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MEMORANDUM REGARDING THE ADOPTION PROCESS OF THE PROPOSED ARKANSAS INDUSTRIAL HEMP PRODUCTION RULE

Purpose

This memorandum analyzes the status of the adoption process of the Arkansas State Plant Board's (Plant Board) proposed Hemp Production Rule (Proposed Rule).

Background

Action on the proposed rule was delayed due to challenges related to the Plant Board, as outlined in the timeline below:

May 6, 2021 – The Arkansas Supreme Court issued its opinion in McCarty, et al. v. Plant Board, et al., ruling that provisions of the Board's enabling legislation requiring election of certain Board members by private trade associations are unconstitutional. The Supreme Court remanded the matter to Pulaski County Circuit Court, 6th Division, with instructions for the circuit court to issue an order removing the unconstitutionally appointed members.

June 10, 2021 - Pulaski County Circuit Court, 6th Division, issues the Order removing 9 members from the Plant Board. This left only 9 remaining members, and 2 of those are non-voting members.

July 28, 2021 – Act 361 becomes effective providing method for appointment of new Plant Board members.

July 28, 2021 - Act 565 of 2021, also known as the Arkansas Industrial Hemp Production Act, became effective. It was passed in response to the 2018 Farm Bill, which transitioned state hemp programs from research-only to a closely regulated industry.

September 29, 2021 – New Plant Board members were appointed.

December 21, 2021 – Proposed Rule forwarded to Governor's office for review and approval.

January 13, 2022 – Approval received from Governor's office.

January 28, 2022 – Proposed rule reviewed and approved by Plant Board Industrial Hemp Committee at a special called meeting to consider the rule.

March 3, 2022 – Proposed rule reviewed and approved by Plant Board.

March 12 – April 10, 2022 – Public Comment period.

April 14, 2022 – Plant Board meets to review public comments and finalize the rule.

May 17, 2022 – Plant Board ruled unconstitutional again by the Pulaski County Circuit Court.

May 18, 2022 – Rule placed on ALC Administrative Rules Subcommittee agenda. Because industry representatives had expressed a desire to discuss the rule further, a legislator asked the Agency to pull the rule from the agenda.

Further discussions with hemp industry representatives about the rule are ongoing. It is anticipated that the rule will be ready for legislative review later this summer.

Discussion

The agency has been unable to complete the adoption of the rule for the reasons described above, which include issues concerning the legal status of the Plant Board, and a last-minute request from industry members to further discuss the rule.