

Keaton, Jennifer

From: Ben Long <benlong14@gmail.com>
Sent: Monday, July 22, 2019 7:35 AM
To: WV Legislative Rules Comments
Subject: Industrial Hemp: Title 61 Comments

WVDA:

I am writing in regard to the proposed changes to the state industrial hemp program under Title 61 (61-29, 61-30).

1) WVHIA

I would like to show my support for the WVHIA and their proposed comments. This industry voice adequately outlines the concerns I have in a detailed fashion.

2) To Much too Soon

Although I understand the need for regulating this industry, these proposed changes go too far too soon. This is a new industry with a very steep learning curve for farmers. I applaud the WVDA in many aspects to give farms in the state the opportunity to take advantage of this new crop. These changes, however, will place an over burdensome regulatory structure on the industry in its infancy and stifle the industry. I fear the industry in the state will not continue to be a leader but regress if many of these changes are put in place.

3) Protecting Farmers

Whatever is passed in the new rules, the main objective should be protecting the farmers in the state. We need this opportunity in the ag community and we must be able to attract business to the state. As I stated before, there is already a huge learning curve with this plant and industry, the farmers should be given as many protections as possible to help succeed. For example: there are two routes to market for biomass: smokeable flower & whole plant biomass. The whole plant biomass is not intended for consumers. Rather, the market it for extractors to do further processing. The sampling-testing procedures should reflect this reality in the marketplace. Otherwise, this harms the farmer's ability to maximize yields and potentially increasing the risk of running hot.

In conclusion, the WVHIA is a great resource for the industry in this state. I support their comments on Title 61 and hope the Dept will take them into consideration.

Sincerely,

Ben Long

Ben Long
540-570-8480

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Ben Long
Benlong14@gmail.com

Dear Mr. Long:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, 61 C.S.R. §29, Industrial Hemp, and 61 C.S.R. §30, Hemp Products. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department:

Comment:

You voiced your support for the WVHIA and their proposed comments.

Response:

The Department has fully responded to the comments submitted by WVHIA and the response is filed with the WV Secretary of State. A copy is attached for our convenience.

Comment:

You commented the proposed rules is "too much, too soon" and you fear the industry in the state will not continue to be a leader but regress if many of these changes are put in place.

Response:

Pursuant to W. Va. Code §19-12E-7(4), the WV Legislature authorized the Department to establish legislative rules for a regulatory program and the Department has done so in a comprehensive and fair manner.

Comment:

You commented that the proposed rules should focus on protecting the farmers in the state. You emphasized the need to attract business and identify the steep learning curve associated with the hemp industry and ask the Department to consider testing beyond the flower to include the entire biomass.

Response:

The WVDA is committed to protecting the Hemp Industry and that is why we are proposing Rules that will protect and further the practice of Hemp Farming in West Virginia. As guidance from the USDA is issued to the States for the Hemp section 2018 farm bill, WVDA will be responsive to those Rules and further protect the Hemp Farmer.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature of Kent A. Leonhardt in black ink, written over a horizontal line.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: Chuck Romanoli <cromanoli1@comcast.net>
Sent: Monday, July 22, 2019 7:37 PM
To: 'Sarah Kendall'; WV Legislative Rules Comments
Cc: 'J. Morgan Leach'; 'Ron Brunt'
Subject: RE: TITLE SERIES 61-29 AND 61-30

Ms. Birchfield, I endorse the views expressed below, that are held by the WV Hemp Industries Association. These suggested and needed changes are critical to the supporting WV hemp farmers and related West Virginia Hemp industries. Please incorporate these changes to facilitate success of WV hemp farmers and businesses, and in turn WV as a whole.

We will submit some additional issues related to the requirements for "a **post decarboxylated test**". The WVDaA seems to be requiring decarbed testing based on these words in the 2018 farm bill, however, that language only refers to a type of test which is a GP test, but an HPLC test which is used in certified labs will also accurately test the D-9 levels but without decarbing and that should be perfectly acceptable. Mitch McConnell championed the legislation and his State will accept a D-9 HPLC test that is not decarbed as a litmus for hemp.

Processors and formulators need protection from potency testing requirements during mid-stream processing. Extracted oils are concentrates and therefore have elevated levels (above .3%) of THC. These oils need to be processed, stored, tested, transported between labs or downstream processors, etc. prior to having a final product for resale. Properly labeled mid-stream process oils need to be exempt from testing until such time as a retail product is prepared.

Chuck Romanoli Lic #16
609-760-1787
cromanoli1@comcast.net

Canna-Ventures of West Virginia, LLC
Country Roads Cannabis, LLC
Hawkes Ridge Farm
4219 Fairmont Road
Morgantown, WV 26501

President


West Virginia Farm & Cannabis
www.WVhemp.org

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From: Sarah Kendall <skendallus@suddenlink.net>

Sent: Monday, July 22, 2019 5:31 PM

To: rulescomments@wvda.us

Cc: 'J. Morgan Leach' <moleach09@gmail.com>; 'Chuck Romanoli' <cromanoli1@comcast.net>; 'Ron Brunt' <lhhp@suddenlink.net>

Subject: TITLE SERIES 61-29 AND 61-30

Ms. Birchfield, I endorse the views expressed below, that are held by the WV Hemp Industries Association. These suggested and needed changes are critical to the supporting WV hemp farmers and related West Virginia Hemp industries. Please incorporate these changes to facilitate success of WV hemp farmers and businesses, and in turn WV as a whole.

WV Hemp Industries Association
902 29th St. Vienna,
West Virginia 26105
wvhia.org

July 15, 2019

Madison Birchfield
West Virginia Department of Agriculture
1900 Kanawha Blvd. East, Room E-28
Charleston, West Virginia, 25305-0170
rulescomments@wvda.us
VIA EMAIL ONLY

RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

TITLE SERIES 61-29

1. §61-29-3.11 - We oppose this section in its entirety. W. Va. Code §19-12E prohibits the department from requiring a license to possess, handle, or process hemp.

"Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1).

2. §61-29-3.12.b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

3. §61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

4. §61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and

ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

For intact-plant samples:

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

For ground plant or ground floral material samples:

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. §61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. §61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

7. §61-29-6.11b - We opposed this requirement for the same reasons set forth in comment 1 above.

TITLE SERIES 61-30

1. §61-30 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in W. Va. Code §19-12E.

"Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1).

Rationale: The Department's proposed rule is creating a "de facto license" for hemp retailers to sell products, which is contrary to statute. If this, however, where an "option" for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an

advantage in the marketplace.

In the alternative, we advocate for the following amendments to Title Series 61-30:

2. §61-30-2.18 - We recommend the following amendment to this section to conform with W. Va. Code §19-12E.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

3. §61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

4. §61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. §61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

Rationale: The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. §61-30-5 - We recommend removing this section in its entirety as it conflicts with W. Va. Code §19-12E. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

7. §61-30-9 - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department.

8. §61-30-10 - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "selier" in this section as it conflicts with W. Va. Code §19-12E for the reasons stated herein.

Thank you for your consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Very truly yours,

J. Morgan Leach
WVHIA President
morgan@wvhia.org
/s/ Marc Dunbar

WVHIA Executive Director
mdunbar6@mix.wvu.edu

Keaton, Jennifer

From: WV Legislative Rules Comments
Subject: FW: Action Needed Today

From: "Chuck Romanoli" <cromanoli1@comcast.net>

Date: July 22, 2019 at 3:22:08 PM EDT

To: "Brown, Timothy" <TLBrown@wvda.us>, <adamcraten@gmail.com>, <Advancedgrowersinc@gmail.com>, <alternativehealingwv@gmail.com>, "Minor, Amie" <aminor@wvda.us>, <arnorris2712@frontier.com>, <andersonksb@yahoo.com>, <armchp17@aol.com>, <barb@withthespiritofthehorse.com>, <Benlong14@gmail.com>, <benlong14@gmail.com>, <bframe2015@gmail.com>, <bosticfreda@yahoo.com>, <8pokie60@msn.com>, <cain111875@gmail.com>, <campingthegrove@suddenlink.net>, <Carwrex.Loren@gmail.com>, <celestialshelties@gmail.com>, <chadmoss10.88@gmail.com>, <Charles@steaf.com>, <chizz0835@gmail.com>, <clauderyan@hotmail.com>, <claycon@gmail.com>, <clifford.knioli@gmail.com>, <clmccartv10@gmail.com>, <contact@shadygrovebotanicals.com>, <corneroaksfarm1277@gmail.com>, <cornmaze@westvirginia.com>, <Cthompson@thethompsonsgroup.care>, <cti2@cdc.gov>, <curra1029@hotmail.com>, <dani.dobbins@yahoo.com>, <daniel@hyrescountryhaven.com>, <dave@actiongamingwv.com>, <dcates73@gmail.com>, <dch1978@yahoo.com>, <debbiejarrel@gmail.com>, <dishaffer_farms@yahoo.com>, <dockfarmerdo@aol.com>, <doctoroffeet@yahoo.com>, <don_staghemp@outlook.com>, <doug.flight@gmail.com>, <ddransfield@frontier.com>, <drcavender@gmail.com>, <dubynelilbk@aol.com>, <dustrada@gmail.com>, <epauley@yahoo.com>, <erinadair.wv@gmail.com>, <ernie.sammons@gmail.com>, <farrahshiddenhollow@yahoo.com>, <flaniganrd@gmail.com>, <flyingfishco.biafora@gmail.com>, <formanarlie@gmail.com>, <GatorRev@aol.com>, <glpouse@yahoo.com>, <Gregoryfertig@gmail.com>, <hanshawron@gmail.com>, <hemporelief123@gmail.com>, <herbdoc@motherearthworks.com>, <herdsteeleerfan392@gmail.com>, <Hillridgehemp@gmail.com>, <hoochiemama133@gmail.com>, <ifarmalso@gmail.com>, <james.allen@fallenco.com>, <jasoniqueen@rocketmail.com>, <jem@whisperingwindsorganics.com>, <jenniferhamiltonds@gmail.com>, <jmslaw@gmail.com>, <jorgiwi@gmail.com>, <joyandhempuniversal@outlook.com>, <jpsherwood.ak@gmail.com>, <jshasnoff@gmail.com>, <jwfarrell@icloud.com>, <karavaneck@gmail.com>, <karinnelson2014@gmail.com>, <Karrenmb@outlook.com>, <kathryntuckwiller@gmail.com>, <kaviawhited@gmail.com>, <keehillfarms@gmail.com>, <kevinhart123@gmail.com>, <kfslack89@gmail.com>, <kimhuffman@suddenlink.net>, <Kodyadame01@gmail.com>, <kristee.montgomery@yahoo.com>, <ksams@casinternet.net>, <ktuckwiller@msn.com>, <landisears@gmail.com>, <laurie@haileyshemp.com>, <Leah.mcclilton@gmail.com>, <Leah.mcclilton@gmail.com>, <leah.mcclilton@gmail.com>, <Lee@Haberboschhills.com>, <lindsayrdaughterty@gmail.com>, <LMMcDonald@mail.wvu.edu>, <main@smcleanwv.com>, <manypenny51@gmail.com>, <marksamanda27@yahoo.com>, "Arnold, Mike" <MArnold@wvda.us>, <mbweav1@gmail.com>, <mc82toinfinity@gmail.com>, <mccartyfarm@aol.com>, <mcoldaker@gmail.com>, <Mdtate@outlook.com>, <miked@centerbranch.org>, <Mmorrisb@aol.com>, <morgan8n@yahoo.com>, <morganfarm35@gmail.com>, <morlundarnoma@gmail.com>, <mountainresources@yahoo.com>, <mripaolo@hotmail.com>, <mshiriko31@gmail.com>, <murlenesears@yahoo.com>, <mwo9x9@gmail.com>, <nivloc@suddenlink.net>, <nowlinfarm@gmail.com>, <Pboyies6@Verizon.net>, <pariffith0108@gmail.com>, <PHorne3376@aol.com>, <Pj_nickyser@comcast.net>, <pocadan@juno.com>, <Pratsinak@yahoo.com>, <RayPhares@gmail.com>, <rcraigsmith11@outlook.com>, <RickGlaspell@gmail.com>, <rmurphy215@gmail.com>, <rrbrooks78@gmail.com>, <rwalters@sfainc.com>, <S_SFARM@frontiernet.net>, <saniaya@wvstate.edu>, <sentagoudy@hotmail.com>, <sflanigan@yahoo.com>, <shearne16@yahoo.com>, <skendallus@suddenlink.net>, <smalefy@gmail.com>, <stevens38@live.marshall.edu>, <suncoast570@gmail.com>, <susanbarbour@live.com>, <teagansgrammie@gmail.com>, <theForeverYoungFarms@gmail.com>, <thegardenpathwv@gmail.com>, <tiffany.fess@gmail.com>, <Tlascaris37@gmail.com>, <tracy.brown74@hotmail.com>, <trevmo.gemhome@yahoo.com>, <turkeycreekfarmwv@gmail.com>, <TylerMarkso18@gmail.com>, <unguris8@yahoo.com>, <YAPAWV2@gmail.com>, <westfarmwv@gmail.com>, <wherson@hotmail.com>, <woodiecooke@gmail.com>, <wv.victoryco@gmail.com>, <wvfarmerscoop@gmail.com>, <wvlydiane@gmail.com>, <yeagermediagroup@yahoo.com>.

