

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

Form #3

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SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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 RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Industrial Hemp

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard, East
Charleston, WV 25305

Phone Number: 304-558-3200 Email: jodeemartin@wvda.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This will have minimal cost to state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Industrial Hemp

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The research will likely be done with institutions of higher learning and the fee could possibly be waived.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This will have a minimum fiscal impact on the state due to the fact that there is no need for extra staffing and the research will be conducted with insitutions of higher learning.

Date: August 1, 2014

Signature of Agency Head or Authorized Representative

CLF



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Statement of Circumstance

The West Virginia Department of Agriculture was directed by the West Virginia Legislature, the passage of HB 3011, and also the 2014 United States Farm Bill to promulgate rules for Industrial Hemp. This rule is written to establish the removal of the provisions that require an applicant to meet federal requirements concerning the production, distribution and sale of industrial hemp prior to being licensed to grow hemp for industrial purposes in the state or as a part of a complete defense to a prosecution for the possession or cultivation of marijuana; and limiting the cultivation of industrial hemp to research conducted by the Commissioner of Agriculture and institutions of higher learning authorized by the Commissioner to do so.

A handwritten signature in black ink, appearing to be "W. Helmick".



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Brief Summary of Proposed Rule
Industrial Hemp
Title 61 Series 29

This legislative rule establishes general requirements for the regulation, application, licensure and rules for the cultivation, production, processing and manufacturing of industrial hemp within West Virginia.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200

LEGISLATIVE RULE TITLE: Industrial Hemp

1. Authorizing statute(s) citation 19-12E-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 2, 2014

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 2, 2014 - August 1, 2014

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 2014

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jodee Martin/Executive Assistant
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East

Charleston, WV 25305 304-558-3200 304-558-2203 (fax)

jodeemartin@wvda.us

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

July 2, 2014 - August 1, 2014

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 2, 2014

d. Attach findings and determinations and reasons:

Attached

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 29
INDUSTRIAL HEMP

RECEIVED
2014 AUG -1 PM 1:50

SECRETARY OF AGRICULTURE
STATE OF WEST VIRGINIA

§61-29-1. General.

1.1. Scope. -- This legislative rule establishes general requirements for the regulation, application, licensure and rules for the cultivation, production, processing and manufacturing of industrial hemp within West Virginia.

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

1.3. Filing Date. --

1.4. Effective Date. --

§61-29-2. Definitions.

2.1. "Act" or "The Act," in the context of industrial hemp, means the "Industrial Hemp Development Act" of 2002 and amendments thereto.

2.2. "Approved cultivar," means any variety of industrial hemp designated by the Commissioner, set out in the List of Approved Cultivars published by the Department of Agriculture, as amended from time to time.

2.3. "Commissioner" means the Commissioner of Agriculture as described in West Virginia Code §19-1-1 et seq;

2.4. "Industrial hemp" means the plant and plant parts of the genera Cannabis, the leaves, flowering heads and seeds of which do not contain more than one percent (1%) tetrahydrocannabinol (THC) w/w, and includes the derivatives of such plants and plant parts. It also includes the derivatives of non-viable cannabis seed. It does not include plant parts of the genera Cannabis that consist of non-viable cannabis seed, other than its derivatives, or of mature cannabis stalks that do not include leaves, flowers, seeds or branches, or of fiber derived from those stalks. "Industrial hemp", also known as "agricultural hemp", is an agricultural crop which may be grown,

produced, possessed, and commercially traded in West Virginia pursuant to WV Code §19-12E-1 et seq and the provisions of this rule.

2.5. "License" means the approval by the Commissioner to engage in the growing, cultivating, harvesting, producing, selling, possessing, transporting, or delivering industrial hemp within the state of West Virginia.

2.6. "Pilot Program" means a program or programs initiated by the Commissioner, or contracted with colleges and universities instructed by or, as designated in Section 7606 of the Agricultural Farm Act of 2014, for the purpose of testing industrial hemp.

2.7. "THC" means Δ^9 -tetrahydrocannabinol ((6aR, 10aR)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol).

§61-29-3. Application for Registration.

3.1. To be eligible to register, a person shall:

3.1.a. If the person is an individual, ordinarily reside in West Virginia or, if the person is a partnership, at least one of its partners is an individual who ordinarily resides in West Virginia; or

3.1.b. If the person is a corporation or cooperative, have its head office in West Virginia or operate a branch office in West Virginia.

3.2. A person who registers shall submit the following information and documents to the Commissioner, or the Commissioner may prescribe on a form that an applicant shall provide:

3.2.a. The applicant's name, their mailing address and phone number in West Virginia and, if applicable, their fax number and electronic

mail address;

3.2.b. The applicant's date of birth or, in the case of a corporation, cooperative or partnership, the names and dates of birth of its officers, directors and partners, as the case may be;

3.2.c. In the case of a corporation or cooperative, a copy of the certificate of incorporation or other instrument, and, in the case of a corporation, cooperative or partnership, a copy of any document registering with the Secretary of State the name and style under which it operates or intends to operate;

3.2.d. The activity for which the registration is requested;

3.2.e. The form in which the industrial hemp is to be imported, exported, produced, sold, provided, possessed, transported, sent or delivered, as the case may be;

3.2.f. The address and legal description of each place where the industrial hemp is to be stored, sold or provided, indicating for each place the form of the industrial hemp;

3.2.g. The address of the place in West Virginia where the applicant will keep the records, books, electronic data or other documents that are required by these rules to be kept;

3.2.h. With respect of the applicant, each officer and director in the case of a corporation or cooperative and each partner in the case of a partnership, shall provide a copy of a criminal records background check for each person listed on the application;

3.2.i. Provide a description of security measures to be used and a statement that the applicant will meet the security measures required by these rules in respect of the activity;

3.2.j. An application shall be signed by the applicant or, in the case of a corporation, cooperative or partnership, one of its officers, directors or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of his or her knowledge; and

3.2.k. Pay the appropriate fees to the Department of Agriculture.

