

# When Will Schedule III Be Here?

A legal timeline, not a headline — final rule + effective date

Schedule III becomes real only when DOJ/DEA publish a final rule and the effective date arrives.

This deck shows the mandatory steps, the controlling statutes, and realistic timing ranges.

# Where the Process Stands (Jan 2026)

Proposed rule done — hearing phase is the bottleneck

HHS recommendation: Aug 29, 2023.

Proposed rescheduling rule published: May 21, 2024 (89 FR 44597).

Public comments closed: July 22, 2024.

DEA hearing set for Jan 21, 2025 — postponed pending an appeal.

# The Statutes and Rules That Must Be Followed

Formal, on-the-record rulemaking with hearing rights

CSA rescheduling authority/criteria: 21 U.S.C. § 811; scheduling criteria: 21 U.S.C. § 812.

Formal rulemaking procedures: APA 5 U.S.C. §§ 556–557.

DEA hearing procedures: 21 CFR §§ 1316.62–1316.67.

CRA submission + major-rule delay: 5 U.S.C. §§ 801, 804.

Judicial review window: 21 U.S.C. § 877 (30 days to petition).

# On-Screen Checklist to Schedule III

Seven steps that determine timing

- 1) Clear the interlocutory appeal so the case can move.
- 2) Hold the hearing on the merits and build the evidentiary record.
- 3) Post-hearing findings and briefs are submitted.
- 4) ALJ issues the report and recommended decision.
- 5) Exceptions period runs; record is certified to the Administrator.
- 6) Administrator publishes the final order / final rule in the Federal Register.
- 7) CRA submission; if “major,” 60-day minimum delay — then effective date.

# Step 1: Resolve the Interlocutory Appeal

Without this, the hearing on the merits stays paused

What happens: Parties seek permission for an interlocutory appeal; the presiding officer may certify it; the Administrator decides.

Legal hook: Interlocutory appeals are allowed only with consent/certification.

Estimated duration: 1–6 months if prioritized; 6–12+ months if contested.

# Step 2: Hearing on the Merits

This is where the record is built (witnesses + exhibits)

What happens: ALJ conducts a formal hearing; parties present testimony and evidence.

Why it matters: The final rule must rest on the hearing record.

Estimated duration: 4–12 hearing days spread over 1–3 months (varies).

# Step 3: Post-Hearing Briefing and Proposed Findings

Written record that feeds the ALJ recommendation

What happens: Parties submit proposed findings of fact and conclusions of law on the record.

Estimated duration: typically 30–60 days after hearing closes (ALJ sets schedule).

Hard rule: parties must serve each other.

# Step 4: ALJ Report and Recommended Decision

Yes — the ALJ issues a recommendation before the Administrator acts

What happens: presiding officer prepares a report with recommended rulings, recommended findings/conclusions with reasons, and a recommended decision.

Estimated duration: 30–90 days after briefing closes (no firm deadline).

# Step 5: Exceptions + Certification of the Record

Built-in minimum time floors

Exceptions: 20 days after service of the ALJ report.

Certification: not less than 25 days after service, the record is certified to the Administrator.

Estimated duration: 1–2 months in practice, even when moving fast.

# Step 6: Administrator Final Order / Final Rule

Legal “switch flip” — but still not the effective date

What happens: Administrator publishes a final order in the Federal Register setting the final rule and an effective date.

Minimum effective date:  $\geq 30$  days after publication unless a public-interest finding supports earlier.

Estimated duration: 1–4 months after certification to draft + publish.

# Step 7: CRA Submission

Final rule must be sent to Congress + GAO before it can take effect

What happens: agency submits the rule report to each House and the Comptroller General.

Report includes the rule, whether it is “major,” and proposed effective date.

Estimated duration: days to a few weeks, but it starts the major-rule clock.

# CRA: What “Major Rule” Means

Major is a legal definition, not a political adjective

A “major rule” is one OMB/OIRA finds likely to cause:

≥ \$100,000,000 annual economic effect, or major cost/price impacts, or significant adverse competitive effects.

Rescheduling marijuana is very likely to be treated as major.

# CRA Major-Rule Delay

If OIRA says “major,” minimum 60-day runway

Major rule takes effect on the later of 60 days after:

Congress receives the CRA report, or the rule is published in the Federal Register.

Practical effect: final rule publication ≠ immediate Schedule III.

# Court Challenges and Stay Risk

Litigation doesn't automatically stop a rule, but stays can

Judicial review: petition must be filed within 30 days after notice of the final decision.

Challengers may request a stay of effectiveness while litigation proceeds.

Estimated duration impact: weeks to months if a stay is granted; unpredictable.

# Timing Forecast (Realistic Ranges)

What operators should plan around

Fast: appeal clears by Spring 2026 → final rule late 2026 → CRA delay → effective early/mid 2027.

Likely: appeal/hearing drift → final rule in 2027 → CRA delay → effective late 2027.

Slow: procedural fights + stay litigation → effective 2028 or later.

# Business Help

For operators planning taxes, contracts, and compliance

If your company has questions about timing, 280E planning, or risk, go to [cannabisindustrylawyer.com](https://cannabisindustrylawyer.com) and get in touch with our team.