



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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7/27/2020 3:48:35 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Agriculture TITLE-SERIES: 61-39

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

RULE NAME: Seed Certification Program

CITE STATUTORY AUTHORITY: §19-16-3a; §19-16-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/26/2020 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Josh Arbaugh

ADDRESS: WV Dept of Agriculture/READ  
1900 Kanawha Boulevard, East, Charleston, WV 25305

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

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

INCORPORATED BY REFERENCE: Yes

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

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Establishes the requirements governing the standards for industrial hemp seed production, inspection, and seed standards for certification.

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

Adding West Virginia Code references and renumbering

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

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

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

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

n/a

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

Yes

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

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 39  
SEED CERTIFICATION PROGRAM

**§61-39-1. General.**

1.1. Scope. -- This legislative rule establishes the requirements governing the standards for industrial hemp seed production, inspection, and seed standards for certification. Industrial hemp, as defined by W. Va. Code, will be enforced by W. Va. Code and legislative rules promulgated under that article.

1.2. Authority. -- W. Va. Code §19-16-3a; §19-16-6.

1.3. Filing Date. -- ~~April 30, 2019~~

1.4. Effective Date. -- ~~June 1, 2019~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect ~~June 1, 2024~~ ten years from its effective date.

**§61-39-2. Policy.**

2.1. All persons involved in seed certification in the state of West Virginia are equally responsible for full compliance with the provisions of W. Va. Code, §19-16-1 *et seq.*

2.2. The documents of the following organizations are incorporated in their entirety by reference; :

2.2.1. Association of Official Seed Certifying Agencies (AOSCA). Seed Certification Handbook.

**§61-39-3. Seed Certification – Purpose.**

3.1. Under the authority of W. Va. Code §19-16-6, the department adopts rules to establish standards for seed certification in West Virginia in order to maintain and make available sources of high quality seeds and propagating material of plant varieties so grown and distributed as to ensure genetic identity and genetic purity.

**§61-39-4. Seed Certifying Agencies in West Virginia.**

4.1. Seed certification in West Virginia is conducted under the authority of W. Va. Code §19-16-3a, W. Va. Code §19-16-6, and W. Va. Code R. §61-9-11. The department conducts seed certification in cooperation with the West Virginia Associated Crop Growers and the Association of Official Seed Certifying Agencies.

4.2. The West Virginia Department of Agriculture certifies seed of industrial hemp. All other seed is certified by the West Virginia Department of Agriculture or the West Virginia Associated Crop Growers.

**§61-39-5. Definitions of Terms Used for Purposes of Certification Programs.**

5.1. Variety Classes:

5.1.1. Breeder Class: Breeder seed is seed directly controlled by the originating or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, breeder seed is the source for the production of seed of the other classes of certified seed.

5.1.2. Foundation Class: Foundation seed is seed which is the progeny of breeder or foundation seed produced under control of the originator or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, Foundation seed is a class of certified seed which is produced under procedures established by the certifying agency for the purpose of maintaining genetic purity and identity.

5.1.3. Registered Class: Registered seed shall be the progeny of Breeder, Select, or Foundation seed handled under procedures acceptable to the certifying agency to maintain satisfactory genetic purity and identity.

5.1.4. Certified Class: Certified seed shall be the progeny of Breeder, Select, Foundation, or Registered seed so handled as to maintain satisfactory genetic purity and identity, and which has been approved and certified as acceptable to the certifying agency.

5.2. Pre-Variety Germplasm Types:

5.2.1. Source-identified Germplasm: Source-identified is a type of propagating material collected from natural stands, seed production areas, seed fields, or orchards where no selection or testing of the parent population has been conducted.

5.2.2. Selected Germplasm: Selected is a type of propagating material that shall be the progeny of phenotypically selected plants of untested parentage that have promise but no proof of genetic superiority or distinctive traits.

5.2.3. Tested Germplasm: Tested is a type of propagating material that shall be the progeny of plants whose parentage has been tested and has proven genetic superiority or possesses distinctive traits for which the heritability is stable, as defined by the certifying agency, but for which a variety has not been named or released. This seed must be produced so as to assure genetic purity and identity.

5.3. Conditioning: The mechanical handling of seed from harvest until marketing.

5.4. Double Cross: The first generation hybrid between two foundation single crosses.

5.5. Foundation Backcrosses:

5.5.1. A first generation foundation backcross shall be the first generation cross between a foundation single cross of related inbred lines and an inbred line which shall be the same as one of the inbreds in the foundation single cross.

5.5.2. A second generation foundation backcross shall be the cross of a first generation backcross (ear parent) with its recurrent inbred parent (pollen parent).

5.6. Foundation Single Cross: A single cross used in the production of foundation backcrosses or of double, three-way, or top crosses.

5.7. Inbred Line: A relatively true-breeding strain resulting from controlled self-fertilization or of backcrossing to a recurrent parent with selection or its equivalent.

5.8. Off-Types: Any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: a seed or plant of another variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind or variety; a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed; or segregates from any of the above.

5.9. Open-Pollination: Seed produced as a result of natural pollination as opposed to hybrid seed produced as a result of controlled pollination.

5.10. Plant Breeder: Person or organization actively engaged in the breeding and maintenance of varieties of plants.

5.11. Pre-Variety Germplasm: Wild collected or field or nursery cultivated germplasm of a native or naturalized species which originates from a specific geographic area and has not been released as a variety.

5.12. Single Cross: The first generation of a cross of two inbred lines, an inbred line and a foundation backcross, or of two foundation backcrosses.

5.13. Three-Way Cross: The first generation of a cross of a foundation single cross and an inbred line or a foundation backcross.

5.14. Top Cross: The first generation of a cross between an open pollinated variety and an inbred line, a foundation backcross, or a foundation single cross.

5.15. Total Viable: Is the sum of percentage germination plus dormant plus hard seeds.

5.16. Variant: Variant means any seed or plant which (a) is distinct within the variety but occurs naturally in the variety, (b) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted, and (c) was originally a part of the variety as released. A variant is not an off-type.

5.17. Variety: Means a subdivision of a kind which is distinct, uniform, and stable. (1) "Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge. (2) "Uniform" means that the variations in essential and distinctive characteristics are describable. (3) "Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

**§61-39-6. Seed Standards for Proprietary Variety Certification – Application for Proprietary Certification.**

6.1. The general seed certification standards provided for in this rule, together with the varieties eligible for seed certification, ~~constitutes~~ constitute the basic requirements for proprietary variety certification.

~~6.1.1.~~ 6.2. The owner or designee with production or marketing rights of a proprietary variety must submit to the certifying agency a list of growers who will submit applications for certification showing the variety, acreage authorized, processor authorized, and also advising whether the variety is under genetic purity certification or under complete certification. The list of growers must be submitted prior to the application due dates for seed certification as specified by rule.