3.3. An applicant shall provide the following information:

3.3.a. In the case of the cultivation of industrial hemp:

3.3.a.1. The approved cultivar that will be sown, or the variety of industrial hemp if the applicant is a plant breeder,

3.3.a.2. The number of hectares to be cultivated for seed or viable grain and the number of hectares to be cultivated for fiber,

3.3.a.3. In the case of renewal, the number of hectares cultivated for industrial hemp, at each site, in each of the previous two years,

3.3.a.4. The Global Positioning System (GPS) coordinates of each site to be cultivated and a map showing the location of the site in terms of its legal description,

3.3.a.5. If any part of the site is to be cultivated for seed or viable grain, the Global Positioning System (GPS) coordinates of that part of the site, and an indication on the map of its location within the site,

3.3.a.6. A statement that the applicant is the owner of the land to be used for the cultivation or a statement, signed by the owner of the land, indicating that he or she has consented to that use.

3.3.b. In the case of the processing of seed, viable grain or non-viable cannabis seed:

3.3.b.1. The address of each place at which the processing will take place, and

3.3.b.2. If the application is for conditioning seed or viable grain, a description of the activity and location of the establishment at which the conditioning will take place.

3.3.c. In the case of the owner or operator of a laboratory who intends to possess industrial hemp for the purpose of testing for viability,

evidence that the laboratory has been designated as an accredited laboratory and a copy of accrediting body's certificate; and

3.4. If the applicant is processing industrial hemp:

3.4.a. The address of each place at which the processing will take place;

3.4.b. A description of the raw industrial hemp material to be used in the process;

3.4.c. A copy of each contract with each provider of raw industrial hemp material;

3.4.d. A description of the end product or products of each processing facility to be licensed; and

3.4.e. A description of the security measures the applicant will implement to secure all industrial hemp under the control of the registrant.

§61-29-4. Registration.

4.1. The Commissioner shall, on receipt of an application containing the information and documents required under this rule, issue a registration that sets out the following:

4.1.a. The registration number;

4.1.b. The name of the person to whom the registration is issued;

4.1.c. The activities that are permitted, and the location at which each activity is permitted;

4.1.d. The number of acres and Global Positioning System (GPS) coordinates and the form of industrial hemp for which each activity is permitted;

4.1.e. In the case of a plant breeder, the variety of industrial hemp that may be cultivated; and

4.1.f. Any conditions necessary to minimize security, public health or safety hazards related to the licensed or authorized activities.

4.2. The registration or authorization is valid for one year from the date issued.

4.3. A copy of registration shall be displayed at each location where registered activity takes place.

§61-29-5. Denial or Revocation of Registration.

5.1. The Commissioner shall refuse to issue registration or authorization in the following cases:

5.1.a. If the application contains false or misleading information, or if false or falsified documents, have been submitted in or with the application;

5.1.b. If in the previous five (5) years the applicant has had a registration or authorization under the Act revoked or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has had such a license or authorization revoked or has been an officer, director or partner of a corporation, cooperative or partnership, as the case may be, that has had such a license or authorization revoked, except if the revocation was due to loss or theft of the license or authorization;

5.1.c. If the applicant or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has a criminal record that includes within the previous 10 years:

5.1.c.1. A designated felony drug offense, or

5.1.c.2. If he or she ordinarily resides in a state other than West Virginia, an offense that if committed in West Virginia would constitute a designated felony drug offense.

5.1.d. If the applicant does not meet the security measures required by these rules in respect of the activity; or

5.1.e. If the applicant or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, is less than 18 years of age.

5.2. The Commissioner may refuse to register the applicant if the applicant has not complied with any provision of these rules or any condition set out in a

previous registration or authorization.

5.3. The Commissioner may not refuse to register an applicant unless the Commissioner:

5.3.a. Has provided the applicant with a written statement setting out the reasons for the proposed refusal;

5.3.b. Has given the applicant an opportunity to be heard, either by written or oral representations, in respect of the proposed refusal; and

5.3.c. Has sent a notice of refusal to the applicant.

5.4. An applicant denied a license may appeal the decision of the Commissioner pursuant to section 15 of this rule.

5.5. The Commissioner shall revoke a license at the request of the holder, or on being notified by the holder that the license has been lost or stolen.

5.6. The Commissioner shall revoke a license or authorization in the following cases:

5.6.a. If false or misleading information, or false or falsified documents, have been submitted in or with the application;

5.6.b. If the Commissioner has been informed, and has verified, that the holder or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has a criminal record that includes within the previous 10 years:

5.6.b.1. A designated drug offence, or

5.6.b.2. If he or she ordinarily resides in a state other than West Virginia, an offence that if committed in West Virginia would constitute a designated drug offence;

5.6.b.3. In the case of a corporation, cooperative or partnership, if any person who is less than 18 years of age is named as an officer, director or partner, as the case may be;

5.6.b.4. Where the holder of a license that was required to be submitted with the application no longer holds license;

5.6.b.5. Where a laboratory that has been designated as an accredited laboratory no longer holds that designation; or

5.6.b.6. In the case of a person who cultivates for seed, he or she is no longer a member of a Seed Growers' Association.

5.7. The Commissioner may revoke a license or authorization, where it is necessary to protect the security, safety or health of the public, if the Commissioner has reasonable grounds to believe that the holder has failed to comply with any provision of these rules or any condition of the license or authorization.

5.8. The Commissioner may not revoke a license unless:

5.8.a. The Commissioner has provided the holder of the license or authorization with a written statement setting out the reasons for the proposed revocation;

5.8.b. The Commissioner has given the holder an opportunity to be heard, either by written or oral representations, in respect of the proposed revocation;

5.8.c. The holder has not taken any corrective measures that are required by the Commissioner, within the time specified by the Commissioner; and

5.8.d. The Commissioner has sent a notice of revocation to the holder.

