

# United States Senate

WASHINGTON, DC 20510

October 22, 2020

The Honorable Timothy J. Shea  
Acting Administrator  
U.S. Drug Enforcement Administration  
600 Army Navy Drive  
Arlington, VA 22202

Acting Administrator Shea:

We write to express our strong objections to the Interim Final Rule (IFR), Implementation of the Agriculture Improvement Act of 2018, published by the Drug Enforcement Administration (DEA) on August 21, 2020 (RIN 1117-AB53/Docket No. DEA-500).


As authors of the Hemp Farming Act of 2018, which Congress included in the Agriculture Improvement Act of 2018 (2018 Farm Bill), we carefully and deliberately crafted the law to establish the right regulatory framework to grow and support hemp production. The 2018 Farm Bill formally removed hemp, including its seeds and all “derivatives, extracts, cannabinoids,” whether growing or not, from the purview of the DEA and placed the sole authority to promulgate federal regulations and guidelines that relate to the production of hemp, which includes its derivatives, extracts, and cannabinoids, with the Secretary of Agriculture.

The IFR purports to merely implement the 2018 Farm Bill when, in fact, it does significantly more. The IFR treats hemp as a Schedule I controlled substance at any point its THC content exceeds 0.3% THC. However, when Congress passed the 2018 Farm Bill, we understood that intermediate stages of hemp processing can cause hemp extracts to temporarily exceed 0.3% THC, which is why we defined hemp based on its delta-9 THC level. Further, we defined hemp’s THC content on a dry weight basis because dry weight measurements are commonly taken from the initial hemp plant and final hemp-derived product. In effect, the IFR criminalizes the intermediate steps of hemp processing, which is wholly inconsistent with Congress’s clearly stated purpose and the text of the 2018 Farm Bill.

In our view, the IFR rewrites the 2018 Farm Bill contrary to Congressional intent. Moreover, we agree with the USDA’s General Counsel, which concluded in a May 28, 2019 legal opinion that “[c]onforming amendments to 21 C.F.R. § 1308.11, while required as part of DEA’s continuing obligation to publish updated schedules, are not necessary to execute the 2018 Farm Bill changes to schedule I.”

Thank you for your prompt attention to this important matter.

Sincerely,

  
Ron Wyder  
United States Senator

  
Jeffrey A. Merkley  
United States Senator