~~6.1.2.~~ 6.3. Each application for seed certification received by the certifying agency is subject to approval from the list submitted by the owner with production or marketing rights of a proprietary variety.

~~6.1.3.~~ 6.4. The certifying agency shall refuse certification of any seed that appears in a processing or conditioning plant not authorized by the owner with production or marketing rights of a proprietary variety.

~~6.1.4.~~ 6.5. An application for seed certification may be withdrawn at any time prior to tagging. The applicant is responsible for fees due and owing when an application for seed certification is withdrawn.

**§61-39-7. Seed Standards for Genetic Purity Certification.**

7.1. All certified seed must conform to the standards of purity and identity or variety in compliance with W. Va. Code Chapter 19, Article 16 ~~§19-16~~ and rules adopted thereunder. The general certification standards together with the specific crop certification standards established in this chapter are the basic requirements for genetic purity seed certification:

7.1.1. Only proprietary varieties and OECD varieties not of United States origin to be tagged under the OECD scheme are eligible for genetic purity certification;

7.1.2. Only the specific crop certification standards established in rule which pertain to genetic purity such as land requirements and isolation, shall apply for genetic purity certification. Fields must not contain other varieties or off-type plants in excess of established standards. The grower is responsible for controlling noxious weeds to prevent seed formation;

7.1.3. Excessive prohibited and/or objectionable weeds, poor stands, lack of vigor, or other conditions, which make inspection by the certifying agency inaccurate, may be cause for rejection of a field;

7.1.4. Field inspection. A field inspection is made by the certifying agency each year at the time the seed crop is in bloom, or at other times as may be most advantageous to determine genetic purity. A complete record must be maintained on the condition of the field (weeds, crop mixtures, etc.) and all information reported to the authorized agent and/or grower. Upon completion of all requirements for field inspection, a final field inspection report is issued by the certifying agency that the seed produced passed genetic purity requirements;

7.1.5. Seed standards. The certifying agency shall test all lots to determine the purity and germination quality. Seed to be certified must not contain seeds of other varieties or off-types in excess of standards established in rule. The quality of each lot of seed represented to be certified must be that which is normally acceptable in the marketing of high quality seed. Failure to maintain acceptable quality shall be considered cause for revoking permission to participate in seed certification by genetic purity;

7.1.6. Processing or conditioning requirements. Only those conditioning plants approved by the department are permitted to process seed for certification. Complete records must be kept of all processing or conditioning. Blending of seed lots of the same variety from fields passing field inspections may be permitted with prior approval and if in accordance with requirements for blending. Sampling and all other operations involving certified seed must be under supervision of the certifying agency. The sample must be obtained in accordance with official sampling procedures. The entire lot must be cleaned and in condition for sale at the time of sampling. This sample must be submitted to the seed laboratory for testing to evaluate quality. Lots of questionable quality may be rejected and not eligible for certification;

7.1.7. Certification tags for seed meeting the genetic purity standards must be clearly marked, "genetic purity certified"; and

7.1.8. Fees for genetic purity certification are as established for each seed crop and the authorized agent or grower is responsible for all fees.

**§61-39-8. Standards for Production of Foundation Seed.**

8.1. The general seed certification standards together with specific crop standards established in this rule constitute the basic standards for production of foundation seed as deemed necessary by the certifying agency. Seed to be eligible for foundation certification tags must be approved by the originating plant breeder or his designated agent, and in compliance with the following standards:

8.1.1. Pre-planting report. A pre-planting inspection, an industry responsibility, must be made of fields to be planted with breeder seed. A written report of the preplant inspection, performed by either a representative of the person issuing the contract or by the grower must be maintained by the variety owner or designee for a minimum of three years. The report shall show the grower's name, number of acres, location, crop history for the past three years, crops to be planted, origin of breeder seed, isolation status, and weed and crop present.

8.1.2. Planting requirement. To distinguish between any possible volunteer and the crop seeded, all fields must be planted in distinct rows. Plants outside defined rows may be construed as volunteers.

8.1.3. Combine inspection. The combine used for seed harvesting must be cleaned and inspected prior to harvesting foundation seed. The combine must be free of all contaminating material. If an official combine inspection is requested, the certifying agency must be notified of the following: The date, time, and location where the combine inspection may be made.

8.1.4. Processing plant inspection. The processing or conditioning plant must be inspected before processing foundation seed and periodic inspections will be made during processing by the processor.

8.1.5. Recleaning, re-bagging, pre-inoculation, treating, or other processes must be approved by the certifying agency. An original tag must be submitted with the request for recertification and the seed must be retagged and resealed on completion.

8.1.6. For a proprietary variety the above combine inspection (subsection (3) of this section), and processing plant inspection (subsection (4) of this section), responsibility may be assigned to the proprietor or his designee upon their request. The variety owner or designee must maintain a report covering required inspections.

**§61-39-9. Varieties Eligible for Seed Certification in West Virginia.**

9.1. Only seed varieties that are accepted as meriting seed certification by an appropriate AOSCA National Variety Review Board or a member agency of AOSCA in accordance with the criteria listed in subsection (2) of this section may be eligible for seed certification in West Virginia.

9.2. The following information is required for submission to an AOSCA National Variety Review Board or other certifying agency for acceptance of a seed variety for certification:

9.2.1. The name of the variety.

9.2.2. A statement concerning the variety's origin and the breeding procedure used in its development.

9.2.3. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

9.2.4. Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

9.2.5. A statement giving the suggested region of probable adaptation and purposes for which the variety is used.

9.2.6. A description of the procedure for maintenance of stock seed classes, including the number of generations through which the variety can be multiplied.

9.2.7. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

9.2.8. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity.

9.2.9. A sample of the seed representative of the variety as marketed.

**§61-39-10. Seed Classes Recognized for Seed Certification.**

10.1. Four seed classes are recognized in seed certification, namely: Breeder, foundation, registered, and certified.

10.1.1. Breeder seed is seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder, institution, or firm. Breeder seed

supplies the source for the initial and recurring increase of foundation seed. Breeder seed may also be used to produce subsequent generations.

10.1.2. Foundation seed (identified by white tags) is first-generation seed increased from breeder seed or its equivalent. Production must be carefully supervised and approved by the certifying agency. Foundation seed is eligible to produce registered or certified seed.

10.1.3. Registered seed (identified by purple tags) is the progeny of breeder or foundation seed that is handled as to maintain satisfactory genetic identity and purity and is approved and certified by the certifying agency. Registered seed is eligible to produce certified seed.

10.1.4. Certified seed (identified by blue tags) is the progeny of breeder, foundation, registered, or certified seed which is handled as to maintain satisfactory genetic identity and purity and is approved and certified by the certifying agency. Certified seed is not eligible for recertification, except as provided for in Limitation of Generations for Seed Certification section.

