

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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Form #4

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-12E-7

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: Industrial Hemp

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

61CSR29  
TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SERIES 29  
INDUSTRIAL HEMP

FILED

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**61-29-1. General.**

1.1. Scope. – This legislative rule establishes requirements and rules for the licensing, cultivating, testing, supervision, production, processing and sale of industrial hemp in West Virginia through the issuance of Research and Marketing Cultivation Program Licenses as designated in Section 7606 of the Agricultural Farm Act of 2014 (the Farm Bill).

1.2. Authority. -- W. Va. Code §19-12E-7.

1.3. Filing Date. --

1.4. Effective Date. --

**61-29-2. Definitions.**

2.1. “Act” -- means the “Industrial Hemp Development Act” of 2002 and amendments thereto.

2.2. “Commissioner” --means the Commissioner of Agriculture.

2.3. “Department” --means the Department of Agriculture.

2.4. “Industrial hemp” -means all or parts and varieties of the plant cannabis sativa, cultivated or possessed by a licensed grower, whether growing or not, that contain a tetrahydrocannabinol concentration of not more than one percent, or more than the concentration adopted by federal law in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq., whichever is more restrictive.

2.5. “Law enforcement officer” --means an officer responsible for maintaining public order and enforcing the law, particularly the activities of prevention, detection and investigation of crime and the apprehension of criminals.

2.6. “License” or “licensed” means the applicant has been issued a Research and Marketing Cultivation Program License by the Commissioner, following a successful application and review process and may possess, cultivate, grow, harvest, produce, sell, distribute or deliver industrial hemp within West Virginia. The Department is duly licensed to engage in research and development programs initiated by the Commissioner. A duly licensed applicant is presumed to be growing industrial hemp for commercial purposes.

2.7. “Licensee” --means the Commissioner or a person or business entity who has been issued a Research and Marketing Cultivation Program License by the Department.

2.8. “Research and development” -means growth of industrial hemp for increase of seed stock from parent material intended for varietal development, phytoremediation, basic agronomic practices and

other activities for the purpose of discovering and enabling development of useful processes, information and products.

2.9. "Research and Marketing Cultivation Program License" means licensed research and development of West Virginia industrial hemp and hemp products in a controlled fashion as part of an industrial hemp research and development program initiated by the Commissioner or affiliated with a state institution of higher learning, as defined in this section.

2.10. "State institution of higher education" means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in W.Va. Code §18B-1-2.

2.11. "Tetrahydrocannabinol" or "THC" means the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extracatives of, cannabis, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.

**61-29-3. Research and Marketing Cultivation Program License.**

3.1. All applicants shall provide to the Commissioner, on a form proscribed by the Commissioner, the following information:

3.1.a. Name and mailing address of the applicant;

3.1.a.1. Type of business entity, such as corporation, LLC, partnership, sole proprietor, etc.

3.1.a.2. Business name(s) if different from 3.1.a. above.

3.1.b. A description of the research and development program;

3.1.c. Legal description and global positioning coordinates sufficient for locating the production fields to be used to grow industrial hemp. Industrial hemp propagation is only authorized on land areas specified in the license; and

3.1.d. Any other information the Commissioner deems appropriate.

3.2. All applicants shall comply with the following background information requirements:

3.2.a. Each first-time applicant, or if the applicant is a business entity, a principal of the business entity, shall file a set of the applicants fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the Criminal Investigation Bureau of the Department of Justice for state processing and with the Federal Bureau of Investigation for federal processing.

3.2.b. All costs associated with the criminal history checks are the responsibility of the applicant.

3.2.c. Criminal history records provided to the Department will be kept confidential.

3.3. All applications must contain applicant's acknowledgement and agreement to the following terms and conditions:

3.3.a. Any information provided to the Department, except criminal history records provided to the Department under this section, may be publicly disclosed and be provided to law enforcement agencies without further notice to the applicant.

3.3.b. The applicant agrees to allow any inspection and sampling that the Department deems necessary.

3.3.c. The applicant agrees to pay for any sampling and analysis costs that the Department deems necessary.

3.3.d. The applicant agrees to submit all required reports by the applicable due-dates specified by the Commissioner.

3.4. In addition to the application form, each applicant shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application will be considered incomplete and will not be processed until the fee is received.

3.5. The annual registration fee for research and development of industrial hemp shall be one hundred dollars (\$100.00) plus five dollars (\$5) per acre.

3.6. If the Commissioner determines that all requirements have been met and that a Research and Marketing Cultivation Program License should be granted to the applicant, taking into consideration all information available to the Department, the Commissioner may approve the application and issue the license.

