

the buzz:

Cannabis News & Policy Update

December 2024 Edition

FEDERAL UPDATES

Rescheduling: DEA Administrative Law Judge John Mulrooney announced that hearings on the Biden administration’s proposal to reclassify cannabis from Schedule I to Schedule III will run from January 21–March 6. Each of the interested parties selected to participate in the hearing will have a day dedicated to presenting their arguments, including testimony from witnesses who may also be cross-examined. As the designated proponent of the proposal, the DEA will make the first presentation. View the full schedule [here](#).

The rescheduling process has been mired by allegations that the DEA improperly communicated with prohibitionist group Smart Approaches to Marijuana (SAM). Two of the designated participants, Hemp for Victory and Village Farms International, submitted a motion to disqualify the DEA from the rescheduling hearings, to which the [DEA](#) and [SAM](#) summarily responded. While Mulrooney rejected the motion to disqualify the DEA, he expressed concerns with the responses from DEA and SAM.

Medicare and Medicaid: The Centers for Medicare & Medicaid Services proposed a rule clarifying that cannabis products, including CBD, are not eligible for coverage under Medicare Advantage plans or supplemental benefits for chronically ill patients. The federal agency is accepting public comments through January 27.

Canna Provisions Inc. v. Garland: A collection of marijuana businesses presented oral arguments in a federal appeals court December 5, challenging the federal government’s power to enforce federal prohibition in state-regulated cannabis markets. This authority was previously upheld by the Supreme Court in [Gonzales v. Raich](#), which the plaintiffs claim is no longer applicable following Congress’s decision to refrain from interfering in state marijuana laws. The judges’ barrage of questions directed to the plaintiffs appeared to indicate they were skeptical of their arguments.

CTA Compliance: Cannabis businesses required to meet the end of the year filing deadline under the Corporate Transparency Act may have a reprieve based on the case [Texas Top Cop Shop, Inc. et al. vs. Garland](#). At the end of this year, the U.S. District Court for the Eastern District of Texas will issue a nationwide preliminary injunction in favor of certain plaintiffs challenging the constitutionality of the CTA and its reporting requirements.

In response to this development, FinCEN advised “reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect.” (See <https://fincen.gov/boi>). However, this reprieve may be short-lived: On December 11, the government filed a motion to stay the injunction pending appeal. If the motion is granted, cannabis reporting companies may still have to meet the January 1, 2025 filing deadline, unless FinCEN grants an extension resolved.

“No 280E” Tax Return Positions Gaining Further IRS Attention: On December 12, 2024, the IRS issued a statement emphasizing the importance of proper use of Form 8275, a form many cannabis businesses have filed when seeking refund claims based on various arguments that IRC section 280E does not apply. The IRS stated that “a review of Form 8275 filings [of cannabis businesses] has revealed that some taxpayers have taken the position of disregarding the section 280E limitation using a variety of rationales that do not constitute reasonable basis” and warns taxpayers that any such filing will not operate to avoid penalties. The IRS further advised taxpayers in this posture should consult a tax professional or advisor “to determine how to come into compliance”.

Any taxpayer who thinks they may have filed an amended return without a reasonable basis, either with or without Form 8275, should seek a second opinion and advice as to how to remedy any failure to make a proper disclosure.

New Markets and Licensing Opportunities

Kentucky: The Office of Medical Cannabis selected the state’s first 36 medical cannabis dispensary licenses through a lottery on November 25. An additional 12 dispensary licenses were awarded via a lottery on December 16. Patients with qualifying conditions are expected to begin obtaining medical cannabis cards in December, and the OMC scheduled a monthly webinar series for potential patients and caregivers.

Florida: The Office of Medical Marijuana Use notified 22 businesses by letter that it intends to approve their applications for vertically-integrated Medical Marijuana Treatment Center (MMTC) licenses. This will nearly double the number of licensed MMTCs in the state. After the licenses are officially awarded, the recipients must submit a cultivation authorization within 60 days, processing authorization within 120 days, and dispensing authorization within 180 days before they become operational.