#### **§61-39-11. Limitation of Generations for Seed Certification.**

11.1. The number of generations through which a seed variety may be multiplied is limited to the number specified by the originating breeder or owner of a variety except that:

11.1.1. Unlimited recertification of the certified seed class may be permitted for crop varieties where foundation seed is not being maintained.

11.1.2. The production of an additional generation of the certified class may be permitted on a one-year basis when:

~~11.1.2.1~~11.1.2.a. Prior to the planting season, the certifying agency states that foundation and registered seed supplies in the United States are not adequate to plant the needed acreage of the variety.

~~11.1.2.2~~11.1.2.b. Permission of the originating breeder and/or owner of the variety is obtained (if applicable).

~~11.1.2.3~~11.1.2.c. The additional generation of certified seed produced is declared to be ineligible for recertification.

#### **§61-39-12. Establishing the Source of Seed.**

12.1. The certifying agency shall be supplied with satisfactory evidence of the class and source of seed used to plant each crop being considered for certification.

#### **§61-39-13. Eligibility Requirements for Certified Crop Varieties.**

13.1. Minimum standards of the Association of Official Seed Certifying Agencies (AOSCA) shall be met. Only those varieties that are accepted as meriting certification, in accordance with the criteria provided by the West Virginia Department of Agriculture, shall be eligible for certification. The department has the authority to deny or suspend certification when deemed appropriate. Non-Certified seed or grains may be eligible for official AOSCA labels as outlined in the *AOSCA Quality Assurance (QA) Program* or the *General Standards for the Identity Preserved (IP) Program*.

13.1.1. Varieties will normally be considered eligible for certification if the variety has received favorable action by one or more of the following:

~~13.1.1.1.~~13.1.1.a. National Variety Review Board (if one exists for that crop);

~~13.1.1.2.~~13.1.1.b. Plant Variety Protection Office;

~~13.1.1.3.~~13.1.1.c. Another official seed certification agency; or

~~13.1.1.4.~~13.1.1.d. Variety is eligible for certification under the OECD Seed Schemes.

~~13.1.1.5.~~13.1.1.e. If a variety or line has not been exposed to any of the above organizations, then the West Virginia Department of Agriculture will make the final decision. The developer, public or private, must provide reasonable assurance that the identity of the variety or line has been maintained and meets all other eligibility requirements as specified in the *Uniform System for Bringing Varieties into Certification in the United States, Operational Procedures of the Association of Official Seed Certifying Agencies*.

**§61-39-14. Uniform System for Bringing Varieties into Certification in the United States.**

14.1. AOSCA and the certifying agency shall require the originator, developer or owner of the variety, or agent thereof, to make the following information available when eligibility for certification is requested:

14.1.1. Name of variety or temporary designation. Family, kind, genus and species;

14.1.2. A statement concerning the variety's origin and the breeding procedure used in its development;

14.1.3. Genealogy, including public and private varieties, lines or clones used and the breeding method;

14.1.4. Details of subsequent stages of selection and multiplication;

14.1.5. Type and frequency of variants during reproduction and multiplication and how these variants may be identified;

14.1.6. Evidence of stability;

14.1.7. A detailed description of the morphological, physiological and other characteristics of the plant and seed that distinguish it from other varieties;

14.1.8. Special characteristics of the seed and of the plant as it passes through the seedling stage, flowering stage and the fruiting stage. Description of the mature plant and comparison with similar commercially available varieties grown under the same conditions;

14.1.9. Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety;

14.1.10. A statement delineating the geographic area or areas of adaptation of the variety;

14.1.11. A statement of the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;

14.1.12. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;

14.1.13. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity;

14.1.14. A sample of seed representative of the variety as marketed;

14.1.15. The PVP (Plant Variety Protection) status shall be declared. Yes, no or undecided. The originator shall also declare if the variety is to be sold by name only as a class; and

14.1.16. Names of certifying agencies expected to certify seed.

**§61-39-15. Standards for Handling Experimental Lines.**

15.1. The Experimental Line Program provides guidelines for seed increase using published AOSCA field and seed standards during the final stages of testing an experimental line so that classes of certified seed may be available in the event of the line being released as a variety. The program is to be used for seed production of an experimental line that has not been reviewed or accepted into certification. Seed produced using this program cannot be sold or represented as a class of certified seed, nor should it be included in a certified seed mix or blend until such time as the experimental line has been accepted as a variety for certification.

15.1.1. Definitions

~~15.1.1.1~~15.1.1.a. Experimental Line: A germplasm that has not been released and/or recognized as eligible for certification and is being tested with the possibility of release as a variety at some point in the future.

~~15.1.1.2~~15.1.1.b. Classes of Experimental Lines

~~15.1.1.2.1~~15.1.1.b.1. Exp-F: Eligible for Foundation seed upon variety acceptance.

~~15.1.1.2.2~~15.1.1.b.2. Exp-R: Eligible for Registered seed upon variety acceptance.

~~15.1.1.2.3~~15.1.1.b.3. Exp-C: Eligible for Certified seed upon variety acceptance.

15.1.2. The Experimental Line applicant should provide documentation that includes the following information prior to field inspection.\*

~~15.1.2.1~~15.1.2.a. The experimental line owner.

~~15.1.2.1.1~~15.1.2.a.1. If the applicant is an entity other than the experimental line owner, the applicant must provide documentation stating the owner's approval of seed productions by the applicant using this program.

~~15.1.2.2~~15.1.2.b. The experimental line identification or the proposed name of the experimental line.

~~15.1.2.3~~15.1.2.c. A brief description with sufficient morphological, physiological, and/or other characteristics of the plants and seed to identify the experimental line during field and/or seed inspection.

~~15.1.2.4~~15.1.2.d. A statement of the generations through which the experimental line may be multiplied.

~~15.1.2.5~~15.1.2.e. The generation of the stock seed used to plant the field must be documented. Acceptable generations are Breeder Seed, Experimental Line-F, or Experimental Line-R.

### 15.1.3. Standards

~~15.1.3.1~~15.1.3.a. The requirements of section (2) shall be met.

~~15.1.3.2~~15.1.3.b. All land requirements, isolation standards, field standards, and seed standards for the crop and corresponding class of certified seed shall be met.

~~15.1.3.3~~15.1.3.c. All inspections required for that crop shall be performed.

~~15.1.3.4~~15.1.3.d. The limited generation system should be maintained, with a maximum of three generations, those being the equivalent of Foundation (Experimental Line-F), Registered (Experimental Line-R), and Certified (Experimental Line-C) classes.