<yorkshirefarm@aol.com>, <yubecca.brazz@email.com>, <ZIGB58@gmail.com>

Subject: Action Needed Today

I implore all of you colleagues, license holders or otherwise hemp supporters to review and sign the attached petition – it's very easy to do please click here <https://www.ipetitions.com/petition/west-virginia-department-of-agriculture-revising> . If the WVDA proceeds with these proposed changes our industry will grind to a halt. If the WVDA approves testing protocols that consider the total THC vs Delta 9 only, then it will be difficult for our high CBD hemp plants to pass the test and you will be subject to destroying your crop or otherwise suppressed from competing with farmers in other states that only consider D9 THC per Federal law. Processors like us at CVWV may be unable to buy your hemp if it is not compliant on the day we test it (regardless of your WVDOA test results) and therefore you will have no legal market for your hemp biomass.

Please see this link <https://cannabusiness.law/what-is-total-thc-and-does-it-matter/> for an articulate paper written about total THC vs D-9 THC for an understanding of the issues and please support testing protocol that considers D-9 only.

The fact is that most of our retail hemp products will never be decarboxilated for consumption. Mitch McConnell the champion of the 2018 Farm Bill allows his Kentucky DOA to test for D9 thc only which therefore seems like a practical model for our WVDOA to follow.

WVDOA – Thank-you for your attention and support in the past. Please support your farmers and our WV Hemp industry now and promulgate rules that are fair to your constituents and enable us to be competitive with neighboring states in hemp farming, hemp processing, and hemp based product sales.

Thank-you!!

Chuck Romanoli
609-780-1787
Cromanoli1@comcast.net

Canna-Ventures of West Virginia, LLC
Country Roads Cannabis, LLC
Hawks Ridge Farm
4219 Fairmont Road
Morgantown, WV 26501


West Virginia Cannabis Council
www.WVhemp.org

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Chuck Romanoli
609-760-1787
Cromanoli1@comcast.net

Canna-Ventures of West Virginia, LLC
Country Roads Cannabis, LLC
Hawks Ridge Farm
4219 Fairmont Road
Morgantown, WV 26501

President



www.WVhemp.org

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From: Brown, Timothy <TLBrown@wvda.us>

Sent: Friday, July 19, 2019 11:13 AM

To: adamcrater1@gmail.com; Advancedgrowersinc@gmail.com; alternativehealingwv@gmail.com; Minor, Amie <aminor@wvda.us>; amorris2712@frontier.com; andersonksb@yahoo.com; arnchp17@aol.com; barb@withthespiritofthehorse.com; Benlong14@gmail.com; benlong14@gmail.com; bframe2015@gmail.com; hosticfreda@yahoo.com; Bookie60@msn.com; cain111875@gmail.com; campingthegrove@suddenlink.net; Carwrex.Loren@gmail.com; celestialshelley@gmail.com; chadmoss10.88@gmail.com; Charles@gleaf.com; chizz0835@gmail.com; claudervan@hotmail.com; claycon@gmail.com; clifford.knoll@gmail.com; clmccarty10@gmail.com; contact@shadygrovebotanicals.com; cornerpaksfarm1277@gmail.com; cornmaze@westvirginia.com; cromanoli1@comcast.net; Cthompson@thethompsongroup.care; cti2@cdc.gov; curra1029@hotmail.com; dani.dobbins@yahoo.com; daniel@hyrescountryhaven.com; dave@actiongamingwv.com; dcates73@gmail.com; dch1978@yahoo.com; debbielarrel@gmail.com; dishaffer_farms@yahoo.com; dockfarmerdc@aol.com; doctoroffeet@yahoo.com; don.staghemp@outlook.com; doug.flight@gmail.com; djdransfield@frontier.com; drcavender@gmail.com; dubynellbk@aol.com; dustrada@gmail.com; egaulev@yahoo.com; erinadair.wv@gmail.com; ernie.sammons@gmail.com; ferrahshiddenhollow@yahoo.com; flaniganrd@gmail.com; flyingfishco.biafora@gmail.com; formanarlie@gmail.com; GatorRev@aol.com; gipouse@yahoo.com; Gregoryfertig@gmail.com; hanshawron@gmail.com; hemprelief123@gmail.com; herbdoc@motherearthworks.com; herdsteelefan392@gmail.com; Hillridgehemp@gmail.com; hoochiernama133@gmail.com; ifarmalso@gmail.com; james.allen@fallenco.com; jasoniqueen@rocketmail.com; jem@whisperingwindsorganics.com; jenniferhamiltondds@gmail.com; jimsiaw@gmail.com; jorgiwt@gmail.com; jovandhempuniversal@outlook.com; joshewood.ak@gmail.com; jschasnoff@gmail.com; jwfarrell@icloud.com; karavaneck@gmail.com; karinnelson2014@gmail.com; Karrenmb@outlook.com; kathryntuckwiller@gmail.com; kaylawhited@gmail.com; keehillfarms@gmail.com; kevinhart123@gmail.com; kfslack89@gmail.com; kimhuffman@suddenlink.net; Kodyadame01@gmail.com; kristee.montgomery@yahoo.com; ksarns@casinet.net; ktuckwiller@msn.com; landsears@gmail.com; laurie@haileyshemp.com;

Leah.mcjilton@gmail.com; Leah.mcjilton@gmail.com; leah.mcjilton@gmail.com;
Lee@Haberboschhills.com; lindsayrdaugherty@gmail.com; LMMcDonald@mail.wvu.edu;
maig@smcleanwv.com; manypenny51@gmail.com; marksamanda27@yahoo.com; **Arnold, Mike**
<MAArnold@wvda.us>; mbweav1@gmail.com; mc82toinfinity@gmail.com; mccartyfarm@aol.com;
mcoldaker@gmail.com; Mdtate@outlook.com; miked@centerbranch.org; Mmorrisb@aol.com;
morgan8n@yahoo.com; morganfarm35@gmail.com; morlundamoma@gmail.com;
mountainresources@yahoo.com; mrapalo@hotmail.com; mshimko31@gmail.com;
murlenesears@yahoo.com; mwp9x9@gmail.com; nivloc@suddenlink.net; nowlinfarm@gmail.com;
Phoxles6@Verizon.net; griffith0108@gmail.com; PHorne3376@aol.com; PJ_nickysgc@comcast.net;
poradan@juno.com; Pratsinak@yahoo.com; RayPhares@gmail.com; rcraigsmith11@outlook.com;
RickGlaspeil@gmail.com; rmurphy215@gmail.com; rrbrooks78@gmail.com; rwalters@sfa-inc.com;
5SFARM@frontiernet.net; sanjaya@wvstate.edu; sentagoudy@hotmail.com; sflanigan@yahoo.com;
shearne16@yahoo.com; skendallus@suddenlink.net; smalafy@gmail.com;
stevens38@live.marshall.edu; suncoast570@gmail.com; susanbarbour@live.com;
teagansgrammie@gmail.com; theForeverYoungFarms@gmail.com; thegardenpathwv@gmail.com;
tiffany.fess@gmail.com; Tlascaris37@gmail.com; tracy.brown74@hotmail.com;
treyms_gemhome@yahoo.com; turkeycreekfarmwv@gmail.com; TylerMarkso18@gmail.com;
unguris8@yahoo.com; VAPAWV2@gmail.com; westfarmwv@gmail.com; wherson@hotmail.com;
woodlecooke@gmail.com; wv.victorvco@gmail.com; wvfarmerscoop@gmail.com;
wvladyane@gmail.com; veagermediagroup@yahoo.com; yorkshirefarm@aol.com;
yubecca.bragg@gmail.com; ZTG858@gmail.com

Subject: Hemp Public Informational meeting

All, I have attached a meeting announcement for a public informational meeting being held by the West Virginia Department of Agriculture on July 29, 2019.

Thank you for your interest

Timothy L. Brown
Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Blvd. East
Charleston, WV 25305

E-mail: tibrown@wvda.us
Office: 304-558-2212
Cell: 304-550-3887
Fax: 304-558-2435

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Chuck Romanoli
Canna-Ventures of West Virginia, LLC
cromanoli1@comcast.net

Dear Mr. Romanoli:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

Your comment expressed support for the comments submitted by the West Virginia Hemp Industry Association.

Response:

The Department has fully responded to the comments submitted by the West Virginia Hemp Industry Association and those responses are on file with the West Virginia Secretary of State. A copy of that response is attached.

Comment:

Your comment expressed concerns regarding testing.

Response:

We analyze our samples in compliance with the 2018 Farm Bill under section 297B under ii. The farm bill indicates that hemp must have a THC level less than 0.3%. The Farm Bill also indicates that testing on hemp must be calculated for THC post decarboxylation. The Farm Bill does not indicate the specific method that should be used, but that it must be calculated on a dry weight basis. Cannabis decarboxylation is the process of transforming relatively inert THC-A into the psychoactive form of delta nine THC. This is what we refer to as Total THC. Technically speaking decarboxylation is a chemical reaction that releases water and carbon dioxide. If the Department only took into account the Delta-9 THC and did not account for the amount of Delta-9 THC post-decarboxylation, then our State would not be in compliance with the farm bill requirements and the product would be considered federally illegal once it crossed state lines. We calculate THC the same way that the majority of other states are currently calculating for THC.

Comment:

You commented that Processors and Formulators need protections during mid-stream processing.

Response:

At this time, federal regulation does not allow for processors or manufacturers to have product above a 0.3% THC level. The Department will stay within the federal guidelines for all hemp operations and all processors will be treated in the same manner, regardless of the means that they are processing raw hemp.

Comment:

Petition circulated.

Response:

The West Virginia Department of Agriculture currently collects field samples of pre-harvest hemp basically the same as Kentucky. The WVDA does not take post-harvest samples of the product. WVDA is awaiting federal guidelines to be put forth by the USDA and the FDA and continue to model our program after those. WVDA could look into recruiting assistance from WVU extension in future years after Rules have been made for the 2018 farm bill.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a stylized flourish at the end.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: WV Legislative Rules Comments
Subject: FW: Title 61-30 Comments

From: Susan Barbour <susanbarbour@live.com>
Sent: Monday, July 22, 2019 3:33 PM
To: WV Legislative Rules Comments <rulescomments@wvda.us>
Cc: Susan Barbour <susanbarbour@live.com>
Subject: Title 61-30 Comments

To all,
Please see attached commentary on Title 61-30.

Thank you,
Susan Barbour Wood

Re: Written commentary regarding Title 61-30: Hemp Products

July 22, 2019

To Whom It May Concern:

Please accept the following commentary regarding the proposed regulations under WVDA 61-30-4.

We submit this from the standpoint of two individuals currently registered through WVDA as hemp growers, and collectively have been involved in hemp product retail activities for a retail chain owned by Doug Flight of Winkin' Sun Hemp Co. We have many concerns regarding ambiguities in the present wording of the circulated text, and also concerns about the yearly financial and liability burdens of registration for products, particularly when the bulk of products are not manufactured locally and are and have been for sale nationwide without former regulatory restrictions beyond already existing FDA regulations. As written, this document will serve to primarily penalize small business owners and new hemp farmers and bring enterprise to a potential halt.

Comment #1

Section 2.14 does not clearly address "hemp flower", as it is intended for inhalation as a CBD intake method, but also a minimally processed product of the hemp plant and thus excluded by this act.

Hemp root, while containing its own valuable properties but not known for phytocannabinoids, is also not covered by the definitions. While fibrous in nature, it can also be extracted for cosmetic purposes.

Comment #1

Section 4.1 – needs further clarification.

- Does registration only include manufacturers of products for sale *within* WV (as stated), and exclude persons who grow/process and manufacture in WV with intent to only sell outside of the state?
- Further, it is not clear as written if this is pertaining to 1) only WV-grown hemp (manufactured wherever), 2) hemp registered and grown outside of WV (e.g., in Kentucky, Italy, etc.) but acquired by a resident or business in WV for the manufacture (wherever, within or outside of WV), or 3) any and all products located within the border of WV containing hemp, regardless of whether a WV resident or entity/business manufactured it and/or knowingly released it for sale directly or indirectly to WV markets.
 - While #1 and #2 above are plausible, # 3 crosses into the commercial retail domain and would be nearly impossible to regulate and/or manage given WVDA's manpower and budget. However, the "scope" according to section 1.1 suggests the latter (#3) is intended. Consider here the plethora of health food and cosmetic products of long-standing retail availability, carried in stores across the state (and nationally) which are

NOT manufactured in WV or for WV specifically (cereals and other healthy food items, cleaning products, cosmetics and body care products, etc.).

