business intelligence to small & mid-sized businesses (www.RipeMetrics.com).



Courtney Caron

Owner

Adamant Law Group

Courtney Caron, founder of Adamant Law Group, has been representing cannabis entrepreneurs since 2016. Her practice covers a wide range of cannabis industry issues such as compliance, licensing, governmental affairs and general counsel. Aside from the practice of law, Courtney is also a co-owner of several Artist Tree locations throughout the state of California. She resides in Los Angeles with her three children and husband.



Frank Espinoza

Executive Vice President & Chief Risk Officer

South Bay Credit Union
Emerald Beach Financial

Frank Espinoza is Executive Vice President and Chief Risk Officer for South Bay Credit Union. A key member of the Credit Union's leadership team, he has more than two decades of financial services experience, with a strong focus on risk management, BSA and operations for credit unions. He is particularly well-known for his special expertise in the cannabis space, having worked with cannabis entrepreneurs since 2018, when he was recruited by SBCU to develop and grow an innovative program to meet the needs of this underserved sector of the business community.

He has earned the designations of Certified Fraud Examiner (CFE), Certified Anti-Money Laundering Specialist (CAMS) and Certified Commercial Cannabis Expert (CCCE).

In his free time, this proud father of two enjoys spending time with his children.



CONTRIBUTORS



Kate Dymedenko

CPA, CTC,
Partner

Growise

Kate Dymedenko is a founder and managing partner at Growise CPAs. Beyond tax preparation, she excels in offering strategic cannabis tax planning advice, helping clients navigate intricate financial decisions. Her attention to detail extends to auditing financial records and implementing effective standard operating procedures.



Kim Stuck

CQA, CP-FS
Founder & CEO

Allay Consulting

Kim Stuck is the founder and CEO of Allay Consulting, a compliance strategy and services provider serving the hemp, cannabis, kratom and psychedelic industries nationwide. Previously, Ms. Stuck held a pioneering role as the nation's first cannabis and hemp specialist for a major metropolitan public health authority.

Ms. Stuck holds numerous accreditations, such as certified quality auditor (CQA) and certified professional of food safety (CP-FS), among others. In addition to serving on several industry advisory boards, she is a TEDx Speaker, SXSW speaker, and has been a member of ASTM International's cannabis standards committee since its 2017 inception and is the Vice Chair of the cGMP Standards sub-committee.



Mike Goral

JD, LL.M. in Tax
National Cannabis Tax
Partner in Charge

Armanino LLP

Mike leads Armanino's National Cannabis Tax Practice. A tax professional since 1989, he has significant experience in federal, state and local tax from both an accounting and legal perspective. He spent time with multiple Big 4 firms, including serving in KPMG's Washington National Tax Office, and has worked with cannabis companies both large MSOs and smaller cannabis companies in California, Nevada, Oregon, Washington and Colorado.

He advises cannabis clients on a broad range of issues that affect the cannabis space, including mergers and acquisitions, loan structuring, and funding mechanisms from venture capital, private equity and investment banking. Mike provides guidance on cannabis technology, manufacturing, transportation and retail issues.

Mike is the contributing editor of Cannabis Taxation a 350-page treatise for Thomson Reuters discussing all states that tax cannabis sales. He is a Board member of the Cannabis Chamber of Commerce and founding member of the Tri-State Chapter of the Cannabis Chamber of Commerce. Mike is on the Banking and Finance Committee for NCA. He is a member of the California Society of Certified Public Accountants, the National Cannabis Industry Association and the California Cannabis Association, which nominated him for their CPA of the Year award for 2019. He holds a B.S. in mathematics and psychology from the University of Alabama, a J.D. from Cumberland Law, and a Masters of Tax Law from Emory Law School.



CONTRIBUTORS



Marvin J. Miller Jr.

Partner

Crath Miller & Xistris LLP

Marvin J. Miller Jr. is a Partner at Crath Miller & Xistris LLP and is the Co-Head of the firm's Cannabinoids and Psychotherapeutics practice group and the Head of the firm's Finance and Banking practice group. Marvin has more than 30 years of corporate transaction and regulatory experience and currently represents cannabis companies in California, Michigan and New York relating to their corporate structuring, employment, financing, privacy and regulatory matters.



Matthew Nathaniel

Co-Founder/CEO

ATMOSPHERE

Matthew Nathaniel is an accomplished business leader with extensive expertise in the dynamic cannabis and hemp industries. With a background that spans startups and growth-stage companies across entertainment, advertising, and health & fitness, Matthew has established himself as a key figure in shaping influential cannabis organizations. His contributions to the Shryne Group, the parent company of the renowned brand STIIIZY, have been instrumental in its impressive market expansion. Additionally, his work with other brands such as MedMen and Heavy Brands underscores his significant industry experience. Currently, Matthew is the Co-Founder and CEO of ATMOSPHERE, where he applies his industry knowledge to drive innovation and growth in the cannabis and hemp space. His commitment to the sector extends to his role on the board of the national Cannabis Chamber of Commerce, where he advocates for the responsible development of the cannabis ecosystem.



Paul Josephson

Partner Cannabis Industry Co-Lead

Duane Morris

In addition to serving as a team lead for the Duane Morris Cannabis industry group focused on strategic, regulatory and litigated matters, Paul Josephson is a constitutional and regulatory litigator with decades of experience in the transportation, infrastructure, gaming and real estate sectors. He solves complex business problems for CEOs, elected officials, and agency heads. He is typically called on in matters involving significant public interests, highly regulated industries, or novel legal issues. He received his B.A. from the University of Michigan and his J.D. from George Washington University.



CONTRIBUTORS



Roger Tower

CMO/Founder

Cannabis Real Estate
Consultants
(CREC)/Tower Agency

Roger Tower is an experienced entrepreneur and digital marketing strategist, currently the Chief Marketing Officer at Cannabis Real Estate Consultants (CREC) and founder of Tower Agency. After earning a degree in Marketing Communications from Emerson College, Roger worked with over 50 businesses in various sectors, including cannabis and technology, crafting marketing strategies.

Tower Agency provides tailored digital marketing solutions to small and medium-sized businesses, offering services like website development, SEO, and lead generation. Roger also co-founded Riverine, Inc. in 2015, where he honed his skills in business management and leadership. At CREC, he combines his marketing expertise with his passion for the legal cannabis industry, holding a board position at the Cannabis Chamber of Commerce in San Diego.

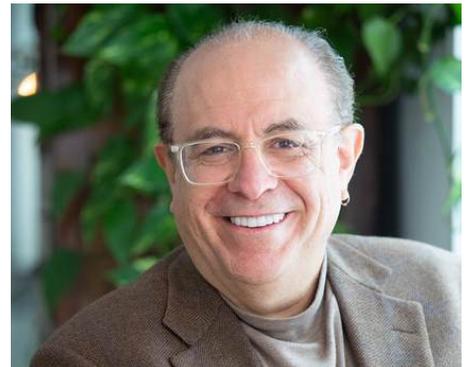


Rachel Wright

Founder & CEO

Verdant Strategies

Rachel Wright, CPA MST is a founder and CEO of Verdant Strategies, a woman-owned, veteran-owned CPA firm serving the cannabis industry and international clients. Rachel is a proactive business leader and innovative problem-solver with 10+ years of cannabis industry experience working with hundreds of operators in the US and abroad.



Simon Menkes

Trusted Advisor

Verdant Strategies

Biography: Simon Menkes, CPA, is a Trusted Advisor at Verdant Strategies with a specialty in cannabis, technology, finance, construction and real estate. He has co-authored numerous articles in the cannabis sphere, a number of which have been featured on Bloomberg.com and other leading-edge publications.



CONTRIBUTORS



Seth Meyer

Account Executive

O.Berk Company

Seth Meyer is an Account Executive at O.Berk Company of Union, New Jersey. Seth helps his customers turn shoppers into buyers by providing them with superior package development and solutions. With over 40 years of industry experience, he has successfully launched several high-profile campaigns, earning recognition and multiple awards for his creative approach and results-driven mindset. Outside of work he enjoys hiking, sculling, swimming, volunteering with The Carter Center and local food banks. Seth is dedicated to continuous learning and aims to further his expertise in brand development and primary packaging.



Shelley Priesler

Associate Attorney

Adamant Law Group

Shelley Preisler is a cannabis licensing and regulatory compliance attorney with 5 years of cannabis industry experience. Shelley graduated magna cum laude from the University of Maryland in 2017 and received her J.D. in 2020 from the University of Southern California Gould School of Law. Since 2020, Shelley has represented a broad array of cannabis industry clients as an Associate Attorney at Adamant Law PC, a Los Angeles-based boutique law firm specializing in cannabis and entertainment law.



CONTRIBUTORS



Xavier Jaillet

Law Clerk

McDonald Hopkins

Xavier Jaillet is a cannabis industry professional with over a decade of experience in both plant-touching operations and ancillary support businesses. He began his career in Colorado just before the state legalized recreational cannabis and has held leadership roles in retail, product manufacturing, and extraction. In 2017, Xavier shifted his focus to supporting plant-touching businesses, working in sales, marketing, and business development roles for ancillary service providers. His work modernized payroll and HR services, ensured compliance with safety standards, and built key partnerships in the industry.

Currently, Xavier is studying law at the University of Denver, with plans to graduate in late 2024 and pursue licensure in early 2025. He also serves as a Non-Attorney Professional at McDonald Hopkins and chairs the Colorado chapter of the Cannabis Chamber of Commerce, using his industry expertise to contribute to the legal and regulatory growth of the cannabis sector.



Polly Jaillet

Designer/Marketing Coordinator

The Cannabis Chamber of Commerce

Polly Jaillet holds a Bachelor of Fine Arts degree from the Metropolitan University of Denver and is passionate about brand design. Her career blends creativity and strategic thinking, as she has garnered experience in sales, content writing, and SEO-driven marketing. Polly excels at crafting compelling visual and written narratives that help brands stand out in competitive markets.

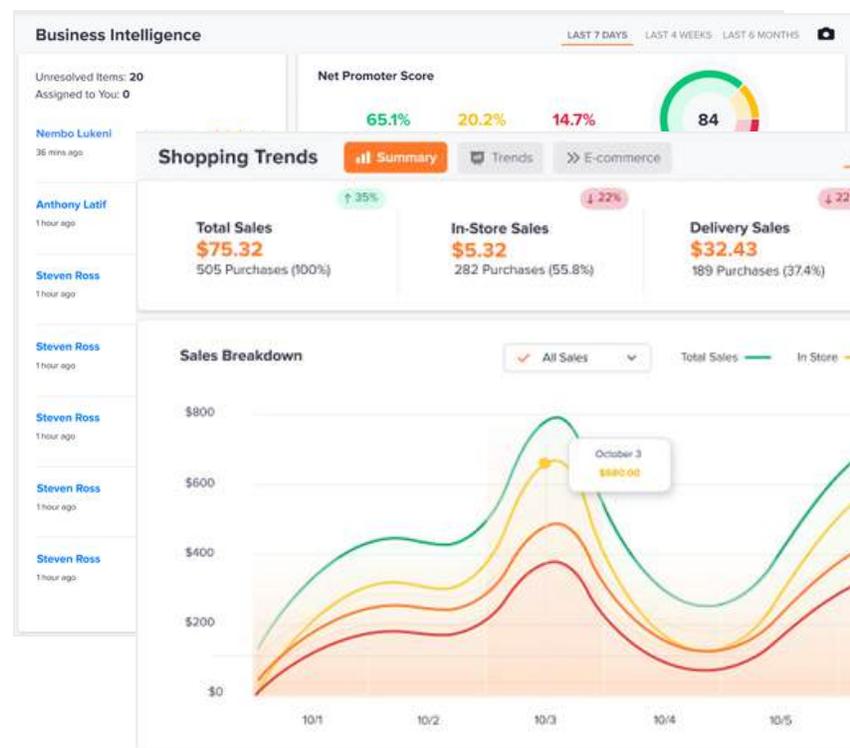
She is currently the Marketing & Membership Coordinator for The Chamber.

Polly has compiled this White Paper.



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PART I

**WHAT
HAPPENS
NEXT**

PART I: WHAT HAPPENS NEXT

PAUL JOSEPHSON & JAMES HEARON (DUANE MORRIS)

On-again, off-again. For the past 15 years, the fits and starts on the long road to cannabis legalization have alternately enthralled and disappointed consumers, operators and investors alike.

But the future has never looked brighter for the cause of legalization. The number of states legalizing medicinal cannabis has grown to 38, with 24 of those states and the District of Columbia also allowing recreational use and sale. After decades of advocacy, the Drug Enforcement Agency finally initiated rulemaking proposing to reschedule cannabis from Schedule I to Schedule III, and Congress may finally pass legislation descheduling cannabis altogether.

Many date the game-changing shift in federal cannabis policy to 2008, when then-Deputy Attorney General David W. Ogden issued a memorandum instructing federal prosecutors to deprioritize cannabis prosecutions of individuals acting in compliance with state medical marijuana laws. The Ogden Memorandum instructed federal prosecutors to focus on "significant drug traffickers" and not "individuals with cancer or other serious illnesses[.]"

In 2011 and again in 2013, then-Deputy Attorney General James M. Cole issued two more memoranda further clarifying federal priorities with respect to state-legal cannabis activity. In his 2011 memorandum, Cole stated that the DOJ's "view of the efficient use of federal resources as articulated in the Ogden Memo has not changed." Cole's 2013 memorandum made clear that state-regulated cannabis "is less likely to threaten . . . federal [cannabis] priorities," which focused on preventing, among other things, distribution to minors, revenue going toward large-scale criminal enterprises, the use of firearms or violence, and drugged driving.

The DOJ's pronouncement of a somewhat safe harbor for state-licensed businesses opened the doors to state legislation authorizing medical and recreational sales of cannabis. Non-institutional investment in state-legal cannabis businesses soon followed.

By the time then-Attorney General Jeff Sessions rescinded the Ogden and Cole memoranda in 2018, the horse was out of the barn. Ultimately, he followed the same model, instructing federal prosecutors to consider the DOJ's "finite resources" and to "weigh all relevant considerations" including "the federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."

By the end of 2018, the Agricultural Improvement Act of 2018 (the “2018 Farm Bill”) was signed into law, which removed hemp from the definition of marijuana under the Controlled Substances Act and effectively de-scheduled hemp. With time and an expansive reading of this legislation, the market for hemp-synthesized intoxicants sprouted.

As licensed cannabis operators struggled to obtain licenses and sites, open their businesses, and turn a profit under the burden of Section 280E and state taxes, intoxicating hemp products not subject to onerous licensing, taxation, or safety regulation have become ubiquitous and available in many traditional retail outlets. The differing treatment of state-licensed cannabis and intoxicating hemp business models has divided the industry, confused consumers, and befuddled regulators. Licensed cannabis businesses increasingly find themselves competing at a significant disadvantage with the legacy cannabis market as well as the intoxicating hemp market.

Though not a panacea, President Biden signaled the single largest shift in federal policy since the enactment of the Nixon-era CSA in October 2022, directing the Secretary of Health and Human Services and the Attorney General to initiate an administrative review of marijuana’s classification under the CSA as a Schedule I drug. That review has been much swifter and consequential than most expected at the time.

On August 30, 2023, the Department of Health and Human Services (“HHS”) recommended to the Drug Enforcement Agency (“DEA”) that cannabis be rescheduled as a Schedule III controlled substance.

On May 21, 2024, the DEA initiated formal rule-making proposing to reschedule cannabis, albeit somewhat reluctantly. The comment period has closed with approximately 43,000 comments received, with the vast majority in support. Consumers and the industry await the Attorney General’s decision whether to approve the rescheduling as proposed or to hold hearings to take further evidence.

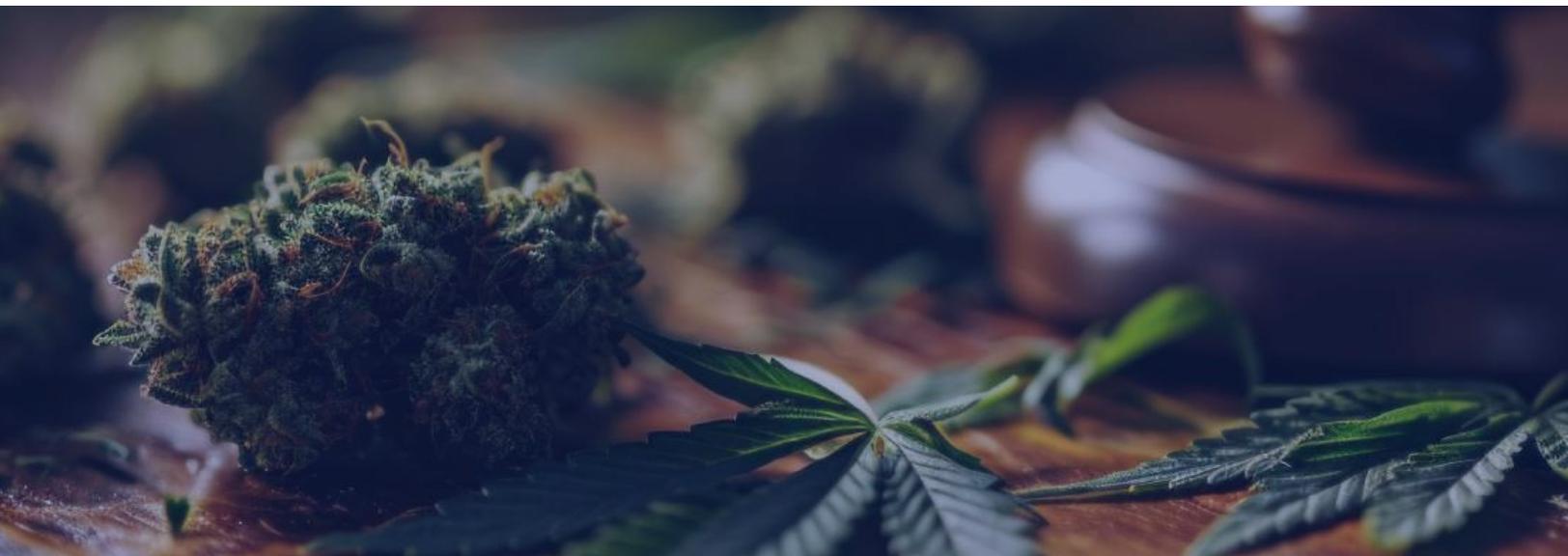
But rescheduling cannabis to Schedule III to permit the prescribing of cannabis for medical purposes is not legalization, and provides no mechanism for authorizing and regulating the recreational market.