§61-29-6. Industrial Hemp Seed Cultivars.

6.1. Industrial hemp shall only be grown if it is on the list of approved seed cultivars as provided by the Commissioner of Agriculture, except when grown by established agricultural research institution developing a new seed cultivar.

6.2. The list of approved seed cultivars shall include all of the following:

6.2.a. Industrial hemp seed cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies i.e. The Canadian Seed Growers' Association; and

6.2.b. Industrial hemp seed cultivars that have

been certified by the Organization of Economic Cooperation and Development.

6.2.c. The Commissioner may update the list of approved seed cultivars by adding, amending, or removing seed cultivars.

§61-29-7. Security Measures.

7.1. No person registered to cultivate industrial hemp shall cultivate it within one mile of any school grounds or any other public place usually frequented by persons under the age of 18 years.

7.2. Every person registered shall, in respect of all industrial hemp that they store, keep it in a locked container or a locked location, or on premises to which only authorized persons have access.

7.3. Ornamental and clandestine cultivation of industrial hemp plants is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

§61-29-8. Records, Books, Electronic Data and Other Documents.

8.1. Every person who holds a license shall keep, at the place referred to in the application as approved and stated on the license, the records, books, electronic data or other documents that contain the following information:

8.1.a. The form in which the industrial hemp is imported, purchased or sold and the variety of industrial hemp, if applicable;

8.1.b. The quantity of each form of industrial hemp imported, purchased or sold;

8.1.c. In the case of a person who holds a license to cultivate industrial hemp, the quantity of seed of each approved cultivar that is sown, or of each variety of industrial hemp if the person is a plant breeder, the quantity of seed or viable grain harvested and the date of harvest;

8.1.d. The source of the industrial hemp imported or purchased, namely the name and address of the person who exported or sold it and the country of origin, if applicable;

8.1.e. The destination of the industrial hemp that is sold, namely, the name and address of the purchaser and the country to which it is exported,

if applicable;

8.1.f. The date that each shipment of industrial hemp is sent or received;

8.1.g. In the case of a person who ships industrial hemp, the name of the carrier; and

8.1.h. The results of any tests required by these rules.

8.2. Every person who holds a license to provide, sell or import seed or viable grain shall also keep records, books, electronic data or other documents that contain the following information:

8.2.a. The name, address and license number of the person to whom the seed or viable grain is delivered;

8.2.b. The date of each shipment;

8.2.c. The quantity shipped;

8.2.d. If applicable, the name and license number of the person from whom the seed or viable grain was purchased, the date it was purchased and the quantity purchased.

8.3. The records as specified in this section shall be kept for at least five (5) years after seed or grain is obtained.

8.4. A person who holds a license shall provide to an inspector, on request, any of the records, books, electronic data or other documents required under this section, in order that the inspector may verify whether the person has complied with the Act and these rules.

8.5. Each licensee shall file an annual report to the Commissioner, on or before January 31 of each year that describes the sale or distribution of any industrial hemp grown by the licensee, including, but not limited to, the name and address of the person or entity receiving the industrial hemp and the amount of industrial hemp sold. The annual report may be submitted electronically.

§61-29-9. Inspections.

9.1. The Commissioner or a designee may inspect the books, records, and premises as well as verify that appropriate licenses are displayed at each location where licensed activity is taking place.

9.2. All registrants are subject to sampling of their industrial hemp crop to verify that the THC concentration does not exceed 0.3% on dry weight basis. The Commissioner shall select up to 33% of the registrants to be inspected, except that no registrant may be selected more than two (2) years in row without cause. The Commissioner shall notify each registrant of their selection by certified mail. The notification shall inform the registrant of the scope and process by which the inspection will be conducted and require the registrant to contact the Department within 30 days to set a date and time for the inspection to occur.

9.3. During the inspection, the registrant or authorized representative shall be present at the growing operation. The registrant or authorized representative shall 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 registrant's industrial hemp growing business.

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

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

9.4.b. The sampled material will be divided into two (2) equally sized parts. One part will be used for testing. The other part will be retained for retesting.

9.4.c. Quantitative laboratory determination of the THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

9.4.d. A composite sample test result greater than 0.3% THC will be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a THC concentration over the limit allowed for industrial hemp and that the registrant of that growing area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend and revoke the registration of a commercial industrial

hemp registrant in accordance with § 24-4-104 (4), C.R.S.

9.5. Sample test results for commercial industrial hemp registrants that are greater than 1.0% THC concentration will be provided to the appropriate state law enforcement agency.

§61-29-10. Authorized Testing Programs.

10.1. The Commissioner may collaborate with any institution of higher education, state agency, or private entity for the purpose of testing industrial hemp as follows:

10.1.a. To determine THC content of industrial hemp;

10.1.b. To determine crop status and absence of pesticides or other pollutants;

10.1.c. To determine remedial properties of industrial hemp; or

10.1.d. For any other purpose deemed appropriate by the Commissioner.

§61-29-11. Inspection & Testing Requirement Waiver.

11.1. Notwithstanding the fact that a sample of a research and development registrant's industrial hemp tests higher than 0.3% THC content the registrant shall not be subject to any penalty if:

11.1.a. The sampled industrial hemp was grown solely for research and development purposes by an individual or entity holding a research and development registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

11.1.b. Test results from a research and development registrant may, at the Commissioner's discretion, be accepted in lieu of Department sampling.

11.2. Notwithstanding the fact that a sample of a commercial registrant's industrial hemp tests higher than 0.3% but less than 1% THC content the registrant shall not be subject to revocation or suspension of their registration if the crop is

destroyed or utilized in a manner approved of and verified by the Commissioner.

§61-29-12. Fees.