- The implications of #3 above are immense. As written, this would require manufacturing registration by Nutiva, Bob's Red Mill and dozens of other companies for hemp seed and snack products, dozens of cereal companies, Dr. Bronners and others for soap products, craft stores for twine, any number of stores for clothing or jewelry/decoration products, etc. based on availability for distribution within WV, even if the company does not knowingly or directly sell products within WV. The inclusion of this regulation, as written without indication of intent or audience, will require the registration of thousands of products formerly widely available and legal for sale and distribution in WV, even prior to the 2014 Farm Bill. You will receive thousands of product registrations for products already registered in order to monitor the movement of hemp within the state and be required to continuously monitor changes in acquisition and formulations of these products by registrants over time. Most of the products that will be registered by thousands of retailers across the state are not CBD or THC containing products. This section alone will effectively diminish the availability of hemp products or make illegal, knowingly or unknowingly, when combined with 61-30-4.7 and the retail section 61-30-5.
- #3 would also more strongly impact small businesses who are more aware of product lines chosen for distribution, and inappropriately place the burden of registration on those small businesses for the acquisition and retail of diverse commercial products.
- For clarification, there needs to be language to make succinctly clear whether this document is intended to control the regulations involving the manufacture (*processing, compounding, or converting raw hemp into a hemp commodity or product*) of hemp grown in WV or hemp manufactured by WV individuals/companies regardless of growth location, or hemp in the nation or world at large if it passes through WV borders, trumping all other state and national regulations.
 - It only seems logical that this state-level regulation would be intended for and enforceable for hemp products grown by WV individuals/companies or products made by WV individuals/companies, or at least narrowed in consideration to products not yet regulated by FDA (vapes, tinctures, and other local production value-added hemp products that are ingested, inhaled, or purposefully absorbed (lotion, creams, balms, and salves, but not soaps, shampoos, or conditioners even though they technically are topically applied) if made with hemp extracts, hemp seeds, or hemp seed oils.

Comment #2

Section 4.3 — Additional clarification needed for “per hemp product”. What denotes a product being different? The requirement to register products differing only in flavor or scent will be exceedingly financially burdensome on manufacturers who process in bulk into extracted hemp (e.g., isolate, distillate, wax) as a base for multiple products, particularly since it is the *hemp base* that WVDA is interested in regulating, and not the flavors/scents or other ingredients per se (beyond FDA regulations for food safety and labeling). *See Attachment A, a table from a local store selling hemp products for an

example of the diversity of products currently on the market from just one store, which carries a small selection of the tens of thousands of products commercially available within WV.

- For example, one processed lot and batch of hemp could be extracted and tested according to regulations. The extract could then be made into an entire product line with multiple flavors (e.g., mint, natural) and strengths (e.g., 300 mg, 600 mg) of hemp tincture, salves, and other items. A \$200/product fee for each “product”, based on the same base, would only serve to discourage enterprise and diversity of products created within the state. Whereas, a per product line/type fee would be less financially burdensome on a yearly basis if a manufacturer could supply continuous documentation for producing, processing, and testing that a single base formula was used to create a varied product line. Differing product lines off a single base could be (e.g.) a 300 mg tincture line (different flavors), a 500 mg tincture line (different flavors), a 1000 mg product line (different flavors), and a hand salve line (different scents) of Brand X, and thus 4 registrations. Registrations could easily require the listing of differences in natural or artificial flavors, scents, etc. within the product line.

Comment #3

Section 4.7 would be impossible and illegal as stated based on requirements of Section 4.3. Per Section 4.3, all manufactured hemp products will be registered. As written, it suggests that a person in WV could possibly manufacture without registering as a manufacturer of hemp products.

- If this document is truly intended to control sale of any and all hemp products within WV, regardless of whether or not the manufacturer is a person/business in WV, the nature of the product (e.g., national chain brand conditioner or cereal vs. local company's hemp oil tincture), or if the product is knowingly sold in WV, the inclusion of this section will require the creation of an open database maintained and updated continuously in order to be effective so that individuals and businesses can look up product registration data. Such a database may need to be available in digital and print formats so as to not discriminate against any audience.
- If this section is not intended to control any and all hemp based products, then wording of this section needs edited to reflect as such.

Comment #4

Section 4.8: barring any edits to sections above to include/exclude certain products or to narrow the focus to WV-based manufacturers (regardless of location of manufacture), this section will become unreasonable, if not impossible, for most products for registrants.

Comment #5

61-30-5, Section 5.1: Without further definition or clarification of intent or narrowing of product type here, WVDA will need to govern, regulate, and provoke registration from nearly every grocery store, department store, convenience store, craft store, big box store, etc. across the state. It needs to be considered if it is even reasonable for every store to know the ingredients list for every product it carries in order to register hemp products. It would also be discriminatory to only mandate restrictions on hemp product sales for smaller businesses and/or individuals. Better definition of “manufacturer” and a

restriction on the intended hemp product list should be included here, unless it is literally intended to restrict the sale of otherwise legal hemp products within WV.

Comment #6

Section 61-30-6

- “Fiber products” do not require COAs. It is suggested here that the use of “Fiber Products” be rewritten to some more inclusive industrial term, or otherwise redefined to include other industrial, non-edible and non-cosmetic uses of hemp (e.g., bioplastics, resins, and byproducts of hemp that destroy the nature of the plant (e.g., soap from hemp seed oil, fuel derived from oil, etc.).

Comment #7

Section 61-30-7

- Section 7.1 --
 - “human consumption” includes cosmetics and hair care products according to definition section, despite cosmetic vs. food use, whereas FDA product registration and labeling requirements differ somewhat
 - Suggest exchanging “CBD” for “Cannabinoids, including CBD”, unless the other cannabinoids are not of interest? THC is a cannabinoid.
- Section 7.2 – need to define “absorption”. This logically could include both food and cosmetics.
 - Sections 7.1 and 7.2 are somewhat conflicting in definition and language in terms of FDA regulation
- Section 7.7 edible products could include hemp seed derived oil products and hemp seeds, which are natural entities of the hemp plant and not “Cannabis-infused”. For example, Green Giant creamed corn and Mazola Corn oil are not “Corn-infused”. The word “infused” for food products would typically indicate an added ingredient, or in the case of hemp, an extracted ingredient added to the product.

Respectfully submitted for your review and consideration,

Douglas Flight
111 Cracraft Ave.
Wheeling, WV 26003

Susan L. Barbour Wood
1208 ½ 9th St.
Moundsville, WV 26041
susanbarbour@live.com, 304-559-8199

Appendix A – Inventory summary of one store located in West Virginia

Item category	# products	# manufactured products for/by WV business persons or companies (i.e., WVDA's regulatory jurisdiction)	Fee required for product sales to be legal under Title 61 rules verbiage, as written
Edible (CBD infused)	76	3	\$15,200 (\$600 from WV-based products)
Edible (seed containing or hemp seed oil containing products)	67	0	\$13,400
CBD infused or extracted hemp-based tinctures and vapable/smokable products	231	12	\$44,400 (\$2,400 from WV-based products)
Topically applied CBD or hemp extract product meant for absorption (including bath bombs)	65	16	\$12,400 (\$3,200 from WV-based products)
Cosmetic hemp product not meant for long term contact or absorption (hemp seed oil-based products, including soaps)	49	0	\$9,800
Fiber products (textiles, paper, rope, etc.)	290	234	\$0
Pet products	46	0	\$8,800

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Susan Barbour Wood
susanbarbour@live.com

Dear Ms. Wood:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

You commented Section 2.14 should address "hemp flower" more clearly.

Response:

The Department distinguishes between applicability of 61 C.S.R. §29 (Industrial Hemp) and 61 C.S.R. §30 (Hemp Products) based on whether the product is unprocessed (raw) or processed. Hemp flower can fall into both categories. The condition of the hemp flower will determine how it is addressed by the Department.

Comment:

You commented Section 4.1 (registration) needs further clarification

Response:

The Department provides the requested clarification, below, to your specific inquiries:

Question: Does registration cover out-of-state manufacturers?

Answer: The Hemp Products rule covers out-of-state manufacturers by requiring product registration for products sold in the State of West Virginia.

Question: Does it cover hemp grown out of state?

Answer: The Industrial Hemp rule (61 C.S.R. §29) only covers raw hemp product that is grown, processed, or possessed within the State of West Virginia. The Hemp Products rule (61 C.S.R. §30) covers all products sold in the State of West Virginia, regardless of the origin of the raw hemp product used to produce the hemp product.

Question: The rule needs narrowing language to address West Virginia-produced hemp products.

Answer: The Department is tasked with regulating all hemp products, regardless of whether they are produced in West Virginia or otherwise. To limit to West Virginia products only would not only undermine the Department's ability to carry out its regulatory function, but also disadvantage West Virginia-produced products.

Comment:

You commented Section 4.3 needs additional clarification for product registration fees "per hemp product" and are concerned that one product could end up having multiple registration fees. You also ask what makes a hemp product unique and require a separate registration.

Response:

A different product is any product with a different formulation or size. This would include products with different ingredients, different labels, or a different size of container, as each product would need to be reviewed.

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”). The Department intends to hire additional staff to assist with the number of product registrations. We already are very familiar with the registration process and currently have other programs with similar registration requirements.

Comment:

You commented Section 4.7 would be impossible and illegal as written based on the requirements of 4.3 and suggest editing to clarify. You also commented that without edits Section 4.8 will become unreasonable or impossible.

Response:

The Department modeled this language after other states. While registration by a manufacturer is required, this rule allows a retail location to register a product to bring its own operations into compliance and avoid penalties for carrying the product. The Department is tasked with regulating all hemp products, regardless of whether they are produced in West Virginia or otherwise. To limit to West Virginia products only would not only undermine the Department’s ability to carry out its regulatory function, but also disadvantage West Virginia-produced products.

Comment:

You commented Section 5.1 indicating it is unreasonable for the Department to regulate every retail outlet of hemp products and may discriminate against smaller businesses and/or individuals and you suggest a different definition of “manufacturer”.

Response:

The Department needs this information (where the products are being manufactured and sold) in order to provide product traceability in the event of a recall or outbreak related to the product.

Comment:

You commented on Section 6 suggesting the definition of “fiber products” be rewritten and expanded to some more inclusive industrial term or otherwise be redefined.

Response:

The Department has left the term “fiber products” vague because the nature of those products can not be further delineated at this time. As the industry and processing technology advance, the Department will provide guidance documents detailing further information on individualized products.

Comment:

You commented on Section 7.1 and offered comments on defined terms including "human consumption" and "CBD".

Response:

The Department is awaiting further guidance from the Federal Food and Drug Administration. As guidance becomes available, the Department will provide further guidance on these terms.

Comment:

You commented on Section 7.2 suggesting a need to define "absorption"

Response:

As regulation of these products continues to develop in response to federal guidance, the Department will continue to identify additional guidance to provide to hemp processors, manufacturers, and retailers.

Comment:

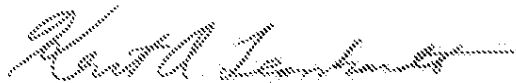
You commented on Section 7.7 pointing out that edible products could include some that are not "infused" and the definition should be expanded.

Response:

The Department believes that the term "infused" properly places the buyer on notice of the presence of portions of a hemp plant or extract.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a stylized, flowing script.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: WV Legislative Rules Comments
Subject: FW: Comments on Industrial Hemp and Hemp Products

From: Ryan Ewing <Ryan.Ewing@Steptoe-Johnson.com>
Sent: Monday, July 22, 2019 11:23 AM
To: WV Legislative Rules Comments <rulescomments@wvda.us>
Subject: Re: Comments on Industrial Hemp and Hemp Products

Please see attached Steptoe & Johnson PLLC's comments on the Department of Agriculture's proposed rulemaking: *Industrial Hemp and Hemp Products*.

Please contact me should you have any questions or concerns.