What must come next for the industry is federal legislation that once and for all de-schedules cannabis and establishes the parameters of federal and state regulation, taxation, and interstate commerce, and that reconciles inconsistent federal policy towards intoxicating hemp products. Though Congress has introduced various bills throughout the years toward legalization or providing relief to cannabis users and operators, most have failed to advance out of committee.

The annual passage of the Rohrabacher–Farr Amendment as part of the annual appropriations bill has provided some safe harbor for consumers and operators, prohibiting the DOJ from using appropriated funds to prosecute any individual or cannabis operator for engaging in federally illegal cannabis activity if the activity is permitted under state law.

More challenging has been devising the terms of full legalization acceptable to a majority of both houses in a divided Congress, as well as a divided industry. Many visions have been advanced once again:

- The Cannabis Administration and Opportunity Act is viewed as a likely vehicle because it is sponsored by Senate Majority Leader Chuck Schumer. The CAO Act decriminalizes cannabis, removes cannabis from scheduling under the CSA, expunges certain federal cannabis offenses, and provides a federal regulatory framework with respect to the commercial sale and distribution of cannabis.
- Representative Jerry Nadler re-introduced the Marijuana Opportunity Reinvestment and Expungement (“MORE”) Act. The MORE Act would, among other things, remove cannabis from the list of scheduled substances under the CSA, allow for SBA loans and services to be available to legal cannabis businesses, impose an excise tax on cannabis products produced in or imported into the United States, and prohibit the denial of public benefits on the basis of certain cannabis-related conduct or convictions.
- Representative Nancy Mace re-introduced the States Reform Act of 2023, removing cannabis as a controlled substance under the CSA and adopting a joint federal-state regulatory scheme similar to the treatment of alcohol and tobacco.
- Representative David Joyce introduced the Strengthening the Tenth Amendment Through Entrusting States 2.0 (the “States 2.0 Act”), which, like the States Reform Act, sought to deschedule cannabis and further address interstate commerce issues.



Other stopgap bills designed to offer financial relief to cannabis operators continue to be considered. In September 2023, the SAFER Banking Act, the latest iteration of the Secure and Fair Enforcement ("SAFE") Banking Act first offered in 2019, was introduced and is substantially similar to the 2019 version. On September 27, 2023, the SAFER bill passed the Senate Banking Committee, but has yet to be called for a full Senate vote.

The latest version of the CAO A appears to offer the most comprehensive approach to date, removing cannabis from the list of scheduled controlled substances and adopting a dual regulatory scheme between the states and the federal governments.

States would control whether or not to allow for medical and/or recreational cannabis within their respective borders, while the federal government would establish a Center for Cannabis Products within the FDA to regulate the production, labeling, distribution, sale, and manufacturing of cannabis in conjunction with the FDA. Cannabis would also be regulated and taxed by the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.

What happens next depends in large measure on the results of the November 2024 election, with control of the presidency and both houses up for grabs. No matter the outcome, the playing field and key players – President and Congressional leadership – will be rearranged.

Whether the latest iteration of CAO A can succeed where the others have failed depends in large measure whether the many parties interested in cannabis legalization can find common ground.

Perhaps the greatest impediment to full federal legalization to date has been the competing interests at play. Licensed cannabis, legacy cannabis, hemp, social equity advocates, alcohol and tobacco each possess a different view of how legalization should work and what, if any, regulatory scheme should govern.

The Cannabis Chamber of Commerce has prepared this white paper to assemble the visions of industry leaders for what legalization can look like and to find the common ground needed to achieve federal legalization.

PART II

HOW
WILL
THIS
IMPACT

PART II: HOW WILL THIS IMPACT HEMP MARKETS & THE DEVELOPING HEMP INDUSTRY

XAVIER JAILLET (MCDONALD HOPKINS)

IMPACT OF RESCHEDULING ON HEMP MARKETS & THE DEVELOPING HEMP INDUSTRY

This section of the Cannabis Chamber of Commerce's 2024 White Paper examines how the potential federal rescheduling of marijuana may impact hemp businesses in the United States. Hemp and marijuana are legal terms used to distinguish between *Cannabis sativa* L. that is historically grown for industrial purposes like grain and fiber, and *Cannabis sativa* L. that is grown for its psychoactive properties. Until the Agricultural Act of 2014 (the "2014 Farm Bill") was passed, federal law in the 20th century made limited distinctions between hemp and marijuana.

The Drug Enforcement Agency (the "DEA"), the federal agency responsible for enforcing federal laws controlling drugs and certain substances, treated hemp and marijuana both as Schedule 1 substances under the Controlled Substances Act (the "CSA") through much of the War on Drugs.

The federal government's stance on hemp radically changed with the passage of the Agricultural Improvement Act of 2018 (the "2018 Farm Bill"), which removed hemp from the CSA and classified it as an agricultural product. Specifically, the 2018 Farm Bill defines hemp as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." The broad definition of hemp has been interpreted by federal courts to include cultivated hemp and all downstream products derived from hemp, opening the floodgates for the hemp-derived cannabinoid product industry, estimated to be \$2.8bn in 2023.

While the 2018 Farm Bill addresses hemp production and directs the U.S. Department of Agriculture ("USDA") to issue regulations (which were published in 2021), neither the 2018 Farm Bill nor USDA regulations promulgated thereunder explicitly address consumer products containing hemp or hemp-derived ingredients. Rather, the 2018 Farm Bill explicitly preserves the authority of the Food and Drug Administration (the "FDA") to regulate hemp products.

Despite this preservation of authority, the FDA has declined to issue rules regarding the manufacturing and sale of those products, because they do not fit into existing regulatory channels. In other words, the federal government legalized hemp but has yet to establish regulations for the manufacture, distribution, and sale of products containing hemp-derived cannabinoids.

While the 2018 Farm Bill addresses hemp production and directs the U.S. Department of Agriculture (“USDA”) to issue regulations (which were published in 2021), neither the 2018 Farm Bill nor USDA regulations promulgated thereunder explicitly address consumer products containing hemp or hemp-derived ingredients. Rather, the 2018 Farm Bill explicitly preserves the authority of the Food and Drug Administration (the “FDA”) to regulate hemp products. Despite this preservation of authority, the FDA has declined to issue rules regarding the manufacturing and sale of those products, because they do not fit into existing regulatory channels. In other words, the federal government legalized hemp but has yet to establish regulations for the manufacture, distribution, and sale of products containing hemp-derived cannabinoids.

As discussed in greater detail throughout this section, the 2018 Farm Bill also preserves state-level regulatory authority. Since the 2018 Farm Bill was passed, states have issued a diverse array of regulations concerning hemp and hemp-derived cannabinoid products. The status quo is a patchwork of widely-varying regulatory models, which creates immense challenges for hemp businesses operating across the United States.



HOW RESCHEDULING OF MARIJUANA MAY IMPACT HEMP BUSINESSES PARTICIPATING IN STATE MARIJUANA MARKETS

INTRODUCTION

Over the last decade, the *Cannabis sativa* L. plant has seen the most attention from federal lawmakers since its prohibition in 1937. From 1937 forward, the federal government's stance on *Cannabis sativa* L. grew increasingly prohibitive until 2014, when the 2014 Farm Bill was passed into law, distinguishing marijuana from hemp-based on delta-9-THC content, and establishing the Hemp Research Pilot Program, which allowed for limited cultivation of hemp by a narrow subset of institutional or governmental parties. The 2018 Farm Bill then removed hemp (including hemp-derived cannabinoids) from the definition of marijuana under the CSA, leading to the creation of a hemp-derived cannabinoid product industry.

While the 2018 Farm Bill addresses hemp production and directs the U.S. Department of Agriculture ("USDA") to issue regulations (which were published in 2021), neither the 2018 Farm Bill nor USDA regulations promulgated thereunder explicitly address consumer products containing hemp or hemp-derived ingredients. Rather, the 2018 Farm Bill explicitly preserves the authority of the Food and Drug Administration (the "FDA") to regulate hemp products. Despite this preservation of authority, the FDA has declined to issue rules regarding the manufacturing and sale of those products, because they do not fit into existing regulatory channels. In other words, the federal government legalized hemp but has yet to establish regulations for the manufacture, distribution, and sale of products containing hemp-derived cannabinoids.

In the wake of these developments and the wave of changes in law and public opinion that followed, the federal government has been playing catch up to try and contain the explosive growth of the cannabinoid product industry. As the federal government lags behind developments in the hemp-derived cannabinoid product industry, many states have established regulatory structures that control what types of hemp-derived cannabinoid products may be sold, where those products must be sold, and to whom those products can be sold.

Those structures tend to fall into one of three buckets: (1) prohibition, meaning the state prohibits the sale of hemp-derived cannabinoid products; (2) integration, meaning the state has integrated high-THC marijuana businesses and hemp cannabinoid businesses into a single regulatory framework; and (3) regulation, meaning the state has established rules and parameters that allow, but control, hemp-derived cannabinoid business activities under a distinct regulatory framework. Notably, although the 2018 Farm Bill legalized hemp (including cannabinoids derived from hemp), products containing cannabinoids derived from marijuana remain federally illegal – which may soon change if marijuana is rescheduled to Schedule 3 of the CSA.

So how will the impending federal rescheduling of marijuana (high-THC *Cannabis sativa* L.) to Schedule 3 of the CSA impact hemp businesses? Because the 2018 Farm Bill removed hemp from the definition of marijuana under the CSA, federal rescheduling of marijuana should not affect the legality of hemp, nor hemp-derived cannabinoids, under federal law. As discussed in greater detail herein, currently, meaningful regulation of hemp-derived cannabinoid products occurs at the state, rather than federal level; thus, a more important question regarding the effects of federal rescheduling of marijuana is whether this action will affect the legality of hemp-derived cannabinoid products at the state level. The answer to this question is inherently multifaceted because laws differ state to state.

CANNABIS IN THE US: HEMP AND MARIJUANA

The current landscape of laws controlling hemp and marijuana sales in the United States is daunting to evaluate. Even the distinction between hemp and marijuana is confusing; although “hemp” and “marijuana” each refer to the same plant, *Cannabis sativa* L., plants with not more than 0.3% delta-9-THC on a dry weight basis are considered “hemp,” whereas any plants exceeding such 0.3% delta-9-THC threshold are considered “marijuana.” Because the federal definition of hemp includes any part of the plant, including derivatives, extracts, cannabinoids, etc., there is the ironic division between federal and state laws: hemp and hemp-derived cannabinoids are fully legal, albeit not regulated, while marijuana and marijuana-derived cannabinoids, are considered Schedule 1 substances under federal law; conversely, marijuana and marijuana-derived cannabinoids are legal in many states under medical and/or adult-use regulatory programs, while hemp cannabinoids may be wholly unregulated, heavily regulated, or even banned. Then there is the wide variance in how hemp cannabinoids are regulated at the state level: what is legal in Tennessee varies widely from what is legal in Idaho, and both vary widely from what is legal in Minnesota. All three states, and many states across the nation, regulate hemp cannabinoids in some way, but each state approaches regulation differently.

The extreme variance in hemp-derived cannabinoid regulations across the United States makes it difficult to evaluate potential impacts of federal rescheduling on hemp-derived cannabinoid businesses. On one hand, the federal evaluation is fairly straightforward: marijuana and hemp are defined differently in statute and are treated differently in the law, so a change to marijuana's status under the CSA should have no impact on hemp businesses. On the other hand, reality shows that the hemp and marijuana industries are deeply entangled, and that a change in regulation or legality of one materially impacts the other. Just look at how marijuana businesses have pivoted to becoming hemp businesses over the last 5 years, or how marijuana business operators blame hemp cannabinoid products for decreased revenues over the same time period. Recent litigation in California brought the fight directly to the courts. In the "March and Ash v. Hemp Lawsuit" a group of licensed cannabis operators sued a group of hemp brands for alleged violations of California state law. The lawsuit has not been resolved yet and is indicative of the tension between both sectors. When you further consider the variety in ways that the states regulate both hemp and marijuana, it is easy to quickly get mired in regulatory language that is challenging to unpack and comprehend.

Fortunately, we can look to current market dynamics and general regulatory structures to begin to understand how marijuana's rescheduling at the federal level will impact hemp business operators.

MARKET DYNAMICS AND THE THREE REGULATORY STRUCTURES

Because of the diversity in state-level hemp regulatory models, evaluating how the federal rescheduling of marijuana will impact hemp businesses requires a general understanding of how states regulate hemp. Thus, this discussion begins by describing broad categories of how states currently regulate hemp businesses.

As alluded to earlier in this section, federal regulation is practically non-existent and the 2018 Farm Bill vests enormous power in the states to control hemp cannabinoid commerce. Ever since the 2018 Farm Bill was passed into good law, states have approached regulating the hemp cannabinoid industry in different ways.

The different approaches can be generally placed into one of three camps: (1) prohibitive regulation, meaning the state totally prohibits, or establishes such arduous requirements around hemp-derived cannabinoid commercial activities, to the point where they are cost- or compliance-prohibitive; (2) integrative regulation, meaning the state integrates its marijuana and hemp regulations into a unified code that allows for hemp and marijuana products to be sold similarly, or otherwise regulates hemp-derived cannabinoid products and cannabis under

a single regulatory framework; and (3) parallel regulation, which regulates hemp and marijuana distinctly, thus allowing for hemp commercial activities to exist as a standalone industry either alongside, or in place of, a marijuana industry.

Instead of describing the differences between the three models, it is easiest to examine specific regulatory models that states have adopted as examples of each model. To that end, the next three sections generally describe the regulatory model, dive into the nuances around operating a hemp business in each regulatory model, and examine how rescheduling will impact hemp businesses regulated under each model.

PROHIBITIVE REGULATORY MODEL: IDAHO

Idaho represents a purely prohibitive approach to regulating hemp-derived cannabinoid commercial activities. Idaho takes a strict zero-THC approach to all hemp products sold in the state. Idaho also doesn't have a marijuana industry – consumers in Idaho do not have legal access to any products containing any amount of THC, which is a stark departure from the federal regulatory model that allows up to 0.3% delta-9 THC to be present in hemp and derivatives, extracts, and cannabinoids thereof.

On the surface, it doesn't seem that federal rescheduling of marijuana from Schedule I to Schedule III of the CSA would change much for hemp businesses in Idaho, and generally that is likely to be true. However, many states, Idaho included, in the United States adopt state-level versions of the CSA that mimic the CSA to the letter. A change in the federal CSA is likely to influence changes in state-level CSAs. In the context of the prohibitive regulatory model, this means that legislators and regulators will have to contend with increased access to medical marijuana products for consumers, which will lead to a growth in acceptance of cannabis – including both hemp and marijuana.

It will be interesting to watch how the divergent cannabinoid product supply chains integrate in the years after rescheduling to deliver cannabinoid products to consumers in prohibitive regulatory models – the greatest opportunity for hemp businesses in those markets may be in providing cannabinoids to researchers and pharmaceutical product development firms.

IMPACT OF RESCHEDULING ON HEMP MARKETS & THE DEVELOPING HEMP INDUSTRY

SHELLEY PREISLER AND COURTNEY CARON (ADAMANT LAW)

INTEGRATED REGULATORY MODEL: MINNESOTA

Minnesota's regulatory model is starkly different from the one seen in Idaho, and is largely celebrated as the modern approach to integrating the hemp-derived cannabinoid and marijuana-derived cannabinoid industries. Minnesota cannabis law allows for the sale of hemp-derived cannabinoid products alongside the sale of marijuana-derived cannabinoid products; and further allows for the sale of hemp-derived cannabinoid beverages in alcohol retail stores. Interestingly, Minnesota does currently have a medical marijuana market but does not yet have an adult-use market (although adult-use licenses are expected to begin being issued in 2025). So how would marijuana's move from Schedule 1 to Schedule 3 of the CSA at the federal level impact hemp businesses in Minnesota's market?

