



September 28, 2021

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Re: Legal Status of Hemp-Derived Product Under Controlled Substances Act

To Whom It May Concern:

This letter is written on behalf of my client, MHF Group Inc. (MHF), regarding the legal status of its hemp-derived products. The specific question addressed is: **“Are hemp-derived products containing no more than 0.3% delta-9 tetrahydrocannabinol ( $\Delta$ 9-THC) controlled substances under United States (US) federal law, even if they cause intoxicating effects?”** Subject to the qualifications contained herein, the answer to this question is **“No”**.

This letter is the position of MHF regarding the legal status of its products with respect to the matters it addresses. It is not intended to be legal advice for any party and should not be construed as such. The analysis and conclusions contained in this letter are based on the Agricultural Act of 2014 (2014 Farm Act), the Agricultural Improvement Act of 2018 (Farm Bill), the federal Controlled Substances Act (CSA), and the Drug Enforcement Administration's (DEA) recently published Interim Final Rule (IFR). This letter does not address any requirements under the federal Food, Drug & Cosmetic Act and associated regulations by the Food and Drug Administration (FDA). Finally, this letter does not address individual state laws and regulations governing hemp-derived products.

### **HEMP AND HEMP EXTRACTS ARE NOT CONTROLLED SUBSTANCES**

Hemp initially became exempt from the CSA, and thus removed from the list of controlled substances, by virtue of the 2014 Farm Act when produced pursuant to a state's industrial hemp pilot program. Nearly forty (40) states created pilot programs under the 2014 Farm Act. The current Farm Bill, enacted at the end of 2018, removed both “hemp” and “THC in hemp” from the CSA.<sup>5</sup> As of this writing all fifty states have enacted legislation legalizing hemp.

The Farm Bill defines “hemp” expansively. The definition includes the hemp plant and its cannabinoids, derivatives, extracts, and isomers with a  $\Delta$ 9-THC concentration that does not

<sup>1</sup> <https://www.govinfo.gov/content/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf>

<sup>2</sup> <https://www.congress.gov/115/bills/hr2/BILLS-115hr2enr.pdf>

<sup>3</sup> 21 U.S. Code § 801 *et seq.*

<sup>4</sup> [https://www.dea diversion.usdoj.gov/fed\\_regs/rules/2020/fr0821.htm](https://www.dea diversion.usdoj.gov/fed_regs/rules/2020/fr0821.htm)

<sup>5</sup> 21 U.S.C. § 802(16)(B): “The term “marihuana” does not include— (i) hemp, as defined in section 1639o of title 7.”

exceed three tenths of one percent (0.3%) on a dry weight basis. In other words, from a legal standpoint all of these things are lawful “hemp”. Specifically, the Farm Bill distinguishes lawful hemp from illegal marijuana and defines hemp as follows:

*(1) HEMP.—The term ‘hemp’ means the plant Cannabis sativa L. and any part of that 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. (Emphasis added).*

The Farm Bill treats hemp as an agricultural commodity, putting it on par with wheat, grain, and soy. Passage of the Farm Bill resulted in a rapid expansion of the hemp industry across the USA. This expansion not only included the people and entities cultivating hemp, but it also provided expanded opportunities for businesses to engage in the manufacturing and production of hemp-derived products. Products containing hemp, including the hemp-derived products that are manufactured and distributed by MHF, are not controlled substances under federal law.

Despite the widespread legalization of hemp and hemp-derived products under federal law, some states still prohibit manufacturing and/or distributing hemp and hemp-derived products that contain it. For this reason, it is important to be aware of individual state laws, regulations, and agency positions.

### **IT IS LAWFUL TO TRANSPORT HEMP AND HEMP-DERIVED PRODUCTS IN INTERSTATE COMMERCE**

Pursuant to the Farm Bill, the interstate transfer of industrial hemp is authorized by 7 USC § 1621 subsection 10114(b), which states in relevant part: “*No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (AMA) (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.*”<sup>6</sup> This provision amends the language set forth in the AMA by making it illegal for states and Indian tribes to prohibit the interstate transportation or shipment of hemp. Although state laws vary, sometimes considerably, with respect to hemp and hemp products, it is absolutely clear that states and Indian tribes may not prohibit the transport of them through their borders.

### **DRUG ENFORCEMENT ADMINISTRATION'S REGULATION OF HEMP-DERIVED PRODUCTS**

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<sup>6</sup> Ibid.

<sup>7</sup> 7 U.S.C. § 1639o(1)

<sup>8</sup> <https://uscode.house.gov/statviewer.htm?volume=132&page=4914#>

On August 21, 2020, the United States Drug Enforcement Administration (DEA) published its Interim Final Rule (IFR) in the federal register. In its IFR, the DEA made it clear that:

[T]he definition of hemp does not automatically exempt any product derived from a hemp plant, regardless of the  $\Delta$ 9-THC content of the derivative. In order to meet the definition of “hemp”, and thus qualify for the exemption from [S]chedule I, the derivative must not exceed the 0.3%  $\Delta$ 9-THC limit. The definition of “marihuana” continues to state that “all parts of the plant *Cannabis sativa* L.” and “every compound manufacture, salt, derivative, mixture, or preparation of such plant,” are [S]chedule I controlled substances unless they meet the definition of “hemp” (by falling below the 0.3%  $\Delta$ 9-THC limit on a dry weight basis) or are from exempt parts of the plant (such as mature stalks or non-germinating seeds) ... As a result, a cannabis derivative, extract, or product that exceeds the 0.3%  $\Delta$ 9-THC limit is a [S]chedule I controlled substance, even if the plant from which it was derived contained 0.3% or less  $\Delta$ 9-THC on a dry weight basis.” (Emphasis added).<sup>9</sup>

The DEA’s IFR continues by stating that the listing for “tetrahydrocannabinols” under 21 U.S.C. 812(c) “does not include tetrahydrocannabinols in hemp”.<sup>10</sup>

In light of the foregoing, the DEA’s IFR supports the conclusion that MHF’s products, which contain no more than 0.3%  $\Delta$ 9-THC on a dry weight basis, are not controlled substances in the US.

### CONCLUSION

As a result of the passage of the 2018 Farm Bill, hemp’s removal from the CSA, and the publication of the DEA’s IFR, it is clear that MHF’s hemp-derived products are not controlled substances under US federal law.

Sincerely,

  
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Attorney

  
Philip M. Snow  
Attorney

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<sup>9</sup> “Implementation of the Agriculture Improvement Act of 2018”, Federal Register Volume 85, Number 163 (Friday, August 21, 2020).

<sup>10</sup> <https://www.govinfo.gov/content/pkg/FR-2020-08-21/html/2020-17356.htm>

<sup>11</sup> See footnote #7.