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Drug Enforcement Administration
Attn: DEA Federal Register Representative/DPW Diversion Control Division
8701 Morrissette Drive
Springfield, VA 22152

Re: RIN 1117-AB53/Docket No. DEA-500

September 18, 2020

To Whom it May Concern:

The Hemp Industries Association appreciates the opportunity to provide a public comment in response to the United States Drug Enforcement Administration's (DEA) publication of its [Interim Final Rule \(IFR\) on the Implementation of the Agricultural Improvement Act of 2018](#) (RIN 1117-AB53/Docket No. DEA-500), and to have that response become part of the public record.

Founded nearly 30 years ago, the HIA is the oldest and largest trade association serving the U.S. hemp industries. It has more than 1,000 business, farming, and individual members, and represents the interests of tens of thousands of American hemp companies and millions of consumers of hemp products throughout the USA. The HIA has challenged the DEA in Federal court on [three separate occasions](#) in response to that agency's attempts to interfere with the free and fair exchange of industrial hemp. In this way, the HIA helped to establish key protections for hemp, a uniquely valuable agricultural commodity. These lawsuits also laid the groundwork for the 2018 Farm Bill, which definitively ended the ill-founded federal prohibition of hemp production and restored a valuable agricultural commodity to the U.S. economy. Hemp is a plant that is deeply entwined with the history of the nation. It has the potential to bolster and transform numerous critical industries, including food & beverage, textiles, health & wellness, animal feed, building materials, pulp & paper, and more.

The judicial ruling in DEA v. HIA in 2004, which halted the DEA's attempt to unlawfully schedule hemp and hemp derived products within the Controlled Substances Act, as well as the subsequent 2014 and 2018 Farm Bills, in which the U.S. Congress ratified and codified the



legality of domestic hemp production and officially differentiated hemp from marijuana, form the basis and justification for the comments below.

The HIA stands ready to challenge this latest instance of overreach by the Drug Enforcement Agency, and along with our new partner organizations, overcome this latest effort to infringe on the rights of hemp businesses and consumers.

ISSUE 1 - The Interim Final Rule improperly attempts to apply the Controlled Substances Act to hemp, a legal agricultural commodity.

Hemp and hemp-derived products are lawful in the United States. They are not subject to regulation by the DEA per the ruling of the Ninth Circuit Federal Court of Appeals in 2004 (<https://caselaw.findlaw.com/us-9th-circuit/1253723.html>), and according to the [Agricultural Act of 2014](#), as well as the [Agriculture Improvement Act of 2018](#) (“the 2018 Farm Bill”). These judicial and legislative actions formally removed hemp and its derivatives, extracts, and other products from the purview of the DEA, which is empowered to regulate only substances listed on the Controlled Substances Registry. Hemp and hemp products have not been added to the federal Controlled Substances Act (the “CSA”) and therefore are not subject to the rulemaking authority of the DEA.

When the U.S. Congress passed the 2018 Farm Bill, it deliberately defined hemp as “any part of that [*Cannabis sativa L.*] 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 DEA is not a legislative body, and has no power to rewrite laws established by Congress and duly signed by the President of the United States. Furthermore, the process for adding a substance to the CSA is unambiguous, and the Ninth Circuit has already rejected the DEA’s attempt to circumvent the statutory scheduling process in its 2004 ruling, saying that “The DEA’s action is not a mere clarification of its THC regulations; it improperly renders naturally-occurring non-psychoactive hemp illegal for the first time.”



ISSUE 2 - The Interim Final Rule improperly purports to criminalize hemp extracts in direct contravention of the 2018 Farm Bill, threatening lawful American businesses.

Since the ruling in 2004, and formalized with the passage of the 2014 and 2018 farm bills, it has been clear that the Controlled Substance Act cannot be applied to, and has no bearing on, hemp or products derived from hemp. Hemp and hemp products are and have been lawful agricultural goods, and any attempt by the DEA to extend its rulemaking authority to regulate them is an illegal overreach that infringes on the authority of the legislative branch. In asserting that “All synthetically derived tetrahydrocannabinols remain schedule 1 controlled substances,” the DEA is overlooking the plain meaning of the law, which Congress crafted deliberately to define “*all derivatives, extracts, cannabinoids... whether growing or not*” (with a delta-9 THC concentration under 0.3 percent on a dry weight basis). Synthesis, after all, refers to any process not found in nature, a meaning so broad as to cover nearly every modern technique used by businesses to separate and extract desired hemp elements (cannabinoids, terpenes, etc.) Thus, the DEA’s use of the undefined term “synthetically derived” purports to bring within the purview of the CSA hemp compounds that were specifically removed from the CSA by Congress.

In conclusion, this infringement by the DEA on the prerogatives of the democratically elected representatives in Congress and the rights of hemp businesses and consumers is an inappropriate attempt to assert control where it is neither necessary nor permissible. If left unchecked, this action will have a chilling effect on critical research and investment, discourage enterprise and entrepreneurship, and deprive American consumers of access to valuable and otherwise lawful hemp products. The repressive economic impacts of the DEA’s interference in this young but growing sector of the American economy are made even more acute by being undertaken in the midst of an unprecedented economic recession, and the personal impact on the lives of Americans is made more painful as consumers struggle to contend with an overpriced and inadequate healthcare system. Cannabidiol, or CBD, one of a growing list of extracts of the hemp plant, is already being adopted as an effective treatment for conditions including epilepsy and chronic pain, and is currently being researched as a potential therapy for —to name just a few— victims of degenerative brain diseases, children with Autism Spectrum Disorder (ASD), Post Traumatic Stress Disorder (PTSD) sufferers, and people struggling with opioid addiction.



The DEA's Interim Final Rule, issued two years after enactment of the law it purports to interpret, attempts to schedule an agricultural product the consumption of which has never resulted in a single recorded death by overdose. By comparison, in 2018 (the most recent year for which national data is available) America was losing 128 people per day to opioid overdoses¹. If that trend has held steady, more than 75,000 of our friends, family, colleagues, and neighbors have overdosed by opioids since the passage of the 2018 Farm Bill. We respectfully suggest that the DEA could more effectively serve the American public if it would cease engaging in efforts to regulate hemp products and instead refocus its limited resources of time and tax dollars on the ongoing and severe issues that do reside clearly within its scope of responsibility.

1. CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC; 2018. <https://wonder.cdc.gov>.