12.1. The Commissioner may charge reasonable fees to support the regulatory activities of the Act and this rule. Fees shall support the regulatory activities and shall be evaluated by the Commissioner to keep the fees as minimal as possible to foster and encourage the economic development of industrial hemp and such manufacturing, processing and packaging as authorized pursuant to the Act and these rules.

12.2. The annual registration fee for commercial production of industrial hemp shall be \$200 plus \$1.00/acre.

12.3. The annual registration fee for production of industrial hemp for research and development shall be \$100 plus \$5/acre. Established agricultural research institutions within the state may be exempt from this fee.

12.4. All applicants shall pay a \$25.00 non-refundable filing fee at the time of registration.

12.4.a. Applicants shall not be required to submit full payment for the registered amount of acreage until certified seed has been obtained.

12.4.b. Applicant must submit full payment prior to planting.

12.4.c. At the time of submission of full payment, the \$25.00 filing fee shall count toward the amount of the full payment.

12.4.d. Inspection fees for facilities - \$200.00 annually.

12.4.e. Inspection fee for records - \$100.00 annually.

§61-29-13. Reporting and Evaluation.

13.1. No more than five (5) years after the provisions of this rule have been implemented the Commissioner of Agriculture shall report to the House and Senate Committees on Agriculture the following:

13.1.a. The economic impacts of industrial hemp cultivation, processing, and product manufacturing in West Virginia; and

13.1.b. What is needed to make industrial hemp a viable commodity.

§61-29-14. Application of rules.

14.1. These rules apply to:

14.1.a. The importation, exportation and possession of industrial hemp;

14.1.b. The production, sale, provision, transport, sending or delivering of industrial hemp.

14.2. These rules do not apply to:

14.2.a. The importation, exportation, sale or provision of whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants;

14.2.b. The importation, exportation, sale, provision or production of any derivative or product made from whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants; or

14.2.c. The importation, exportation, sale or provision of any derivative of seed, viable grain or non-viable cannabis seed, or product made from that derivative, if the derivative or product contains more than 30 µg/g THC.

14.3. The Act and these rules do not apply to the importation, exportation or wholesale sale of a derivative of seed, viable grain or non-viable cannabis seed, or a product made from that derivative, provided that:

14.3.a. The derivative or product was not made from whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants;

14.3.b. A representative sample from each lot or batch of the derivative or product being imported or exported, or sold at wholesale, has been found to contain 30 µg/g THC or less when tested at a competent lab;

14.3.c. In the case of importation or exportation, the shipment is accompanied by a certificate from a competent laboratory in the country of origin of the derivative or product that sets out

the concentration of THC in the samples; and

14.3.d. In the case of the wholesale sale of a derivative, the package containing the derivative is labeled.

14.4. The Act and these rules do not apply to the retail sale, provision, possession, transport, sending or delivering of a derivative of seed, viable grain or non-viable cannabis seed, or a product made from that derivative, whose importation, exportation or wholesale sale has met the requirements set out in subsection (1), as long as the derivative or product is not changed in any way that results in its containing more than 30 µg/g THC.

§61-29-15. Hearing Procedure.

15.1. Any applicant or licensee who is denied a license or has had their license revoked by the Commissioner pursuant this rule shall be entitled to a hearing on the action denying a license or revoking such license within 60 days of notice of such action.

15.2. Any charged party who desires a hearing must present a written demand for such to the Commissioner within 30 days of receipt of decision by the Commissioner.

15.3. When the Commissioner is presented with such a demand for a hearing, he or she shall schedule a hearing within 60 days of receipt of such written demand, unless postponed to a later date by mutual written agreement.

15.4. Charges may be instituted against any licensee by the Commissioner when probable cause exists for believing that the licensee may have engaged in conduct, practices or acts in such condition that his or her license should be revoked for one or more of the grounds set forth in W. Va. Code §19-12E-1 et seq. or the Commissioner's legislative rules. Charges may be based upon information received by way of a written complaint filed with the Commissioner and further information gathered by the Commissioner in the process of investigating such complaint. Charges may also be based upon information received solely through any investigative activities undertaken by the Commissioner.

15.5. Charges instituted against a licensee shall be set forth in a Complaint and Notice of Hearing issued in the name of the Commissioner as the agency of the state regulating industrial hemp. Such Complaint and

Notice of Hearing shall designate the Commissioner as the "Complainant", and shall designate the charged party involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the respondent of the nature, time and place of the conduct or condition complained of therein; and shall state the date, time and place for the hearing.

15.6. The Commissioner may amend the charges set forth in a Complaint and Notice of Hearing as he/she deems proper and shall provide notice of the same to the licensee as provided in this rule.

15.7. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.

15.8. Hearings shall be conducted as follows:

15.8.a. Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia.

15.8.b. The Commissioner may be represented by the West Virginia Attorney General's Office.

15.8.c. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing.

15.8.d. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

15.8.e. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Commissioner and, when appropriate, may cross-examine witnesses called by the Commissioner in support of the charges or in defense of its decision to deny or revoke a license.

15.8.f. The hearing shall be held at such time and place as is designated by the Commissioner, but no hearing shall be conducted unless and until at least 30 days written notice thereof has been served upon the charged party and/or his or her attorney in person; or if he or she does not reside in this state, such notice may be served by the

publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

15.8.g. The hearing shall be open to the general public.

15.8.h. The Commissioner and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, that no member of the Department of Agriculture who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Commissioner with respect to the case in which he testified.

15.8.i. The Commissioner shall conduct the hearing or the Commissioner may elect to have an administrative law judge conduct the hearing.

15.8.j. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commissioner's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

15.8.k. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

15.8.l. Where a hearing is held upon the instance of the Commissioner after charges have been brought against a licensee, the Commissioner shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

15.8.m. Following the conclusion of the Commissioner's presentation of evidence in accordance with subsection 15.8.m. of this section the respondent or charged party shall have the right to submit his or her evidence in defense.