Ryan Dunne Ewing
Steptoe & Johnson PLLC
P.O. Box 1588, Charleston, WV 25326-1588
Overnight
Chase Tower, 17th Floor
707 Virginia Street, East, Charleston, WV 25301
O: 304-353-8186 C: 412-551-2250
Ryan.Ewing@steptoe-johnson.com

Steptoe & Johnson PLLC Note:

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Chase Tower, 17th Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.stepToe-johnson.com

Writer's Contact Information
Telephone -- (304) 353-8186
Facsimile -- (304) 353-8180
Ryan.Ewing@stepToe-johnson.com

July 22, 2019

VIA HAND DELIVERY AND E-MAIL

Ms. Madison Birchfield
West Virginia Department of Agriculture
1900 Kanawha Boulevard East,
Building 1, Room E-28
Charleston, WV 25305
rulescomments@wvda.us

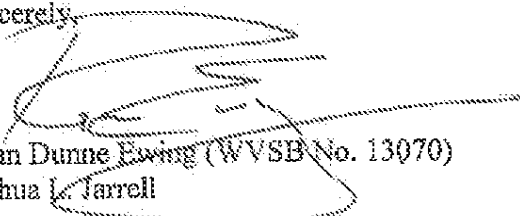
Re: Purple Leaf LLC and PharmaCBD's Joint Comments on the West Virginia
Department of Agriculture's Proposed Rules, *Industrial Hemp* and *Hemp
Products*

Dear Ms. Birchfield:

By counsel, please find enclosed the joint comments of Purple Leaf LLC and
PharmaCBD on the West Virginia Department of Agriculture's Proposed Rules, *Industrial Hemp*
and *Hemp Products*.

Should you have any questions, please do not hesitate the contact me.

Sincerely,



Ryan Dunne Ewing (WVSB No. 13070)
Joshua L. Jarrell

Encl.

cc w/Encl.: Austin Fisher
Kristal Reeves

PURPLE LEAF LLC AND PHARMACBD'S JOINT COMMENTS
ON THE WEST VIRGINIA DEPARTMENT OF AGRICULTURE'S
PROPOSED RULES, *INDUSTRIAL HEMP* AND *HEMP PRODUCTS*

I. Introduction

The West Virginia Department of Agriculture ("WVDA") invites comments on its proposed rules, *Industrial Hemp* and *Hemp Products* (collectively, the "*Proposed Rules*"), which generally provides for the WVDA's regulation of the growth, processing, distributing, and sale of hemp and hemp products throughout the state of West Virginia. By counsel, these comments are jointly filed by and on behalf of Purple Leaf LLC and PharmaCBD (collectively, the "Commenters").

II. Current Status of Law

The Agricultural Act of 2014 (the "2014 Farm Bill") granted state agriculture departments the authority to institute statewide pilot programs for the growth, processing, and sale of industrial hemp.¹ Pursuant to the 2014 Farm Bill, the growth, processing, and sale of industrial hemp in West Virginia is governed under the *Industrial Hemp Development Act* (the "Hemp Act").²

On December 20, 2018, the Agricultural Improvement Act of 2018 was enacted into law (the "2018 Farm Bill").³ Therein, the 2018 Farm Bill deregulated hemp and hemp by-products from the Controlled Substances Act, and required the United States Department of Agriculture to promulgate regulations governing the growth, processing, and sale of hemp and hemp products throughout the country.⁴

In response to the 2018 Farm Bill, on March 9, 2019, the West Virginia Legislature further amended the Hemp Act with the enactment of House Bill No. 2694, *Agricultural Products – Industrial Hemp* ("HB2694"). Generally speaking, HB2694 amended the Hemp Act to reflect the 2018 Farm Bill and required the WVDA to promulgate through legislative rulemaking a legal regulatory environment for the growth, processing, and sale of hemp and hemp products throughout the State of West Virginia.⁵

Pursuant to the Legislature's directive in HB2694, the WVDA submitted for public comment two proposed rules on June 21, 2019: (i) *Industrial Hemp* (W. Va. Code R. 61-29-1 *et seq.*); and (ii) *Hemp Products* (W. Va. Code R. 61-30-1 *et seq.*). Collectively, the *Proposed Rules* provide an all-encompassing regulatory framework for the growth, cultivation, processing, testing, dispensing, and sale of hemp and hemp products throughout the State of West Virginia.

¹ See AGRICULTURAL ACT OF 2014, PL 113-79, Feb. 7, 2014, 128 Stat 649.

² See generally W. VA. CODE § 19-12E-1 *et seq.*

³ See AGRICULTURAL IMPROVEMENT ACT OF 2018, PL 115-334, Dec. 20, 2018, 132 Stat 4490.

⁴ *Id.*

⁵ See AGRICULTURAL PRODUCTS-INDUSTRIAL HEMP, 2019 West Virginia Laws H.B. 2694 (West's No. 249).

III. Comments

The Commenters offer the following comments for the WVDA's consideration on its *Proposed Rules*.

A. Generally, the *Proposed Rules* are Reasonable and Pragmatic.

Generally, the *Proposed Rules* would create a reasonable and pragmatic regulatory environment for the growth, processing, and sale of hemp and hemp products in West Virginia.

The need for some form of regulation is clear. The sale and consumption of CBD and related hemp products has exploded throughout the State. While the Commenters hold themselves to the highest professional standards in providing compliant, safe, and legal products, there are those who unfortunately do not. Indeed, zero regulation in a high growth market concerning products for human consumption is a dangerous combination that will always attract bad actors.

The State of West Virginia should fully embrace the hemp industry and its participants. The exponential growth in the hemp and CBD industry will only further bolster West Virginia's economy and create jobs and revenue that did not previously exist.

While the Commenters generally approve of the WVDA's *Proposed Rules*, the Commenters offer the following comments for the WVDA's consideration.

B. The *Proposed Rules* Must Clarify that Cannabis Flower is a Legal Hemp Product.

WVDA's *Hemp Products* would govern the "regulation of [all] hemp products sold within the State of West Virginia."⁶ As provided in the *Proposed Rules*, a "hemp product" or "hemp commodity" "means any product derived from, or made by, processing hemp plants or plant parts, that are prepared in a form available for commercial sale."⁷ Such products include, but are not limited to:

- Hemp seed derivatives;
- Hemp concentrates or extracts;
- Hemp edibles and drinks;
- Hemp tincture;
- Hemp topicals and lotions;
- Hemp transdermal patches;
- Hemp fiber/fiber products;
- Hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;
- Hemp seed pressed or otherwise processed into oil;

⁶ W. VA. CODE R. § 61-30-1.1.

⁷ W. VA. CODE R. § 61-30-2.14.

- Hemp aerosols;
- Hemp vaping products; and
- Pet treats or by-products used in animal feed, if applicable by federal law.⁸

Thus, the *Proposed Rules* do not definitively provide that cannabis flower (which meets the 0.3% THC threshold)⁹ is a legal hemp product.

Notably, a “hemp product” *does not include*: (i) *hemp that has not been processed in any form*; (ii) hemp that has been minimally processed, for purposes of transfer or storage, including chopping, separating, or drying; and (iii) agricultural hemp seed.¹⁰

While cannabis flower (which meets the 0.3% THC threshold) is not listed, it is nonetheless a “hemp product” as defined under the *Proposed Rules*. The *Proposed Rules* state that a “hemp product” “means any product derived from, or made by, *processing* hemp plants or plant parts, *that are prepared in a form available for commercial sale*.”¹¹ “Processing” “means converting [an] agricultural commodity into marketable form.”¹²

The Commenters’ cannabis flower that is made available for retail sale is: (i) derived from hemp; (ii) is cultivated, trimmed, cured, and packaged in a form available for commercial sale; and (iii) as a result, is an agricultural commodity that has been provided in a marketable form. Accordingly, cannabis flower is a legal “hemp product” under the *Proposed Rules*.

The Commenters encourage the WVDA to clarify that the sale of cannabis flower in the aforementioned manner constitutes a legal “hemp product” under the *Proposed Rules*.

C. The Manner in Which Hemp Products Must be Registered is Unclear.

Pursuant to the *Proposed Rules*, any individual/entity that wishes to manufacture or sell “hemp products” in West Virginia must annually register with the WVDA.¹³ Such registration includes various fees.¹⁴

Notably, the *Proposed Rules* requires manufacturers (*i.e.*, processors) of hemp products to pay a “registration fee of \$200.00 per hemp product” when submitting an annual application to process hemp within the State.¹⁵

⁸ *Id.*

⁹ NOTE: All references to “cannabis flower” presumes that such products meet the 0.3% THC threshold.

¹⁰ *Id.*

¹¹ W. VA. CODE R. § 61-30-2.14.

¹² W. VA. CODE R. § 61-30-2.23.

¹³ W. VA. CODE R. §§ 61-30-4.1, 5.1.

¹⁴ *Id.*

¹⁵ W. VA. CODE R. § 61-30-4.3.a.

As mentioned, the *Proposed Rules*' definition of "hemp products" is very broad. Hemp products include edibles, tinctures, lotions, vaping products, cannabis flower, etc... Thus, under the *Proposed Rules*, it is unclear how a \$200.00 registration fee *per hemp product* will be applied.

For example, PharmaCBD manufactures 20 milligram full-spectrum CBD "cherry-sour" edibles. If PharmaCBD packages the same cherry-sour edibles in: (i) a thirty (30) count bottle; (ii) a sixty (60) count bottle; and (iii) an individual single package, *are all three (3) packages of the same hemp product subject to an individual \$200.00 registration fee?*

This problem is not unique to just edibles. Both PharmaCBD and Purple Leaf sell certain strains of cannabis flower in: (i) pre-rolled blunts and (ii) pre-rolled joints. If the same exact strain of cannabis flower from the same product lot is made available for commercial sale in two different packages, will the WVDA require a registration fee for both the pre-rolled joint and the pre-rolled blunt, *even though both have the same strain of cannabis flower and come from the same product lot?*

Furthermore, both PharmaCBD and Purple Leaf sell thirty (30) mL bottles of tincture oil. Purple Leaf's "Focus Baby" tincture oil comes in concentrations of 250 mg, 500 mg, 1,000 mg, and 1,500 mg. *If Purple Leaf's "Focus Baby" tincture oil is processed from the same cannabis strain from the same product lot, will the various concentrations require separate registration fees?*

The question is whether the WVDA views "hemp products" as: (i) the packaging of the product; or (ii) the product itself. As provided in the *Proposed Rules*, the Commenters state that WVDA's implementation of a registration fee *per hemp product* should be applied based on the product, not the packaging.

D. Manufacturers Who Purchase Out-Of-State Hemp are Unable to Comply with the *Proposed Rules*.

Pursuant to the 2018 Farm Bill and HB2694, the *Proposed Rules* explicitly provide for the manufacture and sale of hemp products from hemp grown outside of West Virginia. In order to manufacture hemp products from out-of-state hemp growers, the *Proposed Rules* states:

*As a condition of registration, all manufacturers are required to retain documentation for each product lot demonstrating the source of the hemp that was utilized to manufacture the hemp product, including documentation that the product was grown by a licensed hemp grower.*¹⁶

Thus, manufacturers are required to retain documentation indicating: (i) the *source* of the product lot and (ii) certifiable proof that the cannabis was grown by a licensed hemp grower.

This requirement is simply not feasible for manufacturers who are purchasing raw cannabis from outside of the state. The purchase and sale of hemp throughout the United States is like any other national marketplace. Rarely, if ever, do out-of-state manufacturers purchase cannabis flower directly from the licensed hemp grower. Most, if not all, purchases for cannabis flower are made through brokers, who, as a matter of course, prevent the manufacturer from dealing directly with the individual who originally grew the hemp. Moreover, raw cannabis is

¹⁶ W. VA. CODE R. § 61-30-4.8.

oftentimes sold amongst brokers, so the manufacturer may be the sixth, seventh, or even eighth owner of the raw cannabis before it is eventually processed into a hemp product for sale.

Due to the manner in which cannabis flower is bought and sold, the manufacturer is simply unable to carry the burden of receiving documentation that the cannabis flower purchased in the national marketplace was grown by a licensed hemp grower. The Commenters wish to make crystal clear, however, that the Commenters are always provided with a certificate of analysis indicating that the cannabis flower purchased in the national marketplace is legal under the 2018 Farm Bill.

The Commenters urge the WVDA to amend the *Proposed Rules* to reflect this issue. The Commenters suggest that the WVDA state that manufacturers who purchase hemp grown out of state satisfy the *Proposed Rules* so long as they possess a valid certificate of analysis indicating that the hemp is compliant under the 2018 Farm Bill.

IV. Conclusion

In conclusion, the Commenters appreciate WVDA and its *Proposed Rules*. The Commenters are setting the industry standard for safe, legal, and compliant high-quality hemp products throughout the State of West Virginia. The Commenters look forward to working with the WVDA now and in the future, and thank the WVDA for its review of the Commenters' filing in this matter.

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Ryan Ewing
Steptoe & Johnson, PLLC
Ryan.Ewing@Steptoe-Johnson.com

Dear Mr. Ewing:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, 61 C.S.R. §29, Industrial Hemp, and 61 C.S.R. §30, Hemp Products. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

The rules as proposed are reasonable and pragmatic.

