



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/27/2018 12:28:57 PM

Office of West Virginia
Secretary Of State

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

AGENCY: Agriculture TITLE-SERIES: 61-29
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 61-29 Industrial Hemp

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §19-12E-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§19-12E-7 gives the Commissioner of WVDA authority to promulgate legislative rule regarding licensing, cultivating, testing, supervision, production, processing and sale of industrial hemp. This amendment will specify that a qualified person may be licensed to grow industrial hemp, setting forth a time limit on the application process, setting an annual application fee, setting forth an alteration fee, setting a license fee, setting a renewal fee, and setting forth an additional fee for each additional acre. In addition stating that all fees are nonrefundable. Requiring all licensees to file a report on sale and distribution within 30 days, requiring the licensee to contact WVDA at least 30 days prior to intended harvest date.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule establishes requirements for licensing, cultivating, testing, supervision, production, process and sale of Industrial Hemp in WV through the issuance of the license.

§19-12E-7 gives the Commissioner of WVDA authority to promulgate legislative rule regarding licensing, cultivating, testing, supervision, production, processing and sale of industrial hemp. This amendment will specify that a qualified person may be licensed to grow industrial hemp, setting forth a time limit on the application process, setting an annual application fee, setting forth an alteration fee, setting a license fee, setting a renewal fee, and setting forth an additional fee for each additional acre. In addition stating that all fees are nonrefundable. Requiring all licensees to file a report on sale and distribution within 30 days, requiring the licensee to contact WVDA at least 30 days prior to intended harvest date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

§19-12E-7 gives the Commissioner of WVDA authority to promulgate legislative rule regarding licensing, cultivating, testing, supervision, production, processing and sale of industrial hemp. This amendment will specify that a qualified person may be licensed to grow industrial hemp, setting forth a time limit on the application process, setting an annual application fee, setting forth an alteration fee, setting a license fee, setting a renewal fee, and setting forth an additional fee for each additional acre. In addition stating that all fees are nonrefundable. Requiring all licensees to file a report on sale and distribution within 30 days, requiring the licensee to contact WVDA at least 30 days prior to intended harvest date.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Legislative Rule 61CSR29 establishes a variety of regulatory processes carried out by WVDA for Industrial Hemp in WV. As noted below, the fiscal impact of the proposed changes to this rule cannot be reasonably estimated, as future participation levels that impact revenue, expense, and regulatory burden are presently known.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Legislative Rule 61CSR29 establishes a variety of regulatory processes carried out by WVDA for Industrial Hemp in WV. As noted below, the fiscal impact of the proposed changes to this rule cannot be reasonably estimated, as future participation levels that impact revenue, expense, and regulatory burden are presently known.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The fees proposed under this rule will result in a change in revenue as fees will be assessed at various stages including initial application (by location), final licensure, and application changes; however the exact amount of revenue generated will be dependent on the number of participants and locations. Similarly, the number and geographic distribution of initial and approved applicants will affect staff time and other agency expenses, and cannot be reasonably estimated at this time.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jodee F Martin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 29
INDUSTRIAL HEMP

§61-29-1. General.

1.1. Scope. – This rule establishes requirements 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. – ~~April 14, 2015.~~

1.4. Effective Date. – ~~June 1, 2015.~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect ten years from its effective date.

§61-29-2. Definitions.

2.1. "Act" - means the "Industrial Hemp Development Act" of 2002.

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 Department~~ a qualified person or a state institution of higher learning 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 the 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 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. An applicant shall provide to the Commissioner, on a form ~~prescribed~~ prescribed by the Commissioner, and during the time prescribed by the Commissioner for submission of applications, the following information:

3.1.a. The name and mailing address of the applicant;

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

3.1.c. A 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 considers appropriate.

3.2. An applicant shall comply with the following background information requirements:

3.2.a. Each first-time applicant shall file a set of the ~~applicant's~~ applicant's 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; and

3.2.b. The applicant shall pay all costs associated with the criminal history checks.