15.8.n. Following the conclusion of the charged party's presentation of evidence, the Commissioner shall have the right to offer its evidence in rebuttal.

15.8.o. The Commissioner may call witnesses to testify in support of its decision to deny a license

or in support of the charges instituted against a licensee or applicant; may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of his or her position.

15.8.p. All parties shall have the right to offer opening and closing arguments.

15.8.q. Hearings held by the Commissioner as a result of charges instituted against a licensee or applicant may be continued or adjourned to a later date or different place by the Commissioner or its designee by appropriate notice to all parties.

§61-29-16. Appeal.

16.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §29A-1-1 et seq.

§61-29-17. Procedures for Judicial Review.

17.1. Any person adversely affected by a decision of the Commissioner rendered after a hearing has the right to pursue judicial review as provided by Chapter 29A of the W. Va. Code.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 29
INDUSTRIAL HEMP

§61-29-1. General.

1.1. Scope. -- This legislative rule establishes general requirements for the regulation, application, licensure and rules for the cultivation, production, processing and manufacturing of industrial hemp within West Virginia.

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

1.3. Filing Date. --

1.4. Effective Date. --

§61-29-2. Definitions.

2.1. "Act" or "The Act," in the context of industrial hemp, means the "Industrial Hemp Development Act" of 2002 and amendments thereto.

2.2. "Approved cultivar," means any variety of industrial hemp designated by the Commissioner, set out in the List of Approved Cultivars published by the Department of Agriculture, as amended from time to time.

2.3. "Commissioner" means the Commissioner of Agriculture as described in West Virginia Code §19-1-1 et seq;

2.4. "Industrial hemp" means the plant and plant parts of the genera Cannabis, the leaves, flowering heads and seeds of which do not contain more than one percent (1%) tetrahydrocannabinol (THC) w/w, and includes the derivatives of such plants and plant parts. It also includes the derivatives of non-viable cannabis seed. It does not include plant parts of the genera Cannabis that consist of non-viable cannabis seed, other than its derivatives, or of mature cannabis stalks that do not include leaves, flowers, seeds or branches, or of fiber derived from those stalks. "Industrial hemp", also known as "agricultural hemp", is an agricultural crop which may be grown,

produced, possessed, and commercially traded in West Virginia pursuant to WV Code §19-12E-1 et seq and the provisions of this rule.

2.5. "License" means the approval by the Commissioner to engage in the growing, cultivating, harvesting, producing, selling, possessing, transporting, or delivering industrial hemp within the state of West Virginia.

2.6. "Pilot Program" means a program or programs initiated by the Commissioner, or contracted with colleges and universities instructed by or, as designated in Section 7606 of the Agricultural Farm Act of 2014, for the purpose of testing industrial hemp.

2.7. "THC" means Δ^9 -tetrahydrocannabinol ((6aR, 10aR)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol).

§61-29-3. Application for Registration.

3.1. To be eligible to register, a person shall:

3.1.a. If the person is an individual, ordinarily reside in West Virginia or, if the person is a partnership, at least one of its partners is an individual who ordinarily resides in West Virginia; or

3.1.b. If the person is a corporation or cooperative, have its head office in West Virginia or operate a branch office in West Virginia.

3.2. A person who registers shall submit the following information and documents to the Commissioner, or the Commissioner may prescribe on a form that an applicant shall provide:

3.2.a. The applicant's name, their mailing address and phone number in West Virginia and, if applicable, their fax number and electronic

mail address;

3.2.b. The applicant's date of birth or, in the case of a corporation, cooperative or partnership, the names and dates of birth of its officers, directors and partners, as the case may be;

3.2.c. In the case of a corporation or cooperative, a copy of the certificate of incorporation or other instrument, and, in the case of a corporation, cooperative or partnership, a copy of any document registering with the Secretary of State the name and style under which it operates or intends to operate;

3.2.d. The activity for which the registration is requested;

3.2.e. The form in which the industrial hemp is to be imported, exported, produced, sold, provided, possessed, transported, sent or delivered, as the case may be;

3.2.f. The address and legal description of each place where the industrial hemp is to be stored, sold or provided, indicating for each place the form of the industrial hemp;

3.2.g. The address of the place in West Virginia where the applicant will keep the records, books, electronic data or other documents that are required by these rules to be kept;

3.2.h. With respect of the applicant, each officer and director in the case of a corporation or cooperative and each partner in the case of a partnership, shall provide a copy of a criminal records background check for each person listed on the application;

3.2.i. Provide a description of security measures to be used and a statement that the applicant will meet the security measures required by these rules in respect of the activity;

3.2.j. An application shall be signed by the applicant or, in the case of a corporation, cooperative or partnership, one of its officers, directors or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of his or her knowledge; and

3.2.k. Pay the appropriate fees to the Department of Agriculture.

3.3. An applicant shall provide the following information:

3.3.a. In the case of the cultivation of industrial hemp:

3.3.a.1. The approved cultivar that will be sown, or the variety of industrial hemp if the applicant is a plant breeder,

3.3.a.2. The number of hectares to be cultivated for seed or viable grain and the number of hectares to be cultivated for fiber,

3.3.a.3. In the case of renewal, the number of hectares cultivated for industrial hemp, at each site, in each of the previous two years,

3.3.a.4. The Global Positioning System (GPS) coordinates of each site to be cultivated and a map showing the location of the site in terms of its legal description,

3.3.a.5. If any part of the site is to be cultivated for seed or viable grain, the Global Positioning System (GPS) coordinates of that part of the site, and an indication on the map of its location within the site,

3.3.a.6. A statement that the applicant is the owner of the land to be used for the cultivation or a statement, signed by the owner of the land, indicating that he or she has consented to that use.