The answer depends on what stance the federal government takes regarding existing state-level marijuana markets once rescheduling occurs. At a high level, there are two potential approaches: either the federal government allows state-level marijuana markets to continue to operate as they have for the last decade, or the federal government uses its authority to require state-legal marijuana businesses to operate as if they were engaged in producing, manufacturing, and dispensing a Schedule 3 drug. If the latter becomes true, many existing marijuana businesses would be unable to comply with the burdensome requirements under federal law for producers, manufacturers, or retailers of Schedule 3 drugs, leading to an exodus from the marketplace. A mass closure of state-level marijuana operators would create a void that could be logically filled by hemp businesses; consumers would otherwise lose access to marijuana-based cannabinoid products. With marijuana no longer a viable option, marijuana-focused brands seeking to remain in business would need to pivot to producing hemp cannabinoid products. On the other hand, if the federal government opts to allow state-sanctioned marijuana businesses to continue to exist, then it is likely that the current status quo will continue: hemp businesses would be able to engage in whatever commercial activities they are authorized to conduct under state law.

In integrated regulatory models, hemp businesses are welcomed as legitimate businesses and are afforded equal access to consumers as marijuana businesses. The rescheduling of marijuana at the federal level is unlikely to materially change how hemp operators do business in integrated regulatory models. However, hemp operators will want to keep a close eye on the federal government's enforcement stance against state-sanctioned marijuana businesses: if those businesses are required to become compliant with costly and onerous Schedule 3 production, manufacturing, and dispensing standards many of them will be unable to do so, which would create immense opportunity for hemp businesses to capture the market.

PARALLEL REGULATORY MODEL: TENNESSEE

The third cannabis regulatory model seen in the United States involves treating hemp and marijuana as two distinct industries and supply chains. Tennessee represents this regulatory model well as it has no marijuana industry (neither medical nor adult-use), yet has a robust hemp cannabinoid industry that allows for hemp and hemp-derived cannabinoid products to be readily sold to consumers. The lack of competing marijuana industry interests is likely what created such a regulatory model for hemp in the State. Tennessee did not try to group hemp and marijuana into the same bucket. Instead, Tennessee treats hemp and hemp-derived cannabinoid products much like other consumer products. Consumers can purchase hemp-derived cannabinoid products at many traditional retailers and can even purchase "infusions" for their favorite dishes at a restaurant. In other words, the hemp industry is the only source of cannabinoid products in Tennessee. So, how would federal rescheduling of marijuana affect hemp businesses in states like Tennessee?

There's a theme across this section: the answer is probably not much. Because this regulatory model treats hemp and marijuana distinctly, federal rescheduling of marijuana is unlikely to have a negative impact on hemp businesses in Tennessee. However, much like the other two regulatory models examined in the preceding subsections, reduced competition from the marijuana industry would create opportunities for growth for hemp businesses, and this regulatory model is no different. The same can be said of states that have parallel regulatory models that do have state-sanctioned marijuana businesses, too: if the federal government requires state-level marijuana businesses to comply with Schedule 3 production, manufacturing, and dispensing requirements, many existing operators would be unable to adapt to such requirements, which would lead to a reduction in competition for hemp operators in those states.

Note to reader: While Tennessee does not have a regulated marijuana industry, many states that do have regulated marijuana industries regulate hemp in a similar fashion. See, for example, Florida.

CONCLUSION

Contemplating the potential impacts of federal rescheduling of marijuana on hemp businesses across the United States requires examining current market dynamics, as well as conjecture regarding how the federal government will approach existing state-licensed marijuana businesses once enforcement occurs. Beyond the predictions outlined above, readers should leave this section with one piece of settled information; federal law treats marijuana and hemp distinctly. While both hemp and marijuana contain various cannabinoids, and are both *Cannabis sativa* L., marijuana is currently a Schedule 1 controlled substance (and would remain a controlled substance, albeit Schedule 3, post-rescheduling), while hemp, including intoxicating cannabinoids derived from hemp, are considered an agricultural commodity. The potential rescheduling of marijuana is unlikely to adversely impact hemp businesses. To the contrary, hemp businesses will be able to seize additional opportunities and realize more growth if marijuana operators are forced to comply with Schedule 3 production, manufacturing, and retail compliance.

One area of regulation for hemp businesses that could be impacted by marijuana's rescheduling is federal regulation around food and dietary supplements containing hemp-derived cannabinoids like CBD. Despite the regulatory authority to do so, as preserved by the Farm Bill, the FDA has declined to engage in specific rulemaking governing hemp-derived cannabinoids as ingredients in food and dietary supplements. Further, the FDA has determined that dietary supplements and foods containing hemp-derived cannabinoid ingredients are adulterated and not fit-for-commerce. Marijuana's move from Schedule 1 to Schedule 3 of the CSA could prompt rulemaking by the FDA related to cannabinoids as drugs, drug ingredients, food, and cosmetics. If FDA rules are promulgated, hemp businesses should closely monitor how the FDA defines cannabinoids, and whether the source of cannabinoids is relevant to their legal inclusion in consumer-ready products.

In sum, the federal government's enforcement stance against state-sanctioned marijuana businesses is the best indicator for how rescheduling will impact hemp businesses.

CURRENT "STATE" OF HEMP INDUSTRY IN THE UNITED STATES

In legalizing hemp and inadvertently opening the floodgates for the hemp-derived cannabinoid product market, the 2018 Farm Bill largely preserves state regulatory authority, resulting in a chaotic regulatory landscape which varies widely from state to state, posing challenges for businesses seeking to navigate this burgeoning market.

Understanding the regulatory framework of hemp-derived cannabinoids is crucial for industry stakeholders - to ensure compliance (and avoid enforcement action), elucidate what aspects of the status quo are impracticable and why such requirements are unworkable, and propose workable policy solutions that address current failures. This section provides a high-level overview of the current state-level regulatory environment for hemp across the nation, including trends and themes in various state approaches to hemp licensing, quality control, and beyond.

While the modern, post-2018 hemp product market is young, it is important to note that many of the themes, trends, and specific legal developments discussed herein are even younger; 2023 and 2024 brought a flurry of new laws at the state level, as well as a variety of litigation, much of which is ongoing. With pending litigation, federal rescheduling of cannabis, and a renewed Farm Bill on the horizon, the bumpy ride is far from over.

STATES MAY SET THEIR OWN RULES

The Farm Bill expressly allows for states to regulate the production of hemp, but bars states from prohibiting transportation or shipment of hemp.

Pursuant to the Farm Bill, the USDA has developed a regulatory framework, which authorizes the USDA to approve plans submitted by states and Indian tribes for the domestic production of hemp and establishes a federal plan for producers in states or territories of Indian tribes that choose not to administer a State or Tribe-specific plan provided also that the state or Tribe does not ban hemp production. The vast majority of states, territories, and tribes have submitted and obtained approval for a hemp production plan.

HOW STATES REGULATE HEMP BUSINESSES

As allowed by the Farm Bill, certain states impose additional hemp-related restrictions and regulatory requirements, which generally fall into the categories of distinct, hemp-specific regulations, or incorporation of hemp into the state's regulated cannabis framework, as discussed in *How Rescheduling Of Marijuana May Impact Hemp Businesses Participating In State Marijuana Markets*.

With growing awareness (and concerns) regarding the nascent hemp-derived cannabinoid consumable product market, many states have passed legislation specifically targeting this subset of the broader hemp industry, with deliberate carve outs for non-consumable industrial hemp products (textiles, fiber, paper, rope, etc.) and food products determined by the FDA to be Generally Recognized as Safe ("GRAS") (hulled hemp seed, hemp seed oil, hemp seed products).

While regulatory requirements differ from state to state, common categories and trends across state-level regulations are summarized below.

HEMP SOURCING, LICENSURE, AND REGISTRATION

Imposition of licensing and registration requirements on various parties in the hemp supply chain, which are often accompanied by hemp sourcing restrictions, appear as a common category of hemp-related regulation in those states which affirmatively regulate hemp, including those that incorporate hemp (or, specifically, hemp-derived cannabinoids) into an existing regulated cannabis program.

While the 2018 Farm Bill specifies that production of hemp is allowed unless otherwise prohibited by the State or Indian tribe, many states require that hemp grown or processed outside of the particular state be compliant with the laws or USDA plan of the jurisdiction where it was grown or processed. Although federal law only contemplates licensing for hemp producers, certain states impose additional registration, licensure, and/or permitting requirements on some or all parties in the hemp supply chain, some of which specifically implement registration requirements for retailers of hemp, hemp extracts, and/or hemp-derived cannabinoid products. In those states which regulate hemp products as part of their adult-use cannabis framework, regulations generally include restriction of sales of such products to licensed cannabis dispensaries. Beyond requiring registration of the parties wishing to manufacture, distribute, and sell hemp products therein, certain states also require registration of each product to be sold (Kentucky, Louisiana, among others).

Addressing the widespread phenomenon of interstate hemp shipping, some states specifically contemplate online retail sales in the applicable laws and regulations requiring registration for various parties in the hemp supply chain – largely either attempting to wholly prohibit online sales (Arkansas*, Washington, among others), or providing a specific category of registration for online vendors (Louisiana, among others).

CANNABINOIDS

While the Farm Bill removed hemp from the definition of marijuana in the CSA, the question of whether various hemp-derived cannabinoids qualify as hemp has led to litigation, legislation, and regulatory activities.

According to the DEA's 2020 Interim Rules, products derived from hemp are not automatically exempt from the CSA; cannabinoids derived from hemp, that are not naturally occurring in hemp, (referred to as "synthetically-derived cannabinoids") are illegal regardless of delta-9 THC content. ("The [Farm Bill] does not impact the control status of synthetically derived tetrahydrocannabinols (for Controlled Substance Code Number 7370) because the statutory definition of "hemp" is limited to materials that are derived from the plant *Cannabis sativa* L. For synthetically derived tetrahydrocannabinols, the concentration of D9-THC is not a determining factor in whether the material is a controlled substance. All synthetically derived tetrahydrocannabinols remain schedule I controlled substances.")

A subsequent February 2023 DEA letter specified that hemp-derived cannabinoids delta-8 THC-O and delta-9 THC-O fall within the CSA definition of marijuana and are therefore federally illegal.

The CSA preserves state authority to regulate scheduled listed chemicals, including imposition of criminal penalties. As such, the DEA's 2020 interim rules, as well as various state law, prohibit synthetically-derived cannabinoids, although some states utilize different terminology such as "artificially-derived" to refer to these prohibited cannabinoids. Please note that the discussion herein regarding prohibitions of particular hemp-derived cannabinoids does not cover law specific to "synthetic cannabinoids," which are generally explicitly listed as prohibited substances in state controlled substance schedules.

The current landscape is a patchwork of various state restrictions, which include laws, regulations, judicial decisions, and guidance issued by regulatory authorities of the respective jurisdiction. Some states specify that certain cannabinoids are illegal, based on abstract definitions of which hemp-derived cannabinoids are allowed versus prohibited (for example, naturally-derived from hemp versus synthetically- or artificially-derived), while other states explicitly name the allowed and prohibited cannabinoids.

In contrast to those states which regulate (in most of which, prohibit would be a more accurate term) cannabinoids based on the process by which they were derived, other states classify various hemp-derived cannabinoids based on intoxicating quality. For example, Kentucky classifies certain enumerated cannabinoids as “adult-use” or “non-intoxicating,” with different regulatory requirements for the sale of these two categories, and prohibits the sale of any cannabinoids not listed in its regulation or otherwise pre-approved by the state Cabinet for Health and Family Services. Similarly, Colorado categorizes various hemp-derived cannabinoids as “nonintoxicating,” “potentially intoxicating,” or “intoxicating,” and widely prohibits the latter two categories, with certain narrow exceptions. Please note that other states use terminology such as “adult use” or “intoxicating” in the context of potency and serving size limitations, as discussed in a later subsection.

INGREDIENTS

Beyond restrictions on hemp-derived cannabinoids, certain states restrict the ingredients which may be contained in manufactured hemp-derived cannabinoid products, and many states require that edible hemp-derived cannabinoid products comply with food safety standards of the particular state. Commonly prohibited ingredients include tobacco, nicotine, and alcohol.

PRODUCT TYPE/FORM

Various state laws restrict the forms and types of hemp, hemp products, and hemp-derived cannabinoid products which may be sold. Common prohibitions include restrictions on hemp material teas (Kansas, Kentucky, among others), smokable hemp flower (Indiana, Utah, among others), with some states totally prohibiting inhalable products (Iowa, South Dakota, among others) and vaporizers (Minnesota, among others) as well as bans on sales of unprocessed hemp plant materials at retail or otherwise outside of the state’s licensed hemp supply chain (Georgia, among others).

PROTECTION OF YOUTH VIA PRODUCT TYPE/FORM RESTRICTIONS

Over the last few years, ingestion of hemp-derived consumable products by children has received substantial media attention. Despite the Food and Drug Administration (FDA)'s failure to regulate hemp-derived products, the FDA and Federal Trade Commission (FTC) have issued various warning letters targeting sellers of hemp-derived consumable products resembling commercially-available food (citing both violations of various federal laws and risks such products pose to children). In response, several states have passed legislation purported to protect youth, including both age limits (which are discussed in the section covering Age Restrictions), as well as prohibition on hemp-derived consumable products which resemble (or which are contained in packaging resembling) commercially-available food or are otherwise "attractive to children." Common definitions of "attractive to children" cover products in the shape of or labeled with imagery containing cartoons, animals, depictions of minors, etc.

Among the most stringent of such product form regulations purporting to protect youth is Florida's SB1676, enacted in 2023 and the subject of past litigation. Beyond prohibiting hemp extract products and product packaging "manufactured in the shape of humans, cartoons, or animals; manufactured in a form that bears any reasonable resemblance to an existing candy product that is familiar to the public as a widely distributed, branded food product such that a product could be mistaken for the branded product, especially by children," the law also prohibits those "containing any color additives."

CONCENTRATION/SERVING SIZE LIMITATIONS

While the Farm Bill specifies that pre-harvest hemp must remain below the 0.3% delta-9 THC threshold, and the subsequent 2020 DEA interim rules clarify that products derived from hemp also must comply with this limitation ("a cannabis derivative, extract, or product that exceeds the 0.3% D9-THC limit is a schedule I controlled substance, even if the plant from which it was derived contained 0.3% or less D9-THC on a dry weight basis."), certain states impose additional product concentration, serving size, and other related limitations for hemp consumables.

Various state restrictions include, among others:

- Holding hemp-derived products to stricter concentration limitations on a dry weight basis than the 0.3% delta-9 THC standard (for example, Idaho, which allows for zero THC, as discussed earlier in this section);

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- Holding products to various “total THC” limitations which account for THCa, (ie, seeking to closed the “THCa loophole,”) and/or for other cannabinoid content beyond delta-9 THC (such as in California and New Hampshire, among others);
 - Imposing specific limitations on THC per serving and per container for hemp-derived cannabinoid products, which often are specific to various product types (such as in Minnesota, among others);
 - Requiring that products (or certain categories of products) fall within specific ranges of ratios of various cannabinoids (such as in Kentucky, among others; or implementing a ratio-related restriction to determine which products may be sold outside of the licensed cannabis supply chain, such as in Maryland* and Montana, among others).

Recent state-level legislation includes serving size limitations widely decried as unworkable by the hemp industry. For example, in Iowa, HF2605 (signed into law by Governor Kim Reynolds in May 2024) imposes maximum total THC concentration limits of the lesser of 0.3% on a dry weight basis, or of 4 milligrams per serving and 10 milligrams per container on a dry weight basis, while allowing for the Iowa Department of Health and Human Services (“IDHHS”) to impose additional consumable hemp product restrictions. While HF2605 does not define “serving” or “container,” guidance and draft rules subsequently issued by IDHHS establish that a serving size for beverages is 12 fluid ounces, and require that liquid consumable hemp products be packaged in a container that holds a minimum of 12 fluid ounces, thereby subjecting liquid consumable hemp products to a 4 milligrams per container THC limitation. Hemp beverage companies immediately filed suit in the Southern District of Iowa, seeking an injunction preventing enforcement of the HF2605 potency limits and packaging and labeling rules, as well as the diverging IDHHS rules. While the court rejected plaintiff’s arguments and denied the request for an injunction, the ruling stated there were serious concerns regarding the vagueness of the law, and plaintiffs have since filed an amended complaint. Subsequently, eight other hemp company plaintiffs have filed suit.

LABORATORY TESTING

The USDA requires any hemp grown under a USDA, State, or Tribal hemp production plan to undergo sampling and compliance testing for THC concentration by a hemp testing laboratory utilizing post- decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC, and that the total delta-9 tetrahydrocannabinol concentration level be determined and reported on a dry weight basis.

Beginning December 31, 2024, laboratories approved for THC testing must also be registered with DEA to handle controlled substances under the CSA, 21 CFR part 1301.13.

While federal law imposes laboratory testing requirements on pre-harvest hemp, various state laws impose additional laboratory testing requirements, some of which require testing of post-harvest hemp and/or finished hemp products by laboratories meeting certain specifications, as well as reporting of these test results or inclusion of the laboratory certificate of analysis ("COA") on each product label.