~~15.1.3.5~~15.1.3.e. Seed meeting documentation, field and seed standards is eligible for seed stock tags or documents that identify it as eligible under the Experimental Line Program.

### 15.1.4. Labels

~~15.1.4.1~~15.1.4.a. Tags, labels, or official documents provided by the department for seed produced using the Experimental Line Program shall be clearly marked with the words "Experimental Line" and "Pending Certification".

~~15.1.4.2~~15.1.4.b. "Foundation", "Registered", or "Certified" shall not appear on tags, labels, or official documents for seed produced using the Experimental Line.

~~15.1.4.3~~15.1.4.c. Buff-colored tags will be used for seed produced under this program.

### 15.1.5. Completing Certification of Seed Produced Using the Experimental Line Program

15.2. In the event that the experimental line meets AOSCA variety eligibility requirements and is accepted for certification, Experimental Line seed stock tags or documents may be replaced by AOSCA tags or documents for the appropriate class of certified seed.

## **§61-39-16. Applying for Seed Certification in West Virginia.**

16.1. To participate in the West Virginia seed certification program, submit an application for seed certification to the appropriate certifying agency.

16.1.1. An application for seed certification must be submitted for each crop, variety and field.

16.1.2. Applications may be obtained from a certified seed processor or the certifying agency.

16.1.3. The applicant is responsible for payment of all fees.

16.1.4. The applicant must attach to the application for seed certification official tags/labels and/or other verification from seed stock planted.

16.1.5. When it is necessary for a grower to reseed due to a failure to get a stand, the grower will retain records of seed lots used and the date of reseeding. Reseeding must be done within two years of the original planting date for grasses or within one year for all other crops. If seed stock of a different lot is used for reseeding, the grower must submit proof of seed stock used on a seedling application form. An additional application fee will be charged.

**§16-39-17. Submitting an Application for Seed Certification.**

17.1. Applications for seed certification are due on or before:

17.1.1. By April 1<sup>st</sup> for Winter Grains;

17.1.2. By May 1<sup>st</sup> for Spring Grains;

17.1.3. By April 1<sup>st</sup> for Turf Grasses;

17.1.4. By May 1<sup>st</sup> for Industrial Hemp;

17.1.5. By June 1<sup>st</sup> for Corn;

17.1.6. By June 1<sup>st</sup> for Soybeans; and

17.1.7. By June 1<sup>st</sup> for all other crops.

17.2. An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops.

17.3. A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops.

17.4. Applications received after the due date are assessed a late application fee.

17.5. No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

**§61-39-18. Responsibilities When Participating in the Seed Certification Program.**

18.1. All participants in the seed certification program must:

18.1.1. Maintain the genetic purity and identity during seeding, growing, harvesting, and postharvest storage, and ensure reasonable precaution is taken to control contaminating crops and varieties, noxious weeds, and seed-borne diseases.

18.1.2. Prevent seed crop and lot mixture when harvesting.

18.1.3. Identify the seed crop as it is delivered to the processor with the assigned field number or numbers.

18.1.4. Clean the seed crop at a seed conditioner approved by the department.

18.1.5. Comply with standards and procedures for seed certification under the authority of W. Va. Code Chapter 19, Article 16, §19-16 and rules adopted thereunder.

18.1.6. Harvest of seed before a field inspection by the certifying agency causes forfeitures of both the application and field inspection fees, and completion of certification.

18.1.7. Failure of seed growers to comply with the seed laws and rules is cause for the department to deny certification of seed.

**§61-39-19. Land History – Seed Certification.**

19.1. Land requirements for seed certification are as established in the specific seed crop standards. When a cultural practice has proved to be successful, requirements may be modified upon written approval of the seed certifying agency. Cultural practice may include any of the following:

19.1.1. Mechanical means such as deep plowing.

19.1.2. Chemical means such as fumigants.

19.1.3. Other material for seed bed preparation. Materials and methods must be a matter of record. Any practice used must be adequate to ensure varietal purity and must be approved in writing by the certifying agency. Any deviations from established land requirements must be submitted in writing to the certifying agency.

**§61-39-20. Seed Field Inspections by the Certifying Agency.**

20.1. The certifying agency conducts field inspections as follows:

20.1.1. A seedling field is inspected at the most appropriate time after receipt of seedling application. If the field produces seed the same year of planting, a seedling producing inspection is made prior to harvest.

20.1.2. Each year a crop of certified seed is produced, field inspections are made at a time when factors affecting certification are most evident.

20.1.3. The unit of certification is defined as the entire field standing at the time of inspection. A portion of a field may be certified if the area to be certified is clearly defined by flagging, stakes or other visual means. The border area of the field is considered the unit of certification if it is planted to the same crop and is inclusive of the acreage applied for.

20.1.4. The unit of inspection may include areas adjacent to a field or areas of surveillance if these areas contain factors that would impact the certification eligibility of the seed crop as defined in the specific crop standards. Such factors may be, but are not limited to, contaminating pollen sources or weeds.

**§61-39-21. Tolerances Stated as “None Found”.**

21.1. A tolerance of "none found" for contaminating or diseased material in either field or clean seed standards means that none was found during the normal procedure of field inspection or seed sample testing. None found does not constitute a guarantee that the field or seed is entirely free of the contaminant or disease.

**§61-39-22. Seed Fields Ineligible for Seed Certification.**

22.1. A seed field is not eligible for certification unless a field inspection is made prior to defoliation or harvesting.

22.2. Prohibited noxious weeds must be controlled to prevent seed formation. Follow-up inspections may be conducted to ensure weed control was sufficiently carried out to prevent prohibited noxious weed seeds from being harvested with the seed crop. Excessive objectionable weeds may be cause for rejection of a seed field. Excessive weeds, poor stands, lack of vigor, or other conditions which make inspection inaccurate may be cause for rejection. A field producing foundation or registered seed that warrants a rejection because of noxious weeds may be reclassified to certified blue tag class if upon reinspection the field meets certified blue tag standards.

22.3. If a seed field is rejected for certification, the grower may reapply to the certifying agency and pay a fee for reinspection after the cause for rejection is corrected, unless otherwise specified in this rule. No more than two re-inspections are permitted for each field per year.

**§61-39-23. Withdrawing a Field From Inspection for Seed Certification.**

23.1. The applicant applying for seed certification may withdraw a field from field inspection for seed certification by notifying the certifying agency before the field is inspected.

**§61-39-24. Agency Power to Reject Certification.**

24.1. The certifying agency shall have the authority to reject from certification any lot of seed not meeting these regulations. The agency reserves the right to refuse certification on any lot of seed if, in the opinion of the certifying agency, the color appearance, or the condition of the seed might be detrimental to the certification program. The certifying agency has the authority to refuse certification if the labeling of containers is misleading or may tend to be confusing as to its contents.