Response:

The Department agrees with your comment.

Comment:

The proposed rules must clarify that cannabis flower is a legal hemp project.

Response:

The Department distinguishes between applicability of 61 C.S.R. §29 (Industrial Hemp) and 61 C.S.R. §30 (Hemp Products) based on whether the product is unprocessed (raw) or processed. Hemp flower can fall into both categories. The condition of the hemp flower will determine how it is addressed by the Department.

Comment:

The manner in which hemp products must be registered is unclear.

Response:

The WVDA will be providing a guidance document detailing the step by step requirements for registrants to register. We will also put together a check list in the guidance document to assist those who wish to register their products.

Comment:

Manufacturers who purchase out-of-state hemp are unable to comply with the proposed rules due to the way cannabis flower is bought and sold the manufacturer is unable to carry the burden of receiving the needed documentation.

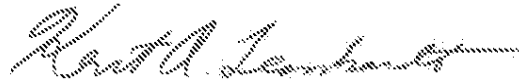
Response:

The WVDA currently has similar registration/licensure programs with various other products, such as animal feed and pesticides. Each of these products, regardless of the manufacturer's origin, must register with the WVDA. This model is very similar and there currently isn't anything in the rule that would not allow for products outside WV to be sold.

With respect to the requirement to identify the source of the hemp, the Department considers this information necessary to appropriately regulate. Because hemp cannot be legally grown without a license from either a participating state or the U.S. Department of Agriculture, it is important to know that the products being sold in West Virginia have a legal origin. Moreover, traceability information is important in the event of an outbreak, to provide information both to the manufacturer of that product, the hemp grower, and any other manufacturers who utilized that hemp.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kent A. Leonhardt', with a long, sweeping horizontal flourish extending to the right.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: Mike & Tricia Washington <teamwash1990@gmail.com>
Sent: Monday, July 22, 2019 9:42 AM
To: WV Legislative Rules Comments
Subject: 61 CSR 30 and 61 CSR 29

I am a very small business that makes pet treats and bath soaks that contain CBD. My family and I use this business as way to make ends meet at the end of the month. I am not a multi-millionaire trying to get richer in this business, I am trying to support my family.

As a result, I find that if these new rules are implemented, I will be forced to close down my business.

My comments/questions are as follows:

1. If I am following FDA Regulations, why should my state that will be getting tax benefits from me implement additional rules that will cost me money that will prevent me from expanding and possibly hiring employees?
2. Manufacturer registration/application is interchanged throughout the document. Will I be automatically approved once I pay the fee or is this in fact an application that can be denied?
3. I carry different scents of bath soaks and dog treats with different amounts of CBD. Will I have to pay the fee for each different one? If so, I am already out of business because that would a \$1,000 fee.
4. Each "lot" must be sent to an independent lab. I do not have a large lab and use my home kitchen. Therefore, I don't have industrial equipment to make large "lots". Will I have to send each batch of dog treats that only makes approximately 110 treats to be tested? If so, again I will be out of business because I can't afford that and if I pass it on to my customers, my products will be too expensive to the typical WVians. .
5. If I decide to add new products, will I be able to amend my registration or will I have to wait until the next registration period to expand?
6. The marketing section of Section 29 is very confusing. Does that apply to a manufacturer who wants to advertise their products or does that section only apply to farms?

Thank you for taking the time to read my comments. Please consider every aspect of this Rule and how it will apply to every West Virginian. We should all be able to benefit from itt not only financially but as a healthy alternative too. It must be affordable for all of us.

Thank you
Tricia Washington
Natural Family, LLC
304-549-1687

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Tricia Washington
Natural Family, LLC
Teamwash1990@gmail.com

Dear Ms. Washington:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Question 1. If I am following FDA Regulations, why should my state that will be getting tax benefits from me implement additional rules that will cost me money that will prevent me from expanding and possibly hiring employees?

Response: The Legislature has tasked the Department with regulating all hemp products sold within the State of West Virginia. The fees for registration are assessed to enable the Department to carry out that regulatory function. The Department does not receive any federal or state funds to support this program. This program is designed to provide consumer safety, allow for consumer protection, and ensure consumer confidence in the product. The fee related to the registration per product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The WVDA is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees.

Question 2. Manufacturer registration/application is interchanged throughout the document. Will I be automatically approved once I pay the fee or is this in fact an application that can be denied?

Response: If your application for registration is complete, it will not be rejected. If for some reason the registration is rejected, you will be reimbursed through our reimbursement process. We will not charge you if your application is rejected.

Question 3. I carry different scents of bath soaks and dog treats with different amounts of CBD. Will I have to pay the fee for each different one? If so, I am already out of business because that would a \$1,000 fee.

Response: Yes. You will be required to register each product with the WVDA and pay for each different product that is registered. We will be reviewing the labels for each product that we receive and potentially testing each of the products. The WVDA does not receive any federal or state funds to support this program. This program is designed to provide consumer safety, allow for consumer protection, and ensure consumer confidence in the product. The fee related to the registration per product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and

microbiologists and related costs to collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The WVDA is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees.

Question 4. Each "lot" must be sent to an independent lab. I do not have a large lab and use my home kitchen. Therefore, I don't have industrial equipment to make large "lots". Will I have to send each batch of dog treats that only makes approximately 110 treats to be tested? If so, again I will be out of business because I can't afford that and if I pass it on to my customers, my products will be too expensive to the typical WVians.

Response: At this point, we do not have special provisions for very small producers. The Department will consider an alternative to this process in the future.

Question 5. If I decide to add new products, will I be able to amend my registration or will I have to wait until the next registration period to expand?

Response: If you are registering only to sell the product, and not manufacture the product, you may contact us in writing at any time to amend your registration. We are working to develop a guidance document that would specifically have this information in it.

Question 6. The marketing section of Section 29 is very confusing. Does that apply to a manufacturer who wants to advertise their products or does that section only apply to farms?

Response: References to "marketing" contained in 61 C.S.R. §29 referred to the industrial hemp program operated by the Department under the 2014 Farm Bill. References to "marketing" have been removed in this current rule based on guidance provided in the 2018 Farm Bill.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,



Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: Tom Farrah <farrahshiddenhollow@yahoo.com>
Sent: Tuesday, July 9, 2019 1:28 PM
To: WV Legislative Rules Comments
Subject: Comments

I have read the proposed rules for hemp products. I was wondering if there were going to be any proximity rules for CBD stores? How about restrictions in the stores, i.e. tobacco and alcohol? Just thinking of possibilities

Thank you,
Tom Farrah

Keaton, Jennifer

From: Tom Farrah <tomfarrah@yahoo.com>
Sent: Tuesday, July 9, 2019 2:04 PM
To: WV Legislative Rules Comments
Subject: Comments

I also feel if you sell vegetation (CBD flower) you should have a grow license.

Thank you,
Tom Farrah

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Tom Farrah
farrahshiddenhollow@yahoo.com

Dear Mr. Farrah:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

Your comment asked whether there are any proximity rules for CBD stores.

Response:

WVDA has discussed proximity rules for stores selling hemp products in West Virginia. Hemp products are currently being sold in everything from supermarkets to gas stations. Currently WVDA does not have plans to develop proximity rules for the locations of stores that sell these products, as they are currently sold nearly everywhere.

Comment:

Your comment proposed that the sale of vegetation (CBD flowers) should require a grow license.

Response:

Those who possess raw hemp are required to have a grow license with the WVDA.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: Don Smith II <don.staghemp@outlook.com>
Sent: Tuesday, July 23, 2019 12:06 PM
To: WV Legislative Rules Comments
Subject: Fw: Title Series: 61-30

Don Smith II
STAG - Standard Agriculture LTD.
ACE - Agri Carb Electric Corporation
WVHFC - West Virginia Hemp Farmers Cooperative Corporation
Board Member of the Minutemen Farmers Cooperative

From: Don Smith II <don.staghemp@outlook.com>
Sent: Monday, July 22, 2019 11:32 AM
To: rulescomments@wvda.com <rulescomments@wvda.com>
Subject: Title Series: 61-30

Madison Birchfield AND
To Whom it may concern,

Please consider the following my personal public commentary regarding Title 61 -30.

When I was first informed of this new set of rules, I was immediately skeptical as West Virginia went from having some of the best Legislation and Rules in the Nation to quite possibly the worst. Background Investigation Requirements, the need to inform Law Enforcement of our Hemp Operations as if this is not the responsibility of Government, and an overly restrictive, ineffective and oppressively costly THC testing protocol has all but driven West Virginia to the bottom of the National Cannabis Industry. Other Hemp Legal States are pulling ahead while our efforts to build the Cannabis Industry, by all predictions worth 10's of billions of dollars within a few short years, are suppressed by insidious and overly conservative restrictions that only serve to give our competition the edge.

However, there is some merit to Title 61-30. The consumer of our West Virginia grown and processed Cannabis must be assured they are not buying "Snake Oil" or tainted biomass. It is my opinion the State has overly restricted the Agricultural part of the overall equation, while simultaneously disregarding the customer.

Quality is the key to developing this multi billion dollar industry. Statistical Process Control and Continuous Process Improvement is the only way to achieve quality. I'm not seeing any sign of it here. The State and the Cannabis Industry must concentrate on the customer. It should be all of our goal to insure the customer is delighted with their purchase of WV Cannabis Products. They should feel confident of the purity and quality of

their purchase. Otherwise, we West Virginians' have to satisfy ourselves at being #50 at everything, including the Cannabis Industry. Study Dr. W. Edwards Deming and Agricultural ISO protocols. Immediate concentration on organic certifications and "Flower" market development is also recommended.

Title 61-30 needs work and Legislative Funding before it is promulgated:

- + It costs the retailers and manufacturers too much and delivers nothing tangible ...
- + It is too sophisticated to operate effectively without LEGISLATIVE FUNDING ...
- + There are no provisions for Quality Improvements. As with all prior ill conceived Rules and Legislation, there has been little if any consultation with those of us in the Industry..
- + Registrations are the same as licenses. Processors and Retailers are NOT required by Law to be Licensed.
- + THC testing protocols and limitations are based on arbitrary and capricious numbers. We should never have to destroy a West Virginia Crop. THC levels can be scientifically manipulated for consumer goods. There is no allowance for this in Title 61-30.
- + Scientific Testing for Pesticide, Heavy Metals, and a host of other contaminants is vital. Testing for all ingredients and their levels in products is vital. If the State is going to require this testing, then the Laboratories within the State need to be the ones doing the work. If the products meet purity standards, then the State should produce and sell the Cannabis Industry stickers that state the following; WEST VIRGINIA DEPARTMENT OF AGRICULTURE TESTED AND CERTIFIED. That will drive consumer confidence and sales.
- + I do not recommend promulgation of these rules until these stickers can be supplied and until the Legislature provides adequate funding so the Department of Agriculture can properly protect the consumer and effectively regulate the Hemp Industry.

Know this: Cannabis is the most beneficial plant on Earth. There is more food, fiber, fuel and medicine to an acre of Cannabis than any other plant on Earth. How it is that a Free American cannot grow, use, prosper by, and enjoy the most beneficial plant on Earth is a Crime Story that is now being told. It is certainly an Inconvenient Truth that Cannabis has been West Virginia's number one cash crop for well over four decades. When you throw in all the Hemp West Virginians are now growing, impressive numbers come into focus. It is now time for all of us to take advantage of our Strategic Location and our abilities in Cannabis Agriculture. Truth, Hard Work, and Quality can bring prosperity.

Regards,

Don Smith II

Agri Carb Electric Corp
Standard Agriculture LTD
West Virginia Hemp Farmers Cooperative
Minutemen Farmers Cooperative

July 22, 2019 - 11:32AM

Don Smith II

STAG - Standard Agriculture LTD.

ACE - Agri Carb Electric Corporation

WVHFC - West Virginia Hemp Farmers Cooperative Corporation

Board Member of the Minutemen Farmers Cooperative

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Don Smith II
don.staghemp@outlook.com

Dear Mr. Smith:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, 61 C.S.R. §29, Industrial Hemp, and 61 C.S.R. §30, Hemp Products. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

You comment the rule costs retailers and manufacturers too much and delivers nothing tangible, is too sophisticated to operate effectively without legislative funding, has no provision for quality improvements and has failed to consult those in the industry.

Response:

The WV Legislature requires the program to set fees to allow the program to function. This mandate results in related license and testing fees. The Department is constantly striving to improve its processes and has sought input from multiple industry and regulatory sources including this public comment period.

Comment:

You commented that registrations are the same as licenses and that processors and retailers are not required by law to be licensed.

Response:

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

Comment:

You comment that THC testing protocols and limitations are based on arbitrary and capricious numbers and that crops should never be destroyed because final THC levels can be scientifically manipulated for consumer goods.