PACKAGING AND LABELING

As discussed in greater detail in Operational Risks to Hemp Businesses in 2024: Identification and Mitigation Strategies, some states impose a diverse array of packaging and labeling restrictions for hemp consumable products, thereby requiring operators to adhere to different requirements in each state where products are sold, including requiring specified warning statements, lists of ingredients, and other information to appear on products labels, sometimes specifying font size, label placement, and other specifications. Some of these packaging and labeling requirements are designed to protect children, including requiring child-resistant packaging, and prohibiting packages from containing imagery considered attractive to youth or imitating packaging of candy or other commercially-available food. In addition, several states such as Florida and Iowa require that hemp-derived cannabinoid products include a scannable QR or barcode on the product packaging which leads to a certificate of analysis from a testing laboratory, or a listing of other required product information.

ADVERTISING

Various state regulatory frameworks restrict advertising and marketing of hemp-derived cannabinoid products. In states which incorporate hemp-derived cannabinoid products into existing regulated cannabis programs, such products are subject to existing restrictions on cannabis advertising and marketing. In those states with distinct hemp regulations, advertising restrictions often are intended to protect youth (such as prohibitions on advertisements deemed "attractive to children," as discussed in the Product Type/Form and Packaging and Labeling subsections) and/or prevent health-related claims.

OPERATIONAL RISKS TO HEMP BUSINESSES IN 2024: IDENTIFICATION AND MITIGATION STRATEGIES

MATTHEW NATHANIEL (ATMOSPHERE)

INTRODUCTION

The hemp industry continues to experience significant growth, accompanied by a range of operational risks that businesses must navigate to ensure sustainability and success. This section delves into some of these risks, including federal hemp bill revisions, individual state regulations, interstate commerce challenges, universal label requirements, compliant supply chain practices, compliant sales and retail channels, and market and product trends, and proposes mitigation strategies for each.

FEDERAL HEMP BILL REVISIONS

Although the 2018 Farm Bill was originally enacted to cover a five year period, Congress enacted a one-year extension, which will expire on September 30, 2024. Draft and committee versions address the hot topic of hemp and the hemp-derived cannabinoid loophole; notably, the version passed by the House Agriculture Committee and draft Fiscal Year 2025 Agriculture/Food & Drug Administration appropriations bill include specific provisions to close the legalized intoxicating hemp loophole. While these specific pieces of proposed legislation may not pass, and Congressional dysfunction may mean that no updated Farm Bill is passed before the September 30, 2024 deadline, future legislation is highly likely to address the hemp industry in some way. A revised Farm Bill and related future federal legislative action presents potential opportunities and challenges for the hemp industry.

POTENTIAL POSITIVE EFFECTS OF A REVISED FARM BILL FOR THE HEMP INDUSTRY

On the positive side, a revised Farm Bill could clarify and harmonize the hemp regulatory framework, which would alleviate compliance confusion and pave the way for expanded market opportunities. For example, standardized testing and quality control measures across states could bolster consumer trust, enhance product marketability. Changes such as raising or removing limits on hemp production would enable businesses to scale operations, meet growing demand, and diversify into new product lines such as textiles, bioplastics, and health supplements.

Financial support and improved risk management tools could provide critical backing for the industry. Enhanced access to federal grants, loans, and subsidies, coupled with better crop insurance options, could offer hemp farmers greater financial stability and the means to weather unforeseen challenges. This financial backing could, in turn, fuel research and innovation, leading to advancements in cultivation techniques, pest control, and product development. Strengthened partnerships between businesses and academic institutions could further drive innovation and workforce development in the sector.

The revised Bill could encourage sustainable farming practices, providing environmental benefits and aligning with growing consumer demand for sustainable products. Support for soil health initiatives and incentives for eco-friendly cultivation methods could reduce the ecological footprint of hemp farming while improving long-term agricultural productivity.

Economic growth and job creation are additional potential upsides of a revised Farm Bill. Investment in hemp infrastructure and processing facilities could stimulate rural economies, creating jobs across the supply chain. Moreover, revised regulations could facilitate the export of hemp and hemp-derived products, opening up lucrative international markets and positioning U.S. hemp products competitively on the global stage.

POTENTIAL NEGATIVE EFFECTS OF A REVISED FARM BILL FOR THE HEMP INDUSTRY

The revised Farm Bill may lead to potential challenges that businesses must navigate carefully. The bill could impose stricter compliance requirements, raising operational costs and complexity, particularly impacting small and medium-sized businesses with limited resources, including a lack of legal and regulatory expertise. While some operators may benefit from increased federal funding, others could find it challenging to secure the necessary capital to comply with new requirements or expand operations. This disparity could lead to industry consolidation, with larger agricultural corporations better positioned to absorb costs and complexities, potentially pushing out smaller, independent farmers.

Heightened compliance requirements could include stringent product quality and safety standards, which could enhance overall product reliability, but also could require significant changes to production processes, raising costs and complexity, particularly for businesses producing a wide range of hemp products. Navigating new standards while differentiating products in an increasingly crowded market could prove challenging.

Market saturation is another concern. If production limits are raised or removed, there's a risk of overproduction, potentially leading to a glut in the market. An oversupply could drive down prices, squeezing profit margins for hemp farmers and processors. Increased competition from new market entrants could further intensify this pressure, making it harder for existing businesses to maintain their market share.

International trade could offer new opportunities and challenges. Changes in U.S. hemp regulations could lead to trade disputes with other countries, potentially impacting the smooth exportation of products. Businesses looking to expand globally may find themselves grappling with complex and costly export regulations.

Consumer perception remains a critical factor. Despite regulatory advancements, some consumers might continue to associate hemp with marijuana, affecting market growth and acceptance. Frequent changes in regulations and standards could also confuse consumers, potentially eroding trust and impacting demand.

To navigate this complex landscape successfully, hemp businesses should consider several strategic approaches. Engaging actively with policymakers and industry associations is crucial to stay informed about potential revisions and influence legislation positively. Maintaining relationships with legal experts specializing in hemp law can help businesses quickly understand and adapt to new regulatory requirements. Developing flexible operational strategies with contingency plans for different regulatory scenarios is essential to ensure quick compliance with new laws.

Continuous monitoring of legislative developments and market trends, coupled with investment in research and development, can help businesses stay competitive and innovate in this rapidly evolving sector. Collaborating within the industry to share resources and advocate collectively can also strengthen the sector's position. Finally, contributing to consumer awareness campaigns can help build trust and expand the market, creating a more favorable environment for sustainable growth.

The 2024 Farm Bill revision represents a critical juncture for the hemp industry. By proactively addressing both the opportunities and challenges it presents, businesses can position themselves for success in this dynamic and promising sector. The future of the hemp industry will likely belong to those who can adeptly navigate these regulatory waters, balancing compliance with innovation, and seizing the opportunities that arise amidst the challenges.

INDIVIDUAL STATE REGULATIONS

As discussed in greater detail in the earlier subsections, widely diverging and inconsistent state regulations pose compliance-related, operational, financial, and other challenges, particularly for businesses operating across multiple states.

As discussed in greater detail in the Current “State” of Hemp in the United States, with wide latitude to enact state-level regulations, state regulatory frameworks vary drastically; each state may set wholly different rules governing hemp cultivation, processing, and distribution, such as varying THC thresholds, diverse seed certification requirements and farming practices, state-specific standards for extraction methods and manufacturing facility requirements, and beyond. Supply chain management becomes a delicate balancing act as businesses strive to maintain inventory that complies with the diverse labeling, testing, and packaging requirements of each state.

Distribution strategies must be fluid, adapting to accommodate state-specific regulations that may necessitate product segregation, packaging alterations, or modified transportation routes. With differing acceptable THC levels, prohibited additives and contaminants, as well as general testing, safety, and quality control requirements across states, businesses face major logistical and cost burdens to ensure compliance across jurisdictions. Varying registration, licensure, and certification requirements across different states pose significant administrative burdens on businesses.

Further, state-specific incentives and restrictions vary widely. While some states roll out the red carpet for hemp businesses with grants and tax breaks, others erect additional barriers or impose fees, requiring businesses to stay abreast of policies across jurisdictions to operate efficiently. These operational and financial challenges disproportionately affect smaller enterprises with fewer resources and dedicated legal and compliance personnel to navigate the complex landscape effectively.

The fractured regulatory environment may affect market dynamics, as consumer confusion regarding the safety and legality of hemp products can erode trust and dampen demand.

Forward-thinking hemp businesses deploy comprehensive strategies to thrive in this complex environment, such as creating adaptable standard operating procedures (SOPs) across operations to easily tailor operations to each state's unique regulatory requirements while maintaining a cohesive approach to interstate commerce. Regular employee training sessions on state-specific regulations and compliance practices are essential for compliance and operational efficiency at the facility-level. Investment in legal and regulatory expertise is integral to developing and implementing such strategies, in order to comply with existing law and adapt to regulatory updates. Collaboration with industry associations and advocacy groups is a strategy for addressing current regulatory challenges and advocating for favorable changes in law.

As the hemp industry continues to evolve, those businesses that can adeptly navigate this complex regulatory landscape will find themselves well-positioned to capitalize on the immense opportunities the market presents. By embracing adaptability, prioritizing compliance, and fostering collaboration, hemp enterprises can turn regulatory challenges into competitive advantages, paving the way for sustainable growth in this dynamic and promising sector.

CHALLENGES OF INTERSTATE COMMERCE

Although states may not prohibit transportation or shipment of hemp, varying rules across states pose legal, regulatory, and logistical challenges to interstate commerce, which businesses must overcome to thrive in the interstate marketplace. Conflicting requirements across states, along with gaps and gray-areas at the federal level has led to legal ambiguity; even when acting compliantly, businesses risk inadvertently triggering enforcement actions by state or local authorities with differing interpretation in law. Even when complying with differing state requirements, such as rules governing e-commerce, documentation accompanying shipments, packaging, and labeling, businesses face financial risks and potential shipping delays. Product seizure is a lingering risk, with the potential for law enforcement to mistake legal hemp for its illicit cousin, marijuana.

Despite federal legality, the challenges of a splintered regulatory environment and confusion regarding the distinction between marijuana and hemp extend into the realm of financial services and insurance. Securing insurance for hemp transportation remains an uphill battle, leaving many businesses exposed to potential losses. While the financial sector has made strides in accommodating hemp businesses, some institutions remain wary, complicating essential business functions like banking and financial planning.

Beyond the challenges of domestic, interstate shipping, the global regulatory landscape for hemp is complex, requiring significant expertise and resources to engage in international commerce.

To mitigate the risks associated with interstate transport, businesses may consider forging partnerships with logistics experts to strategically plan transportation routes that avoid states with more restrictive hemp laws, reducing risk in-transit and ensuring more reliable product delivery. Businesses can work with legal and regulatory experts to ensure each shipment is accompanied by comprehensive legal documentation, such as certificates of analysis, proof of compliance with federal and state laws, and other pertinent documents, to adhere to various state rules, prevent legal disputes, and expedite inspections.

The challenges of interstate commerce will likely evolve as the hemp industry matures and applicable laws are reformed. Employing legal and compliance professionals with hemp expertise will remain crucial to navigate these ever-changing circumstances.

UNIVERSAL LABEL REQUIREMENTS

Inconsistent labeling requirements across jurisdictions, including different requirements for information, format, and content, pose a major compliance challenge for multi-state hemp operators. While hemp businesses can employ legal and compliance experts to track the wide variety of rules across jurisdictions, a universal labeling requirement could simplify operations and enable compliant labeling across states.

Despite the challenge of diverging labeling requirements across jurisdictions, hemp operators can utilize modular design principles to craft universal product labels, such as using peel off stickers, QR codes linked to digital repositories of state-specific information, and adaptable label sections. Any universal label must include all mandatory elements like product names, cannabinoid content, ingredient lists, and required warnings in a manner that is both compliant and consumer-friendly.

IDENTIFYING COMPLIANT MANUFACTURERS AND BRANDS

The search for compliant manufacturers and brands is as critical to compliant operations as it is challenging. Operators must meticulously research potential partners to ensure they possess the credentials required under the laws of each jurisdiction, which may include licenses, certifications, permits, various industry certifications (GMP, ISO standards, organic badges), and beyond. Requesting documentation to verify partners' credentials and claims is vital. Site visits to facilities and vetting reviews of potential partners are also important when building new vendor relationships. Businesses can also join industry associations, becoming part of a greater community that shares knowledge, resources, and recommendations.

Deliberately-crafted contracts become the cornerstone of compliance and a successful partnership. Even after establishing a relationship with a thoroughly-vetted partner, businesses need to continue to audit, monitor, and adapt, and remain ready to adapt in the event of regulatory changes. Contracts and agreements should be living documents, constantly refined to reflect the latest in legal standards and industry best practices.

IDENTIFYING MARKET AND PRODUCT TRENDS

A new chapter is unfolding in the hemp industry - the rise of intoxicating hemp products. Consumer preferences, regulatory shifts, and technological innovations have sparked a renaissance in product development, with widespread hemp-infused beverages, topicals, and beauty products, in addition to familiar products like tinctures and edibles. Cutting-edge technologies like nanoemulsions enable innovative products that offer faster action and longer-lasting effects. Broad and full spectrum products combine a rich assortment of cannabinoids and terpenes to harness the entourage effect.

As discussed at length under the Current "State" of Hemp in the United States, the widely divergent state-level regulatory restrictions governing intoxicating hemp products poses a major challenge for hemp businesses. Beyond challenges related to regulatory compliance and ever-shifting regulatory requirements, businesses also must face the challenge of appealing to consumer preferences. Beyond recreational interests, consumers are increasingly interested in holistic health, seeking products with functional benefits, such as improved sleep, reduced anxiety, and pain relief, but regulatory restrictions greatly restrict such claims from manufacturers and sellers.

With heightened interest in transparency, customers increasingly seek supplemental product information, leading to the availability of product specifications and Certificates of Analysis on websites, even though many jurisdictions do not impose such a requirement. In a crowded marketplace, brands may distinguish themselves by storytelling in a way that resonates with consumers, utilizing social media marketing and influencer partners which appeal to customers seeking a health-conscious, wellness-oriented lifestyle.

CONCLUSION

In 2024, the hemp industry finds itself at a critical juncture, poised between unprecedented opportunities and formidable challenges. To thrive in this complex landscape, businesses must adopt a multifaceted approach: implementing informed strategies, ensuring robust compliance, and embracing innovation. Success hinges on staying ahead of regulatory shifts, actively participating in industry advocacy, conducting meticulous due diligence, and maintaining operational flexibility. As the market evolves, those who skillfully navigate these hurdles will be uniquely positioned to harness the hemp industry's vast potential. The future belongs to agile enterprises that can transform risks into strategic advantages, setting the stage for sustainable growth in this dynamic sector.

HOW THIS WILL IMPACT INTERSTATE COMMERCE OF CANNABIS

MARVIN MILLER (CRATH MILLER & XISTRIS LLP)

Other sections of this White Paper have covered the positive practical impact of the Rescheduling of Cannabis by the DEA Proposed Rule, but here we will discuss an aspect that needs more time and work to develop: selling cannabis across state lines, or cannabis in Interstate Commerce.

One point to get out of the way at the outset, and warning you are about to get a small Con Law lesson, is the Commerce Clause.

The U.S. Constitution reserves to Congress the exclusive jurisdiction to regulate commerce between the states, or interstate commerce. Because this jurisdiction is exclusive, states cannot erect barriers to interstate trade. Where states attempt to do so, it violates a legal concept known as the dormant Commerce Clause.

In other words, a State³ is prohibited from erecting barriers to the free movement of goods, in our case cannabis, since that belongs solely within the purview of Congress.

So once cannabis is Rescheduled you can freely ship your cannabis products to another State?

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- ¹ While the possibility for international trade is beyond the scope of this of this section, the DOJ Proposed Rule noted that additional regulatory action may be necessary for the import and export of cannabis to meet United States' treaty obligations. DOJ Proposed Rule Section VIII. International Treaty Obligations, p. 86.
 - ² U.S. Const. Article I, Section 8, Clause 3.
 - ³ For purposes of this Section, "States" means any State or Territory of the United States of America that permits Adult-Use or Medical Marijuana and the District of Columbia.
 - ⁴ See, *Northeast Patients Group v. United Cannabis Patients & Caregivers of Maine*, No. 21-1719 (1st Cir. 2022), *Original Investments v. Oklahoma*, 542 F. Supp. 3d 1230 (W.D. Okla. 2021) (dicta acknowledging the Oklahoma residence requirement may violate the dormant Commerce Clause, but that the court could not facilitate criminal activity under federal law since marijuana was a Schedule 1 narcotic; but see, *Brinkmeyer v. Washington State Liquor & Cannabis Board*, C20-5661 BHS (W.D. Wash. Feb. 7, 2023), where the court in upholding the State of Washington's residency requirement held there was no dormant Commerce Clause violation since the law furthered congressional intent under the CSA by attempting "to prevent any interstate commerce in cannabis and to prevent any cannabis from Washington from moving into states where it remains illegal."

