



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 02 2018

The Honorable Tom Cotton
United States Senate
Washington, D.C. 20510

Dear Senator Cotton:

This responds to your letter to Attorney General Jeff Sessions and Drug Enforcement Administration (DEA) Acting Administrator Uttam Dhillon, dated September 13, 2018. The letter asks if the Department of Justice (Department) considers the sale of poppy straw along with poppy seeds a violation of the Controlled Substances Act (CSA); what kind of criminal liability a manufacturer or distributor of unwashed poppy seeds can face for manufacturing, distributing, and dispensing morphine laced unwashed seeds; and what the Department and DEA are doing to address this problem.

The production, cultivation, and distribution of opium are controlled under several international agreements. Under the provisions of these agreements, the United States refrains from engaging in the domestic commercial production of plant material containing opium. Instead, the United States addresses its legitimate need for opium through the importation of this basic material.

The CSA defines "opium poppy" as the plant of the species *Papaver somniferum L.*, except the seed thereof. *See* 21 U.S.C. § 802(19). The CSA defines "poppy straw" as all parts, except the seeds, of the opium poppy, after mowing. *See* 21 U.S.C. § 802(2). Both opium poppy and poppy straw are listed under the definition of a "narcotic drug" in 21 U.S.C. § 802(17) and are listed as a Schedule II controlled substance in 21 U.S.C. § 812(c), Schedule II (a)(3). Further, although *Papaver* species, other than *Papaver somniferum L.*, are not specifically listed as controlled substances in the CSA, if Schedule II opium alkaloids are contained within the product that is being distributed as poppy seeds, the product may be subject to CSA controls.

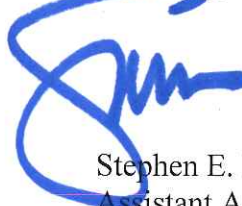
Depending on the specific circumstances of each case, selling poppy straw along with poppy seeds may be a violation of the CSA. *For example see* 21 U.S.C. § 841(a)(1). The CSA prohibits the knowing or intentional manufacture, distribution, dispensation, or possession with the intent to manufacture, distribute, or dispense a controlled substance. *See* 21 U.S.C. § 841(a)(1). Among other potential penalties, a violation of 21 U.S.C. § 841(a)(1) regarding a Schedule II controlled substance may result in a sentence to a term of imprisonment of not more than 20 years, and if death or serious bodily injury results from the use of the substance, a

sentence to a term of imprisonment of not less than twenty years or more than life. *See* 21 U.S.C. § 841(b)(1)(C).

As your letter points out, our nation is currently fighting the worst drug crisis in our history. We appreciate your support and interest in our work as the Department and DEA fight this crisis head-on. The information you provided regarding the online sales of unwashed poppy seeds is concerning. The Department and DEA will be looking into the matter more closely to determine what actions may be necessary. Specifically, DEA will further investigate available information to include toxicology, overdose, and intelligence data, to determine, in consultation with the Department of Health and Human Services, if further regulatory or enforcement action needs to be taken in regards to unwashed poppy seeds.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Boyd', is written over the typed name.

Stephen E. Boyd
Assistant Attorney General
Office of Legislative Affairs