

Center for Regulatory Effectiveness

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September 16, 2016

Ms. Valerie B. Jarrett
Senior Advisor and Assistant to the President for
Intergovernmental Affairs and Public Engagement
Room 130
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20501

Re: CRE's Creation of a Kratom Scheduling Docket

Dear Ms. Jarrett:

In his Open Government Directive,¹ President Obama called for creating and institutionalizing a "Culture of Open Government." The President explained that to

create an unprecedented and sustained level of openness and accountability in every agency, senior leaders should strive to incorporate the values of transparency, participation, and collaboration into the ongoing work of their agency.

Last month, however, the Drug Enforcement Administration issued a Notice of Intent to place the widely used dietary supplement kratom (mitragynine and 7-hydroxymitragynine) into schedule I of the Controlled Substances Act. Thus, without any opportunity for public participation, DEA will be criminalizing a substance that is not only widely used in the United States but also is used in and will continue to be legal in Canada and Mexico.

Examples of parties who would be able to provide DEA with information to help it reach an informed decision on scheduling kratom include:

- Federal research agencies such as the USDA's Agricultural Research Service and the National Institutes of Health, both of which are evaluating potential uses of kratom.
- Federal law enforcement agencies, such as Customs and Border Patrol and the Federal Bureau of Investigation, that would be given new enforcement responsibilities and understand the damage to our country from transnational criminal organizations.
- The US-Canada Regulatory Cooperation Council which coordinates and harmonizes regulatory issues in the world's largest trade relationship.

¹ See, <https://www.whitehouse.gov/open/documents/open-government-directive>.

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- Kratom product producers.
- Kratom consumers.

It is because of the Obama Administration's deep and nearly eight year long commitment to Open Government, including through the creation of new opportunities for public participation in the governing process, that I am calling to your attention an instance in which greater openness in government is needed.

The customary practice for agencies initiating a regulatory action is to *open* a docket into which interested parties may place their comments. DEA chose instead to establish a *closed* docket which permits no comments to be filed, <https://www.regulations.gov/docket?D=DEA-2016-0015>.

Since there is no federal docket was opened on a regulatory action affecting tens or hundreds of thousands of consumers, CRE opened an Interactive Public Docket on DEA's kratom scheduling regulatory initiative. Our IPD has received hundreds of substantive, individual comments, not form letters. An introduction to the Kratom IPD is available here, <http://www.thecre.com/forum11/?p=31>.

CRE's primary Kratom Scheduling IPD, which has received over 600 comments so far this week, is found here, <http://www.thecre.com/forum8/?p=294>. A supplementary Kratom docket with over 100 additional comments is here, <http://www.thecre.com/forum11/?p=37>. CRE also created a Kratom Black Market docket focused on the potential for a kratom smuggling and its effects if a ban were instituted, <http://www.thecre.com/forum11/?p=46>.

On December 9, 2009, the White House created a landmark public docket. Titled, *Why An Open Government Matters*, the Administration discussed its Open Government Initiative in the docket and I was fortunate to have my comments recognized, <https://www.whitehouse.gov/blog/2009/12/09/why-open-government-matters>. I have also been fortunate enough to receive public recognition from the National Science Foundation, <http://www.thecre.com/oira/?p=1728> and from the Department of Justice, http://theacre.com/pdf/20100603_Government_DQA_Appeal_to_Court.abrev.pdf.

One of the core components of the President's Open Government Initiative is a White House petition site which promises an official White House response to petitions which gain at least 100,000 signatures in 30 days. The petition, *Please do not make Kratom a Schedule I Substance*, easily met the requirement and now has over 120,00 signatures.²

In light of the the White House's commitment to respond to petitions meeting its requirements and in light of the over 600 public comments CRE has received on kratom in three days, by this letter I am requesting that the White House,

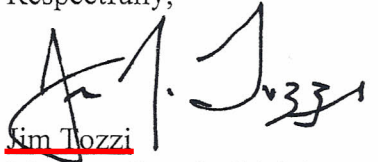
1. Establish a kratom docket on the White House's Open Government Initiative website,
2. Include in the White House docket the comments in CRE's Kratom IPD.

² <https://petitions.whitehouse.gov/petition/please-do-not-make-kratom-schedule-i-substance>.

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3. Open the docket for a public comment period not less than 60 days.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Tozzi", written over a red horizontal line.

Member, Board of Advisors

cc:

The Honorable Howard Shelanski, Administrator, Office of Information and Regulatory Affairs

Mr. Jonathan J. Wroblewski, Principle Deputy Assistant Attorney General, Office of
Legal Policy

Mr. Charles P. Rosenberg, Administrator (acting), Drug Enforcement Administration