



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Agriculture TITLE-SERIES: 61-29

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Industrial Hemp

CITE STATUTORY AUTHORITY: §19-12E-7

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/22/2019 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Madison Birchfield

ADDRESS: West Virginia Department of Agriculture
1900 Kanawha Blvd. East

EMAIL: rulescomments@wvda.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes requirements for the licensing, cultivating, testing, supervision, production, processing and sale of industrial hemp in West Virginia

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Updated definitions, creates a permit requirement for hemp processing, and updated testing procedures, and establishes enforcement and penalties.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

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 unknown.

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

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 unknown.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 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 exact amount of revenue generated will be dependent on the number of participants and locations. The number and geographic distribution of 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

Norman Bailey -- 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.

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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 30, 2019~~

1.4. Effective Date. – ~~July 1, 2019~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect ~~on July 1, 2029~~ ten years from the effective date.

§61-29-2. Definitions.

2.1. "Act" - means the "Industrial Hemp Development Act" of 2002, codified at W. Va. Code §19-12E-1 et seq.

2.2. "Commissioner" – means the Commissioner of Agriculture.

2.3. "Department" – means the West Virginia Department of Agriculture.

2.4. ~~"Industrial hemp"~~ "Hemp" or "industrial hemp" means all parts and varieties of the plant ~~cannabis~~ Cannabis sativa L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, 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 not greater than 0.3%, or the concentration authorized by federal law, whichever is greater.

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 license to grow, research, process, or possess hemp that has been issued by the Commissioner pursuant to this rule following a successful application and review process and may possess, cultivate, grow, harvest, produce, sell, distribute or deliver industrial hemp within West

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Virginia. The Department is duly authorized 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 a person or state institution of higher learning entity who has been issued a Research and Marketing Cultivation Program License license by the Department.~~

~~2.8. "Product" means any article or substance having raw material or another product as an ingredient, that are prepared in a form available for commercial sale.~~

~~2.9. "Raw materials" means plant material harvested by a licensee that remains in an unprocessed form that is not prepared for commercial sale.~~

~~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 and not for commercial development or sale.~~

~~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 extracavities 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 To Grow Hemp.~~

~~3.1. An applicant for a license to grow hemp shall provide to the Commissioner, on a form 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. 3.1.c. Any other information the Commissioner considers appropriate.~~

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

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3.2.a. Each first-time applicant shall file a set of the 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.

3.2.c. If an application is submitted by a business entity, rather than by an individual, the Department will identify individuals within the business entity's leadership structure on whom background checks are to be performed.

3.2.d. The Commissioner may refuse to grant a license to an applicant whose criminal background check contains criminal history that violates the requirements of 7 U.S.C. §5940 or otherwise indicates that the applicant should not hold a license.

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

3.4. All applications must contain the applicant's acknowledgment and agreement to the following ~~forms~~ terms 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 application fee set by this rule. If the application 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 separated by more than one mile may be considered non-contiguous and subject to ~~the additional a~~ separate application 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, as designated in 3.5.a.

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

3.7. 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.

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

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 or amend 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.

3.10.a. The Department must give written approval before the licensee begins growing on the proposed alterations.

3.10.b. All requests for alterations or amendments to growing areas are subject to the "Alteration Fee" set forth in section 3.5.b and, once approved, are subject to additional licensing fees as set forth in section 3.7.

3.11. An applicant seeking to store hemp but not grow or process must comply with the requirements of this section.

3.12. License renewal applications must be submitted annually during the time prescribed by the Commissioner for submission of renewal applications.

3.12.a. If a completed renewal application is received by the Department on or before the deadline established by the Department, the licensee may continue to operate under the current license pending receipt of the renewal application.

3.12.b. The Commissioner shall require license renewal applicants to complete background checks once every three years as part of the renewal application process.

§61-29-4. Notification Reports.

4.1. Within sixty (60) days of being issued a license pursuant to section 3 of this rule, the licensee shall certify to the Commissioner that he or she has provided a copy of that license to both the sheriff of the county in which the hemp is being grown and the local detachment of the West Virginia State Police.