24.2. Persons found guilty of violation or misuse or abuse of these regulations shall be subject to prosecution under W. Va. Code §19-16-7. Proof of violation may result in removal of privileges of certifying, dealing in or handling certified seed.

**§61-39-25. Sampling – Methods Used in the Sampling, Inspecting, Testing, Analyzing, and Examining Seed for Certification.**

25.1. The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining seed for certification are those adopted by the AOSA as shown in W. Va. Code §19-16-6. Other testing methodologies such as, but not limited to, genetic testing may also be used to determine certification eligibility.

25.2. The entire lot of seed must be cleaned, the quantity defined, and in condition for sale at the time of sampling.

25.3. A representative of the department shall take a representative sample for laboratory analysis of each lot of seed for certification. The sample shall be taken in accordance with official sampling procedures. Official sampling procedures are those adopted by AASCO as shown in W. Va. Code §19-16-6.

25.3.1. A sampling fee will be charged under provisions of this rule.

**§61-39-26. Identification of Seed Containers With Field or Lot Numbers.**

26.1. The field number must be on all seed containers or bulk seed delivery documents to ensure identity when delivered to the seed conditioner.

26.2. All seed for certification must be packaged in clean, new containers of uniform weight and identified with a lot number when tagged and sealed. The lot number must identify the producer and year of production for each lot of seed.

**§61-39-27. Seed Certification – Prohibited Noxious Weed Seed.**

27.1. Prohibited noxious weed seed are those found in W. Va. Code R. §61-9-13.1.1.

**§61-39-28. Seed Certification – Objectionable Noxious Weed Seed.**

28.1. Objectionable noxious weed seed are those found listed as restricted noxious weed seed in W. Va. Code R. §61-9-13.1.2.

28.2. Objectionable noxious weed seed for lawn and turf seed certification are those found listed as restricted noxious weed seed or undesirable grass seed in W. Va. Code R. §61-9-13.1.3.

**§61-39-29. Completion of Seed Certification – Tagging, Labeling, or Sealing.**

29.1. The seed certification tag, label or seal is evidence of the genetic identity and purity of the contents must be attached to a container of certified seed prior to distribution. Seed that fails to meet certification standards because of genetic purity is not eligible for labeling.

29.2. Seed certification tags, labels, and seals must be obtained from the certifying agency and must be attached to seed containers in accordance with the certifying agency's rules.

29.3. Certification of seed is valid only if the tag, label or seal is affixed to each container in accordance with the AOSCA procedures.

29.4. No tag, label or seal may be removed and reused without permission of the certifying agency.

29.5. A certified seed sale certificate will be issued upon completion of final certification for all seed to be sold in bulk. This certificate must accompany any shipment or transfers including those to other seed plants, out-of-state shipments or with any brokered seed. The seed plants own invoice may be used in lieu of a certified seed sale certificate for retail sales to growers. The invoice must contain the certification information from the certified seed sale certificate as well as labeling information as required in W. Va. Code §19-16-2.

29.6. Seed that fails to meet certification requirements on factors other than genetic purity may be designated substandard at the discretion of the certifying agency. The certification tag or label attached

to the seed must clearly show the reason the seed is substandard. Seed may not be tagged substandard if the seed can be remilled to meet minimum seed standards.

29.7. Refer to W. Va. Code §19-16-2 for seed labeling requirements.

**§61-39-30. Limitation of Liability – Certification.**

30.1. The issuance of a certified seed label or certificate by the certifying agency for a lot of seed affirms that seed has been produced and conditioned according to this rule and the certification rules adopted thereunder. The certifying agency makes no warranty, expressed or implied or any representation as to the freedom from disease or quality of certified seed.

**§61-39-31. Labeling, Advertising or Other Representation of Seed – Prohibitions.**

31.1. It shall be deemed unlawful if any labeling, advertising, or other representation subject to W. Va. Code §19-16-7:

31.1.1. Seed to be certified seed or any class thereof unless it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to species (and subspecies, if appropriate), and variety, in compliance with the rules and laws of that agency pertaining to such seed.

31.1.2. Seed to be foundation, registered, or certified seed unless it has been inspected and tagged accordingly by a certifying agency as meeting certification standards of the department.

**§61-39-32. Conditioning Seed in West Virginia.**

32.1. Under the authority of W. Va. Code §19-16-1 et seq., a seed conditioning facility must be inspected and approved by the department or its authorized agent prior to conditioning seed in West Virginia. Upon approval by the department, a seed conditioning permit is issued and the facility is placed on a list of approved seed conditioning plants. A copy of the list can be obtained by contacting the department.

32.2. A person desiring to condition seed must make application to the department for a permit on a form provided by the department.

32.3. To obtain department approval for a seed-conditioning permit, the department or its authorized agent conducts an inspection. A facility must show evidence that:

32.3.1. Seed for certification is handled in a manner which prevents mixture of lots of seed;

32.3.2. The seed conditioning facility is maintained and cleaned. Equipment must be easily accessible for cleaning and inspection, and must be cleaned between lots;

32.3.3. Each lot of seed is identified with a lot number;

32.3.4. Screenings are disposed of in accordance with W. Va. Code R. §61-9-23; and

32.4. A seed conditioning facility must be approved by the department prior to handling seed for certification in bulk.

**§61-39-33. Responsibilities of a Seed Conditioner.**

33.1. It is the responsibility of a department approved seed conditioner to operate in a manner that:

33.1.1. Maintains the purity and identity of seed conditioned, stored, transshipped or labeled.

33.1.2. Complies with the standards and procedures for conditioning seed in accordance with W. Va. Code §19-16-1 et seq. and rules adopted thereunder.

33.2. Prior to shipping seed out-of-state, adhere to the interagency seed certification requirements set forth in this rule.

33.3. Records of all operations must be complete and adequate to account for all incoming seed and final disposition of seed.

33.4. Failure of a seed conditioner to comply with the seed law and rules is cause for the department to revoke a seed conditioning permit.

**§61-39-34. Considerations for Blending Seed.**

34.1. Size of seed blend permitted is dependent on factors such as quality of seed lots to be blended and the conditioning plant facilities.

34.2. A blend data sheet is filed with the certifying agency and must be maintained by the seed conditioner. Laboratory analysis must be completed before tags are issued.

34.3. Seed must be blended by a seed conditioner approved by the department, W. Va. Code §19-16-1 et seq.

34.4. A representative of the certifying agency may supervise the blending operation.

34.5. Seed lots resulting from a blend of different certified classes may only be labeled at the lower class.

**§61-39-35. Standards for Verification of Turf Seed Ingredients.**

35.1. The general rules for seed certification are basic and together with the following specific requirements constitute the rules for certification identity of mixtures of different kinds of turf certified seed:

35.1.1. A blend data sheet, including proof of certification, verifying the origin and the certifying agency along with the analysis and pounds of each lot must be submitted to the certifying agency for approval.

