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Regulatory Watchdog Calls On DEA To Halt Kratom Ban, Calls On OMB Intervention

TOPICS: Brandon Turbeville DEA Kratom

SEPTEMBER 17, 2016

By **Brandon Turbeville**

On September 12, the **Center for Regulatory Effectiveness**, an independent think tank and regulatory watchdog organization, **wrote an open letter to the DEA** regarding the notoriously corrupt and rights-crushing agency's recent ban on **kratom**. In this letter, the CRE has made a number of recommendations to the DEA that would at least put an element of logic to the agency's actions.

The CRE points out that the DEA's policy on kratom is in conflict with the policy of a number of other federal agencies and, thus, the legality of kratom falls under the jurisdiction of the Office of Management and Budget whose job it is to settle inter-agency conflicts of policy.

The letter reads:

> The Office of Information and Regulatory Affairs (OIRA) has been described as the cockpit of the regulatory state. It is an organization that has a statutory mandate to manage and oversee the flow of regulatory actions taken by federal agencies. In the discharge of these duties OIRA is often involved in one-on-one discussions with agency personnel to resolve potential conflicts with OMB personnel.

However, in this instance, the DEA action to ban kratom, the conflict is considerably wider in scope. In this instance there is a sharp disagreement among a number of federal agencies. Consequently if there were ever a time for an OMB intervention this is it.

The CRE's letter also calls into question the shaky "science" used by the DEA in order to push its ban when it states:

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> 'The DEA's August 31, 2016 Federal Register notice placing Mitragynine and 7-Hydroxymitragynine into Schedule I5 highlights the out of context observation that the "consumption of kratom individually,or in conjunction with alcohol or other drugs, is of serious concern as it can lead to severe adverse effects and death.' The FR notice, however, left out the crucial supporting data that is necessary to understand the information provided by DEA and to it place in a policy context. Earlier this year, the peer-reviewed neuroscience journal Brain Research Bulletin published a survey of the literature on traditional and non-traditional uses of Mitragynin which found that,
>
> 'While several cases of toxicity and death have emerged in the West, such reports have been non-existent in South East Asia where kratom has had a longer history of use. We highlight the possible reasons for this as discussed in the literature. More importantly, it should be borne in mind that the individual clinical casereports emerging from the West that link kratom use to adverse reactions or fatalities frequently pertained to kratom used together with other substances. Therefore, there is a danger of these reports being used to strengthen the case for legal sanction against kratom. This would be unfortunate since the experiences from South East Asia suggest considerable potential for therapeutic use among people who use drugs.'

Thus, one federal agency–law enforcement agency–DEA, is in the process of making the Period Until October 14, 2016?

possession of kratom a felony at the same time that a journal edited by the Principal Investigator of another federal agency, the National Institute of Child Health & Human Development, published an article which concluded that "more scientific clinical human studies are necessary to determine [kratom's] potential therapeutic value."

Citing research conducted by the USDA, NIH, University of Massachusetts Medical School, and the University of Mississippi, the CRE shows that the DEA has "arbitrarily" banned kratom and that the DEA's own claims are either disproven or contradicted by the findings of organizations who have actually conducted research on the substance.

The CRE writes,

> The kratom footprint grows even further. The research was so well conducted and received by the scientific community that the aforementioned institutions applied for a patent. How much more additional evidence is needed to demonstrate that the DEA has acted arbitrarily in issuing a ban on kratom?

In short, without going through a notice-and-comment process, DEA is obviating another agency's research that was conducted with appropriated funds. With its action, DEA is also obviating the progress and promise of kratom research to boosting the American bio-sciences industry.

In short the arbitrary cancellation of kratom by DEA without any public input suggests that OMB must reassert itself with respect to the regulatory actions of the agency. In addition where have been the officials the Office of Legal Counsel in the Department of Justice whose job is to review regulatory actions taken by the

components of the agency before they are submitted to OMB?

CRE also states that the DEA's actions violate the US-Canada Regulatory Cooperation Council (RCC) Agreement since the U.S. regulatory system coordinates closely with that of Canada. As the FDA recently stated that the Canadian food safety system is comparable to that of the U.S. and since Canada lists kratom as a Natural Health Product, the DEA's actions not only put it in conflict with the RCC but also with the FDA.

The CRE also states that the DEA's decision violates the Information Quality Act since it did not designate the Schedule 1 classification of kratom as a HISA (Highly Influential Scientific Assessment). CRE states,

> The OMB Peer Review Guidelines, which govern the Information Quality responsibility of all federal agencies, define a Highly Influential Scientific Assessment (HISA) as follows:
>
> "A scientific assessment is considered ''highly influential'' if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest."