3.3.b. In the case of the processing of seed, viable grain or non-viable cannabis seed:

3.3.b.1. The address of each place at which the processing will take place, and

3.3.b.2. If the application is for conditioning seed or viable grain, a description of the activity and location of the establishment at which the conditioning will take place.

3.3.c. In the case of the owner or operator of a laboratory who intends to possess industrial hemp for the purpose of testing for viability,

evidence that the laboratory has been designated as an accredited laboratory and a copy of accrediting body's certificate; and

3.4. If the applicant is processing industrial hemp:

3.4.a. The address of each place at which the processing will take place;

3.4.b. A description of the raw industrial hemp material to be used in the process;

3.4.c. A copy of each contract with each provider of raw industrial hemp material;

3.4.d. A description of the end product or products of each processing facility to be licensed; and

3.4.e. A description of the security measures the applicant will implement to secure all industrial hemp under the control of the registrant.

§61-29-4. Registration.

4.1. The Commissioner shall, on receipt of an application containing the information and documents required under this rule, issue a registration that sets out the following:

4.1.a. The registration number;

4.1.b. The name of the person to whom the registration is issued;

4.1.c. The activities that are permitted, and the location at which each activity is permitted;

4.1.d. The number of acres and Global Positioning System (GPS) coordinates and the form of industrial hemp for which each activity is permitted;

4.1.e. In the case of a plant breeder, the variety of industrial hemp that may be cultivated; and

4.1.f. Any conditions necessary to minimize security, public health or safety hazards related to the licensed or authorized activities.

4.2. The registration or authorization is valid for one year from the date issued.

4.3. A copy of registration shall be displayed at each location where registered activity takes place.

§61-29-5. Denial or Revocation of Registration.

5.1. The Commissioner shall refuse to issue registration or authorization in the following cases:

5.1.a. If the application contains false or misleading information, or if false or falsified documents, have been submitted in or with the application;

5.1.b. If in the previous five (5) years the applicant has had a registration or authorization under the Act revoked or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has had such a license or authorization revoked or has been an officer, director or partner of a corporation, cooperative or partnership, as the case may be, that has had such a license or authorization revoked, except if the revocation was due to loss or theft of the license or authorization;

5.1.c. If the applicant or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has a criminal record that includes within the previous 10 years:

5.1.c.1. A designated felony drug offense, or

5.1.c.2. If he or she ordinarily resides in a state other than West Virginia, an offense that if committed in West Virginia would constitute a designated felony drug offense.

5.1.d. If the applicant does not meet the security measures required by these rules in respect of the activity; or

5.1.e. If the applicant or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, is less than 18 years of age.

5.2. The Commissioner may refuse to register the applicant if the applicant has not complied with any provision of these rules or any condition set out in a

previous registration or authorization.

5.3. The Commissioner may not refuse to register an applicant unless the Commissioner:

5.3.a. Has provided the applicant with a written statement setting out the reasons for the proposed refusal;

5.3.b. Has given the applicant an opportunity to be heard, either by written or oral representations, in respect of the proposed refusal; and

5.3.c. Has sent a notice of refusal to the applicant.

5.4. An applicant denied a license may appeal the decision of the Commissioner pursuant to section 15 of this rule.

5.5. The Commissioner shall revoke a license at the request of the holder, or on being notified by the holder that the license has been lost or stolen.

5.6. The Commissioner shall revoke a license or authorization in the following cases:

5.6.a. If false or misleading information, or false or falsified documents, have been submitted in or with the application;

5.6.b. If the Commissioner has been informed, and has verified, that the holder or, in the case of a corporation, cooperative or partnership, any of its officers, directors or partners, as the case may be, has a criminal record that includes within the previous 10 years:

5.6.b.1. A designated drug offence, or

5.6.b.2. If he or she ordinarily resides in a state other than West Virginia, an offence that if committed in West Virginia would constitute a designated drug offence;

5.6.b.3. In the case of a corporation, cooperative or partnership, if any person who is less than 18 years of age is named as an officer, director or partner, as the case may be;

5.6.b.4. Where the holder of a license that was required to be submitted with the application no longer holds license;

5.6.b.5. Where a laboratory that has been designated as an accredited laboratory no longer holds that designation; or

5.6.b.6. In the case of a person who cultivates for seed, he or she is no longer a member of a Seed Growers' Association.

5.7. The Commissioner may revoke a license or authorization, where it is necessary to protect the security, safety or health of the public, if the Commissioner has reasonable grounds to believe that the holder has failed to comply with any provision of these rules or any condition of the license or authorization.

5.8. The Commissioner may not revoke a license unless:

5.8.a. The Commissioner has provided the holder of the license or authorization with a written statement setting out the reasons for the proposed revocation;

5.8.b. The Commissioner has given the holder an opportunity to be heard, either by written or oral representations, in respect of the proposed revocation;

5.8.c. The holder has not taken any corrective measures that are required by the Commissioner, within the time specified by the Commissioner; and

5.8.d. The Commissioner has sent a notice of revocation to the holder.

§61-29-6. Industrial Hemp Seed Cultivars.

6.1. Industrial hemp shall only be grown if it is on the list of approved seed cultivars as provided by the Commissioner of Agriculture, except when grown by established agricultural research institution developing a new seed cultivar.

6.2. The list of approved seed cultivars shall include all of the following:

6.2.a. Industrial hemp seed cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies i.e. The Canadian Seed Growers' Association; and

6.2.b. Industrial hemp seed cultivars that have

been certified by the Organization of Economic Cooperation and Development.

6.2.c. The Commissioner may update the list of approved seed cultivars by adding, amending, or removing seed cultivars.

§61-29-7. Security Measures.

7.1. No person registered to cultivate industrial hemp shall cultivate it within one mile of any school grounds or any other public place usually frequented by persons under the age of 18 years.