35.1.2. Each lot of certified seed shall:

~~35.1.2.1.~~ 35.1.2.a. Meet standards acceptable to the certifying agency.

~~35.1.2.2~~35.1.2.b. Be sampled under supervision of the certifying agency prior to mixing. The sample shall be obtained in accordance with official sampling procedures. The sample shall be identified with:

~~35.1.2.3.1~~35.1.2.b.1. The verification of certification, origin, and certifying agency;

~~35.1.2.3.2~~35.1.2.b.2. The kind/variety;

~~35.1.2.3.3~~35.1.2.b.3. The analysis and size of lot.

35.1.3. The certifying agency reserves the right to:

~~35.1.3.1~~35.1.3.a. Refuse permission to use individual lots;

~~35.1.3.2~~35.1.3.b. Approve the equipment to be used and procedure to follow in mixing;

~~35.1.3.3~~35.1.3.c. Approve the containers and labeling to be used; and

~~35.1.3.4~~35.1.3.d. Sample the final mixture.

35.1.4. The certifying agency will identify each container with an official certification label verifying that the individual lots used were certified seed lots.

#### **§61-39-36. Interagency Seed Certification Standards and Procedures.**

36.1. Interagency certification is the participation of two or more certifying agencies in performing the services required to certify the same final lot or lots of seed.

~~Generally, the methods and standards employed in each step of the interagency certification process are identical with those used when certification is completed by a single agency.~~

36.1.1. Eligibility

~~36.1.1.1~~36.1.1.a. Seed recognized for interagency certification must be received in containers carrying official certification labels, accompanied by transfer certificates or other proper documentation showing evidence of its eligibility from another official certifying agency together with the following information:

~~36.1.1.1.1~~36.1.1.a.1. Variety and species;

~~36.1.1.1.2~~36.1.1.a.2. Quantity of seed;

~~36.1.1.1.3~~36.1.1.a.3. Class of seed; and

~~36.1.1.1.4~~36.1.1.a.4. Field or lot number traceable to the previous certifying agency's records.

~~36.1.1.2~~36.1.1.b. Seed tagged and sealed with official certification tags is eligible for interagency certification without obtaining approval from the certifying agency of the originating state.

~~36.1.1.3~~36.1.1.c. An "interagency certified seed" report form must be submitted to all certifying agencies involved. Information required to complete the form includes:

~~36.1.1.3.1~~36.1.1.c.1. Section A:

~~36.1.1.3.1.1~~ Name, Address of shipper, Destination, Shipping weight, Lot number and receiving weight, Grower name, Field number, Date of seed shipment, Amount of seed used, Date shipment is received by the receiving state

~~36.1.1.3.2~~ Section B:

36.1.1.c.2. Clean weight, Bag count, New lot number (if different than the receiving lot number).

~~36.1.1.4~~36.1.1.d. Certified seed not tagged and sealed with official certification tags must follow the interagency certification procedure.

36.1.2. Procedure

~~36.1.2.1~~36.1.2.a. Certified seed that is produced in West Virginia and shipped out-of-state must comply with the interagency seed certification procedure.

~~36.1.2.1.1~~36.1.2.a.1. The interagency seed certification procedure is as follows:

~~36.1.2.1.1.1~~36.1.2.a.1.a. Complete Section (A) of "interagency certified seed" report. One copy of the "interagency certified seed" report must be submitted to the department and one copy to the certifying agency where seed is being processed.

~~36.1.2.1.1.2~~36.1.2.a.1.b. Clearly mark each container with the lot number and field number.

~~36.1.2.1.1.3~~36.1.2.a.1.c. If the department is to finalize certification, upon completion of seed processing, Section (B) of "interagency certified seed" must be completed and submitted to the department. A sample must be taken by the department and submitted to the department seed laboratory.

~~36.1.2.1.1.4~~36.1.2.a.1.d. When West Virginia certification tags are used, the lot must be tagged and sealed under supervision of the department. The applicant must pay a mileage fee and hourly rate for all additional mileage and travel time required.

~~36.1.2.1.1.5~~36.1.2.a.1.e. When West Virginia interagency tags are used, the tags must be mailed to the nearest representative of the certifying agency having jurisdiction for tagging.

~~36.1.2.1.1.6~~36.1.2.a.1.f. If another state receives seed and finalizes certification, the department must advise the receiving state's certifying agency of certification eligibility. Sampling, testing, and tagging shall be in accordance with the receiving state's requirements.

~~36.1.2.1.1.7~~36.1.2.a.1.g. The applicant for interagency seed certification is responsible for all fees authorized under West Virginia's certification program and any

additional fees that may be assessed by both agencies involved. Fees for West Virginia's interagency certification program must be paid upon submission to the department of the "interagency certified seed" report, Section (A).

36.1.3. Seed Produced Out-of-State

~~36.1.3.1~~36.1.3.a. Certified seed produced out-of-state and shipped into West Virginia for processing is eligible for West Virginia interagency tags only after obtaining approval from the certifying agency of the originating state. The seed must then comply with West Virginia certification standards.

~~36.1.3.2~~36.1.3.b. Certified seed produced out-of-state that is officially tagged and sealed must be handled under the interagency program if seals are to be broken for reinoculation or other processing. The applicant for interagency seed certification must obtain approval from the department prior to breaking the official seals and all operations must be under the supervision of the certifying agency.

36.1.4. Blends

~~36.1.4.1~~36.1.4.a. Blends of different origin can be authorized only after obtaining approval from certifying agencies involved. Blends must comply with blend standards established by the department. Interagency tags used must show percentage of each origin involved.

**§61-39-37. Other Considerations in Applying the Standards for Certification.**

37.1. Any crop certification standard, with the exception of germination, that is expressed as a percent will be derived from a test based on the minimum weight for purity analysis as specified in the AOSA rules for that crop unless otherwise specified in rule.

37.2. Any crop certification standard that is based on a number per pound will be derived from a test based on the minimum weight for noxious weed seed examination as specified in the AOSA rules for that crop unless otherwise specified in rule.

37.3. For species that have a high rate of inherent dormancy, it will be acceptable to use the percent of total viability instead of germination percentage for certification only. State and federal seed laws require seed be labeled on a germination test.

37.4. For species or varieties that contain GMO (genetically modified organism) traits, herbicide resistant traits, or other novel traits, each seed lot may be required to meet minimum trait standards as defined by the breeder or trait owner. The variety description must define the trait. To determine the level of trait present, a test such as PCR (polymerase chain reaction) or specified bioassay test may be required. If a test is not otherwise available the variety owner must provide testing protocols to the department.