In short, not yet.

Since cannabis, or marijuana, will still appear on the Schedule, albeit as Schedule III instead of Schedule I, it is still a drug subject to the review of other applicable agencies, in this case the Food and Drug Administration (“FDA”) which, under the Controlled Substances Act (CSA)⁵ needs to approve that marijuana may be introduced or delivered for introduction into interstate commerce.

That is the technical regulatory hurdle that we will need to keep our eyes on, since that will not happen until after the DEA Proposed Rule becomes a final rule.

There are, as you can imagine, other practical challenges for the cannabis industry in taking our product across State lines.

In response to the DOJ request for comments on the practical consequences of rescheduling marijuana into Schedule III, the Massachusetts Cannabis Control Commission noted that it was crucial for the DEA in its final ruling:

“to consider the impact on interstate commerce. Currently, states have flourishing cannabis markets under different regulatory frameworks. With reclassification, clear guidance will be needed to regulate the interstate commerce of cannabis and cannabis products. Given the varying state regulations, the question of which regulations apply is crucial. For instance, cultivators in one state with a surplus harvest could potentially sell their product to licensees in another state. Guidance would be needed to clarify whether the home states’, destination states’, or both states’ testing and labeling regulations would apply for compliance. As expressed, additional clarification and regulatory guidance will be necessary to address the complex issues surrounding the rescheduling of cannabis and maintain compliance with both federal and state laws.”⁶

In other words, we will need a uniform license checking system for States and a corollary track and trace program. Whether this will be done at the federal level or among the cannabis governing bodies of the States is a very big open question.

This issue was also noted by the Coalition For Cannabis, Policy, Education, And Regulation in their comment on the DEA proposed Regulation.⁷

⁵ 21 U.S.C. ch. 13 § 801 et seq.

⁶ Mass Cannabis Control Commission’s Comment on Docket No. DEA-2024-0059-0001, July 19, 2024, pp. 3-4.

⁷ Coalition For Cannabis, Policy, Education, And Regulation, Comment Letter, July 22, 2024, p.4: As cannabis would remain federally illegal under Schedule III, state markets would be prohibited from engaging in interstate commerce. A robust interstate market, underpinned by federal public health regulations along with track and trace systems, is imperative to addressing the illicit markets that currently flourish in the current patchwork system.”

The Michigan Cannabis Regulatory Agency noted the same concerns as the Massachusetts Cannabis Control Commission but added an additional wrinkle: physically getting the stuff from place-to-place.

“It will be critical for federal agencies to issue clear guidance about the requirements and expectations for interstate commerce while recognizing that states have developed their own requirements for the cultivation, processing, transportation, tracking, and sales of marijuana. Pilots and air carriers are currently prohibited from transporting marijuana on aircraft, even within states where it is legal. Additionally, transporting marijuana by watercraft across state or international waters is illegal under federal law. Rescheduling could lead to more clarity and potentially relaxed restrictions on the transport of marijuana products across state lines and on different modes of transportation, while still ensuring compliance with federal safety, security, and regulatory standards. If marijuana is rescheduled, the FAA and any other agency responsible for regulating air and water transport should issue clear guidance about the implications of rescheduling on the transportation of medical and adult-use marijuana by aircraft or watercraft.”

While we long for the day to be treated like any other agricultural product, we at least have a baby step in the DEA Proposed Rule when it comes to operating a cannabis business generally from a banking, financial markets and taxation aspect.

But for our industry to sell our product across state lines we will need further action well beyond the purview of the DEA Proposed Rule, even in its final form.

In advance of the FDA permitting cannabis to travel across State lines, and unless the federal government sets a uniform standard for cultivators, processors, labs and dispensaries in the meantime (which seems highly unlikely), there will need to be cooperation among the State Cannabis Regulatory Authorities to create a uniform track and trace system and a uniform license verification system, and quire if that will result in uniform standards and impact current regulations (either for the better or the worse). States will, however, be encouraged to cooperate, since a whole new round of litigation against States violating the dormant Commerce Clause will ensue, and this time around it may not wind up in individual State’s favor.

⁸ Michigan Cannabis Regulatory Agency Comments on the Proposed Rescheduling of Marijuana 21 CFR Part 1308, July 22, 2024, p7

⁹ As to the Tri-State arrangement among California, Oregon and Washington, that still will not be activated since until the FDA permits the introduction of cannabis into interstate commerce those states will continue to be prohibited from fully realizing upon their arrangement, since there is a “possibility that California’s laws authorizing interstate cannabis activities could be deemed preempted by the Controlled Substances Act—that is, declared “without effect” under the Supremacy Clause.” Opinion of ROB BONTA Attorney General of the State of California, the December 19, 2023, p. 10.

HOW WILL THIS IMPACT FEDERAL CANNABIS TAXES & 280E

HOW RESCHEDULING OF MARIJUANA MAY IMPACT HEMP BUSINESSES PARTICIPATING IN STATE MARIJUANA MARKETS

MIKE GORAL J.D., LL.M. (ARMANINO LLP)

In July 2024, the U.S. Supreme Court overturned the 1984 precedent set by Chevron. The Chevron doctrine, as it is commonly known, required the courts to generally defer to various administrative agencies whenever there is a question about the legislative meaning or interpretation of a statute that is in controversy. As a result of overturning the Chevron doctrine, the courts going forward will have more power and oversight of administrative agencies while plaintiffs will more likely challenge administrative agencies' rule-making authority.

When you apply this change in policy to the cannabis industry, it only creates uncertainty around the prospects for rescheduling. The DEA held a public comment period in July 2024 that generated approximately 43,000 responses. The vast majority, 92.45% according to Headset, were in favor of rescheduling. The next step will be for the DEA to carefully review all these comments. It is uncertain whether this process will take weeks or months to complete.

Following the review of these comments that were submitted (or possibly during the review process), the DEA will either grant a hearing before an administrative law judge or opt to go directly to issuing a final rule. Obviously if a hearing is requested before the administrative law judge, then the timing for rescheduling will be further delayed and the likelihood of a decision will not occur before the 2024 Presidential election.

Finally, there is the prospect that various parties to this controversial issue will sue, and this could further delay the effective date of a potential rescheduled cannabis law.

280E AND THE TAX IMPACTS OF CANNABIS RESCHEDULING

**RACHEL WRIGHT CPA MST & SIMON MENKES CPA
(VERDANT STRATEGIES)**

SUMMARY

One of the most widely anticipated and perhaps most immediate benefits of cannabis's rescheduling by the DEA will be that Internal Revenue Code Section 280E will no longer apply to cannabis businesses, substantially reducing cannabis companies' federal taxes. Cannabis's move from Schedule I to Schedule III on the Controlled Substances Act may also provide businesses with other tax advantages, including allowing them to take advantage of certain federal tax credits previously denied to them. It should also allow customers to deduct their medical cannabis purchases as a medical expense, under specific circumstances, which would in turn increase sales.

Unfortunately, the heavy tax burden placed on the cannabis industry by the 38 states where it's legal will not be affected by this change. Work still needs to be done on this front.

In addition, it's important to note that, for now, 280E remains in place and will likely not leave the scene until 2025. Optimistic cannabis companies need to remember that 2024 will still be a "280E year" and budget for their year-end federal tax burden accordingly.

WHY RESCHEDULING WILL ELIMINATE 280E

Internal Revenue Code Section 280E disallows deductions and credits for expenditures connected with the illegal sale of drugs (other than cost of goods sold), requiring retail and other cannabis businesses to add back such significant expenses as rent and wages for sales staff.

IRC Section 280E states, "No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted." Once cannabis moves to Schedule III, Internal Revenue Code Section 280E will no longer apply to the cannabis industry.

TIMING

Because it's quite possible that rescheduling will take place sometime in 2025, 2024 tax returns for cannabis businesses will likely have to be filed under 280E's restrictions. When cannabis is finally moved to Schedule III, the IRS will probably remove 280E on a "go-forward basis", not accepting the amendment of prior returns.

POTENTIAL TAX SAVINGS

As cannabis will no longer be on Schedule I or II, cannabis businesses will be able to take the same federal tax deductions as any other business. Also, any [states that still follow the IRS](#) in the calculation of their cannabis companies' state income taxes, such as Alaska, Arizona, and Maine, will also now follow this change and allow full deductions. On a federal level, significant tax savings will be achieved, as many retail cannabis businesses have experienced an [effective tax rate in excess of 70%](#), while mainstream businesses pay closer to 21% tax on corporate income.

The tax savings could be substantial. According to some industry estimates, the rescheduling could save the cannabis industry \$2.3 billion annually.

TAX CREDITS

Moving to Schedule III will make certain tax credits available to cannabis businesses, chief among those being the Research and Development Tax Credit. The R&D Tax Credit is a dollar-for-dollar reduction in federal tax liability for certain approved expenses. In addition, companies get back about \$0.13 for every dollar spent on eligible research expenses. These expenses include the development, improvement, or design of a product, technique, process, or software.

Small businesses (under \$5 million in gross receipts) will also be able to take a portion of the federal R&D credit as a reduction of the employer portion of social security taxes on their employment tax return.

Like the U.S. government, some states also offer their businesses an R&D credit, and this credit can even be larger than the federal one. For those states that follow 280E though, this credit has not been available to cannabis. The removal of 280E will allow this state tax advantage.



Rescheduling should also enable consumers with a prescription to deduct their purchases of cannabis as a medical expense deduction on both their federal and state tax returns, which should lead to increased sales for the industry. Rescheduling should also enable consumers with a prescription to deduct their purchases of cannabis as a medical expense deduction on both their federal and state tax returns, which should lead to increased sales for the industry.

STATE TAX BURDEN WILL REMAIN

Even when 280E leaves the scene, the unfair taxation placed on the cannabis industry by the states will remain. State and local excise taxes on adult-use cannabis can vary from 6% (Missouri) to 37% (Washington), and some states like California require businesses to calculate their excise tax on top of city tax collected, with sales tax calculated on top all of that (tax on tax), created a catastrophically heavy tax burden.

This heavy taxation has made it almost impossible for many cannabis companies to compete with the illicit market, which pays no taxes whatsoever. In many states, illegal shops are now responsible for a higher dollar volume of sales than the legal market. For example, it's estimated that the legal sales of cannabis in California are around \$5 billion while the illegal market scoops up over \$7 billion annually.

Studies have shown that customers are willing to pay up to 20% more for legal cannabis before they switch to the illicit market. With excise taxes averaging 15%, combined with local taxes, combined with sales taxes, the 20% "illicit-sales-ceiling" is shattered in almost all states. This problem will have to be resolved for cannabis to be allowed to mature into a long-term, viable, healthy industry.

LIKELY FEDERAL EXCISE TAX

On May 1, 2024, Senator Corey Booker introduced S. 4226, whose intent is to "decriminalize and deschedule" cannabis. It would transfer cannabis from the jurisdiction of the DEA to the jurisdiction of the Department of Health and Human Services and the Department of the Treasury.

Once under the purview of the Department of the Treasury, S. 4226 proposes to levy an excise tax of 10% on all sales for the first two years. This percentage would scale in increments over the following three years until it reached 25% in year five.

This federal excise tax would be combined with the already unsupportable rates of state and city excise taxes which already exist, further decimating the industry. This being said, it is unrealistic to expect that there will be no federal excise tax in cannabis's future. Just as there is currently a federal excise tax on alcohol, the key to keeping the level of taxation from throttling the cannabis industry is "Moderation".

Currently, total federal plus state excise taxes on alcohol approximately range from 3% on beer up to 19% on liquor. With state excise taxes plus sales taxes plus a federal excise tax of 25%, total cannabis taxes would BEGIN at 45%. Obviously, serious downward adjustments would need to be made, on both the state and federal level, for the cannabis industry to survive!

IT AIN'T OVER 'TIL IT'S OVER

A note of caution: On June 28, 2024, the IRS sent out a warning saying, "until a final federal rule is published, the Internal Revenue Service today reminded taxpayers that marijuana remains a Schedule I controlled substance and is subject to the limitations of Internal Revenue Code." Also, they warned cannabis taxpayers not to seek refunds related to 280E by filing amended returns. Such refunds "are not valid," they wrote, adding, "The IRS is taking steps to address these claims."

A legal challenge by anti-cannabis forces could also delay the timing of rescheduling, and with a new president due to take the Oval Office, and one which may not be favorable to cannabis, rescheduling is not a done deal until it's done.

For now, cannabis companies need to continue filing taxes as usual, while keeping an optimistic eye on the future. The federal tax situation is about to get a lot better for cannabis, but with states still over-taxing, it has a long way to go before it's right.

FEDERAL CANNABIS TAXES & 280E

KATE DYMEDENKO, CPA, CTC, PARTNER (GROWISE)

THE IMPACT OF SECTION 280E

The cannabis industry has long navigated the complexities and challenges posed by Section 280E of the Internal Revenue Code. The potential rescheduling of cannabis to Schedule III represents a significant shift that could have profound implications for cannabis businesses, particularly from a tax perspective. Section 280E has been a major financial hurdle for cannabis businesses, preventing them from deducting many of their business expenses, leading to effective tax rates that can exceed 70%. This has placed cannabis businesses at a distinct disadvantage compared to other industries, severely impacting their profitability and cash flow.

POTENTIAL BENEFITS OF RESCHEDULING

1. TAX DEDUCTIONS AND SAVINGS:

- If cannabis is rescheduled to Schedule III, cannabis businesses would be able to deduct ordinary and necessary business expenses. This change could drastically reduce their effective tax rates, improving EBITDA, cash flow, and profitability.
- The tax savings could be substantial, allowing businesses to reinvest in growth areas such as research and development and product innovation. According to industry estimates, the rescheduling could save the cannabis industry billions annually.

2. ENHANCED MARKET CONFIDENCE:

- The rescheduling could boost investor confidence and push Financing and M&A Markets to increase the number of transactions, attracting more capital into the industry. This influx of investment would likely spur innovation, expansion, and market maturation.

REMAINING CHALLENGES

1. STATE-LEVEL REGULATIONS:

- Rescheduling doesn't fix the conflict between state and federal laws. Each state has its regulatory framework, which can complicate compliance and operational consistency across state lines.
- Businesses must stay abreast of federal and state regulatory changes to ensure comprehensive compliance.

2. ONGOING TAX COMPLEXITIES:

- Despite the elimination of Section 280E restrictions, businesses will still need to navigate complex tax issues, such as accounting for inventory and the cost of goods sold (COGS).
- There is a chance that 280E will be replaced with some other federal tax, not reducing the tax burden on the cannabis operators. With the existing budget deficit and Tax Gap (the difference between what is owed in federal taxes and what is paid in federal taxes), the cannabis tax burden won't be eased quickly.

TAX PLANNING POINTS FOR CANNABIS BUSINESS OWNERS

1. ADJUST FINANCIAL STRATEGIES:

With the ability to deduct business expenses, cannabis companies should reassess their financial strategies. This includes revisiting budgets, cash flow projections, and financial planning to optimize the newfound tax benefits. Transitioning from a Schedule I to a lower schedule could involve significant costs. Businesses would need to adapt to new regulatory requirements, update compliance systems, and possibly restructure operations. These transition costs could be a burden, particularly for smaller businesses with limited resources.

2. REVIEW ENTITY STRUCTURE:

Most Business owners never reevaluate the entity structure throughout the business's life—what worked before may no longer be optimal. Rescheduling is a great excuse for business owners to sit down with their tax professionals and create a plan for the future. Don't panic if you are a C Corporation and cannot sleep well because of "double taxation;" a good tax professional can find tax advantages for every type of business.

Navigating the maze of tax planning and business structuring to protect your business from IRS scrutiny can feel like playing a complex game of chess. While the moves can be tricky, the rules are straightforward. It might be tempting to look for shortcuts to maximize your benefits, but the IRS is usually ahead of these tactics, and the consequences can outweigh any short-term gains. For example, setting up a new C corporation to shift income through management fees from your main company might seem clever at first glance, but the IRS is highly skeptical of this strategy.

3. FRINGE BENEFITS

Yet one of the most powerful tools business owners can use to minimize their tax bills is fringe benefits. Certain types of fringe benefits are tax-free. The best part is that a company takes a tax deduction for these fringe benefits, resulting in the best of both worlds: the business gets a tax deduction, and the employee does not pay taxes.

4. FEDERAL INCOME TAX CREDITS

Tax credits are another powerful tool that would become available to cannabis businesses. Unlike tax deductions, which reduce the amount of taxable income, tax credits directly reduce the amount of tax owed, dollar for dollar. This makes them particularly powerful for maximizing tax savings and supporting business growth.

5. PLAN FOR INCREASED AUDITS:

With the potential for increased scrutiny from tax authorities, businesses should be prepared for more frequent audits. Maintaining accurate financial records will be crucial to withstand such examinations. Tax compliance isn't something to be taken lightly. It requires careful planning, meticulous attention to detail, and a solid understanding of IRS guidelines.

CONCLUSION

The potential rescheduling of cannabis to Schedule 3 represents a pivotal moment for the industry. We can definitely say the cannabis industry is on a tax diet. If rescheduled, the companies could finally enjoy all the sweets in the world. With all these potential changes and the easy-to-get overwhelmed and lost, cannabis businesses must remain vigilant and proactive in their tax planning and compliance efforts. Ultimately, if the company survived in the 280E era, it should overcome any challenges.

