December 26, 2019

The Honorable Sonny Perdue  
Secretary of Agriculture  
U.S. Department of agriculture  
1400 Independence Avenue SW  
Washington, DC  20250


Secretary Perdue,

We are pleased to present for the consideration of USDA the Indiana state hemp plan in response to publication of the U.S. Department of Agriculture’s Interim Final Rule requirements for the Establishment of a Domestic Hemp Production Program, 7CFR 990, appearing in the Federal Register on October 31, 2019.

This document is presented at this time in response to an Indiana statutory mandate that the Indiana State Seed Commissioner file a state hemp program plan with USDA prior to December 31, 2019. (Indiana Code 15-15-13-15).

In response to the 2014 Farm Bill, the Indiana legislature enacted the Indiana Hemp Act cited in Indiana Code 15-15-13. Under this state code, a state research program was initiated and approved under DEA oversight. The research component was led by Purdue University and included researchers from seven other Indiana universities. The Office of Indiana State Chemist & Seed Commissioner (OISC) was designated as the lead agency for hemp regulations, not including hemp products (IC 15-15-13, see especially the duties of the state seed commissioner recorded in IC 15-15-13-12).

With adoption of the Agricultural Improvement Act of 2018 (2018 Farm Bill), the Indiana legislature modified IC 15-15-13 to bring Indiana law into conformance with the newly adopted hemp regulations represented in the 2018 Farm Bill. In addition, the Indiana legislature granted to the Office of Indiana State Chemist the authority/responsibility of drafting and adopting emergency rules. The attached emergency rules, OISC official methods, and OISC standard operating procedures represent a program that responsibly serves the hemp growers and citizens of Indiana in keeping with increased resources to meet the expected demands.

The Office of Indiana State Chemist has hired added staff for inspections, and increased laboratory capacity, developed and secured a Schedule 1 compliant laboratory and quality program. All OISC inspectors have been trained to the standards. Frequent and meaningful communication takes place regularly with hemp growers, hemp industry advocates, hemp researchers, and law enforcement officers throughout Indiana to maintain program consistency and continuity.
Below is a synopsis of our Indiana State Hemp Plan compliance with the 2018 Farm Bill and the USDA Interim Final Rule (7 CFR 990) for hemp published in 7 CFR 990 on October 31, 2019.

- A practice to collect, maintain, and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the state program regarding:
  - Contact information as described in 990.70 (a) (1);
  - Legal description of the land on which the producer will produce hemp in the state to the extent practicable, its geospatial location; and
  - The status and number of the producer’s license or authorization.
  - **COMMENT:** These data, as listed above, are criteria met as required information in our application forms and licensing software to be developed under contract. Commercial software is being contracted to meet the standards presented, and to facilitate the reporting required in the USDA Interim Final Rule. Operational software is expected prior to the 2021 season.

- A procedure for accurate and effective sampling of all hemp produced to include:
  - **COMMENT:** For 2020, Indiana has adopted to continue a research program as allowed in the 2018 Farm Bill that limits the number of hemp growers and allows the state to randomly sample growers and randomly inspect growers. No certification of hemp fields is being mandated by the state. Receivers of a crop are self-monitoring for compliance of materials received to avoid taking in marijuana and being possibly charged under marijuana laws. If a grower is sampled by OISC inspectors and discovered to be out of compliance, under Indiana Code 15-15-13-the crop will be ordered to be terminated and retted, or destroyed. After retting, a crop may be used for its intended purpose as fiber.
    - Within 15 days prior to the anticipated harvest of the hemp plants, a sample collected by a state or federal designated person. The sample shall be collected from the flower materials and tested for delta-9 THC concentration levels as described.
    - **COMMENT:** The sampling program in Indiana requires 30 days advance notice by a grower of a request for sampling, which is then conducted within the fifteen day window.

- Sampling method must address that no more than one per cent (1%) of the plants in the lot would exceed the acceptable hemp THC level.
  - **COMMENT:** The statistical assumptions supporting this requirement in the USDA rule are largely unknown, e.g., the fundamental issue of individual plant THC variance, THC distribution as a function of a crop in field, etc., are lacking. The one percent (1%) threshold one might surmise to be a biologically unattainable level of performance standard in a field of hemp at this time. The genetics of hemp as a crop in this country are nowhere near that level of expected stability. The guidance provided does not appear to meet the rigor of standard as stated in the rule.
The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

COMMENT: The method OISC Field Sampling of Hemp MTD 0501-IS Rev. 2 (12/13/2019) uses thirty (30) randomly selected top buds or flowers for each separate non-cloned variety that is to be tested (Varieties are NOT combined.) A sample of the plant is taken as one (1) inch up to one and one-half (1.5) inches of the flower and plant material for noncloned plants. The randomly drawn thirty stems are consolidated and treated through drying and analysis as one entity. For authoritatively credentialed cloned plants: Because authoritatively credentialed clones represent one genetic entity, the sampling of an authoritatively cloned lot is drawn from five (5) samples of four inches including the flower and stem plant tissue.