**§61-39-38. Certification Fees.**

38.1. Fees apply to both new and renewal applications.

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Seed	Application Fee	Seedling field inspection fee	Seedling producing or field inspection Fee	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes tagging)	Seed shipped Out-of-State (uncleaned)
Industrial hemp	\$35.00 per field	N/A	\$35.00/hour and mileage as established by the WVDA	\$50.00	Additional inspections: \$35.00/hour and mileage as established by the WVDA	\$0.15 per tag issued; \$15.00 minimum fee	N/A

38.2. A sampling fee of \$40.00/hour (including travel time) and mileage (as established by the WVDA) will be assessed on each sample taken.

38.3. A laboratory testing fee of \$150.00 for tetrahydrocannabinol (or THC) analysis will be assessed on each sample.

38.4. Seed testing fees are established by W. Va. Code R. §61-9-1 et seq.

**§61-39-39. Industrial Hemp (*Cannabis sativa L. Subsp. sativa*) Certification Standards.**

39.1. Standards for Industrial Hemp Seed Production

39.1.1. The general seed certification definitions and standards in this rule are basic and together with the following specific standards constitute the standards for industrial hemp seed certification.

39.1.2. Fees for seed certification are assessed as established in this rule.

39.1.3. All growers of industrial hemp certified seed crops are required to be licensed under the department's industrial hemp licensing rules adopted under W. Va. Code §19-12E-5.

39.1.4. Only varieties of industrial hemp approved by the department shall be eligible for certification. An approved variety must be a variety recognized by an international organization recognized by the department, such as the association of official seed certifying agencies or the organization for economic cooperation and development (OECD) seed scheme.

39.1.5. The allowable area of an industrial hemp seed crop area or seed production field may be determined and limited by the department under W. Va. Code Chapter 19, Article 12E, §19-12E-~~6~~.

39.1.6. All industrial hemp fields established for seed certification shall be planted with not less than thirty-inch row spacing to facilitate inspection, roguing, and harvesting.

39.1.7. Growers must post signage approved by the department on at least four sides, including the main entry point of each authorized field.

39.1.8. The department will sample plants to analyze for tetrahydrocannabinol (THC), as required by W. Va. Code §19-12E-7.

~~39.1.9. All fields of industrial hemp grown for seed production are required to undergo the certification process.~~

**§61-39-40. Definitions Specific to Industrial Hemp Seed Production.**

40.1. "Approved Cultivar" means any variety designated as eligible for production by federal or local regulatory authorities.

40.2. "Approved Laboratory" means a laboratory approved by the commissioner under this article.

40.3. "Commissioner" means the Commissioner of Agriculture of the State of West Virginia or his or her duly authorized agent.

40.4. "Dioecious type" means a type of industrial hemp that has male and female flowers on separate plants.

40.5. "Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of  $\pm 0.3$  percent or less by dry weight.

40.6. "Industrial hemp seed production" means an industrial hemp seed production field established with an appropriate generation of certified seed intended to produce a subsequent generation of certified seed.

40.7. "Monoecious type" means a type of industrial hemp that has male and female flowers on the same plant.

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

40.9. "Too male" means an intersexual plant that exceeds the ratio of male and female flowers as described in the variety description.

40.10. "Unisexual female" means a monoecious type of industrial hemp plant that has a sterile male and fertile female flowers.

40.11. "Unisexual female hybrid" means a hybrid where the A line is a unisexual female type and the B line produces fertile male flowers.

40.12. "Volunteer plant" means an industrial hemp plant that results from a previous crop.

40.13. "West Virginia landrace cannabis seed" means seed from the plant *Cannabis sativa* that possesses characteristics of a unique and specialized cannabis seed variety that is present in West Virginia or has been recognized as produced in West Virginia.

**§61-39-41. Land Requirements for Industrial Hemp Seed Certification.**

41.1. Crops must not be planted on land where foreseeable volunteer growth from a previous crop may cause contamination detrimental to certification.

41.2. Fields for foundation and registered classes must not be planted on land which in the previous ~~five~~ three years ~~grew~~ produced a ~~different~~ crop of industrial hemp ~~or marijuana~~.

41.3. Crops for certified class must not be planted on land which in the previous ~~three years~~ year produced a certified crop of the same variety of industrial hemp or marijuana.

41.4. Crops for certified class must not be planted on land which in either of the previous two years produced a non-certified crop of industrial hemp or a different variety of industrial hemp.

41.5. The presence of Broomrape (*Orobancha* spp.) in industrial hemsps crops is cause for declining certified status.

**§61-39-42. Isolation Requirements for Industrial Hemp Seed Certification.**

42.1. Isolation areas must be kept free of any harmful plants that can cause contamination. ~~Not more than one plant per eleven thousand square feet of harmful contaminants (species that can cross pollinate with the inspected crop) is permitted within the required isolation distance(s) adjacent to the inspected crop.~~ The area, density, stage of maturity, and location of any contaminating pollen source is an important factor in cross pollination, and therefore must be noted on the *Seed Crop Inspection Report* for consideration in determining certification status. There shall not be any *Cannabis sativa* L. plants within 100 m of the crop and not more than 10 plants/ha beyond 100 m within the isolation requirement. The conditions of each crop are assessed by the department, which may alter this standard, usually by reducing the number of contaminant plants permitted per square yard, according to identified contamination risks.

42.2. ~~Foundation, registered and certified industrial hemp must be isolated from any marijuana production by a distance of fifteen miles. The required isolation must be present prior to flowering and crop inspection.~~

42.3. Industrial hemp seed production crops for certification must be isolated from all other industrial hemp varieties or fields not meeting the varietal purity requirements for certification as follows:

Inspected Crop	Isolation Factor	Isolation Distance in Feet
<u>Dioecious type: Foundation</u>	<u>Different varieties of industrial hemp</u>	<u>15,748</u>
	<u>Non-certified crop of industrial hemp</u>	<u>15,748</u>
	<u>Lower certified class seed crop of same variety</u>	<u>6,460</u>
	<u>Same class of certified seed crop of same variety</u>	10
Dioecious type: <del>Foundation and Registered</del>	Different varieties of industrial hemp	<del>16,150</del> <u>15,748</u>
	<u>Non-certified crop of industrial hemp</u>	<del>16,150</del> <u>15,748</u>
	<del>Lower certified class of same variety</del> <u>Seed crop of same variety that meets Certified standards for varietal purity</u>	<del>6,460</del> <u>5,249</u>
	<del>Same class of same variety</del> <u>Seed crop of same variety that meets Registered standards for varietal purity</u>	3
Dioecious type: Certified	Different varieties of industrial hemp	<del>16,150</del> <u>2,624</u>
	<u>Non-certified crop of industrial hemp</u>	<del>16,150</del> <u>2,624</u>