A PERSPECTIVE ON THE IMPLICATIONS OF THE SAFER BANKING ACT AND RESCHEDULING OF CANNABIS ON FINANCIAL INSTITUTIONS

**FRANK ESPINOZA, EXECUTIVE VICE PRESIDENT
(SOUTH BAY CREDIT UNION)**

Since individual states began legalizing cannabis, first for medicinal use and later for recreational use, credit unions have sought to serve the largely small-business cannabis community. Applying the movement's "people helping people" philosophy to assist these legal businesses, credit unions were uniquely situated to provide banking services even as possession, distribution, or sale of cannabis remained illegal at the federal level.

The need to provide banking services in the cannabis space was clear, but messaging from regulators was mixed at best. On the Federal level, little to no guidance was provided on restrictions or expectations outside of mandated reporting for each cannabis entity. State governments encouraged financial institutions to provide banking but placed onerous duties on them for collecting, verifying, and performing ongoing monitoring for each cannabis account. With states providing little to no direction or protection, financial institutions needed to fund their cannabis programs outside the standard organizational structure.

As not-for-profit, member owned organizations with much more limited resources than large, for-profit banks, credit unions had few options for providing needed cannabis banking services. Program-specific fees became the standard cannabis banking business model for credit unions, as it was made abundantly clear that this would be considered a high-risk business line and that any financial institution that decided to partner with the cannabis industry would face the highest level of scrutiny. Against this backdrop, the financial industry and credit unions were as excited as our cannabis partners to hear there may be some relief in sight.



SAFER BAKING ACT

The federal SAFER Banking Act, recently passed out of the Senate Banking Committee, is an update of earlier SAFE Banking Acts and aims to bridge the gap between state and federal laws that historically prevented most financial institutions from offering banking services to cannabis-related businesses (CRBs). It does so by providing a legal framework that would protect financial institutions that offer banking services to CRBs from prosecution under federal money laundering laws.

The SAFER Act, as currently written, would bring a multitude of benefits to CRBs as well as opportunities for financial institutions. Among its key impacts include:

1. INCREASED ACCESS TO BANKING SERVICES:

The Act will make it clear that financial institutions may legally serve cannabis businesses. This includes providing checking accounts, loans, and other financial services that were previously difficult or impossible to offer due to legal and regulatory risks.

2. REDUCED COMPLIANCE RISKS:

The Act would offer clearer guidance and protection against federal enforcement actions, reducing the compliance risks associated with servicing cannabis-related businesses.

Increased access combined with reduced compliance risks will most certainly lead to greater competition among financial institutions for CRB customers/members, which will in turn lower the cost of services and spur innovation.

3. ENHANCED FINANCIAL TRANSPARENCY:

By providing banking services to the cannabis industry, financial institutions could help integrate these businesses into the formal financial system, improving transparency and reducing reliance on cash transactions.

4. OPERATIONAL CHALLENGES:

Financial institutions will need to adapt their compliance procedures to meet new requirements related to the cannabis industry, including thorough due diligence and anti-money laundering measures.

RESCHEDULING OF CANNABIS AT THE FEDERAL LEVEL

Earlier this year, the Drug Enforcement Administration (DEA) began the process of rescheduling cannabis from Schedule I to Schedule III of the Controlled Substances Act, which is seen as a key step toward federal legalization. This is good news for CRBs and the financial institutions seeking to serve them.

Among the key impacts of this federal reclassification on financial institutions could include:

1. NORMALIZATION OF CANNABIS BUSINESS BANKING:

Reclassification could further reduce the stigma and legal uncertainties surrounding cannabis businesses, making it easier for credit unions to provide financial services without special considerations or higher compliance costs.

2. EXPANDED OPPORTUNITIES

With cannabis potentially no longer classified as a controlled substance, more institutions will likely want to allow CRBs to open accounts and offer services to them.

3. REGULATORY ADJUSTMENTS

Financial institutions serving CRBs will need to remain vigilant regarding new regulations and compliance requirements that are likely to emerge from changes in cannabis law, including effects on lending practices, investment opportunities, and risk management.

CONCLUSIONS

Both the SAFER Banking Act and the potential reclassification of cannabis would significantly impact financial institutions looking to partner with CRBs by opening new opportunities and reducing legal risks while requiring adjustments in compliance and operational practices. However, these changes do not guarantee adoption or willingness to work with the cannabis industry by all financial institutions. It would not be unexpected for many, if not most, of the largest financial institutions to take a very conservative, wait-and-see approach to a line of business that many average consumers still view as undesirable or, at minimum, controversial.

Similarly, CRBs expecting to be able to drop in to their local financial institution and open a free business account the day after these changes go into effect will likely be disappointed. A much more realistic expectation would be to see more institutions gradually getting pilot programs started, expansion of services available from institutions with existing CRB programs, and marginalization of fee structures for compliance centric banking.

RECLASSIFICATION AND THE STATE MEDICAL AND RECREATIONAL MARKETS

**RACHEL WRIGHT CPA MST & SIMON MENKES CPA
(VERDANT STRATEGIES)**

In a perfect (cannabis) world, cannabis would be fully legalized at both the state and federal level, and the states would adjust to a percentage of taxation similar to the rates at which beer, wine and spirits are now taxed. The industry would also settle down to a thriving mix of local, regional and national brands, and the illicit industry would join the party or quietly disappear into the night.

However, this is not that world. When cannabis eventually moves from Schedule I to Schedule III of the Controlled Substances Act, the federal status of cannabis will be that of a tightly monitored drug similar to Tylenol with codeine, ketamine, anabolic steroids, and testosterone, all of which are now Schedule III.

MORE INVESTMENT IN CANNABIS

Industry experts agree reclassification will result in immediate tax benefits, and many believe it moves cannabis further into the mainstream, which may result in more investment in state and local companies in addition to the MSOs. However, very few see reclassification as a way forward for cannabis beyond that.

STATE CANNABIS STILL OUT OF COMPLIANCE

If & when reclassification takes effect, both adult-use businesses and medicinal cannabis companies will be out of compliance with federal law as applied to Schedule III drugs. This is because the procedures involved in getting a drug approved by the FDA so that it may be sold as a pharmaceutical are years-long, multi-million dollar processes. Michael Schwamm, cannabis legal expert with Duane Morris LLP, commented, "Each drug has to be approved with research and trials, etc. It's unclear what the FDA will need for cannabis to be approved. Would one trial be enough for all cannabis products, or just one specific product? Also, would that trial suffice for all uses or just specific indications? One thing's for sure, flower can't be approved under the current process, because THC levels vary too much bud-by-bud."

It is unlikely that states will conform to these new federal standards and revoke the licenses of their adult-use or medicinal companies. After all, both types of businesses have been approved under the far more onerous Schedule I. So, it is likely the industry will continue to flourish state-by-state while still being out of compliance federally.

BANKING AS BEFORE, LOANS BETTER, CREDIT CARDS STILL OUT OF REACH

The President of the American Bankers Association recently clarified that its members will still not serve those cannabis businesses which don't comply with federal law, even if cannabis is moved to Schedule III, so cannabis businesses will still be denied access to much of banking at the federal level.

Peter Su, cannabis banking specialist with Hanover Bank, believes credit should ease for businesses once reclassification takes place, because the stigma around cannabis will be lessened, and more lenders will feel comfortable. "Also, with 280E gone at both the federal and state levels, the profitability of many cannabis companies will be improved," Su says.

However, Su believes that it'll mainly be the big MSO's that reap the lending benefits of reclassification. "Some banks will say that it's worth doing a \$130 million deal, like what was done for Trulieve (Cannabis Corp) last year, but not a 100,000 loan. It's hard to get financing for an individual pizzeria, for example, but not hard to get financing for a pizzeria group."

Su is less optimistic about merchant services being available for cannabis companies. "Credit card companies want zero risk. If there's still a question of murkiness, like being out of compliance with FDA regulations, they won't go for it."

A NEW COLE MEMORANDUM?

In 2013, Deputy Attorney General James Cole issued a memorandum for all United States attorneys stating that the U.S. Department of Justice would now focus on serious violations of federal drug law, including organized crime, sale on public lands, and sale to minors while leaving other, less serious, cannabis violations to the states to prosecute.

With its transfer to Schedule III, cannabis's federal status will still be at odds with its status in many states, and the DOJ may see fit to provide its attorneys with another similar memorandum clarifying its minimal marijuana enforcement.

OTHER WORKAROUNDS NEEDED

Reclassification will still leave a cannabis industry hamstrung at the federal level, and workarounds from Congress and other federal institutions will still be needed. Congress's approval of the S.A.F.E.R. Banking Act would go a long way to opening up full banking and merchant services.

Attorney Schwamm believes it's possible the FDA will give cannabis blanket approval or even tacitly allow interstate commerce, possibly issuing a Cole Memorandum-style notice that they will not be enforcing interstate commerce regulations for cannabis.

Congress might even go as far as to modify the definition of Controlled Substances, as has been done for alcohol in the Controlled Substances Act: "The term [Controlled Substances] does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986."

POSSIBLE WAR BETWEEN THE STATES?

Not everyone in the cannabis industry is comfortable with the idea of interstate commerce. Those states whose cultivators rely on costly indoor facilities would likely be at a competitive disadvantage with states with relatively inexpensive outdoor grows. Schwamm sees things succinctly: "Winners would be states like California, Nevada, and Arizona. Losers would be the Northeastern states. Those cultivators do not want interstate commerce."

FURTHER INDUSTRY CONSOLIDATION IN THE FUTURE

Should the feds provide a better way forward for FDA approval and interstate commerce, further industry consolidation would be likely. Right now, less than 25% of cannabis businesses are making a profit. Given that FDA compliance is capital-intensive, many of these businesses would not be in a strong position to step up to the federal level. This would likely cause our industry to become more consolidated in the hands of those with deeper pockets. Those businesses would be able to create a strong national brand presence, and with access to cheaper funds through the federal banking system, the cycle of big-getting-bigger would probably continue. Small cannabis businesses could become further marginalized while concentrating the industry's future in the hands of fewer and larger MSOs.

SOCIAL EQUITY VALUES MAY STRUGGLE

Many states have established their cannabis industries on a foundation of social justice, using legalization to right generations of wrongs caused by the country's war on cannabis. Special priority for licensing has been awarded to those who were arrested for then-illegal cannabis activities or who have lived in communities that were disproportionately affected by poverty and the nation's fight against drugs. New York state's goal, for example, has been to award 50% of adult-use cannabis licenses to social and economic equity applicants, and to award those licenses first. On the other side of the country, the City of Los Angeles established its Social Equity Program "to acknowledge and repair the harm caused by the War on Drugs and the disparate enforcement of cannabis prohibition." The California Cannabis Equity Act of 2018 granted Los Angeles almost \$16 million to assist equity applicants.

Despite these and other state and local efforts, the stark reality of business in cannabis, with its high taxes, over-regulation, and competition from the illicit industry, has forced many social equity firms out of business or caused them to take on wealthy non-social equity partners so they can survive.

Federal reclassification, with its further regulations and increased demands for capital, could put more pressure on the small “mom-and-pop” social equity businesses, creating additional impediments to their ability to compete with the large, deep-pocket MSOs. In the end, we may see the Social Equity Vision, with its goal of “decreasing disparities in life outcomes for marginalized communities”, being lessened to give way to the financial actualities that assail an embattled, overtaxed and overregulated, cannabis industry.

CANNABIS WILL BECOME FULLY LEGAL

In the end, however, the disparities between the federal status of cannabis, soon to be elevated to Schedule III, and cannabis’s status among the states, which varies from fully illegal to completely legal adult-use, must give way to an open and fair national playing field. It’s also quite possible that the rescheduling of cannabis by the DEA may cause more states to legalize adult-use.

Currently, 57% of Americans believe cannabis should be legal for adult-use, while another 32% believe it should be legal of medical use only. The comment phase of the DEA’s transfer of cannabis to Schedule III closed on July 22, 2024, with the DEA receiving over 43,000 comments, the most ever received for the rescheduling of a drug. 35% of commenters approved the reschedule, while another 57% said it should be descheduled altogether and made fully legal. Only 8% supported cannabis remaining as a Schedule I substance. With such overwhelming support, it is only a matter of time before cannabis attains a national parity with alcohol.

THE KEY TO THE FUTURE: LESS TAXATION AND REGULATION

The key to cannabis’s future lies not just in its federal status, but more importantly in how it’s treated by the states. Currently, the states are over-taxing and over-regulating cannabis to such an extent that the industry finds it very challenging to make a profit. Indeed, studies have shown that any more than a 20% price difference, and consumers will buy their cannabis from the cheaper illicit market.

A review of excise taxes imposed on alcohol, which are also levied by the federal government as well as states and cities, shows a rough range of between 3% for beer up to 19% for liquor. Combined with 0%-10% sales taxes, alcohol taxation is mostly below or close to the 20% level that would cause a bootleg industry to spring up.

The excise taxes imposed on cannabis in some states (and likely all under rescheduling), combined with sales tax, which the illicit industry also doesn't pay, cause the price differential (legal vs. illicit) to start at 20% and go up from there. Is it any wonder that the illicit industry dwarfs the legal industry in most states? And that 75% of legal cannabis businesses are in the red?

Unless the states change the way they treat cannabis companies, when the day comes that cannabis is made fully legal, what's left of the industry will still be saddled with hefty state taxes and regulations. State governments need to lower tax levels and regulation to a reasonable level as soon as possible. Rescheduling cannabis to Schedule III on the CSA is a step forward for our industry. But our states must remake themselves into healthy places for cannabis companies to do business for our industry to thrive.

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ENSURING HEALTH AND SAFETY IN THE CANNABIS INDUSTRY: PREPARING FOR FDA COMPLIANCE

KIM STUCK CP-FS, CQA (ALLAY CONSULTING)

The cannabis industry stands at a crossroads with the potential rescheduling of THC from Schedule I to Schedule III under the Controlled Substances Act (CSA). This change will inevitably cause increased regulatory scrutiny, especially from the FDA, and mandates stringent adherence to health and safety standards. Currently, many cannabis companies operate with minimal regulation concerning these aspects, posing risks to businesses due to lack of quality assurance and consumer safety. I would like to emphasize the critical need for cannabis businesses to achieve FDA compliance or obtain Current Good Manufacturing Practices (cGMP) certifications to prepare for future regulations and avoid severe repercussions like fines, recalls, or closures. At this time, there are already many companies preparing for the future and have or are working towards cGMP Certification and are set up to thrive when schedule III is passed and when international and interstate sales are permitted. Some states already require a certification to apply for a license, such as New York and Florida, putting the companies in those states ahead of the game. The requirement to be compliant with FDA regulations is becoming more and more common as time goes on and will eventually be the norm if you are conducting business in the cannabis/hemp industries, regardless of rescheduling.

THE FRAGMENTED REGULATORY LANDSCAPE

Cannabis remains a Schedule I substance under federal law, leading to a patchwork of state regulations that vary widely in their approach to health and safety standards. Some states are regulated by a local or state health department, while others are not overseen at all. In most states budget and bandwidth prevent the proper regulation of cannabis products when it comes to health and safety. This inconsistency has resulted in disparities in product quality and safety across the industry. In some states the department of revenue has required testing and some quality control measures, but the lack of health department regulation has allowed in many cases substandard products to enter the market. This fragmented regulatory environment underscores the urgent need for a unified approach to cannabis regulation that prioritizes consumer health and safety. Some states have started requiring cGMP Certification as a solution to ensure safe products without having to spend state resources to regulate cannabis.

The requirement of cGMP Certification ensures that the companies are passing an annual audit to FDA standards by a third-party accredited certification company, leaving regulators to only have to ensure they uphold their certificate. This practice is becoming more and more common, much like in the wholesale food space, this will eventually be an industry driven requirement to conduct business.

THE SIGNIFICANCE OF FDA COMPLIANCE

FDA compliance is synonymous with adherence to rigorous safety, efficacy, and quality standards. For the cannabis industry, aligning with FDA regulations means adopting practices that ensure product safety, such as accurate labeling, contamination prevention, and robust quality control systems. These measures are crucial not only for protecting consumers but also for building trust and credibility in the market. FDA regulation is going to happen eventually, it is not a matter of if, but really a matter of when. With the newest DEA announcement, companies are realizing that FDA compliance as a proactive approach can open doors to new markets and opportunities, both domestically and internationally, as it signals a commitment to high standards of product quality and safety to regulators and consumers alike.

THE IMPORTANCE OF CGMP CERTIFICATION

Current Good Manufacturing Practices (cGMP) are a set of regulations enforced by the FDA to ensure that products are consistently produced and controlled according to quality standards. For cannabis companies, obtaining cGMP certification from an accredited third party is a proactive step towards regulatory compliance and can safeguard your company's future. This certification demonstrates a commitment to maintaining high standards in manufacturing, which is crucial for gaining consumer trust and staying competitive in the market. cGMP certification involves rigorous testing, proper documentation, and maintaining high hygiene standards in manufacturing facilities, all of which contribute to the production of safe and high-quality cannabis products.