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

4.2.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~~ the maximum level of THC authorized by this rule;

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

4.2.c. A copy of any contract to grow industrial hemp;

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

4.4. ~~Within 30 days following harvesting~~ Before the end of the calendar year, each licensee shall file a report with the Commissioner regarding the sale or distribution of any industrial hemp grown by the licensee and include ~~the following information:~~ 4.4.a. A statement of the intended use or other disposition of the licensee's industrial hemp crop with the following information:

~~4.4.a.1.~~ 4.4.a. If the crop is being sold or distributed, the name and mailing address of the person or business entity receiving the industrial hemp;

~~4.4.a.2.~~ 4.4.b. The type of industrial hemp product sold or distributed; and

~~4.4.a.3.~~ 4.4.c. The amount, in standard units of measurement, of industrial hemp product sold or distributed.

~~4.4.b.~~ 4.5. A licensee shall report any subsequent changes to ~~the report~~ any documents or information submitted to the Commissioner, including information contained on the application or background check, within ten (10) days of the change.

~~4.5. 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.~~

~~4.6. 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 crop at any time during growth and harvest to verify that the THC concentration does not exceed ~~one percent~~ the concentration permitted by this rule.

5.2. The Department shall sample hemp crops prior to harvest. 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.~~ 5.3. During ~~the any inspection and/or sampling~~, the licensee, or his or her authorized representative, shall be present at the growing operation and provide the Department's inspector with competent 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.

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~~5.1.b.~~ 5.4. The inspector shall sample the industrial hemp plants ~~in the following manner utilizing protocols established by the Department. Such protocols shall, at a minimum, comply with the following requirements:~~

~~5.1.b.1.~~ 5.4.a. Composite samples of each variety of industrial hemp may be sampled from the growing areas at the Department's discretion;

~~5.1.b.2.~~ 5.4.b. 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.~~ 5.4.c. Quantitative laboratory determination of the THC concentration will be performed according to protocols approved by the Commissioner.

~~5.1.b.4.~~ 5.5. A composite sample test result greater than ~~one~~ 0.3 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

5.6. If a test result comes back above the THC concentration permitted by this rule, the Commissioner may permit a second sampling of a licensee's crop. The Commissioner shall establish procedures for circumstances in which a second sampling and testing may be reported.

~~5.1.b.6.~~ 5.7. As part of inspection and testing, each licensee shall pay actual mileage incurred, plus 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.~~

5.8. The Department may establish procedures for licensees to utilize the Department's testing capabilities prior to the pre-harvest testing required by section 5.2.

5.8.a. Permissive testing under this section is subject to availability of Department equipment, facilities and personnel.

5.8.b. A licensee shall pay the costs required to conduct the sampling and/or testing of the hemp crop, as required by section 5.7.

5.8.c. Results obtained from voluntary testing under this section shall not be considered official sampling results unless the following conditions are satisfied:

5.8.c.1. Both sampling and testing are conducted by Department staff pursuant to protocols established for pre-harvest sampling and testing; and

5.8.c.2. Harvest occurs within thirty days of the date of sampling.

§61-29.6. License to Process Hemp.

6.1. An applicant for a license to process hemp shall provide to the Commissioner, on a form prescribed by the Commissioner and during the time prescribed by the Commissioner for submission of applications, the following information:

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

6.1.b. The address and legal description of the location or locations to be used to process hemp; and

6.1.c. Any other information the Commissioner considers appropriate.

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

6.2.a. Each first-time applicant shall file a set of the applicant's fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check; and

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

6.2.c. If an application is submitted by a business entity, rather than by an individual, the Department will identify individuals within the business entity's leadership structure on whom background checks are to be performed.

6.2.d. The Commissioner may refuse to grant a license to an applicant whose criminal background check contains criminal history that violates the requirements of 7 U.S.C. §5940 or otherwise indicates that the applicant should not hold a license.

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

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

6.4.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;

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

6.4.c. The applicant agrees to pay for any sampling, inspection, and analysis costs that the Department considers necessary.

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

6.5.a. The annual "Application Fee" for a license to process hemp is one hundred dollars (\$100.00) per facility included on the application.

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6.5.b. Any applicant that wishes to add additional processing areas shall, before altering the area, submit to the Department the address, global positioning system location, and map specifying the proposed additional processing area. The Department must give written approval before the alterations to the processing area take effect. 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.

6.6. If the Commissioner determines that all requirements have been met and that a license to process hemp should be issued to the applicant, taking into consideration all information available to the Department, the Commissioner may approve the application and issue the license.

6.7. The annual "License Fee" is five hundred dollars (\$500.00) per processing facility included on the application. The license fee will be required if the Commissioner approves the application.

6.8. All licenses shall contain a unique registration number and are valid until December 31 of the year for which the license is issued, unless otherwise revoked by the Commissioner.