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Inspected Crop	Isolation Factor	Isolation Distance in Feet
	<del>Certified class of the same variety</del> <u>Planted with certified seed of the same variety that meets Certified standards for varietal purity</u>	<del>3</del> <u>656</u>
	<u>Seed crop of same variety that meets Certified standards for varietal purity</u>	<u>3</u>
Monoecious type: Foundation	<u>Dioecious variety of industrial hemp</u>	<u>15,748</u>
	<u>Non-certified crop of industrial hemp</u>	<del>16,150</del> <u>15,748</u>
	<del>Different varieties of monoecious or female hybrid</del> <u>Other Monoecious varieties</u>	<del>6,460</del> <u>9,690</u>
	<u>Lower certified class seed crop of same variety</u>	<u>9,690</u>
	<del>Certified class of same variety</del> <u>Same class of certified seed of same variety</u>	<del>3</del> <u>16</u>
Monoecious type: Registered	<u>Dioecious variety of industrial hemp</u>	<u>15,748</u>
	<u>Non-certified crop of industrial hemp</u>	<u>15,748</u>
	<u>Different varieties of the same type of industrial hemp (Monoecious or Female Hybrid)</u>	<u>6,460</u>
	<u>Seed crop of same variety that meets Certified standards for varietal purity</u>	<u>3,230</u>
	<u>Seed crop of same variety that meets Registered standards for varietal purity</u>	<u>3</u>
Monoecious type and hybrids: Certified	Dioecious variety of industrial hemp	3,230
	<u>Non-certified crop of industrial hemp</u>	3,230
	<del>Different varieties of monoecious or female hybrid</del> <u>Different varieties of the same type of industrial hemp (Monoecious or Female Hybrid)</u>	<del>646</del> <u>656</u>
	<del>Certified class of same variety</del> <u>Planted with certified seed of the same variety that meets Certified standards for varietal purity</u>	<del>3</del> <u>656</u>
	<u>Seed crop of same variety that meets Certified standards for varietal purity</u>	<u>3</u>

**§61-39-43. Field Inspection Standards and Tolerances for Industrial Hemp Seed Certification.**

43.1. Industrial hemp seed production crop fields shall be inspected by the department in three stages.

43.1.1. The first inspection ~~should be conducted before female (pistillate) flowers of the inspected crop are receptive and after the formation of male (staminate) flowers before pollen is shed.~~ for all classes of monoecious types must be made just before or at early flowering. First inspection for all classes of dioecious types must be made after flowering when male plants are beginning to senesce.

43.1.2. The second inspection ~~should be conducted during the receptive stage of the female plants in the inspected field, normally within three weeks of first inspection for all classes of monoecious types, and the Foundation class of dioecious types must be made when seeds are well forming.~~

43.1.3. The third inspection should be conducted within ten days prior to harvest. The grower must notify the department of anticipated harvest date. Fields not harvested within ten days of the third inspection will require an additional inspection and THC test.

43.1.4. Isolation areas will be inspected for volunteer plants and harmful contaminants at each department inspection.

43.2. Off-type male flowers must be removed by the grower prior to producing pollen and evidence of removal must be identifiable during the department's crop inspection.

43.3. Rogued male flowers must be removed from the field and buried or otherwise destroyed by the grower to prevent pollen production.

43.4. If dioecious male plants start flowering before removal from field, all plants around them must be destroyed by the grower within a radius of ten feet for foundation seed, six feet for registered seed and three feet for certified seed.

43.5. If dioecious male plants or if other off-type male flowers are found to be shedding pollen during any inspection, an additional inspection will be required within seven days to verify adequate control of detrimental pollen. An additional reinspection fee will be assessed by the department.

43.6. Plant samples will be taken by the department for THC testing at the third inspection. Violative THC test results will be cause for rejection and the field may be subject to destruction.

~~43.6.1. Industrial hemp and industrial hemp products will not have a THC concentration in excess of 1% for those products intended for use solely in the State of West Virginia.~~

~~43.6.2. Industrial hemp and industrial hemp products will not have a THC concentration in excess of 0.3% for those products intended for interstate commerce.~~

43.7. The seed crop for certification may be harvested after the third inspection and the THC sample has been submitted for testing. However, no seed or other industrial hemp by-products may be transported off of the registered land area until THC testing with an acceptable result has been received and a release notice to the grower has been issued by the department.

43.8. Intersexual plant type ratios shall not exceed the limits when defined in the variety description by the breeder.

43.9. Excessive weeds or other factors that prevent varietal purity and identity determination shall be cause for the department to reject the affected field for certification purposes.

43.10. Fields planted in such a manner that prevents inspector access shall be cause for the department to reject the affected field for certification purposes unless the grower remedies the condition in a timely manner as required by the department.

43.11. Maximum impurity standards must not be exceeded based on six replicated counts of ten thousand plants according to the following table:

	Maximum impurity standards per 10,000 plants		
	Maximum number of <del>too male</del> monoecious plants	Maximum number of dioecious male plants shedding pollen	Maximum number of <del>other</del> impurities including <u>off-types</u> or other varieties
Dioecious type: Foundation	-	-	3
Dioecious type: Registered <del>and</del> Certified	-	-	10
<u>Dioecious type: Certified</u>		-	<u>20</u>
Monoecious: Foundation	<del>500</del>	1	3
Monoecious: Registered	<del>1000</del>	2	10
Monoecious: Certified	<del>2000</del>	100	<del>10</del> <u>20</u>

**§61-39-44. Seed Standards for Industrial Hemp Seed Certification.**

	Foundation	Registered	Certified
Pure seed (minimum)	98.00%	98.00%	98.00%
Other crop (maximum)	0.01%	0.03%	0.08%
Inert matter (maximum)*	2.00%	2.00%	2.00%
Weed seed (maximum)	0.10%	0.10%	0.10%
Other kinds (maximum)**	0.01%	0.03%	0.07%
<del>Other kinds (maximum)</del>	<del>2 per lb.</del>	<del>6 per lb.</del>	<del>10 per lb.</del>
Other varieties (maximum)**	<del>None found</del> <u>0.005%</u>	0.01%	0.05%
Germination (minimum)***	80.00%	80.00%	80.00%

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- \* Inert matter shall not contain more than 0.50% of material other than seed fragments.
- \*\* Other ~~varieties when distinguishable.~~ kinds shall not exceed 2 per lb. (454 grams) for Foundation; 6 for Registered; 10 for Certified.  
\*\*\*Exclusive of dormancy, firm or hard seed, or any other reference to viability.

**§61-39-45. Certification Standards For All Other Crops.**

45.1. The West Virginia Department of Agriculture will use the specific certification standards of another AOSCA member agency for any crop in which specific certification standards are not defined by legislative rule.