The aforementioned information most certainly demonstrates that the Schedule I listing is controversial and has significant interagency interest. Consequently DEA is required by law to conduct a HISA. Either DEA or OMB can designate a scientific study as a HISA.

CRE also points out that the alleged hazards of kratom are not imminent according to the standards set by the Controlled Substances Act. CRE writes,

> The Controlled Substances Act states (21 U.S.C. 811(h)(1) that the Attorney General may act without adherence to established administrative processes "If the Attorney General finds that the scheduling of a substance in Schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety." With respect to established administrative processes the statute states: "Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing.."

Kratom has been in use for decades, if not centuries. What compelling documentation does the DEA, a law enforcement agency, have in its possession that would support a finding of an imminent hazard? DEA did present arguments in the Federal Register in which they claim kratom poses a threat to public health, but none so convincing that it is an imminent threat to public health. The public, including a wide range of experts, should have been given the opportunity to comment on DEA's findings. The DEA chose to bypass the preferred listing process in the Controlled Substances Act, which allows for public comment, by claiming that kratom is an "imminent hazard." By taking this action without providing sufficient detail of the factual predicate justifying its determination that kratom is somehow an imminent hazard, the DEA inappropriately revoked any rights of the public to comment on the agency's findings.

With all of this in mind, the CRE has issued its recommendations for the DEA, none of which would actually prevent the DEA from moving forward on its

plans but which would at least give the American people some breathing room in terms of how long they have to address, fight, and resist the primitive agency's tactics. The CRE recommends the following:

> 1. Extend the effective date for placing kratom into schedule I until July, 1, 2017.
> 2. Open a Federal Register notice-and-comment proceeding on placing kratom into Schedule I and inform the public that the DEA's proposal is a "significant regulatory action" under Executive Order 12866 because it,
> a) Has an annual effect on the economy of $100 million or more or
> b) Creates a serious inconsistency with an action taken by another agency, FDA, or
> c) Raises novel legal and policy issues arising out of legal mandates.
> 3. Submit the proposed listing to OMB for review pursuant to Executive Order 12866.
> 4. Inform the US-Canada Regulatory Cooperation Council (RCC) via OMB of DEA's intent to place kratom on schedule I and seek its comments.
> 5. Conduct an interagency peer review of DEA's science which lead to a Schedule I listing of kratom as required by the HISA requirements of the Data (Information) Quality Act.
> We support the calls of the CRE, although we must readily point out that we are demanding that the DEA back off of Kratom completely and allow the substance to be bought, sold, possessed, consumed, and transported freely. The DEA has already pushed far enough with its ridiculous and totalitarian drug war. It is time that the agency realizes that the mindset of prohibition is coming to an end.

Please see this Action Alert to see what you can do to help keep Kratom legal.

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Brandon Turbeville – article archive here – is an author out of Florence, South Carolina. He is the author of six books, Codex Alimentarius — The End of Health Freedom, 7 Real Conspiracies,Five Sense Solutions and Dispatches From a Dissident, volume 1 and volume 2, The Road to Damascus: The Anglo-American Assault on Syria, and The Difference it Makes: 36 Reasons Why Hillary Clinton Should Never Be President. Turbeville has published over 600 articles dealing on a wide variety of subjects including health, economics, government corruption, and civil liberties. Brandon Turbeville's podcast Truth on The Tracks can be found every Monday night 9 pm EST at UCYTV. He is available for radio and TV interviews. Please contact activistpost (at) gmail.com.

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elfmom55 • 12 days ago

This is my comment I just made to CRE.
I will add here that my last Dr. visit was $130.00 + $50.00 for urine test I had to pay in order to get a refill which was approx. $60.00. The steroid shots I got in my back did nothing to relieve me that time.
elfmom55

September 17, 2016 at 2:15 pm

I have herniated discs and spinal stenosis and was back on Hydrocodone last year after not taking it for several years. I hated what they did to me and even though effective I couldn't wait till the effects wore off. I found out about Kratom a few mos. ago and it is keeping me very comfortable with NO side effects. It is a miracle all natural leaf. The "Medical Mafia" just does not want us taking care of our personal issues naturally. They want us on their very toxic and highly addictive substances with chances to OD on them which many do. Many people I have shared Kratom with say it helped their pain also and they consider it a miracle too. This truly is about money and tyranny!

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Doug Stevens • 11 days ago

The DEA wants to be the main snake in he bog!

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