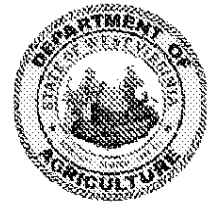


West Virginia Department of Agriculture

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



August 15, 2024

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Thank you for your comments on West Virginia Department of Agriculture's legislative rule §61CSR30 "Select Plant-Based Derivatives and Select Plant-Based Derivative Products". After careful consideration, the Department would like to respond to your comments below:

Comment 1. Consider renaming the proposed rule "Select Plant-Based Derivatives and Derivative Products: Industrial Hemp and Kratom".

Response 1. The term "Select Plant-Based Derivatives" was purposefully given to the rule to accommodate any new or additional plant derivatives in the future. This prevents changing the title of the rule each time a new compound is added.

Comment 2. Numerous definitions are missing from SB 220 and SB 679 or are quite different from SB 220 and SB 679.

Response 2. There were errors in SB 220 and SB 679 that did not align either with the federal hemp bill or the definitions already set forth in WV code related to hemp. Our intent is to align our rules specifically with both the federal and state definitions that had already been adopted.

- a. **Please clarify in the definitions of a "distributor" or "seller", it appears these entities should also be considered or defined as a retailer.**

The rule was clarified to clarify the definition that each of the terms "distributor", "seller", and "retailer" are synonymous.

- b. Please define a "retailer", "retail facility", and "retail establishment".
Please see above for the response to "retailer". The terms "retail facility" and "retail establishment" were added to the definitions.
- c. Please define "embargo", "final product", "grower", "retail permit" (perhaps better define "permittee"), "person", "retail sales", "white labeler", "retail permit", "grower", "final product".
The definition of "embargo", "final product", "retail permit", "person", "retail sales", "white labeler", and "final product" was added to the rule. The definition of "grower" was changed to specify that it applied to hemp and *Mitragyna speciosa* plants. Note: The comment duplicates "grower" and "final product" so only one definition was added for each of these.
- d. Please add the definitions of "processor" and "manufacturer" to reflect the W. Va. Code.
We clarified this definition to incorporate a clearer definition to reflect that processing applied to hemp and *Mitragyna speciosa*.

Comment 3. Please clarify in the proposed rule that Agriculture's forms and applications are available on Agriculture's website.

Response 3. Clarification was added to specify the forms were available on the Department's website throughout the rule.

Comment 4. See handwritten comments for proposed rule §§3.1., 4.5., 4.5.a.1., 4.5.b., 4.5.d.1., 4.5.d.2., 4.6., 5.1., 5.2., 5.8.; possibly a new §5.10., or see new §60-30-14, §6.1., §6.9., §6.10., possibly a new 6.10. or see new insert for §60-30-14 of the proposed rule; §6.11., §8.14. a typo is noted; the violations stated in § 11 and § 12 are not clear as those appear to be criminal violations applicable to unregistered sellers, distributors, manufacturers (should it be product manufacturers?), and products; § 13 - not clear why this section is in the rule as their does not appear to be requirements for flagrant, careless, or negligent classes of violations for Select Plant-Based Derivatives and Derivative Products: Industrial Hemp and Kratom; consider revising § 13; note nowhere in the proposed rule is there mention of an underage sale violation against a retailer, retail establishment, retail facility, permittee, distributor or seller and again these violations are subject to Agriculture's administrative sanctions and subject to Agriculture's hearing process; clarify the embargo process for product seized by the WV ABCA and delivered to Agriculture with respect to chain of custody - §13.5.a.2., §13.5.a.3., and §13.5.b and §13.5.c., See 13.7. and 13.8.; again see new insert for §61-30-14 for a new section 14 for Retail Permittee Enforcement and Penalties that should address Agriculture's use of WV ABCA's agents who will need to charge applicable provisions of the code and rule against a Agriculture's retail permittees for sales to an underage whether online or in-person; and the new section 14 also addresses Agriculture's ability to sanction its permittees, alter egos and issue multiple violations, the ability to cooperate with the other agencies, the ability to conduct the underage buys subject to exclusion from criminal penalties, and other penalties in § 14.2.b. and § 14.2.c.

Response 4. *Please note, while the handwritten notes were considered, the reviewer had a hard time deciphering the notes and may not have addressed the requested changes. Please consider responding with a typed response in the future or use of notetaking software.*

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Section 3.1 was changed to read –“The Department has the authority to regulate hemp and kratom products for the purposes of consumer protection and public safety. The Department further has the authority to approve or deny registration(s) of products. The Department may deny a registration of a product considered to be potentially hazardous, as well as products which pose a threat to consumer safety or otherwise are considered harmful.”

Section 4.5 was changed to include the word “separate”.

Section 4.5.a.1. the word “records” was changed to include the words “substantive evidence”

Section 4.5.b. We do not feel that this should be in the rule. As paper copies become more obsolete, we do not feel renewal forms must be mailed to the recipients, as this is also available on the WVDA’s website.

Section 4.5.d.1. and 4.5.d.2. It was unclear what the suggestion was for these two sections from the public comment received. From our understanding, these two sections were deleted and incorporated into section 4.5.d..

Section 4.6 was changed to include the verbiage “and have had no action taken for 60 calendar days”

Section 5.1 was amended to include the words “retail” and clarify permits issued are “on the Department’s website”.

Section 5.2 was amended to include the words “at retail”.

Section 5.8 verbiage was added to include “This certificate will be issued annually. The correct and accurate certificate must be displayed at all times at the retail facility.”

Section 5.10 we did not change this section to include administrative fines in this section, as we feel the fines and regulatory actions should stay together for less confusion.

Section 6.1 verbiage was added to include “each year, which is available on the Department’s website”.

Section 6.9 verbiage was added to include “or erroneous” and “and have had no action taken for 60 calendar days.”

Section 6.10 verbiage was added to include “This certificate will be issued annually. The correct and accurate certificate must be displayed at all times at the retail facility.”

Section 6.11 we did not change this section to include administrative fines in this section, as we feel the fines and regulatory actions should stay together for less confusion. Also, the

reference to section 8.14 is what we intended as we want the ability to revoke the license of anyone who sells to children under the age of 21. We did not change this reference.

Section 8.14 we added an end quote.

Regarding the comments on section 13. These are in reference to products that are hemp derived products, but not those specifically listed in SB 220 or SB 679, such as CBD (non-intoxicating hemp derivatives). There still needs to be regulations related to these products, so these will remain in the rule. We moved section 13 to section 11 in order to make it clearer to understand, as the new section 11 refers to violations in products tested from section 10.

Comment 5. The handwritten comments also contain renumbering and rewording of various sections.

Response 5. The Department has renumbered the rule.

Semper Fi,

A handwritten signature in black ink, appearing to read "Kent A. Zerkow". The signature is fluid and cursive, with a horizontal line extending from the end.

Commissioner

KAL/jfm