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

6.10. After issuance of a license, any licensee that wishes to alter or amend the processing locations shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations.

6.10.a. The Department must give written approval before the licensee begins growing on the proposed alterations.

6.10.b. All requests for alterations or amendments to processing areas are subject to the "Alteration Fee" set forth in section 6.5.b and, once approved, are subject to additional licensing fees as set forth in section 6.7.

6.11. License renewal applications must be submitted annually during the time prescribed by the Commissioner for submission of renewal applications.

6.11.a. If a completed renewal application is received by the Department on or before the deadline established by the Department, the licensee may continue to operate under the current license pending receipt of the renewal application.

6.11.b. The Commissioner shall require license renewal applicants to complete background checks once every three years as part of the renewal application process.

§61-29-7. Inspection of Hemp Processing Facilities.

7.1. All hemp processing facilities licensed pursuant to section 6 of this rule are subject to inspection.

7.2. Processing licensees shall establish policies and procedures for each processing facility that contain the following:

7.2.a. Measures to exclude from any operations any person who might be a source of microbial contamination, due to a health condition, where such contamination may occur, of any material,

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including components, CBD related compound, and contact surfaces used in the manufacture, packaging, labeling, or holding of a CBD related compound;

7.2.b. The use of hygienic practices to the extent necessary to protect against adulteration of components, CBD related compounds, or contact surfaces;

7.2.c. The qualification and training of employees;

7.2.d. Procedures to keep the grounds of the physical processing plant in a condition that protects against the contamination of components, CBD-related compounds, or contact surfaces;

7.2.e. Requirements to keep the physical processing plant in a clean and sanitary condition and in good repair to prevent components, CBD related compounds, or contact surfaces from becoming contaminated.

7.2.f. Selection, use, and storage of cleaning compounds and sanitizing agents;

7.2.g. Cleaning of the physical plant and pest control;

7.2.h. Standards for equipment and utensils utilized in the processing of hemp, including the proper repair and sanitation;

7.2.i. For the use of automated, mechanical, or electronic equipment:

7.2.i.1. Quality control procedures to calibrate, inspect, or check equipment to ensure proper performance;

7.2.i.2. Controls for equipment to ensure that changes to the manufacturing, packaging, labeling, holding, or other operations are approved by quality control personnel and instituted only by authorized personnel; and

7.2.i.3. Appropriate training and supervision of personnel operating the equipment.

7.2.j. Production and process controls;

7.2.k. Specifications for any point, step, or stage in the manufacturing process where control is necessary to ensure the quality of the CBD related compound and that the CBD related compound is packaged and labeled as required; and

7.2.l. Corrective action plans for use when necessary.

7.3. Each licensed processor shall maintain records to demonstrate compliance with the policies and procedures established pursuant to section 7.2 of this rule.

7.4. The Department shall, at least once a year and at any other time it deems appropriate, inspect the facilities and records of a processor. That inspection shall ensure that:

7.4.a. All policies and procedures required by section 7.2 of this rule are in effect and being followed; and

7.4.b. The processing facility is otherwise sanitary and suitable for the processing of hemp.

§61-29-8. Enforcement and Penalties.

8.1. The Commissioner shall have authority to enforce the provisions of this article, the Industrial Hemp Development Act, W. Va. Code §19-12E-1 et seq., and the requirements established by the United States Department of Agriculture for the regulation of industrial hemp.

8.2. The Commissioner has the authority to take action against a licensee for any violation of, or failure to comply with, established requirements for license holders and their operations. Such grounds can include, but are not limited to:

8.2.a. Refusal or failure of a licensee to provide any information required or requested by the Commissioner for the purposes of this Act;

8.2.b. Providing false, misleading, or incorrect information pertaining to the applicant or licensee'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 failing to timely update information previously provided;

8.2.c. Receipt of test results showing that the licensee's crop contains more than the permissible amount of THC; or

8.2.d. Failing to pay the costs incurred as a result of the inspection and testing required by this rule.

8.3. The Commissioner may take the following actions against a licensee or applicant:

8.2.a. Embargoing a licensee's crop;

8.2.b. Ordering the destruction of a licensee's crop;

8.2.c. Denying an application for license;

8.2.d. Suspending a license;

8.2.e. Revoking a license; or

8.2.f. Any other action the Commissioner determines appropriate.

8.4. An applicant or licensee who has been the subject of an adverse decision may appeal the decision to the Commissioner.