The initial cost to companies to implement these standards is usually much less than companies might think with the right partners involved. To understand the full cost, I recommend a cGMP gap analysis of your facility before deciding to go down the cGMP certification path. This audit will identify any facility changes that might need to be made and evaluate all documents that need to be created or updated to meet cGMP standards. I have found over the years, most companies (in cannabis and wholesale foods) overestimate their initial compliance to these standards, and without a proper evaluation they are unable to understand the standards fully or become compliant on their own. Working with a seasoned consultant and accredited certification company is key to compliance and certification success.

PREPARING FOR FUTURE REGULATIONS

The potential rescheduling of THC to Schedule III is expected to bring about increased regulatory oversight by the FDA. To navigate this transition successfully, cannabis companies must take several proactive steps:

1. IMPLEMENTING CGMP STANDARDS:

Adopting cGMP standards is essential for ensuring product quality and safety. This involves comprehensive training programs for employees, regular internal audits, and the establishment of robust quality control systems. Implementing these practices not only prepares companies for future regulations but also enhances their operational efficiency and product consistency. Most companies find it difficult to become compliant with these standards without the help of 3rd party audits or without receiving an outside accredited certification. Having a set standard that they can rely on and being able to prove their compliance by passing a certification audit is the best way to ensure compliance.

2. CONDUCTING REGULAR AUDITS:

Regular internal audits are a required part of a cGMP program, and third-party external audits are critical for identifying and addressing potential compliance issues that may not be easily recognized by someone in the facility from day to day. Third-party audits provide an unbiased assessment of a company's compliance status, helping to identify areas for improvement and ensure that regulatory standards are consistently met.

3. INVESTING IN QUALITY CONTROL SYSTEMS

Robust quality control systems are essential for detecting and preventing contamination, ensuring accurate labeling, and maintaining product consistency. Investing in advanced testing and monitoring technologies can help companies meet stringent regulatory requirements and ensure the safety and quality of their products. Many times, this includes a robust track and trace system that can follow all of your ingredients from the beginning to the end of your product cycle. Many people don't understand that a THC track and trace program that is required by many states is not enough to be compliant with a cGMP standard. These programs only follow the THC, and don't address issues with any other ingredients or equipment throughout your processes.

4. TRAINING EMPLOYEES:

Comprehensive training programs are also required in a cGMP compliance plan to ensure that employees understand and adhere to regulatory standards, reducing the risk of non-compliance. Training should cover all aspects of cGMP and FDA regulations, from proper documentation practices to contamination prevention and quality control measures. These trainings most importantly teach employees how to properly update SOP's and document all activities that are in place to mitigate risk, in case something goes wrong. Conducting mock recalls with your employees will also help them know exactly what to do in an emergency situation. Nothing looks better to regulators than a well-trained staff.

5. STAYING INFORMED:

Keeping abreast of regulatory changes and industry best practices is crucial for maintaining compliance and anticipating future requirements. Companies should establish mechanisms for monitoring regulatory developments and participate in industry forums and associations such as the Cannabis Chamber of Commerce to stay informed about emerging trends and best practices.



RISKS OF NON-COMPLIANCE

Failing to comply with FDA regulations or achieve cGMP certification can have severe consequences for cannabis companies. These risks include:

- **FINES AND LEGAL ACTION:**

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- **PRODUCT RECALLS:**

Regulatory authorities can mandate product recalls if safety standards are not met, resulting in significant financial losses and reputational damage. Recalls can erode consumer trust and loyalty, making it difficult for companies to regain their market position. Recalls already happen regularly in state departments for everything from high mold/microbial counts to pesticide issues. Recalls happen in all industries to all companies, being ready to handle a recall is the best way to ensure the safety of your company.

- **OPERATIONAL CLOSURES:**

In severe cases, regulatory bodies can shut down operations until compliance is achieved. Shutdowns can cause operational disruptions, leading to financial losses and delays in product delivery. Building your facility to cGMP compliance from the beginning and putting a robust quality assurance system in place to avoid product contamination or unallowed working conditions is the easiest way to prevent a closure from happening.

THE BENEFITS OF PROACTIVE COMPLIANCE

Proactively seeking FDA compliance and cGMP certification offers numerous benefits for cannabis companies:

- **ENHANCED CONSUMER TRUST:**

Meeting high safety and quality standards builds consumer trust and loyalty, which is crucial for long-term success. Consumers are more likely to purchase products from companies that prioritize their safety and well-being. Marketing your product to show you are cGMP Certified is an excellent way to show your company goes above and beyond when it comes to consumer safety. It also cuts down your likelihood of being shut down or going through a recall and ruining your brand reputation.

- **EXPANDED MARKET ACCESS:**

Compliance with FDA regulations can open doors to new markets and opportunities, both domestically and internationally. Companies that meet stringent regulatory standards can expand their market reach and tap into new customer segments. Many states require cGMP Certification already to even get a license and when interstate commerce is allowed you will want to be prepared to sell to those other markets. Thinking long term, other countries also have cGMP requirements for international sale.

- **COMPETITIVE ADVANTAGE:**

Companies that prioritize compliance and quality can differentiate themselves in a crowded market, attracting more customers and investors. Compliance with regulatory standards demonstrates a commitment to excellence and can enhance a company's reputation and market position. It also safeguards investor money by mitigating risk to their investment. With more and more companies becoming certified to cGMP standards, if you haven't started the certification process, you are already behind your competitors.

- **OPERATIONAL EFFICIENCY:**

Implementing cGMP standards and investing in robust quality control systems can enhance operational efficiency and product consistency. These practices help companies streamline their operations, reduce waste, and improve overall product quality. We have seen all kinds of benefits when it comes to getting cGMP Certification, one being less employee turnover and a more confident, trained staff. cGMP requirements automatically make an operation more efficient when the procedures are put in place. It is a win on so many levels.

CASE STUDIES: LESSONS FROM OTHER INDUSTRIES

Lessons from other industries that have undergone similar regulatory transformations can provide valuable insights for the cannabis industry. For instance, the pharmaceutical and food industries have long adhered to stringent FDA regulations and cGMP standards to ensure product safety and quality. These industries have developed best practices for achieving compliance, such as investing in advanced testing technologies, conducting regular audits, and implementing comprehensive training programs for employees. By studying these examples, cannabis companies can gain valuable insights into how to navigate the regulatory landscape and achieve compliance.

COLLABORATIVE EFFORTS FOR INDUSTRY-WIDE COMPLIANCE

Achieving industry-wide compliance with FDA regulations and cGMP standards requires collaborative efforts from all stakeholders. Industry associations, regulatory bodies, and cannabis companies must work together to develop guidelines and best practices that ensure product safety and quality. Collaborative initiatives can include:

- **DEVELOPING INDUSTRY STANDARDS:**

Industry associations can develop standards and guidelines that promote best practices and ensure compliance with regulatory requirements. Many international standards companies have been in the process of writing cGMP's for years such as ASTM. These standards can serve as a benchmark for companies and help drive industry-wide improvements in product quality and safety.

- **PROMOTING EDUCATION AND TRAINING:**

Industry associations and regulatory bodies can promote education and training programs that enhance understanding of regulatory requirements and best practices. Training programs can cover all aspects of compliance, from quality control measures to proper documentation practices. The more trained our workforce is the better the industry will do as a whole.

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- **ADVOCATING FOR SUPPORTIVE POLICIES:**

Industry associations can advocate for policies that support the growth and sustainability of the cannabis industry. These policies can include incentives for companies that achieve compliance, as well as initiatives that promote research and development in the industry.

The impending rescheduling of THC and the resulting increased regulatory oversight underscore the urgent need for cannabis companies to prioritize health and safety standards. Achieving FDA compliance and obtaining cGMP certification are critical steps in preparing for future regulations and avoiding potential fines or shutdowns. By investing in robust quality control systems, conducting regular audits, and staying informed about regulatory changes, cannabis companies can ensure their products meet high standards, protect consumer safety, and thrive in a competitive market. Collaborative efforts from all stakeholders, including industry associations such as the Cannabis Chamber of Commerce, regulatory bodies, and cannabis companies, are essential for achieving industry-wide compliance and ensuring the long-term success of the cannabis industry.

HOW WILL THIS IMPACT MARKETING

ROGER TOWER (TOWER AGENCY)

Once cannabis is legalized at the Federal level, it will open up a huge opportunity for businesses to have more options for marketing their brand that were not available previously.

The largest opportunity will be nationwide advertising channels like television, radio, print, and digital platforms that were not able to accept cannabis advertising due to their nationwide presence and operating in states that did not yet legalize cannabis.

For example, larger TV advertisers sell national ad placements, and with legalization, there is a good chance that these rules will be relaxed. This is subject to change based on the nature of how Federal legalization occurs and what guidelines are set in place for advertising.

Regardless of how rules are created, there will be more brand visibility available with companies who may not be as interested in what the rules are and are willing to let the ads slip in due to the high price that cannabis companies will be willing to spend to be more known nationwide. Google Adwords, Facebook, and other top media platforms do not allow ads. This should be expected to change once Federal Legalization occurs.

The same is true for sponsorships of mainstream events and sports teams. Previously you would not be able to do it due to each state having different guidelines, but once it becomes nationwide, there will be more opportunity to sponsor events that travel around the nation. There will also be more collaborations with non-cannabis brands for co-branded products.

Marketing budgets will also be increased to meet the demand of the new opportunities and to outbid the other companies vying for more attention across the country. There will also be more jobs available for top marketing talent and agencies to specialize in this type of advertising.

Direct-to-consumer sales and online sales have always been complicated with only having sales in the current state and no shipping of products to consumers. Depending on how the rules are written, this could be a huge opportunity for online sales that was never available before.

It should also be expected that more market research, analytics, and data about the industry will become more available. The standardization of reporting on sales metrics will create the ability to better target and market to consumers based on nationwide data.

One of the most exciting aspects of inter-state commerce and federal legalization is the branding that each state/region will be able to create. For example, California cannabis is sold as one of the highest-priced items in Amsterdam and nowhere else in the world can grow cannabis the way that the Emerald Triangle / Humboldt County can grow.

California can now ship its classic Blue Dream strain across the country and brand itself as the highest quality in the state. This will create other regions to focus on developing their own specialties. For example, one region may become the best place to create concentrates and another be great for creating edibles. The way that you can't get NY pizza/bagels anywhere else, due to the quality of the water, you can't get Blue Dream which is true CA Blue Dream unless it is from Humboldt. Sour Diesel strain is very popular in the Northeast region and they can create whole brands around it being their specialty. Why buy blue dream locally, when you can get the best quality from California?

Brands in California have a bigger market and a stronger demand for looking cool to develop great packaging and this will also be a strong advantage when legalization occurs. If you compare it to the Colorado market, you'll see very basic packaging and not high-quality designs, product names, detailed teepee contents/inserts, etc. that are a requirement to compete in the larger California market.

Lower quality brands that are only surviving because of the limited access in their state will no longer be relevant or able to compete at that level. Now that they have to compete nationwide or maybe even globally, there will be a lot more emphasis on product quality.

Overall Federal legalization will significantly change the marketing landscape to allow access to a significantly larger market, with more accessible ways to sell the product, and a more educated set of marketing professionals entering the industry.

HOW WILL THIS IMPACT PACKAGING REQUIREMENTS

SETH MEYER (O.BERK COMPANY)

Federal legalization of cannabis will have two broad effects on packaging. The first is regulations to ensure safety and compliance. The second, material sourcing and sustainability.

REGULATIONS TO ENSURE SAFETY AND COMPLIANCE

STANDARD REGULATIONS

Standardized regulations will replace state and local guidelines for cannabis packaging. These regulations aim to address the potential health risks associated with the accidental ingestion of cannabis products, especially by children, and to ensure that cannabis products are used responsibly and safely. This will include model guidelines to ensure safety and compliance in a rapidly growing industry.

UNIVERSAL DESIGN

Expect a universal design that adheres to various cannabis packaging requirements to be implemented. This design will address concerns about safety and prevent misuse.

CHILD RESISTANT FEATURES

Packaging will need to incorporate child-resistant features to prevent accidental consumption by minors. This includes making packaging tamper-proof and difficult to open for young children.

CLEAR LABELING

There will be a focus on clear labeling, including proper dosage information and warnings. Packaging that mimics popular kids' images, snacks and candy, potentially leading to accidental consumption, will be discouraged.

MATERIAL SOURCING AND SUSTAINABILITY

COMPLIANCE WITH REGULATIONS

Sustainable packaging must meet federal safety and labeling requirements.

LOCAL SOURCING

Sourcing materials locally to reduce the carbon footprint associated with transportation.

SUSTAINABLE MATERIALS

There is a push for sustainable materials in packaging, such as biodegradable plastics, recycled paperboard, and glass, which are environmentally friendly and can be recycled or decomposed naturally.

MATERIAL SOURCING AND SUSTAINABILITY

BIODEGRADABLE MATERIALS

Use of biodegradable materials like hemp-based plastics, which can decompose naturally and reduce environmental impact.

RECYCLABLE PACKAGING

Encouraging the use of recyclable materials such as glass or cardboard that can be easily processed in recycling facilities.

REUSABLE CONTAINERS

Designing packaging that can be reused for other purposes, thereby extending its lifecycle and reducing waste.

RESEALABLE

Packaging often needs to be resealable to keep product quality and freshness, as well as to ensure continued safety.

OPAQUE PACKAGING FOR EDIBLES

California and other states require that packaging for edibles must be opaque to prevent the product from being visible from the outside.

MINIMALIST DESIGN

Adopting a minimalist approach to packaging design to use fewer materials and reduce waste.

ECO-FRIENDLY INKS

Using soy-based or other eco-friendly inks for printing on packaging to minimize the release of volatile organic compounds (VOCs).

CONSUMER EDUCATION

Educating consumers about the importance of sustainability and how to properly dispose of or recycle cannabis packaging.

HOW WILL THIS IMPACT HOSPITALITY AND TOURISM

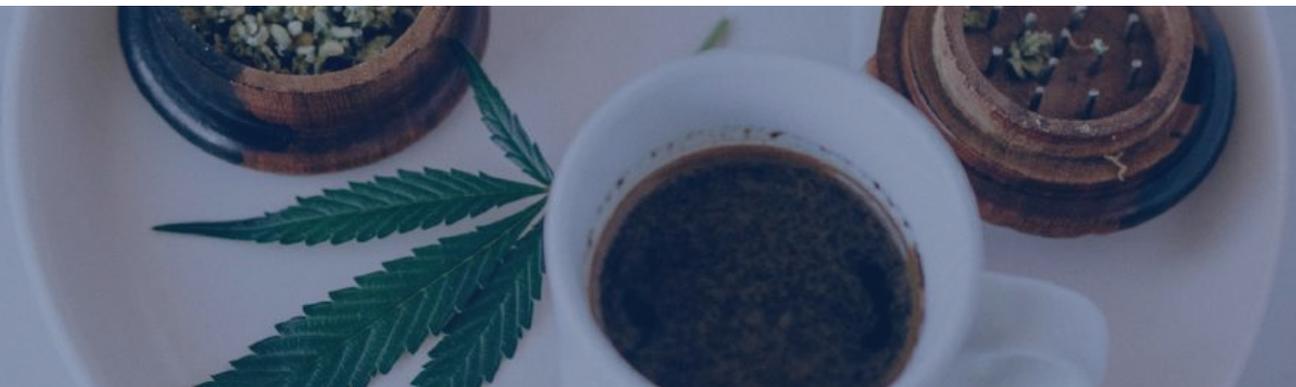
CHRISTOPHER LAPORTE (RESET)

With US cannabis sales reaching all-time monthly highs [1] and the industry preparing to launch 5,000+ dispensaries in the next 12-24 months, the race to the BOGO bottom continues, simply on a grander scale. Meanwhile in Nevada, after a few years of legislative and regulatory processes, an innovative piece of cannabis hospitality legislation, AB341 [2], was signed into law on June 4, 2021. Coffee shops and tasting rooms aren't an original idea, however lawmakers, with the cooperation of local community, business, and educational leaders would present entrepreneurs the opportunity to open cannabis consumption lounges in Nevada. The first license issued by the Cannabis Compliance Board went to Thrive Cannabis Marketplace and their Smoke & Mirrors lounge with doors opening in Las Vegas on February 23, 2024 [3]. Their success presents an opportunity to accelerate industry growth through cannabis hospitality and tourism with the implementation of on-premise cannabis venues.

As of 2023, cannabis travel and tourism has already developed into a \$57B industry with the Cannabis Travel Association International projecting \$444B by 2030 [4]. The opportunity for on-premise venues to amplify these numbers begins with state regulations. We've seen markets like California limit food and beverage sales within cannabis lounges, resulting in creative business structuring to include the obvious advantage of food service in a venue selling cannabis. Nevada's AB341 gave the license holders freedom to incorporate all aspects of hospitality, food & beverage, ticketed entertainment, retail, and guest services to their cannabis business model. Whether you want to open a comedy club, indie theater, hair salon, or driving range, if you can add cannabis products to it, you're better equipped to succeed than simply providing a smoking room. By combining high-quality services, you create opportunities for premium pricing on cannabis products and additional revenue streams through activities, exclusive events, personalized experiences, and upscale amenities. This is no longer traditional retail cannabis. Sell the experience plus the service and the cannabis hospitality business model becomes a complementary asset to the cannabis industry at large.

