Sovereign by Law, *Vulnerable by Design*

A tribal license alone does not reach Schedule III. This brief summarizes why, what it costs, and what to build.

21 C.F.R. § 1300.01 · "STATE MEDICAL MARIJUANA LICENSE" MEANS A LICENSE ISSUED BY

A STATE ENTITY	A DISTRICT OF COLUMBIA ENTITY	A FEDERAL TERRITORIAL ENTITY	INDIAN TRIBES
INCLUDED	INCLUDED	INCLUDED	NOT NAMED

Joseph Rosado, MD, MBA, DC, EMT-P, CNA · Physician Executive, Rosado Advisory · November 2026

THE FINDING

A definition written without tribes

AG Order No. 6754-2026, effective April 28, 2026, moves marijuana to Schedule III in exactly two circumstances: in an FDA-approved drug product, or under a state medical marijuana license. All other marijuana stays in Schedule I.

The order defines that license as one issued by a state, District of Columbia, or federal territorial entity. Indian tribes are not named. Cannabis authorized solely under tribal law therefore remains in Schedule I.

THE RECORD

No consultation identified, and no tribal government at the later hearing

The Department of Justice certified, under its own Executive Order 13175 heading, that the order has no tribal implications. The order identifies no tribal consultation.

This is the most vulnerable sentence in the order.

No tribal government appears among the participants in DEA's separate, later hearing on broader rescheduling. When a physician asked to raise tribal clinical and safety concerns, DEA ruled those issues outside the hearing's scope.

WHAT THE EXCLUSION COSTS

Every difference turns on which sovereign issued the license

PROVISION	STATE-LICENSED PROGRAM	TRIBALLY LICENSED PROGRAM
Federal schedule AG Order No. 6754-2026	**Schedule III** when subject to a state medical marijuana license	**Schedule I**, federally indistinguishable from illicit cannabis
DEA registration § 1301.13(k)	Expedited pathway; priority processing and interim authority for filings within 60 days	**A tribal license alone does not qualify**; the priority window has closed
Federal tax 26 U.S.C. § 280E	**May no longer be subject** to the deduction disallowance, as the order states	**May remain subject** to it
Patient certification § 1301.13(k)(5)	State-law certification may substitute for a federal prescription	**No recognition** for a tribal health authority's certification
Research sourcing AG Order No. 6754-2026	DEA-registered researchers sourcing from a federally registered state licensee are not liable solely because of that source	**No equivalent clarification** for a supplier licensed only by a tribe
Deference to local law § 1301.13(k)(8)–(10)	State law satisfies federal labeling, packaging, security, and disposal requirements	**Tribal law given no effect** anywhere in the rule

THE SOVEREIGNTY TRAP

To reach Schedule III, a tribe must hold a state license and submit its cannabis operations to state licensing, inspection, and revocation. A state regulator can then end its federal status by revoking a permit.

In North Carolina, and in every other state without a medical program, even that exit does not exist. The Eastern Band of Cherokee Indians cannot qualify by any action it takes.

The rule offers Indian country a choice between subordination and exclusion, and for some tribes it offers only exclusion.