During the scheduled sample collection, an authorized representative of the producer shall be present at the growing site.

COMMENT: The adoption of this practice has been adopted as part of the sampling protocol in the OISC Field Sampling of Hemp MTD 0501-IS Rev. 2 (12/13/2019).

A grower shall not harvest the hemp crop prior to samples being taken.

COMMENT: Sampling is drawn from standing crop only as delineated in the OISC Field Sampling of Hemp MTD 0501-IS Rev. 2 (12/13/2019).

The plan must include a procedure for testing that is able to accurately identify whether the sample contains a delta-9 THC content that exceeds the acceptable hemp level based on an analysis that measures total THC on a dry weight basis.

Any test of a representative sample that results in a valuation higher than the acceptable THC level is conclusive evidence the lot is not in compliance. A lot that is sampled in a non DEA registered laboratory shall not be further handled, processed, or enter the stream of commerce, and the producer shall ensure that the lot is disposed of in accordance with 7 CFR 990.27 (See also 21 CFR 1317.15)

COMMENT: 1) The crop, or lot, found to be in violation, may be burned on site and documented by an OISC inspector, or burned on site and documented by a law enforcement official, or burned on site and documented by the owner in digital video. Or, 2) The crop may be sent in a future time to a registered DEA facility that is a reverse distributor, and that may also be licensed as a hemp processor. There are currently no reverse distributors in Indiana equipped to handle volumes of hemp plants.

Samples of hemp from a lot shall not be comingled with samples from another lot.

COMMENT: This sampling standard is addressed in OISC Field Sampling of Hemp MTD 0501-IS Rev. 02, (12/13/2019), and, in Storage, handling, accountability, and disposal of hemp at the Office of Indiana State Chemist, SOP 0282-FD Rev. 02 (12/13/2019).

The analytical method selected shall meet the standards of the federal rule.

COMMENT: This analytical methodology is addressed in OISC adopted Analysis of delta-9-tetrahydrocannabinol in hemp by gas chromatography, MTD 0500-FD Rev. 02 (12/13/2019); and Analysis of delta-9-tetrahydrocannabinol in hemp by liquid chromatography, MTD 0502-FD Rev. 01 (12/13/2019).
• A plan must consent to promptly notify the Administrator by certified mail or electronically of any occurrence of hemp that do not meet the definition, and attach records demonstrating the appropriate disposal of all of those plants, and materials in the lot from which the samples were taken.

• **COMMENT:** Inciana has a protocol for burning the crop in the field that works for purposes of destroying an inadequate or non-compliant crop. A procedure to notify the Administrator electronically including the documentation requested is in place.

• A state plan must comply with 7 CFR 990.6 Violations

• **COMMENT:** IC 15-15-13-13.5 and 360 IAC 2-6-3 speak to negligent violations. 360 IAC 3 (DRAFT PENDING 2020) will speak to civil penalty and negligent acts.

• A state plan must include conducting of annual inspections of, at a minimum, a random sample of producers to demonstrate compliance under 7 CFR 990.6 and Indiana laws.

• **COMMENT:** Annual inspections including checks on compliance for records and procedural audits will be randomly conducted.

• A state plan must include the procedures for submitting the information required by USDA under 7 CFR 990.70 to the USDA Secretary of Agriculture within 30 days after the date on which the information is received. All data must be transmitted to USDA in a format that can be received by USDA.

• **COMMENT:** This requirement is to be met as part of the performance requirements of commercial software that is being contracted. The receipt of the software and program functionality is expected in 2020.

• A state plan must include a certification that the state has the resources and personnel to carry out the practices and procedures described in 7CFR 990.

• **COMMENT:** The state of Indiana has the resources to carry out a state hemp plan as outlined in the supporting state commentary above.

Recommended for forwarding as a representation of the Indiana state hemp program plan,

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