While comparing cannabis to alcohol raises a fair share of concerns, certain business elements make it the perfect correlation, especially around sales growth. On-premise alcohol sales refers to the sale of alcohol in establishments where it is intended to be consumed on-site, such as bars, restaurants, hotels, and wineries. Whereas off-premise sales include alcohol sold for consumption away from the establishment. According to CGA by NielsenIQ, the average consumer drinks half of their alcohol on-premise [5]. Additionally, on-premise visits can be important for driving brand awareness, trial, and spending for both at-home and out-of-home consumption. Today dispensaries sell their retail cannabis for off-premise use with a few exceptions in states that have legalized “tasting-room” style businesses. Expanding the market through on-premise hospitality venues that follow the Nevada regulatory model seems obvious. In 2022 retail sales of alcoholic beverages in the United States saw \$147B in off-premise sales and \$111B in on-premise sales, or 43% of the total market [6]. With cannabis retail sales currently projected at \$49.7B by 2026 [7], the implementation of on-premise venues in legal jurisdictions could net an additional \$22B if following a similar formula.

During the regulatory process of AB341, there was significant dialogue around indoor air quality and HVAC system requirements. While the importance of air quality for guests and staff alike continues to be high priority, trends in non-alcoholic beverages showcased an over-reliance on combustibles in cannabis lounges and a new opportunity to provide a more welcoming environment to our guests [8]. By focusing on a sophisticated cannabis-infused beverage program utilizing only high-quality ingredients, we believed that half of our customers would likely partake in drinking cannabis versus smoking. After 6 months of operations we can report over 60% of revenues come from infused drinks versus combustible flower options.



There are also important lessons to be learned from the success of hemp-derived THC beverages across the US, with and specifically in markets like Minnesota [9]. The explosive expansion to new markets through national chains like Total Wine & More, as well as direct to consumer online sales further prove the budding trend is one that state marijuana retailers, product developers, and regulators should pay close attention to. Providing a greater selection of low-dose cannabis infused drinks ranging from 1mg to 5mg per serving will continue to attract new consumers outside the traditional cannabis demographic.

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We can't be satisfied with the continued success of cannabis beverages alone. Cannabis-infused dining offers a unique and sophisticated twist on traditional culinary experiences, blending the artistry of cooking with the nuanced effects of cannabis. Chefs skilled in cannabis cuisine are holding private events where a multi-course meal sells for hundreds of dollars competing with some of the best restaurant experiences in Las Vegas. But we have to take things slow. As regulators look for more assurances in the operations of these venues, the first step should be single-use cannabis-infused accoutrements. Kiva Brand collaborating with Fatburger with their cannabis-infused ketchup packets are a great example of product innovation [10] and mainstream marketability. With proper regulatory support, we can pair a variety of single-serve sauces and dressings with food menus and create unique dining experiences at on-premise cannabis venues.

History proves that as legal cannabis markets mature, the industry is challenged to find more revenue streams to compensate for declining sales growth [11]. In Nevada we enjoyed sales of \$1B in Fiscal Year 2021 only to see annual sales drop to \$965M in 2022 and \$848M in 2023 with early estimates suggesting we'll see that downward trend continue in 2024 [12]. In an effort to shift public perceptions around public cannabis consumption, on-premise cannabis venues can showcase the opulent and professional standards associated with Las Vegas hospitality and shift the narrative to a more mainstream, socially accepted activity. Combined with regulatory knowhow and an extensive understanding of cannabis products, these venues offer guests a guided journey satisfying both legacy consumers and newcomers alike. Should this strategy be adopted by multiple cannabis venues, the industry will attract a broader customer base, including individuals who might otherwise be hesitant to visit a cannabis dispensary. Rather than dispensaries focusing on a market where daily users represent 42% of that demographic [13], we will see that trend reverse by reaching mainstream audiences through on-premise cannabis venues that offer more than the airport smoking lounge.

PART III

WHAT HAPPENS NEXT

PART III: WHAT'S NEXT?

WHAT YOU SHOULD DO NOW

KIM STUCK CP-FS, CQA (ALLAY CONSULTING)

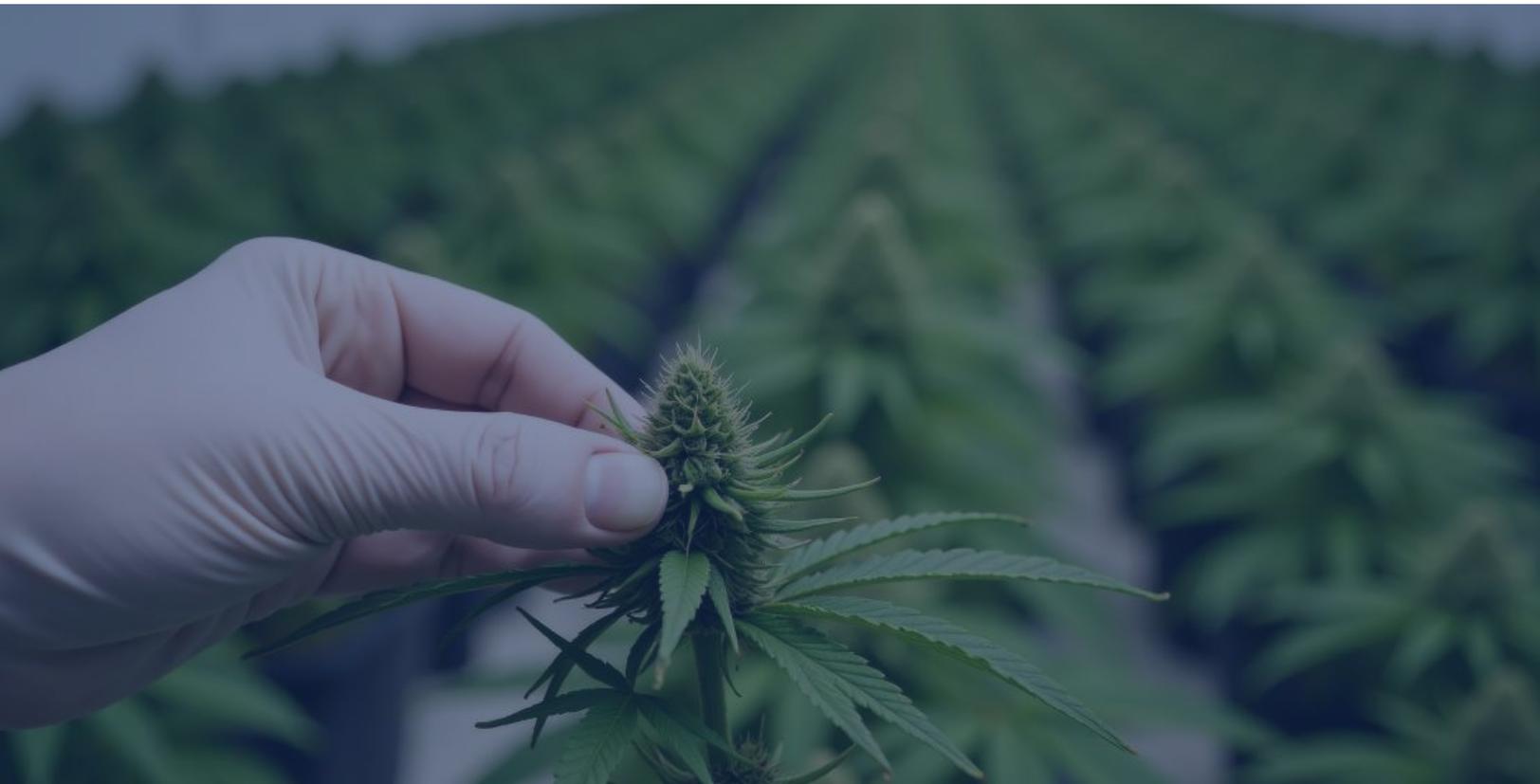
As federal legalization looms, cannabis companies must prepare for rigorous FDA and OSHA compliance. The FDA will likely enforce stringent regulations similar to those applied to pharmaceuticals and food products. Companies should immediately begin implementing Current Good Manufacturing Practices (cGMP) to ensure the quality and safety of their products. This includes maintaining proper documentation, conducting regular quality control checks, and ensuring that all processes meet high standards of cleanliness and quality assurance.

Additionally, it is crucial to anticipate the need for current cGMP 211 certification, which will be essential for compliance once THC is potentially rescheduled to Schedule III. This certification will help ensure that all manufacturing practices meet federal guidelines and can withstand regulatory scrutiny.

In parallel, preparing for OSHA compliance is equally important. OSHA will enforce workplace safety standards to protect employees from hazards specific to the cannabis industry. Companies should conduct thorough risk assessments and implement safety protocols to address issues such as chemical exposure, equipment safety, and proper ventilation. Regular training programs should be established to ensure that all employees are aware of and adhere to these safety standards. By proactively addressing OSHA requirements, cannabis businesses can create a safer work environment and avoid costly penalties and shutdowns. Taking these steps now will not only ensure compliance but also build a solid foundation for sustainable growth in a federally regulated market.

I have been working with clients for years to prepare them for this transition. Achieving compliance with federal standards is challenging and time-consuming, but it is inevitable. Even if federal legalization doesn't happen immediately, it will eventually, and the best way to protect your company is to become compliant as soon as possible.

This proactive approach will reduce the last-minute scramble to meet federal regulations when legalization is finally implemented. Companies that are prepared for federal legalization will have a much smoother transition and will gain a competitive edge over those that may face substantial fines or shutdowns once federal regulators become involved. Being proactive rather than reactive will determine whether your business thrives or fails in the future.



WHAT SHOULD WE DO NOW?

RACHEL WRIGHT CPA, MST (VERDANT STRATEGIES)

What should we, as cannabis businesspeople, do now with everything that's happening in our industry? How do we best steer our ship forward?

This is a really great question given that our normally tumultuous sector is going through even more changes and challenges. We have the upcoming reclassification of cannabis from Schedule I to Schedule III on the CSA. At the same time, many of us are struggling to turn a profit due to over-taxation and regulation by the states, and to the unequal playing field we find ourselves on with the illicit market. The issues facing us have never been more complex!

PUTTING AWAY THE CRYSTAL BALL

I feel we need to put our crystal balls away here. Anytime we as an industry, as professionals and operators, have thought something was going to happen, sometimes completely the opposite situation has taken place. Instead, we need to operate within the current state of the industry rather than wishing it would be a certain way or where we think it will be in the future. Especially with the state of politics and the upcoming elections, the divisions and gridlocks within Congress, and their ability to get anything over the finish line. Meaning that 280E is still here for the foreseeable future. That rescheduling gets postponed or derailed is a possibility we must always keep in mind.

THE GOOD OLD DAYS

A lot of folks we work with have been in business legally since at least 2018, and during that time, there have been a lot of fluctuations. Here in California, it was the Gold Rush between 2018 and 2021 and many operators made a lot of money. Unfortunately, because they were making so much money, they weren't thinking about operations. They weren't focusing on efficiencies or other practices which are normal for most industries, like their profitability on each skew or what their best product mix was. I tell my clients they need to get out of that "windfall-of-cash" mindset. It's never coming back.

THE MATURE MARKET

I'm preparing my clients for a more mature market. This includes the possibilities that might take place should cannabis be rescheduled, but it's not limited to that. So, what does a mature market look like?

It's time to grow up and face the truth that this is a competitive market where more sophisticated businesspeople are coming to the table, so to speak, folks who are paying attention to running their operations as actual businesses. Whether you're a cultivator, manufacturer or retailer, you need to know what your actual cost is to produce each of your products, what's your gross profit per skew, which skews have the best profit margin. What are some more creative ways to stay profitable other than just offering discounts to get folks in the doors? That's what the new sophisticated cannabis entrepreneurs are doing.

KPIS

We have to pay attention to our Key Performance Indicators, our KPIs. Ratios like percentage COGS, our percentage gross profit, our percentage of facility costs versus our selling and marketing costs. We need to ask questions about our business, like, "Are there better ways to market? Are we thinking outside the box? Can we find new ways to create customers?"

CHOOSE VENDORS WISELY

As individual businesses, I think we need to examine our vendors and suppliers and choose to work with those who are actually benefitting the industry. For example, there are some suppliers and distributors who squeeze retailers so much, that they can't even make a profit. That kind of profiteering is the type of thing that makes an industry unsustainable in the long run. We need to work with vendors and suppliers who think of their relationships with their clients as long-term partnerships. We need to choose our vendors and suppliers wisely.

CHOOSE YOUR NET INCOME WISELY TOO

Another important number to choose is your Net Income -- your bottom line. Because that number ultimately affects the stakeholders of your business: your partners, shareholders, and investors. It's not just about doing "the best you can." I like to target a Net Income number with a client and reverse engineer it, work backward from there. I believe a healthy retail store, for example, should be making 10%-15% after taxes and after paying working owners a realistic wage. It's achievable, but you must run a tight ship to get there.

There's a lot of math in these questions, and maybe you're a visionary and math isn't your strong suit. But that's where you can bring in your numbers-partners like your CPA and your in-house CFO, if you have one.

EXPANDING MULTI-STATE AND INTERNATIONALLY

Maybe you have one solid retail location or a state-wide chain, and you want to spread multi-state. What does that look like to plan it out? Start with your 1 or 2-Year Goals, then divide these out into quarterly objectives. Then make sure your quarterly objectives are being met. Another consideration is whether you want to find co-packing arrangements and just be a brand.

These are the kinds of conversations I'm having with my clients. I tell them we need to get more sophisticated, and that this planning phase is what separates the "women and men from the boys and girls." The future of our industry is in cross-border types of transactions, not just inter-state, but international transactions as well. There are producers in Thailand, Mexico, South America, Africa, Europe, and of course Canada, and it's worth doing the research and getting to know them, in preparation for the opening up of our industry.

GOOD MANUFACTURING PRACTICES

You'll want to focus on Current Good Manufacturing Practices and getting cGMP certified so that your company is compliant with the FDA. Kim Stuck has a great piece on this earlier in this white paper. When cannabis is reclassified as Schedule III, this certification will be required to go interstate, and Europe is demanding this level of compliance as well.

CHALLENGES: THE ILLICIT MARKET, OVER-TAXATION, AND OVER-REGULATION

We have some fundamental challenges as an industry that we're going to need to resolve for the market to mature and stabilize. These are the illicit market, and over-taxation/over-regulation.

Right now, illicit cannabis is flourishing and driving legitimate companies out of business. I think this is the responsibility of the state regulators and the tax agencies. They need to support the industry which is paying the taxes instead of enabling the black market. By lowering taxes, the states can enable legal cannabis to operate on a level playing field with the illicit. In the end, the states will collect more taxes because our businesses will be healthy and growing.

Studies have been conducted, and there's a threshold where if a legal product is greater than 15%-20% more expensive, people will buy it from the illicit market. So, for cannabis taxation to support a vibrant legal industry and be viable in the long-term, taxes have to be structured to fall below that threshold.

As the cannabis industry matures, one of the most important actions is that the industry players are going to need to come together and play politics like politics was meant to be played. At this time, cannabis doesn't have enough money or clout for the type of lobbying that needs to be done to achieve this fair taxation and sensible regulation, but with reclassification and the removal of cannabis's status as a federally illegal substance, the regulators and tax authorities will need to be supported to see reason. For this to be a long-term viable industry, cannabis needs to be treated fairly the same as every other business. You don't see illegal bootleggers putting legitimate whiskey and beer companies out of business, do you?

MOVING FORWARD

We have an amazing industry with dynamic and intelligent people who are paving the way for us. I love the people I meet in cannabis! We're an eclectic collection of innovators and problem-solvers with a spicy mixture of rebel thrown in. It's the perfect combination of attributes to take this new sector of the economy and mature it to new height

But it means we can't just keep trying to do it like business-as-usual. Let's face it – the green rush is over. We're going to have to evolve our companies, by making them more efficient and profitable, by finding new ways to create customers, and by upgrading to good manufacturing practices. We're going to need to support the players that support our industry, and push back against those vendors and suppliers, and those regulators and tax-promulgators, which threaten to undermine our future.

In the end, I believe we're going to see successful local and regional cannabis companies as well as cannabis businesses that cross state and national borders and bring first class cannabis to the world. I'm excited to be a part of this adventure. It will be a wild ride, but what's more exhilarating than participating in the growth of a new industry, its maturation and success?

Let's build cannabis together!

LEARN MORE ABOUT THE CHAMBER

The Cannabis Chamber functions to support the growth and development of the broader compliant cannabis industry (properly permitted businesses and ancillary products & services). Our local regional boards are dedicated to supporting cannabis businesses through our signature networking mixers, educational events, and shared resources.

Our goal is to help connect all aspects of the industry: Cultivation, Manufacturing, Distribution, Retail, everything in between, and everything around it. Contact us to learn more about how we can help you find the opportunities and partners you need.



Info@TheCannabisChamber.com

www.TheCannabisChamber.com