40
states with medical programs when the order issued

0
Tribal Nations named in the license definition

93
tribally owned retail outlets nationwide, April 2026

60
day priority window tribal licensees could not enter

THE REMEDY

Six words added to one definition

SHOULD READ

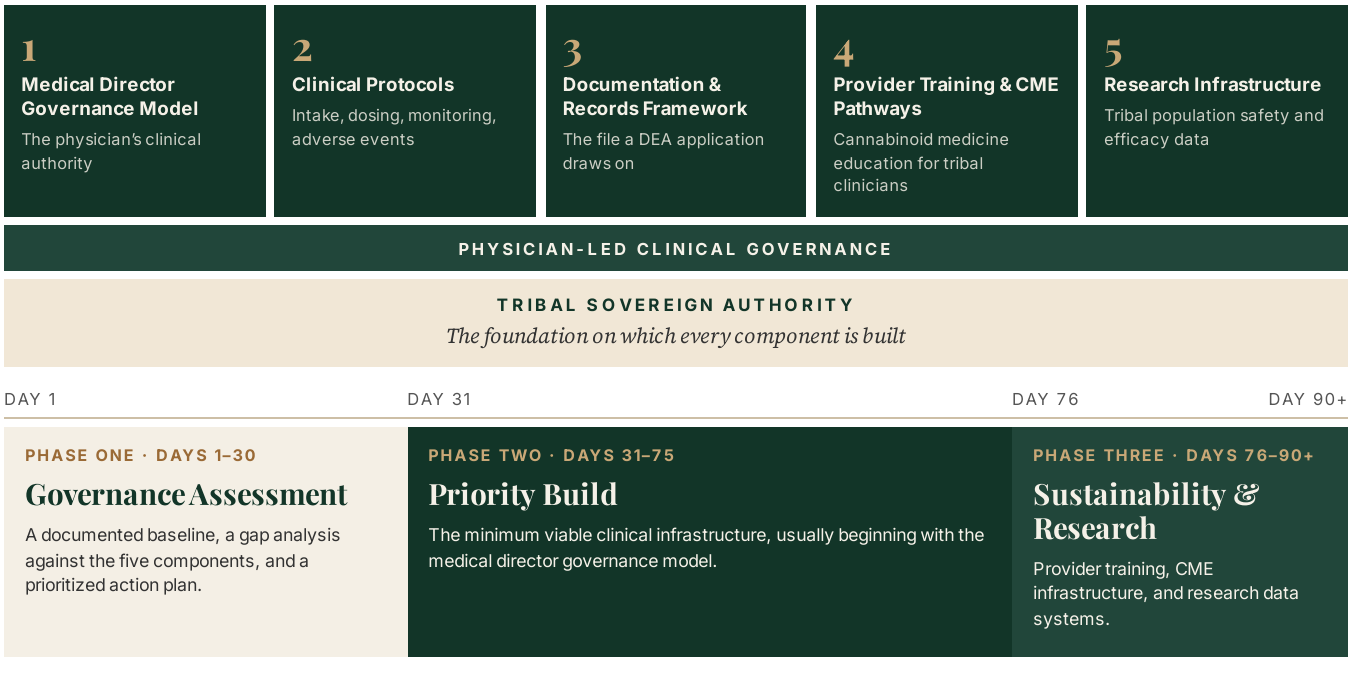
"...a license issued by a state entity (or by a District of Columbia entity, a federal territorial entity**, or a federally recognized Indian tribe**)..."

As proposed, no reopened scheduling proceeding. Conforming changes would carry the amendment through § 1301.13(k)'s references to state law and state licenses: authorization, suspension, patient certification, and deference to local law, with the research clarification assessed as well. Counsel should confirm whether any statutory change is also needed. The Administrator's public-interest review under 21 U.S.C. § 823 remains intact. No tribe would be waved through. Eligible tribal licensees could apply.

WHAT THE PAPER RECOMMENDS TRIBES BUILD

The Rosado Five Pillar Clinical Governance Framework

The fix gets a tribe to the door. The paper recommends a physician-led clinical governance model: five modular components, with a proposed ninety-day starting plan adaptable to each Nation. The regulation does not prescribe it; it is the author's proposed model for building clinical and regulatory readiness, and Rosado Advisory offers assessments based on it.



THE CALL TO ACTION

Four asks

TRIBAL HEALTH LEADERS

Conduct or commission an independent clinical-governance assessment. It is the entry point, deliberately small.

TRIBAL GOVERNMENTS AND COUNSEL

Put the E.O. 13175 finding on the record, and make the six-word amendment the unified ask.

FEDERAL POLICYMAKERS

Amend the definition at 21 C.F.R. § 1300.01, make conforming changes to § 1301.13(k), and consult with Tribal Nations as E.O. 13175 requires.

CLINICIANS

Counsel patients that cannabis obtained under tribal license remains a Schedule I substance under federal law.

WHERE THINGS STAND

The order remains in effect: on September 9, 2026, the D.C. Circuit denied a motion to stay it while petitions for review proceed. A separate DEA proceeding on rescheduling marijuana more broadly was stayed on September 29 to consider a new GAO report; in late October the judge admitted it for briefing but denied reopening the hearing, and a recommended decision is pending. The federal hemp redefinition takes effect December 11, 2026, for most products; cannabinoids the plant cannot produce naturally lose hemp status on November 12. A broader rescheduling would narrow the exclusion but not end it: the registration pathway, certification, and deference provisions would still run only through a state license.

KEY AUTHORITIES

AG Order No. 6754-2026, 91 Fed. Reg. 22,714 (Apr. 28, 2026)
21 C.F.R. §§ 1300.01, 1301.13(k), 1308.13(g)
Exec. Order No. 13175, 65 Fed. Reg. 67,249
26 U.S.C. § 280E · 21 U.S.C. § 823
Pub. L. No. 119-37, § 781; Pub. L. No. 119-103, § 2019
D.C. Cir., consolidated petitions; stay denied Sept. 9, 2026
MJBizDaily tribal retail count, Apr. 30, 2026
Status checked through October 27, 2026. Policy analysis; not legal advice.

Sovereignty is not enough. Sovereignty plus physician-led clinical infrastructure is the combination that holds.

ABOUT THE AUTHOR

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