3.3. Criminal history records provided to the Department are confidential.

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

3.4.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;

3.4.b. The applicant agrees to allow any inspection and sampling that the Department considers necessary;

3.4.c. The applicant agrees to pay for any sampling and analysis costs that the Department considers necessary; and

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

3.5. In addition to the application form, each applicant shall submit the registration fee set by this rule. If the registration fee does not accompany the application, the Commissioner will consider the application incomplete and will not process the application until the fee is received.

3.5.a. The annual "Application Fee" for research and development of industrial hemp is one hundred dollars (\$100.00) per non-contiguous parcel of land included on the application. Parcels of land separated by more than one mile may be considered non-contiguous and subject to the additional fee.

3.5.b. Any applicant or licensee that wishes to alter the growing areas included on their application shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations. The Department must give written approval before beginning any proposed alterations to the growing area. Any change is subject to approval by the Commissioner and shall require an "Alteration Fee" of fifty dollars (\$50.00) be submitted by the applicant. Changes which involve additional growing areas may also be considered non-contiguous and subject to additional fees designated in 3.5.a.

~~3.6. The annual registration fee for research and development of industrial hemp is one hundred dollars (\$100.00), plus five dollars (\$5) per acre.~~

~~3.7.~~ 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.

3.6.a. The annual "License Fee" is one hundred dollars (\$100.00) plus five dollars (\$5.00) per acre included on the application. The license fee will be required if the Commissioner approves the application.

3.6.b. The license "Renewal Fee" is one hundred dollars (\$100.00) plus five dollars (\$5.00) per acre included on the application.

3.7. All fees submitted to the Department for application, alternation, licensing or renewal are non-refundable.

3.8. All licenses shall contain a unique registration number and are valid until December 31, of the year of application unless otherwise revoked by the Commissioner.

~~3.9. The license renewal fee is fifty dollars (\$50.00).~~

~~3.10.~~ 3.9. A copy of the license shall be displayed at each location where a licensed activity takes place.

~~3.11. After issuance of a license, any licensee that wishes to alter the growing areas 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. The Department must give written approval before the licensee begins 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;

4.2. A licensee shall report any subsequent changes to the report within ten (10) days of the change.

4.3. ~~At least~~ Within 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:

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

4.3.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;

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

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

4.3.b. A licensee shall report any subsequent changes to the report within ten (10) days of the change.

4.4. Refusal or failure of a licensee or authorized representative to provide any information required or requested by the Commissioner for the purposes of the Act or this rule is a violation of the act and the Commissioner may deny, suspend or revoke the license.

4.5. 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 this rule is a violation of the act and the Commissioner may deny, suspend or revoke the license.

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

5.1. A licensee is subject to sampling of his or her industrial hemp crop at any time during growth and harvest to verify that the THC concentration does not exceed one percent. ~~The Department shall notify the licensee, by registered mail, of 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.~~ The licensee shall contact the Department at least thirty (30) days prior to the intended harvest date to allow sampling before harvest.

5.1.a. During the inspection, the licensee, or his or her 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.b. The inspector shall sample the industrial hemp plants in the following manner:

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

5.1.b.2. The sampled material shall be divided into two equal parts, one part shall be used for testing, the other part shall 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. The Commissioner shall provide sample test results for industrial hemp licensees that are greater than one percent THC concentration to the appropriate state law enforcement agency; and

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 considers appropriate, including retesting. Inspection and testing may be performed by an institution or private entity approved by the Commissioner. The Commissioner may suspend or revoke a license if the licensee fails to pay for costs incurred as a result of this inspection and testing requirement, within thirty (30) days of receipt of invoice.

§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 the results of the initial research and development licenses issued by the Department and the estimated economic impact of industrial hemp in West Virginia to the House and Senate Committees on Agriculture. 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.