Response:

The Department does not perform arbitrary sampling, its protocols being similar to other states, most notable all states the Department consulted target the top of the plant. Samples collected in the field are to be as representative of the grow area as possible. Testing protocols follow industry standards. The Department is committed to complying with the federal 0.3% THC concentration limit.

Comment:

You comment that additional scientific testing is needed for pesticide, heavy metals, and others. You

further want the state to use state laboratories if such additional testing is required and then issue a label or other marketing device to promote WVDA testing and certification to increase consumer confidence and sales. You suggest holding off on promulgation of these rules until the labeling and recommended legislative funding is in place.

Response:

The Department does not have current plans for additional testing or adding other purity standards. The Department is committed to promoting WV agriculture and will take your comments related to purity, state lab testing, labeling and marketing under consideration. The Department will not delay the promulgation and implementation of these rules as mandated by the WV Legislature.

Comment:

You commented on the beneficial use of cannabis and its potential for economic prosperity for West Virginia if allowed to flourish without unnecessary regulation.

Response:

The Department looks forward to the tremendous growth of the hemp industry and is committed to promoting hemp and hemp products while complying with state and federal law.

We appreciate your interest in these legislative rules and your participation in the public comment process. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a long, horizontal flourish extending to the right.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: WV Legislative Rules Comments
Subject: FW: Industrial Hemp Amendment Rule Changes

From: arlie forman <formanarlie@gmail.com>
Sent: Friday, July 19, 2019 10:27 PM
To: WV Legislative Rules Comments <rulescomments@wvda.us>
Subject: Industrial Hemp Amendment Rule Changes

Please find attached some questions and comments with respect to proposed changes. I ask that I remain anonymous.

Thanks
Arlie

Questions and Comments Regarding Amendment to Existing Rule – Industrial Hemp

§ 61-29.3 License to Grow Hemp

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

Comment: Isn't this open ended and how are decisions made with respect to what information is needed? Are decisions made based on data or are decisions reactive or proactive to situations? For an emerging industry in WV this could potentially add cost and burden to the grower. Do other requirements (information) the Commissioner deems necessary go through a public comment period before they are enacted?

3.2.a. Each first time applicant shall file a set of the applicant's fingerprints, taken by a law enforcement officer.....

Comment: Isn't this presently done by a service of some type?

3.7. The annual "License Fee" is \$100 plus five dollars per acre.....

Comment: Should the per acre amount be prorated so if you were only farming 1.5 acres the license fee would be \$107.50 or would any portion of an acre constitute a whole acre?

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

Comment: How would you do this in a field? Laminate and fix to a fence post?

§ 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.

Comment: Why? Will law enforcement visit my farm just to inspect or in response to a complaint founded or unfounded? This same information is made available to law enforcement in Section 3.4.a. My concern isn't with law enforcement because I do not intend on breaking the rules. My concern is with other people who don't understand that I am growing hemp and not marijuana. Anyone could make the accusation to law enforcement that I am growing marijuana and not hemp and law enforcement would likely show up at my house. What happens at that point? Is there seizure of plants? A probable worse situation is those individuals that just don't like the program/plant or want to cause trouble for me or law enforcement make the accusation. I think you can see where this has the potential for abuse. Which it turn is Does the accusation by an anonymous or named individual constitute probable cause? If so, does this mean law enforcement can search my entire property. Again, I don't intend on breaking any rules but my farm is also my home and I have to think about my family and our reputation in the community. If this is included in the rule, how do you Certify that you have provided law enforcement your license? Would they stamp it received with a time and date and give you a copy to send the Commissioner?

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 the maximum level of THC authorized by this rule:

Comment: How do you accomplish this? I'm not a plant sciences guru and have only grown two seasons. If the mother and father from a crop are both tested and both are found to be below the maximum THC amount would that suffice? If there are other technologies or methods to sex a seed I would like to know about them. This requirement if not carried out cautiously could cost growers a great deal of money if seed banks are the only resource for seed. Please leave in some provision that will allow growers the opportunity to develop their own seed. For this industry to survive the initial years, growers need to drive down costs especially when returns are small. I don't want this opportunity to be lost for the average farmer and only corporations be able to navigate the process.

5.1. A licensee is subject to the sampling of his or her industrial crop at any time during growth and harvest to verify that the THC concentration does not exceed the concentration permitted by this rule.

Comment: This ties into my comment from 4.1. This could be an open-ended liability. There is nothing stopping the testing of a crop every month. Testing isn't a small cost to the small-scale grower and if some concerned citizen were to tell law enforcement that I am growing marijuana (out of ignorance or just to cause issues for the grower) when I am really growing hemp there could be more testing involved. Would this testing be my responsibility? This could also take quite a bit of time resolve and I can see where this might be abused. I can appreciate the Departments concern over some disreputable grower trying to grow illegal plants but hemp was taken off the schedule 1 list and WV has a hemp program so the crop isn't illegal. Some of the suggested rule changes seem to still think of hemp as marijuana. I would think a larger concern is someone "guerilla growing" or imbedding the plants within another crop in an attempt to hide the plants.

5.3. The word complete is spelled incorrectly. I am not judging, my spelling and grammar is horrible.

5.7. As part of testing and inspection.....each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.

Comment: Can the laboratory costs be defined per test so growers can forecast the cost? Is testing performed by a State lab or third-party independent lab? If performed by the State lab what is the contingency plan if the State cannot perform the testing? What happens with the farmers crop? Can it be harvested, dried or sold? I wouldn't want to see farmers loose significant investment due to someone retiring or leaving the Departments lab. Farmer's can invest thousands of dollars per acre to grow this crop so there is a lot of risk.

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

Comment: Can this be explained further? Is the intent to offer additional testing service to the farmer to identify other compounds or confirm that compounds do not exist? If the State could issue a Certificate of Analysis or COA that would be a nice option. This might actually help move WV hemp inside WV and to other states providing there is reciprocity between states with respect to transportation of biomass. Please make the transport across state lines reasonable. I have spoken with several people in Kentucky who have interest in WV hemp and with only a small number of extractors within the state it keeps the price for biomass low locally. The more options and competition the better for the farmer and perhaps the State.

Question: Hypothetically, what happens to a crop that has been tested twice and found to exceed the maximum THC level, lets use successive tests indicated THC at 0.31%, is the crop destroyed by the grower? Is it destroyed by the WVDA or Law Enforcement? Who pays those costs? I believe THC levels can be impacted by growing conditions so its possible for a grower to use good seed and still exceed the maximum THC levels.

Comment: Please make transport across state lines with hemp (live plants) and harvested biomass reasonable. Please work with the other states and maybe some form of mutual agreement or recognized reciprocity of a hemp license can be reached to facilitate transport of hemp outside the state. If you live in WV and need to transport to Florida it might be tough to coordinate permission slips (for lack of a better term) to cross through multiple states before you loose your crop.

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Arlie Forman
formanarlile@gmail.com

Dear Mr. Forman:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

You commented on 61-29.3 License to Grow Hemp, 3.1.c. Any other information the Commissioner considers appropriate. You indicated the words "any other information" is too open ended and asked how decisions are made by the Department. You asked if new requirements were needed, would the public comment period be observed?

Response:

The language of concern is not new, it is current law and allows the Commissioner to respond to changing federal regulations and other circumstances to ensure the integrity of the hemp program. The Department uses the best data available to drive their decisions and strives to be proactive when possible. Any changes to the legislative rule would require a legislative process to include a public comment period.

Comment:

You commented on the fingerprinting process for new applicants found in 3.2.a.

Response:

The Department enters into agreements with authorized entities for applicant fingerprinting. Language in the 2019 Regular Session allowed the Department to make these changes to streamline the process. These changes model the statutory language and make it easier to comply with the background check process.

Comment:

You asked whether the Department would prorate the annual license fee of \$100 plus five dollars per acre if less than a full acre was farmed, or, if any portion of an acre would constitute a whole acre for purposes of the fee?

Response:

The Department does not prorate acreage and any portion of an acre is charged as an entire acre for purposes of the five dollar per acre fee.

Comment:

You asked how to comply with 3.9 requiring a copy of the license to be displayed at each location where a licensed activity takes place.

Response:

You may laminate and affix the license to a fence post.

Comment:

You had several concerns about 4.1. relating to notification reports that require licensees to provide copies of their license to the county sheriff in the county where the hemp is being grown and to the local detachment of the WV State Police. You had several questions related to law enforcement's actions after notification was provided, including questions about anonymous complaints, confiscation and probable cause. You also asked how you could prove to the Department that you provided your license to law enforcement.

Response:

The rule language of concern mirrors existing code language, already in effect, that was added by the WV Legislature in recognition of law enforcement's need to quickly and easily know who has legal licenses. The Department cannot respond to the questions you posed related to law enforcement's actions or how they would respond to a complaint. The Department certification only requires a simple signed and dated statement from the licensee indicating they have provided law enforcement with a copy of their license. You should check with your local sheriff and WV State Police detachment for their individual policies for accepting these documents.

Comment:

You commented on 4.2.a, asking how to accomplish documentation protocols showing that the seeds planted are of a type and variety to contain no more than the maximum level of THC authorized by the rule.

Response:

The Department does not dictate where conforming seed must be sourced. The Department requires documented assurances that licensees are complying with the rules because the Department wants licensees to source seed that produces below 0.3% THC to minimize undesirable outcomes. Even when licensees source seed below 0.3% THC the crop the seed produces must still be tested and may still have the potential to exceed that amount due to environmental variables.

Comment:

You commented on 5.1 related to licensee being subject to sampling of the crop at any time during growth and harvest in order to determine THC concentrations. You are concerned about open-ended liability and related expenses for repeated testing.

Response:

WVDA is committed to fairness and is not going to constantly test licensee's crops. If law enforcement has suspicions about the crop they can complete testing. WVDA will sample the crop pre-harvest and charge accordingly for that sample and testing.

Comment:

You commented on 5.7 relating to the payment for testing and inspection costs, including retesting. You asked if prices could be published, who would serve as a backup laboratory and what happens to the crop if the testing doesn't take place.

Response:

Laboratory test costs are held as low as possible and still allow the program to function. Each variety grown must be sampled. Testing prices are not published and can change over time. The Department technician's time involved in taking the field sample is currently charged at \$35.00 per hour including

drive time, and proposed is a mileage charge to cover the expense of the vehicle. Tests will only be performed in the Departments certified laboratories. The crop cannot be sold until testing shows compliance with the rule.

Comment:

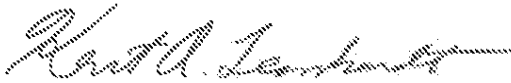
You commented on 5.8 related to permissive testing asking for additional explanation and clarification and included a hypothetical about what happens to a crop that exceeds the allowable THC concentration and who bears the costs. You also commented that transport across state lines with hemp is needed to facilitate interstate commerce.

Response:

The intent is to offer additional testing if the grower wants this service and if the Department has the time to perform the grower requested tests. 0.3% THC concentration is the legal limit unless otherwise altered by the USDA and for the crop to be sold it must be 0.3% THC or less. Regarding the transport of hemp across state lines, the Department is following the USDA rulemaking currently underway that deals with this issue and intends to comply with their guidance for transport.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a stylized flourish at the end.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: Timothy Luce <timothy@presidiostudios.com>
Sent: Monday, July 22, 2019 11:59 AM
To: WV Legislative Rules Comments
Subject: Comment regarding Industrial Hemp Amendments

1. I see no provision for contracting with third party seedling growers, is that prohibited? (If permissible, would the grower be required to have a license?)
2. Is leasing high tunnels from a third party acceptable for growing seedlings?
3. I see no provision regarding seed procurement. Is ordering seeds from a supplier outside of WV permitted.
4. I see no provision for contracting with a third party to grow industrial hemp in WV. Is contracting with a third party that has a license to grow in WV permitted? (Would we need to have a license to grow, and the third party also has a license to grow, or would it be acceptable for the third party to have the license to grow.)
5. Can we purchase seedling a from out of state and transport those to our growing site

Timothy Luce
Alderson, WV

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Timothy Luce

timothy@presidentstudios.com

Dear Mr. Luce:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

You commented that you saw no provision for contracting with third party seedling growers and asked whether that was prohibited. You questioned, if permissible, would the grower be required to have a license?

Response:

Contracting with third-party growers is permissible, so long as the grower has a license. The individual growing the hemp is required to have a license.

Comment:

You asked whether it is acceptable to lease high tunnels from third parties for growing seedlings.

Response:

Yes, leasing high tunnels is acceptable, but the Department will require a copy of the lease to be submitted and a background check on the owner to be performed.

Comment:

You commented that you saw no provision regarding seed procurement and asked whether ordering seeds from a supplier outside of West Virginia is permitted.

