

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FLANDREAU SANTEE SIOUX TRIBE, a  
Federally-recognized Indian tribe,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE,

and

SONNY PERDUE, in his official capacity  
as Secretary of Agriculture,

Defendants.

Case: 4:19-cv-04094-KES

DECLARATION OF  
SONIA N. JIMENEZ

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I, Sonia N. Jimenez, hereby declare and state as follows:

1. I am the Deputy Administrator of the Specialty Crops Program within the United States Department of Agriculture (USDA). The Specialty Crops Program is a program under the Agricultural Marketing Service (AMS), which is an agency of USDA. I have been employed in this role since September 2017. This declaration is based on my personal knowledge and facts as reported to me.

2. In my role as Deputy Administrator, I am charged with helping buyers and sellers of all sizes in the U.S. produce industry to market their

perishable products in the most efficient manner. The program offers a wide array of services from marketing services, marketing agreements and orders, market news, regulatory activities, economic analysis, research and promotion programs, commodity procurement activities, and grading and standardization for fresh and processed fruits, vegetables, and nuts, and other related products.

3. The 2018 Farm Bill directs the USDA to issue regulations to implement a program for the commercial production of industrial hemp in the United States.

4. The forthcoming Domestic Hemp Production Program will be managed by the Specialty Crops Program for which I am Deputy Administrator. As such, my office is responsible for the required rulemaking and I have been directing my team through the rulemaking process.

5. The 2018 Farm Bill was signed into law December 20, 2018. On December 21, 2018, the federal government shut down. Some of my team members were partially working for programs that were not funded by annual appropriations so that work was able to continue despite the shutdown.

However, there were no appropriations for the hemp program so we did not work on this program during the federal government shut down.

6. The federal government reopened on January 25, 2019, and my team began working toward establishing regulations at that time.

7. On February 27, 2019, USDA issued a Notice to Trade announcing its plan to formulate regulations “that will include specific details for both

federally regulated hemp production and a process for the submission of State, and Indian tribal plans to USDA.” Exhibit 1.

8. The February 27 announcement indicated: “USDA’s intention to issue regulations in the Fall of 2019 to accommodate the 2020 planting season.” *Id.* USDA still intends to issue regulations in the Fall of 2019.

9. USDA further announced its commitment to substantively review State and Tribal plans within the 60 days as required by law, *once regulations are effective. Id.* (emphasis added)

10. On March 8, 2019, USDA received the Flandreau Santee Sioux Tribe’s hemp production plan. USDA did not and has not substantively reviewed the merits of the plan.

11. To date, USDA has received State and Tribal hemp production plans from 7 states and 8 Tribal Nations. USDA has not substantively reviewed the merits of these plans.

12. On March 13, 2019, USDA held the “2018 Farm Bill Implementation Listening Session on Hemp” to provide interested parties an opportunity to provide input regarding the forthcoming Hemp Production Program and corresponding regulations. At this session, Mr. Ben Fenner, on behalf of Mr. Seth Pearman, spoke representing the Flandreau Santee Sioux Tribe. The Flandreau Santee Sioux Tribe also submitted written comments for USDA’s consideration. Exhibit 2. USDA also met with representatives of the Flandreau Santee Sioux Tribe following the listening session on March 13, 2019.

13. On May 1 and 2, 2019, USDA held a Tribal Consultation regarding the 2018 Farm Bill. The meeting was held in Washington, DC and the Flandreau Santee Sioux Tribe participated by and through Mr. Ben Fenner.

14. At the conclusion of the 2018 Farm Bill Tribal Consultation, a hemp listening session was held on May 2, 2019. Mr. Ben Fenner attended the session on behalf of the Flandreau Santee Sioux Tribe.

15. On May 6, 2019, the Flandreau Santee Sioux Tribe submitted a waiver request to USDA. In the letter, the Flandreau Santee Sioux Tribe requested, “a waiver of USDA’s discretionary ‘hold’ and that USDA approve the Tribe’s plan[.]” Exhibit 3.

16. At the request of the Flandreau Santee Sioux Tribe, on May 13 USDA had a meeting with the Flandreau Santee Sioux Tribe to discuss their request for a waiver and their plan. The FSST was represented by Ben Fenner, Seth Pearman, and Patty Marks. USDA attendees included Patty Bennett (AMS), Mai Dinh (USDA Office of the General Counsel), Elizabeth Kruman (USDA Office of the General Counsel), Ciarra Toomey (USDA Office of the General Counsel), Brian Hill (USDA Office of the General Counsel), Diane Cullo (USDA Office of Tribal Relations), and Dennis Kennedy (USDA Office of Tribal Relations).

17. Until USDA has established regulations, it cannot consistently review State and Tribal plans submitted pursuant to the 2018 Farm Bill. Further, the Farm Bill left a number of required elements of the State and

Tribal plan up to the discretion of USDA such as the testing methods and disposal requirements for production of non-compliant plants.

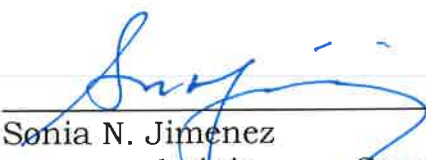
18. USDA is in the middle of its internal process for drafting regulations and guidelines. Given the levels of review and drafting, and careful and deliberative process involved—the form of the regulations today may be substantially different than the final published version.

19. USDA is working as expeditiously as practicable to draft rules as directed by the 2018 Farm Bill.

20. On May 28, 2019, USDA issued a “Legal Opinion on Authorities for Hemp Production” and a notice clarifying industrial hemp production for Indian Tribes.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing statements are true and correct to the best of my knowledge and belief.

Executed in Washington, D.C. on this 4 day of June, 2019.

  
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Sonia N. Jimenez  
Deputy Administrator Specialty Crops Program  
Agricultural Marketing Service  
United States Department of Agriculture