7.2. Every person registered shall, in respect of all industrial hemp that they store, keep it in a locked container or a locked location, or on premises to which only authorized persons have access.

7.3. Ornamental and clandestine cultivation of industrial hemp plants is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

§61-29-8. Records, Books, Electronic Data and Other Documents.

8.1. Every person who holds a license shall keep, at the place referred to in the application as approved and stated on the license, the records, books, electronic data or other documents that contain the following information:

8.1.a. The form in which the industrial hemp is imported, purchased or sold and the variety of industrial hemp, if applicable;

8.1.b. The quantity of each form of industrial hemp imported, purchased or sold;

8.1.c. In the case of a person who holds a license to cultivate industrial hemp, the quantity of seed of each approved cultivar that is sown, or of each variety of industrial hemp if the person is a plant breeder, the quantity of seed or viable grain harvested and the date of harvest;

8.1.d. The source of the industrial hemp imported or purchased, namely the name and address of the person who exported or sold it and the country of origin, if applicable;

8.1.e. The destination of the industrial hemp that is sold, namely, the name and address of the purchaser and the country to which it is exported,

if applicable;

8.1.f. The date that each shipment of industrial hemp is sent or received;

8.1.g. In the case of a person who ships industrial hemp, the name of the carrier; and

8.1.h. The results of any tests required by these rules.

8.2. Every person who holds a license to provide, sell or import seed or viable grain shall also keep records, books, electronic data or other documents that contain the following information:

8.2.a. The name, address and license number of the person to whom the seed or viable grain is delivered;

8.2.b. The date of each shipment;

8.2.c. The quantity shipped;

8.2.d. If applicable, the name and license number of the person from whom the seed or viable grain was purchased, the date it was purchased and the quantity purchased.

8.3. The records as specified in this section shall be kept for at least five (5) years after seed or grain is obtained.

8.4. A person who holds a license shall provide to an inspector, on request, any of the records, books, electronic data or other documents required under this section, in order that the inspector may verify whether the person has complied with the Act and these rules.

8.5. Each licensee shall file an annual report to the Commissioner, on or before January 31 of each year that describes the sale or distribution of any industrial hemp grown by the licensee, including, but not limited to, the name and address of the person or entity receiving the industrial hemp and the amount of industrial hemp sold. The annual report may be submitted electronically.

§61-29-9. Inspections.

9.1. The Commissioner or a designee may inspect the books, records, and premises as well as verify that appropriate licenses are displayed at each location where licensed activity is taking place.

9.2. All registrants are subject to sampling of their industrial hemp crop to verify that the THC concentration does not exceed 0.3% on dry weight basis. The Commissioner shall select up to 33% of the registrants to be inspected, except that no registrant may be selected more than two (2) years in row without cause. The Commissioner shall notify each registrant of their selection by certified mail. The notification shall inform the registrant of the scope and process by which the inspection will be conducted and require the registrant to contact the Department within 30 days to set a date and time for the inspection to occur.

9.3. During the inspection, the registrant or authorized representative shall be present at the growing operation. The registrant or authorized representative shall 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 registrant's industrial hemp growing business.

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

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

9.4.b. The sampled material will be divided into two (2) equally sized parts. One part will be used for testing. The other part will be retained for retesting.

9.4.c. Quantitative laboratory determination of the THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

9.4.d. A composite sample test result greater than 0.3% THC will be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a THC concentration over the limit allowed for industrial hemp and that the registrant of that growing area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend and revoke the registration of a commercial industrial

hemp registrant in accordance with § 24-4-104 (4), C.R.S.

9.5. Sample test results for commercial industrial hemp registrants that are greater than 1.0% THC concentration will be provided to the appropriate state law enforcement agency.

§61-29-10. Authorized Testing Programs.

10.1. The Commissioner may collaborate with any institution of higher education, state agency, or private entity for the purpose of testing industrial hemp as follows:

10.1.a. To determine THC content of industrial hemp;

10.1.b. To determine crop status and absence of pesticides or other pollutants;

10.1.c. To determine remedial properties of industrial hemp; or

10.1.d. For any other purpose deemed appropriate by the Commissioner.

§61-29-11. Inspection & Testing Requirement Waiver.

11.1. Notwithstanding the fact that a sample of a research and development registrant's industrial hemp tests higher than 0.3% THC content the registrant shall not be subject to any penalty if:

11.1.a. The sampled industrial hemp was grown solely for research and development purposes by an individual or entity holding a research and development registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

11.1.b. Test results from a research and development registrant may, at the Commissioner's discretion, be accepted in lieu of Department sampling.

11.2. Notwithstanding the fact that a sample of a commercial registrant's industrial hemp tests higher than 0.3% but less than 1% THC content the registrant shall not be subject to revocation or suspension of their registration if the crop is

destroyed or utilized in a manner approved of and verified by the Commissioner.

§61-29-12. Fees.

12.1. The Commissioner may charge reasonable fees to support the regulatory activities of the Act and this rule. Fees shall support the regulatory activities and shall be evaluated by the Commissioner to keep the fees as minimal as possible to foster and encourage the economic development of industrial hemp and such manufacturing, processing and packaging as authorized pursuant to the Act and these rules.

12.2. The annual registration fee for commercial production of industrial hemp shall be \$200 plus \$1.00/acre.

12.3. The annual registration fee for production of industrial hemp for research and development shall be \$100 plus \$5/acre. Established agricultural research institutions within the state may be exempt from this fee.

12.4. All applicants shall pay a \$25.00 non-refundable filing fee at the time of registration.

12.4.a. Applicants shall not be required to submit full payment for the registered amount of acreage until certified seed has been obtained.

12.4.b. Applicant must submit full payment prior to planting.

12.4.c. At the time of submission of full payment, the \$25.00 filing fee shall count toward the amount of the full payment.

12.4.d. Inspection fees for facilities - \$200.00 annually.

