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**Cannabis Newsletter**

**Senate Dems Move to Redefine Hemp**

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[\[Link\]](#)

WHAT HAPPENS NEXT WITH RESCHEDULING —

Theoretically, it could happen as soon as Election Day.

"Everybody is quite focused on getting this done by November 5," said Jonathan Havens, co-chair of law firm Saul Ewing's cannabis practice and former regulatory counsel at FDA. "It's likely that if Trump were to win, this would be axed."

Havens thinks that the administrative rulemaking process should take roughly 200 days. Currently, there are fewer than 190 days left before the November election. "The stars would really need to align for this to all get done," Havens said.

If and when marijuana does officially get moved into Schedule III, it could still be vulnerable to court challenges. The nation's leading anti-legalization group Smart Approaches to Marijuana said it would pursue legal action to oppose rescheduling.

Lawmakers have raised concerns about the FDA's evaluation of cannabis science and HHS's Schedule III recommendation. For example, Rep. Andy Harris (R-Md.) questioned the FDA's "two-factor" test for determining whether cannabis has accepted medical use — a change from the five-factor test the agency has historically used to evaluate scheduling.

Lawmakers are also wary that the rescheduling decision was more political than scientific. Those concerns could serve as fodder for opponents, said Jason Klimek, co-leader at the law firm Barclay Damon's cannabis team.

"Why not Schedule II?... Was it just to pull it out of 280E?" Klimek said. "When you start putting all those pieces together it could be ripe for a legal challenge in the right circuit."