

For Immediate Release
Monday, September 21, 2020

Contact: Mason Tvert
720-213-9048, mason@vsstrategies.com

Hemp Industry Members File Lawsuit Against DEA, Challenging Rule That Could Have Far-reaching Consequences

Petition asks federal appeals court to review a rule the DEA issued last month, arguing the agency exceeded its authority and violated the 2018 farm bill

WASHINGTON, D.C. — A national hemp trade association and a South Carolina-based hemp company have filed a federal lawsuit against the Drug Enforcement Administration, challenging a rule the agency implemented last month that could have far-reaching consequences for the U.S. hemp industry.

The [petition](#) filed Friday afternoon in the U.S. Court of Appeals for the District of Columbia Circuit asks the court to review an interim final rule, "[Implementation of the Agriculture Improvement Act of 2018](#)," which was promulgated by the DEA on August 21. The lawsuit claims the rule is unlawful because it exceeds the DEA's legal authority and violates the Agriculture Improvement Act of 2018, also known as the farm bill. The petitioners also argue that acting DEA administrator Timothy Shea, who is individually named as a respondent along with the agency, issued the interim final rule without observing procedures required by law.

The DEA's interim final rule clarifies that all hemp derivatives or extracts exceeding 0.3% THC shall remain Schedule I controlled substances. This could be interpreted to include intermediate hemp derivatives that temporarily exceed 0.3% during processing, but contain less than 0.3% in final products. As such, it improperly establishes the DEA's authority over legal hemp activities, which is contrary to the plain language and intent of the 2018 farm bill, according to the petitioners.

The petitioners in the lawsuit are RE Botanicals, Inc. and the Hemp Industries Association.

RE Botanicals, Inc. is a hemp manufacturer and retailer based in South Carolina. In 2019, it acquired Palmetto Synergistic Research LLC (dba Palmetto Harmony), which was founded to provide lawful, reliable, and high-quality hemp products.

"We are a small, woman-operated company," said Janel Ralph, CEO of RE Botanicals. "The DEA's new rule could put us out of business overnight."

HIA is a trade association that represents approximately 1,050-member hemp businesses, including approximately 300 hemp processors and individuals involved in, or impacted by, the manufacture, distribution and/or sale of hemp extract and other products lawfully derived from industrial hemp. HIA successfully challenged DEA rulemaking in 2003, when the agency amended federal regulations to include naturally occurring THC within the definition of "synthetic THC," thereby treating it as a Schedule I substance despite it falling outside the definition of marijuana in the Controlled Substances Act.

"When Congress passed the 2018 farm bill, it explicitly carved hemp and its derivatives out of the Controlled Substances Act so that hemp can be regulated as an agricultural commodity," said HIA President Rick Trojan. "The DEA's interim final rule could create substantial barriers to the legal manufacturing of hemp-derived products, a critical component of the hemp supply chain, and devastate the entire hemp industry. Although the DEA states that is not its intention, the rule must be amended to ensure hemp remains an agricultural crop, as Congress intended."

The petitioners are represented by leading hemp industry attorneys at Vicente Sederberg LLP, Kight Law Office PC, and Hoban Law Group, along with appellate attorneys from Yetter Coleman LLP, which has received national attention for its work against the DEA in the realm of cannabis research.

"The DEA implemented this rule without following proper rule-making procedures, such as providing the public with notice and the opportunity to comment," said Shawn Hauser, a partner at Vicente Sederberg LLP and chair of the firm's hemp and cannabinoids practice. "The petitioners believe legal action is necessary to protect the lawful U.S. hemp industry that Congress intended to establish when it enacted the 2018 farm bill."

###