12.4.e. Inspection fee for records - \$100.00 annually.

§61-29-13. Reporting and Evaluation.

13.1. No more than five (5) years after the provisions of this rule have been implemented the Commissioner of Agriculture shall report to the House and Senate Committees on Agriculture the following:

13.1.a. The economic impacts of industrial hemp cultivation, processing, and product manufacturing in West Virginia; and

13.1.b. What is needed to make industrial hemp a viable commodity.

§61-29-14. Application of rules.

14.1. These rules apply to:

14.1.a. The importation, exportation and possession of industrial hemp;

14.1.b. The production, sale, provision, transport, sending or delivering of industrial hemp.

14.2. These rules do not apply to:

14.2.a. The importation, exportation, sale or provision of whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants;

14.2.b. The importation, exportation, sale, provision or production of any derivative or product made from whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants; or

14.2.c. The importation, exportation, sale or provision of any derivative of seed, viable grain or non-viable cannabis seed, or product made from that derivative, if the derivative or product contains more than 30 µg/g THC.

14.3. The Act and these rules do not apply to the importation, exportation or wholesale sale of a derivative of seed, viable grain or non-viable cannabis seed, or a product made from that derivative, provided that:

14.3.a. The derivative or product was not made from whole industrial hemp plants, including sprouts, or the leaves, flowers or bracts of those plants;

14.3.b. A representative sample from each lot or batch of the derivative or product being imported or exported, or sold at wholesale, has been found to contain 30 µg/g THC or less when tested at a competent lab;

14.3.c. In the case of importation or exportation, the shipment is accompanied by a certificate from a competent laboratory in the country of origin of the derivative or product that sets out

the concentration of THC in the samples; and

14.3.d. In the case of the wholesale sale of a derivative, the package containing the derivative is labeled.

14.4. The Act and these rules do not apply to the retail sale, provision, possession, transport, sending or delivering of a derivative of seed, viable grain or non-viable cannabis seed, or a product made from that derivative, whose importation, exportation or wholesale sale has met the requirements set out in subsection (1), as long as the derivative or product is not changed in any way that results in its containing more than 30 µg/g THC.

§61-29-15. Hearing Procedure.

15.1. Any applicant or licensee who is denied a license or has had their license revoked by the Commissioner pursuant this rule shall be entitled to a hearing on the action denying a license or revoking such license within 60 days of notice of such action.

15.2. Any charged party who desires a hearing must present a written demand for such to the Commissioner within 30 days of receipt of decision by the Commissioner.

15.3. When the Commissioner is presented with such a demand for a hearing, he or she shall schedule a hearing within 60 days of receipt of such written demand, unless postponed to a later date by mutual written agreement.

15.4. Charges may be instituted against any licensee by the Commissioner when probable cause exists for believing that the licensee may have engaged in conduct, practices or acts in such condition that his or her license should be revoked for one or more of the grounds set forth in W. Va. Code §19-12E-1 et seq. or the Commissioner's legislative rules. Charges may be based upon information received by way of a written complaint filed with the Commissioner and further information gathered by the Commissioner in the process of investigating such complaint. Charges may also be based upon information received solely through any investigative activities undertaken by the Commissioner.

15.5. Charges instituted against a licensee shall be set forth in a Complaint and Notice of Hearing issued in the name of the Commissioner as the agency of the state regulating industrial hemp. Such Complaint and

Notice of Hearing shall designate the Commissioner as the "Complainant", and shall designate the charged party involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the respondent of the nature, time and place of the conduct or condition complained of therein; and shall state the date, time and place for the hearing.

15.6. The Commissioner may amend the charges set forth in a Complaint and Notice of Hearing as he/she deems proper and shall provide notice of the same to the licensee as provided in this rule.

15.7. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.

15.8. Hearings shall be conducted as follows:

15.8.a. Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia.

15.8.b. The Commissioner may be represented by the West Virginia Attorney General's Office.

15.8.c. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing.

15.8.d. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

15.8.e. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Commissioner and, when appropriate, may cross-examine witnesses called by the Commissioner in support of the charges or in defense of its decision to deny or revoke a license.

15.8.f. The hearing shall be held at such time and place as is designated by the Commissioner, but no hearing shall be conducted unless and until at least 30 days written notice thereof has been served upon the charged party and/or his or her attorney in person; or if he or she does not reside in this state, such notice may be served by the

publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

15.8.g. The hearing shall be open to the general public.

15.8.h. The Commissioner and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, that no member of the Department of Agriculture who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Commissioner with respect to the case in which he testified.

15.8.i. The Commissioner shall conduct the hearing or the Commissioner may elect to have an administrative law judge conduct the hearing.

15.8.j. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commissioner's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

15.8.k. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

15.8.l. Where a hearing is held upon the instance of the Commissioner after charges have been brought against a licensee, the Commissioner shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

15.8.m. Following the conclusion of the Commissioner's presentation of evidence in accordance with subsection 15.8.m. of this section the respondent or charged party shall have the right to submit his or her evidence in defense.

15.8.n. Following the conclusion of the charged party's presentation of evidence, the Commissioner shall have the right to offer its evidence in rebuttal.

15.8.o. The Commissioner may call witnesses to testify in support of its decision to deny a license

or in support of the charges instituted against a licensee or applicant; may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of his or her position.

15.8.p. All parties shall have the right to offer opening and closing arguments.

15.8.q. Hearings held by the Commissioner as a result of charges instituted against a licensee or applicant may be continued or adjourned to a later date or different place by the Commissioner or its designee by appropriate notice to all parties.

§61-29-16. Appeal.

16.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §29A-1-1 et seq.

§61-29-17. Procedures for Judicial Review.

17.1. Any person adversely affected by a decision of the Commissioner rendered after a hearing has the right to pursue judicial review as provided by Chapter 29A of the W. Va. Code.