Nebraska: A Lancaster County District Court judge **dismissed** the lawsuit challenging the statewide ballot initiatives to legalize and regulate marijuana, **Initiative 437** and **Initiative 438**, which passed overwhelmingly on Election Day. Former state Sen. John Kuehn **appealed** the ruling, sending it to the Nebraska Court of Appeals, or it can be heard immediately by the state Supreme Court. If the measures remain valid, they will take effect when the election results are certified in mid-December.

Minnesota: Due to ongoing litigation, the Minnesota Office of Cannabis Management scrapped a planned social equity license preapproval lottery that would have given social equity applicants a significant head start in the market. Regulators will instead accept applications for social equity and general adult-use licenses from February 18–March 14, 2025, with a lottery to award licenses planned for May or June 2025. Applications will be accepted for various license types, including retailers, cultivators, manufacturers, microbusinesses, and mezzobusinesses. Canceling the social equity preapproval lottery is expected to significantly delay the start of adult-use sales, as certain preapproval licensees would have been authorized to begin operations when final rules are adopted.

STATE POLICY UPDATES

Missouri: The Missouri Eastern District Court of Appeals **ruled** that it is unconstitutional for counties to create their own marijuana sales taxes in addition to the taxes levied by local municipalities. The decision reverses an earlier circuit court ruling and prevents the “stacking” of taxes, which had led to adult-use cannabis being subject to nearly 21% in total sales tax. The ruling impacts dispensaries in 74 counties where the city and county have both imposed a 3% marijuana sales tax. St. Louis and St. Charles counties may appeal the decision to the Missouri Supreme Court.

Pennsylvania: House Health Committee Chair Dan Frankel and Rep. Rick Krajewski circulated a **co-sponsorship memo** for an adult-use legalization bill they intend to file in 2025. The bill language has not been released, but it reportedly requires sales through state-run stores, with private licenses for cultivation and social consumption sites. No state has implemented state-run retail sales of adult-use cannabis.

Michigan: The Cannabis Regulatory Agency **proposed** language for a highly anticipated omnibus rulemaking package that was previewed by regulators in May 2023. It includes several notable provisions, such as allowing regulators to deny a license renewal due to court orders from unpaid debt, prohibiting the conversion of nonintoxicating cannabinoids to intoxicating cannabinoids, and authorizing licensees to add QR codes to labels. A public hearing on the draft rules will take place in early 2025, and a formal public comment period will open after the hearing is scheduled.

Mississippi: The 5th U.S. Circuit Court of Appeals **upheld** Mississippi’s restrictions on medical cannabis advertising, citing the illegality of marijuana under the federal Controlled Substances Act. The court rejected a dispensary owner’s argument that the ban violates the First Amendment.

HEMP

Federal: The chair of the U.S. Senate Agriculture, Nutrition, and Forestry Committee, Sen. Debbie Stabenow (D-MI), **proposed** language for the 2024 Farm Bill that would prohibit the sale of many hemp products. It would redefine hemp as cannabis with no more than 0.3% total THC, rather than 0.3% delta-9 THC. The bill also proposes a new definition for “industrial hemp” that specifies it “will not be used in the manufacturing or synthesis of natural or synthetic cannabinoid products”.

Beer Institute: The Beer Institute, a massive national industry group that represents American beer producers, importers, and industry suppliers, announced its **policy positions** on intoxicating hemp and cannabis products. The group supports closing the “unintended federal loophole that is enabling the proliferation of unregulated intoxicating hemp products.” It also calls for regulators to prohibit co-location of alcohol sales in the same retail venues as hemp and cannabis, and it supports federally taxing hemp and cannabis at a rate higher than that of any beverage alcohol product.

Texas: Texas Lt. Gov. Dan Patrick **announced** the state Senate will pursue a ban on all consumable hemp products. It will be introduced by Sen. Charles Perry as Senate Bill 3 when the legislative session begins on January 14.

Connecticut: Hemp retailers filed a **federal lawsuit** in the U.S. District Court in Connecticut, claiming the state’s recently enacted restrictions on hemp products conflict with the 2018 Farm Bill because they create a different definition of hemp. The state law enacted in October 2024 limits THC in manufactured hemp products to one milligram of total THC per serving.

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