3.7. All licenses shall contain a unique registration number and are valid until December 31, of the year of application.

3.8. Each annual renewal shall require the payment of a license renewal fee of fifty dollars (\$50.00).

3.9. A copy of the license shall be displayed at each location where a licensed activity takes place.

3.10. After issuance of a license, any licensee that wishes to alter the growing area(s) on which the licensee will conduct industrial hemp cultivation for research and development purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations. No alterations will be allowed until the Department gives written approval of the proposed alterations.

#### **61-29-4. Notification Reports.**

4.1. Prior to planting, each licensee shall file a report with the Commissioner that includes:

4.1.a. Documentation, according to protocols approved by the Commissioner, showing that the seeds planted are of a type and variety certified to contain no more than one percent THC;

4.1.b. A description of the varieties to be planted and a map showing where they are planted;

4.1.c. A copy of any contract to grow industrial hemp.

4.1.d. Licensees must report any subsequent changes to the report within ten (10) days of the change.

4.2. At least 30 days following harvesting, each licensee shall file a report with the Commissioner of the sale or distribution of any industrial hemp grown by the licensee and include the following information:

4.2.a. A statement of the intended use or other disposition of the licensee's industrial hemp crop.

4.2.a.1. If the crop is being sold or distributed, the name and mailing address of the person or business entity receiving the industrial hemp;

4.2.a.2. The type of industrial hemp product sold or distributed; and

4.2.a.3. The amount, in standard units of measurement, of industrial hemp product sold or distributed.

4.2.b. Licensees must report any subsequent changes to the report within ten (10) days of the change.

4.3. Refusal or failure of a licensee or authorized representative to provide any information required or requested by the commission for the purposes of the Act or these Rules constitutes a violation of the act and may result in a denial, suspension or revocation of the license.

4.4. Providing false, misleading, or incorrect information pertaining to the applicant's cultivation of industrial hemp to the Commissioner, by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules constitutes a violation of the act and may result in a suspension or revocation of the license.

#### **61-29-5. Inspection Program for Testing and Supervision During Growth and Harvest.**

5.1. All licensees are subject to sampling of their industrial hemp crop at any time during growth and harvest to verify that the THC concentration does not exceed one percent. The Department shall inspect any crop, covered any license to be inspected. The Department shall notify the licensee by registered mail the scope and process by which the inspection will be conducted and require the licensee to contact the Department within 30 days to set a date and time for the inspection to occur.

5.1.a. During the inspection, the licensee, or authorized representative shall be present at the growing operation and provide the Department's inspector with complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation and storage of industrial hemp, and all documents and records pertaining to the industrial hemp crop.

5.1.a.1. Refusal or failure by a licensee or authorized representative to fully cooperate and assist the Department with the inspection process constitutes a violation of the act and may result in a suspension or revocation of the license.

5.1.b. Sampling of industrial hemp plants will occur in the following manner:

5.1.b.1. Composite samples of each variety of industrial hemp may be sampled from the growing area(s) at the Department's discretion.

5.1.b.2. The sampled material will be divided into two equal parts, one part will be used for testing, the other part will be retained for retesting.

5.1.b.3. Quantitative laboratory determination of the THC concentration will be performed according to protocols approved by the Commissioner.

5.1.b.4. A composite sample test result greater than one percent THC concentration shall be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains THC concentration over the limit allowed for industrial hemp and that the licensee is not in compliance with the Act. Upon receipt of such a test result, the Commissioner may order a retest of the retained samples, or, may summarily suspend and revoke the license. If a retest is done, the results of the retest are considered final.

5.1.b.5. Sample test results for industrial hemp licensees that are greater than one percent THC concentration shall be provided to the appropriate state law enforcement agency.

5.1.b.6. As part of inspection and testing, each licensee shall pay a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department deems appropriate, including retesting. Inspection and testing may be performed by an institution or private entity approved by the Commissioner. Failure to pay for inspector, sampling and analysis costs incurred as a result of this inspection and testing requirement, within thirty (30) days of receipt of invoice, may result in suspension and revocation of the license by the Commissioner.

**61-29-6. Reporting and Evaluation.**

6.1. The Commissioner shall maintain data relating to all licenses, reports and testing analysis performed for each licensee.

6.2. Within five (5) years of the implementation of this rule, the Commissioner shall report to the House and Senate Committees on Agriculture the results of the initial research and development licenses issued by the Department and the estimated economic impact of industrial hemp in West Virginia. The Commissioner shall make suggestions designed to improve the cultivation, distribution and sale of industrial hemp and industrial hemp products as a way to contribute to the state's economy and agricultural vitality.