Response:

The Department does not regulate seed procurement. Ordering seeds from a supplier outside West Virginia is permissible.

Comment:

You commented that you saw no provision for contracting with a third party to grow industrial hemp in West Virginia and asked whether contracting with a third party that has a license to grow in West Virginia is permitted. You asked whether both you and the third party would need to have a license to grow, or if it would be acceptable for the third party alone to have a license to grow.

Response:

Any person growing or possessing raw, unprocessed hemp is required to hold a license. In the scenario you presented, both you and the grower would be required to hold a license.

Comment:

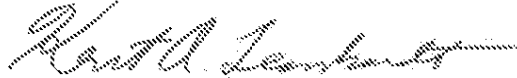
You asked whether a grower may purchase seedlings from out of state and transport those to the grower's growing site.

Response:

The Department does not regulate seedling procurement. Ordering seedlings from a supplier outside West Virginia is permissible, provided that the seedlings were produced by an individual licensed in his or her respective state.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kent A. Leonhardt', with a stylized, flowing script.

Kent A. Leonhardt
Commissioner

Keaton, Jennifer

From: WV Legislative Rules Comments
Subject: FW: COMMENT to WV 61-29-1 et seq. and 61-30-1 et seq.

From: Mason, Jennifer <Jennifer.Mason@DINSMORE.COM>
Sent: Monday, July 22, 2019 7:30 PM
To: WV Legislative Rules Comments <rulescomments@wvda.us>
Subject: COMMENT to WV 61-29-1 et seq. and 61-30-1 et seq.

To Whom It May Concern:

THREE COMMENTS:

First:

The regulations permit the WV DOA to conduct testing of the hemp plant in order to test for the Delta 9 THC concentration. The WVDOA has chosen to use GC testing, which heats up or carboxylates the biomass when testing. This process modifies other components of the hemp plant and changes them to THC, specifically changing what was THCa (an acid) to THC.

1. According to the 2018 Farm Bill, as it amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621), "SEC. 297A. DEFINITIONS. 22 "In this subtitle: 23 "(1) HEMP.—The term 'hemp' means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. WV has incorporated this definition of Hemp into its legislation. <http://www.wvlegislature.gov/WVCODE/code.cfm?chapter=22&art=22E01>

2. In legal interpretation of statutes in WV, you cannot remove any piece of the definition. Therefore, a Court would read the statute "in parie Materia" which means in combination with one another. In considering civil service statutes it is important to follow the statutes as closely as possible in order to carry out the intention of the Legislature that enacted them. See *Legg v. Smith*, 181 W.Va. 796, 798, 384 S.E.2d 833, 835 (1989). Looking at a similar statutory system, this Court has recognized that "[o]ur Civil Service System Act . . . is a conglomeration of statutes that must be read in *pari materia*." *Syllabus Point 1, State ex rel. Callaghan v. W. Va. Civil Service Commission*, 166 W.Va. 117, 273 S.E.2d 72 (1980). It is axiomatic that a court must whenever possible read statutes dealing with the same subject matter in *pari materia* so that the statutes are harmonious and congruent, giving meaning to each word of the statutes, and avoiding readings which would result in a conflict in the mandates of different statutory provisions. "Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." *Syllabus Point 3, Smith v. State Workmen's Compensation Com'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). See *Parkins v. Londeree*, 146 W.Va. 1051, 1060, 124 S.E.2d 471, 476 (1962). Citing *Mangus v Ashley*, 199 W.Va. 651, 487 S.E.2d 309 (1997).

3. So, if a Court interpreting the Statute is going to read it “in parie materia”, how do you read it all together?

a. Let’s start with going through the definition point by point. First, “the term “Hemp” means the plant Cannabis sativa L and any part of that plant, including”

b. So, the real question is how that definition works:

i. Should you “group together,” as in one lot, all parts of the plant and then measure, or

ii. Should you look at each part separately?

c. In reviewing the definition “in parie Materia”, the definition says plant and any part of the plant. The definition appears to indicate that in determining whether a plant is hemp, you can look at “the plant” and “any part of the plant”. What it does not say is that you can combine just the parts high in THC to test the whole. It seems you can test either the whole or any part individually. However, it does not indicate that you can select only the highest THC content parts, combine them together, and then test.

Why do I say this?

1. Hemp is a) the plant (the whole thing) AND b) hemp is any part of that plant . . . including individual items.

2. If you take the whole plant and measure, you have a true result.

3. If you take each individual part and measure, you have a true result.

4. However, taking just the parts most high in THC, decarboxylating them thus turning THCa into THC, inaccurately reflects higher content that is true of the “plant” and “any individual part”, which is how the definition is designed.

The next question is whether, in testing, (regardless of whether it is of the parts or the plant) the WV Department of Agriculture can use a test which decarboxylates the THCa material in order to get a true test of the THC concentration.

The heart of the answer starts with the word “Concentration”-what is the “concentration” of THC in the plant and in any part of the plant. If you want to test the concentration of delta-9 Tetrahydrocannabinol, you (the WVDOA) should not first change another component of the plant THCa into THC first and then test. That artificially raises the result. The statutory definition doesn’t ask for that. The legislature could have included THCa in the definition, it didn’t. The legislation doesn’t indicate THCa matters at all. It would be like saying, let’s test the chlorophylls of the plant to see if it is hemp. That isn’t the way it is defined. Just because THCa can be “scientifically” modified into THC by essentially heating it (the most common way we have always tested for THC content in blood), doesn’t mean it is a proper method to test for the THC concentration which by definition will define whether the plant is hemp or not. Conducting the test the WV DOA currently uses to test for the Delta 9 Concentration of THC is in error. By first changing the THCa to THC to determine the concentration, hemp farmers are left with a difficult dilemma.

What Congress and later the WV legislature indicated was that the test for determining whether a cannabis sativa L plant is hemp or not, is, by definition, ONLY the concentration of THC in either the plant or the parts of the plant. So, if the bud alone has a concentration of Delta 9 THC of higher the .03, then it isn’t hemp. Whether and how THCa might impact that result IS NOT part of the definition.

Importantly, there is a test that will not artificially include the THCa content in the result. Please see the article referenced below.

The definition is where the WV DOA should start with the analysis. If the WV DOA uses a test that artificially raises the value, it is conducting a test outside the statutory definition and therefore, is in violation of the statute.

<https://cannabusiness.law/hemp-testing-101-analytical-testing-protocols-explained-and-evaluated/>

Further, other states such as Kentucky follow the method that DOES NOT include the THCa in the total measure. (See sampling and testing procedure from the Kentucky Department of Agriculture attached above.)

Now, what the WV DOA may be relying upon is language in another portion of the Act which conflicts with the definition stated above. That is, in Subsection G Hemp Production, Sec. 297 B State and Tribal Plans, the statute indicates that:

“(2) CONTENTS.—A State or Tribal plan referred to in paragraph (1)— “(A) shall only be required to include— “(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years; “(ii) a procedure for testing, using postdecarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe; “(iii) a procedure for the effective disposal of— “(i) plants, whether growing or not, that are produced in violation of this subtitle; and “(ii) products derived from those plants; “(iv) a procedure to comply with the enforcement procedures under subsection (e); “(v) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle; “(vi) a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received; and

However, when two parts of the statute that must be read in combination conflict, the question is can they be made to be read in *parie materia*, together, somehow. Here, the “postdecarboxylation test” cannot be reconciled with the definition of hemp. It will not test the concentration of THC. However, the requirement has a second “Or” clause that can be read in *parie materia*. That is the state can provide a “similarly reliable method.” Since the postdecarboxylation cannot be read in *parie materia* with the definition, it must be eliminated. A reasonable test is noted above and an example from Kentucky is attached hereto.

SECOND:

The Rules, as currently promulgated by the WVDOA, do not provide any guidance to processors who, when processing hemp from biomass to end product, have product that, for a short period of time, exceeds the concentration level permitted by law. It is acknowledged that the biomass product as it arrives at the processor must be hemp and that it will include a COA or Release from a State DOA and that no retail product should leave a processing facility that is not validated by an independent third party test for contaminants and potency confirming it is a legal product. The Rules, as currently promulgated by the WVDOA, do not provide any guidance to processors who, when processing hemp from biomass to end product, have product that, for a period during processing, exceeds the concentration level permitted by law. When cannabidiol is extracted from hemp, the oil /THC that is contained in the plant is concentrated. When it is concentrated, even though the oil is derived from a plant that complies with the definition, the THC concentration may rise above the legal limit while in processing -- sometimes up to 3% as we understand. Processors seek specific relief from the WV DOA with respect to; materials stored on site; materials in processing labs; material transported between processing/testing facilities that are in mid-stream processing and properly labeled as such. We need to confirm that no mid-process materials will be subject to the THC limitations because none of those products are for retail sales or human consumption. The Processors would urge the WV DOA to require submission of post processing and formulation testing, thus doing a pre-market analysis of any retail products entering the WV retail market. This will ensure public safety and protect the processors from the unknown during the course of doing business.

THIRD:

Section 61 CSR 30, subsection 4.3) The fees proposed by the WV DOA of \$200 per CBD product could push small WV farmers out of the market. Some farmers have 25 products. 25 products at \$200 per product is \$5000. These fees could add up to much greater cost than any profit these individuals or entities will ever obtain. This fee will also negatively impact the retailers, shop owners, etc.

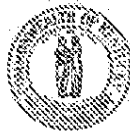


Jennifer K. Mason
Partner

Dinsmore & Shohl LLP • Legal Counsel
1033 Court Street N
Lewisburg, WV 24901
T (304) 645-9118 • C (412) 427-8828

Dinsmore & Shohl LLP • Legal Counsel
1300 Six PPG Place
Pittsburgh, PA 15222
T (412) 230-8997 • F (304) 645-5375

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Kentucky Department of Agriculture

Hemp Program

Procedures for Sampling, THC Testing, and Post-Testing Actions

SOP# KDA-HEMP-20190204-1

Publication Date: February 4, 2019

Federal and state law charge the Kentucky Department of Agriculture (KDA) with responsibility for managing Kentucky's Hemp Program. In 2014, Congress enacted legislation permitting state departments of agriculture to conduct research pilot programs with industrial hemp. Congress specifically limited its authorization of state-level industrial hemp research pilot programs as defined in 7 U.S.C. § 5940 (2014 Farm Bill). The 2018 Farm Bill removes hemp from the list of controlled substances and delegates the regulatory authority to the state departments of agriculture through a USDA-approved state plan.

To that end, KDA conducts a sampling and testing program to confirm compliance with state and federal law. KRS 260.850(5) defines industrial hemp as "the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis."

In addition, KRS 250.355 requires KDA to collaborate with the University of Kentucky's Division of Regulatory Services to establish a testing program that will ensure that THC levels in industrial hemp produced by KDA's license holders do not exceed the 0.3% delta-9-THC threshold set by Congress.

KDA is committed to ensuring that crops grown under the auspices of KDA's hemp program are compliant with federal law and are, in fact, industrial hemp. Accordingly, KDA intends to inspect and sample 100% of hemp plots to be harvested. All varieties will be tested for compliance with the 0.3% delta-9-THC threshold set by Congress.

I. Definitions

- (1) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).
- (2) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to ensure the genetic purity and identity of the seed certified.
- (3) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.
- (4) "Post-Harvest Sample" means a sample taken from the harvested hemp material from a particular plot's harvest in accordance with the procedures as defined 302

KAR 50:050; the entire plot's harvest must be in the same form (e.g., intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp materials from another plot.

- (5) "Pre-Harvest Sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as defined in 302 KAR 50:050.
- (6) "Processing" means converting an agricultural commodity into a marketable form.
- (7) "Prohibited Variety" means a variety or strain of cannabis excluded from the KDA Hemp Program.
- (8) "Seed source" means the origin of the seed or propagules as determined by the Department.
- (9) "Variety of Concern" means any variety of hemp in the Department's program that tests above or 0.3000% delta-9-THC in one (1) or more Pre-Harvest Samples. A hemp variety designated as a "Variety of Concern" may be subject to restrictions and additional testing.

II. Sampling Timeline and Grower Responsibilities

- (1) A completed *Harvest/Destruction Report Form* from a grower shall be provided to KDA at least 15 days prior to the expected harvest date.
- (2) KDA's receipt of a harvest notification triggers a potential site inspection and sample collection by a KDA inspector.
- (3) KDA inspectors shall contact the grower to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
- (4) During the inspection, the grower or an authorized representative shall be present at the growing site.
- (5) Inspectors shall be provided with complete and unrestricted access to all industrial hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation and storage of all industrial hemp and other cannabis plants.
- (6) The grower shall harvest the crop not more than 15 days following the date of sample collection by KDA, unless specifically authorized in writing by KDA.
- (7) Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the processor, nor commingled, nor extracted, until KDA releases the material.
- (8) Harvested materials from Varieties of Concern shall not be comingled with other harvests without express permission from KDA.
- (9) The License Holder shall be notified within 45 days of sampling the status of their testing and eligibility of their harvested materials to move into market research.

III. Pre-Harvest Sampling Procedure

- (1) All samples become the property of KDA and are non-returnable.
- (2) Equipment Used:
 - a) Inspection Form,

- b) Pruning shears,
- c) Alcohol wipes to clean shears before each sample,
- d) Paper sample bags,
- e) Stapler,
- f) Sharpie marker to write sample ID on bag,
- g) Bucket to transport bagged samples,
- h) *Harvest/Destruction Report* forms, and
- i) Maps.

(3) The material selected for Pre-Harvest Sampling will be determined by KDA, not the grower. Cuttings will be collected to make one representative sample.

- a) Clip the top 20 cm of hemp plant's primary stem, including female floral material.
- b) Take cuttings from at least five (5) hemp plants within the plot.
- c) Place the complete sample in a paper bag.
- d) Seal the bag by folding over the top once and stapling the bag shut.
- e) A separate sample must be taken from each non-contiguous plot of a given variety.
- f) A separate sample must be taken for each variety.
- g) Samples shall be secured in a paper bag (to allow for air-drying during transport).
- h) Label the sample container with a sample ID. The sample ID shall include the last four numerical digits of the License number, Date (MMDDYY), and a two-digit sequential sample number assigned by the inspector.

Example: License# 17-80-11G, Sample Date March 30, 2017, Sample 03
Translates to Sample ID: 8011-033017-03

- i) The sample shall be transported to KDA for drying and storage.

IV. Handling Procedures of Pre-Harvest Samples

- (1) Samples will be taken to KDA for drying and storage.
- (2) Samples should be arranged in a single layer for drying.
- (3) Drying oven will be used when possible.
- (4) Samples in the oven will be left in the labeled sample bag.
- (5) If selected for testing, the entire sample will be sent to KDA's testing lab for analysis.

V. Post-Harvest Sampling Procedures for Floral Material

- (1) All samples become the property of KDA and are non-returnable.
- (2) Equipment Used:
 - a) Inspection Form,
 - b) Pruning shears (if necessary),
 - c) Alcohol wipes to clean shears before each sample,
 - d) Paper sample bags for solid material,
 - e) Plastic sample containers for ground material,
 - f) Stapler,

- g) Sharpie marker to note sample ID on sample container,
- h) Bucket to transport samples,
- i) *Harvest/Destruction Report* forms,
- j) Maps, and
- k) Results notification letter.

(3) The plot selected for sampling shall be designated by the Pre-Harvest Sample results. The material selected for Post-Harvest Sampling from this plot will be determined by the KDA, not the grower. All Post-Harvest Samples of floral material shall be taken from the designated harvested plot materials in the form (intact-plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must inventory the entire harvest to determine the form in which it exists, and follow the protocol as appropriate in part a), b), or c) below.

If, upon inventory, the inspector determines that the entire harvest is not in a homogenous form (intact-plant, flowers, ground materials, etc.), the inspector shall notify the Hemp Program Manager. A License Holder who refuses to complete post-harvest processing preparations waives the right to a post-harvest test and the pre-harvest test results shall stand, and the plot materials shall be ordered destroyed.

License Holders are responsible for all post-harvest testing fees.

a) For intact-plant post-harvest samples:

- i) Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
- ii) Clip the top 20 cm of hemp plant, primary stem, including female floral material.
- iii) Take cuttings from at least five (5) hemp plants within the harvest's storage/drying area at the discretion of the inspector.
- iv) Place the complete sample in a paper bag.
- v) Seal the paper bag by folding over top once and stapling to keep closed.
- vi) Complete sampling procedures in part (d) – (f).

b) For ground plant or ground floral material Post-Harvest Samples:

- i) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
- ii) Sample material from bag or container.
- iii) Sample from a minimum of four locations within the containers from a given harvest.
- iv) Place the complete sample in a plastic sample container.
- v) Seal the plastic sample container.
- vi) Complete sampling procedures in part (d) – (f).

c) For Post-Harvest Samples in other forms (e.g., trimmed floral material, or floral material and stems, etc.):

- i) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material must be uniform).
 - ii) Randomly collect at least one cup of material by volume.
 - iii) Place the complete sample in a paper bag or plastic container and seal the container, as appropriate.
 - iv) Complete sampling procedures in part (d) – (f).
- d) A separate sample must be taken for each plot designated for Post-Harvest Sampling.
- e) Samples shall be labeled, and prepared for transport to the lab.
- f) Label the sample container with a sample ID. The sample ID shall include the last four numerical digits of the License number, Date (MMDDYY), and a two-digit sequential sample number assigned by the inspector.

Example: License#17-80-11G, March 30, 2017, Sample 03
Translates to Sample ID: 8011-033017-03
- g) The sample shall be transported to KDA for storage.

VI. Handling Procedures of Post-Harvest Samples

- (1) Samples will be taken to KDA for storage.
- (2) The entire sample will be sent to the testing lab for analysis.

VII. Selecting Samples for Testing

KDA reserves the right to test all industrial hemp and other cannabis plant crops produced by any License Holder for THC compliance. KDA intends to inspect and sample 100% of all industrial hemp and other cannabis plots to be harvested, but not every sample will be tested.

VIII. Testing Procedures

- (1) Testing shall be completed by KDA's testing lab; the primary testing lab is the University of Kentucky, Division of Regulatory Services, as mandated in KRS 250.355.
- (2) Quantitative determination of delta-9-THC levels will be measured using gas chromatography with flame ionization detector (GC-FID).
- (3) Test results shall be reported to License Holders by KDA.

IX. Post-Testing Actions

The delta-9-THC content for hemp produced in the KDA Industrial Hemp Research Pilot Program should not exceed the 0.3% delta-9-THC threshold set by Congress. Additionally, in the interest of furthering research efforts and in recognition of variances due to growing conditions, weather, and varieties, KDA shall report the details of the test results to at least three decimal places. Table 1 (below) provides a summary of the post-testing actions detailed in the following numbered points.

Table 1: Post-Testing Action Summary			
	Material allowed to market	Material not allowed to move – triggers Post-Harvest Sampling and testing or verification of leaf and floral destruction	
Pre-Harvest Test Results	$\leq 0.399\%$ (1, below)	$\geq 0.400\% - 0.999\%$ (2, below)	Material Destroyed $\geq 1.0\%$ (3, below)
	Material Allowed to Market		Material Destroyed
Post-Harvest Test Results	$\leq 0.300\%$, compliant (4, below)	$\leq 0.399\%$ (5, below)	$\geq 0.400\%$ (6, below)

(1) Pre-Harvest Test Results of less than or equal to 0.399% delta-9-THC:

- a) KDA will report results to grower.
- b) Material allowed to market.
- c) Any variety testing above 0.30% may become designated as a Variety of Concern.
- d) Any marketing of materials testing between 0.300% and 0.399% is at the License Holder's risk.

(2) Pre-Harvest Test Results of greater than 0.399%, but less than 1.00% delta-9-THC:

- a) KDA will report results to grower.
- b) The License Holder is not allowed to transfer an individual plot's harvest. The harvest must remain segregated from other harvested plots until released in writing by KDA.
- c) License Holder is allowed to complete harvest activities, which may include drying, chopping, and/or grinding, in preparation for transfer to a processor.
- d) If harvesting leaf or floral material from the plot, the grower can elect between (1) a post-harvest sample and retest or (2) complete destruction of leaf and floral material. License Holders must complete harvest activities, which may include drying, chopping, and/or grinding, on the entire harvest before the material is eligible for post-harvest sample collection.
- e) If harvesting only grain, seed or fiber from the plot, KDA shall verify the complete destruction of all leaf and floral material from the plot. The grain or seed must be processed and cannot remain as a viable seed for planting. Bare stalk for fiber that is free of leaf, seed, or floral material is eligible for processing.
- f) This hemp variety becomes designated as a Variety of Concern and KDA may run additional tests on the samples collected from other plots of this variety.
- g) If more than 50% of Pre-Harvest Samples' test results for a given Variety of Concern are above 0.300%, then this variety may be designated as a

Prohibited Variety and excluded from the KDA Industrial Hemp Research Pilot Program.

- h) If a variety is designated as a Prohibited Variety in the KDA program, the License Holder must surrender without compensation any viable seeds, live plants, stock plants, and all germplasm of this variety, to KDA for destruction. See Section 7(d).

(3) Pre-Harvest Test Results equal to or greater than 1.0% delta-9-THC:

- a) KDA will report results to grower.
- b) KDA may report to the Kentucky State Police (KSP) and other law enforcement agencies.
- c) KDA may collect samples of and test post-harvest material in the interest of furthering research efforts. However, a post-harvest retest is not required.
- d) The variety may be labeled a Prohibited Variety and excluded from the KDA Industrial Hemp Research Pilot Program.
- e) KDA may terminate the License and exclude License Holder from future involvement in the KDA program.
- f) The License Holder must surrender without compensation the entire harvest and any unharvested crop of this variety from this plot, to KDA for destruction.

(4) Post-Harvest Test Results of less than or equal to 0.300% delta-9-THC:

- a) KDA will report results to grower.
- b) Compliant material; no action required.
- c) Material allowed to market.

(5) Post-Harvest Test Results of greater than 0.300%, but less than 0.399% delta-9-THC:

- a) KDA will report results to grower.
- b) Material allowed to market.
- c) Any marketing of materials testing between 0.300% and 0.399% is at the License Holder's risk.

(6) Post-Harvest Test Results equal to or greater than 0.400% delta-9-THC:

- a) KDA will report results to grower.
- b) KDA may report to KSP and other law enforcement agencies.
- c) KDA reserves the right to run additional tests on post-harvest samples of that variety from that plot in the interest of furthering research efforts.
- d) Variety may be labeled a Prohibited Variety and excluded from the KDA Industrial Hemp Research Pilot Program.
- e) KDA may terminate the License and exclude License Holder from future involvement in the KDA program.
- f) License Holders must surrender without compensation the entire harvest from this plot, to KDA for destruction.

(7) Varieties determined to be a Prohibited Variety:

- a) KDA may report to KSP and other law enforcement agencies.
- b) License Holder must surrender without compensation any viable seeds, live plants, stock plants, and all germplasm of this variety, to KDA for destruction.

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Jennifer Mason
Dinsmore & Shohl LLP
Jennifer.Mason@dinsmore.com

Dear Ms. Mason:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

Comment:

Your first comment addressed the sampling and testing protocols utilized by the Department, and argued that the Department should not include THC-A in its testing to determine compliance with the law and the program.

Response:

The object of sampling activities is to collect enough plant material in each sample to run 2 tests in the lab from each variety at each location where a licensee has grown Industrial Hemp. The Department has chosen to implement a protocol that tests the flowering part of the plant. The Department understands this method, and its implementation of this method, to be in line with the practices in most other states. The Department continues to collaborate with other state departments of agriculture and is awaiting guidance from the US. Department of Agriculture. Until such guidance is received, the Department has decided to maintain the current sampling protocols.

With regard to the testing protocols, the Department does not use gas chromatography, as indicated in the comment submitted. The Department does not have a flame ionization detector (FID) for the endpoint that would be combined with the gas chromatography. The Department uses high performance liquid chromatography to determine the total THC in hemp. The THC is calculated in compliance with the 2018 Farm Bill under section 297B, subsection ii. The amount of THC is calculated for dry weight conditions post-decarboxylation.

Additionally, the Department is part of the National Hemp Regulators Group, which shares information and methods regarding testing and collection methods. The method that the Department uses aligns with the majority of other states in the US.

Comment:

Your second comment addressed the lack of guidance provided to processors concerning how their compliance with the law will be evaluated when the biomass product will, "for a short period of time, exceed[] the concentration level permitted by law." Your comment further provides: "The Processors would urge the WV DOA to require submission of post processing and formulation testing, thus doing a pre-market analysis of any retail products entering the WV retail market. This will ensure public safety and protect the processors from the unknown during the course of doing business."

Response:

At this time, federal regulation does not allow for processors or manufacturers to have product above a 0.3% THC level. The WVDA will stay within the federal guidelines for all hemp operations and all processors will be treated in the same manner, regardless of the means that they are processing raw hemp.

Comment:

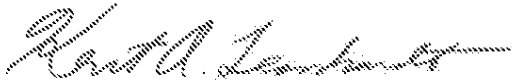
Finally, your third comment addresses the fees proposed by the Department for the registration of hemp products, and contends that the fees could adversely impact small farmers.

Response:

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. *See W. Va. Code §19-12E-7(4)* (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a stylized flourish at the end.

Kent A. Leonhardt
Commissioner