



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative

TITLE-SERIES: 61-30

RULE NAME: Select Plant-Based Derivatives and  
Select Plant-Based Derivative Products -  
Hemp Products

CITE AUTHORITY: §19-12E-7, 19-12E-12, 19-12F-5

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**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 30  
HEMP PRODUCTS  
SELECT PLANT-BASED DERIVATIVES AND  
SELECT PLANT-BASED DERIVATIVE PRODUCTS-HEMP AND KRATOM

**§61-30-1. General.**

1.1. Scope. -- This legislative rule provides for the registration and regulation of select plant-based derivative products sold within the State of West Virginia.

1.2. Authority. -- W. Va. Code §19-12E-7; §19-12E-12; §19-12F-5.

1.3. Filing Date. -- ~~April 13, 2023~~

1.4. Effective Date. -- ~~May 1, 2023~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2033.

**§61-30-2. Definitions.**

2.1. “Cannabidiol” or “CBD” means the compound by the same name derived from the hemp variety of the Cannabis sativa L. plant.

2.2. “Cannabinoid” or “Phytocannabinoid” means any of the various naturally occurring, biologically active chemical constituents (such as cannabidiol or cannabinol) of hemp or cannabis, including those (such as THC) that possess psychoactive properties.

2.3. “Commercial sales” means the sale of products in the stream of commerce direct to the endpoint consumer.

2.4. “Commissioner” means the Commissioner of Agriculture or his or her designee.

2.5. “Confiscation” means seizure of a select plant-based derivative product or product by the Commissioner/the Department.

~~2.5.2.6.~~ “Consumable” means a ~~hemp~~ select plant-based derivative product or products intended for human and/or animal consumption.

~~2.6.2.7.~~ “Crop” means hemp or mitragyna speciosa (hereafter “kratom”) grown under a single registration.

~~2.7.2.8.~~ “Department” means the West Virginia Department of Agriculture and its employees.

~~2.8.2.9.~~ “Distributor,” “Retailer,” or “Seller” means any person who sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots shares, or dispenses a hemp select plant-based derivative product or products.

~~2.9.2.10.~~ “Distributor permit” “Retailer permit” means any person who, or entity which grows, makes, processes, and/or sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots shares, or dispenses a select plant-based derivative product or product(s) the physical piece of paper that authorizes a distributor, retailer, or seller to make taxable sales of hemp and kratom and collect sales tax on hemp and/or kratom product(s).

~~2.10.2.11.~~ “Embargo” means to remove a product from circulation (when a regulatory body, such as the Department, orders or otherwise prevents a product or product from being distributed or sold).

~~2.11.2.12.~~ “Final product” means the product that is packaged and is ready to be made available to the consumer by distribution or sale.

~~2.12.2.13.~~ “Grower” means any person, joint venture, cooperative, or ~~any~~ entity that grows hemp or kratom produces hemp select plant based derivatives.

~~2.13.2.14.~~ “Fiber product” or “hemp fiber product” means a hemp product that is manufactured with suitable fiber for textiles, rope, paper, hempcrete, building, or fiber materials.

~~2.14.2.15.~~ “Handling” means processing or storing hemp or kratom plants for any period ~~of time~~ on premises owned, operated, or controlled by a person licensed to cultivate or process hemp or kratom. “Handling” also includes processing or storing hemp or kratom plants in a vehicle for any period other than during its actual transport from the premises of one licensed person to cultivate or process hemp or kratom to the premises of another licensed person. “Handling” does not mean possessing or storing finished hemp or kratom products.

~~2.15.2.16.~~ “Hemp” means all parts and varieties of the plant *Cannabis sativa L.*, and ~~any part of the plant~~ including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a concentration of not more than 0.3% delta-9 tetrahydrocannabinol on a dry-weight basis, or not more than the concentration established by the provisions of 7 U.S.C. § 1639o, whichever is greater no greater than 0.3% tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C §5940, whichever is greater.

~~2.16.2.17.~~ “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. This includes, but is not limited to:

2.17..a. Hemp seed derivatives;

2.17..b. Hemp concentrates or extracts;

2.17..c. Hemp edibles and drinks;

2.17..d. Hemp tincture;

2.17..e. Hemp topicals and lotions;

2.17..f. Hemp transdermal patches;

2.17.g. Hemp fiber/fiber products;

2.17.h. Hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;

2.17.i. Hemp seed pressed or otherwise processed into oil;

2.17.j. Hemp aerosols;

2.17.k. Hemp vaping products;

2.17.l. Smokable hemp products that are properly packaged, labeled, and sealed in a manner approved by the Commissioner; and

2.17.m. Pet treats or by-products used in animal feed;

2.17.n. The term “hemp product” or “hemp commodity” does not include:

2.17.n.1. Hemp that has not been processed in any form;

2.17.n.2. Hemp that has been minimally processed, for purposes of transfer or storage, including chopping, separating, or drying; and

2.17.n.3. Agricultural hemp seed.

2.18. “Informational panel” means any part of the label that is not the primary label.

2.19. “Intended for human consumption” means to ingest, inhale, or topically apply to the skin or hair.

2.20. “Kratom” means any portion of the specified strain of botanical *Mitragyna speciosa*.

~~2.17.2.21.~~ 2.21. “Kratom product” means any product manufactured from any part of the *Mitragyna speciosa* plant, which is intended or marketed for consumption, and contains the alkaloids known as mitragynine and 7-hydroxymitragynine.

~~2.18.2.22.~~ 2.22. “Lot” means any amount of hemp or kratom product of the same type and processed at the same time using the same ingredients, standard operating procedures, and batches.

2.23. “Manufacturer” or “processor” means a person who or entity which compounds, converts, or processes ~~who is which processing, compounding or converting~~ raw hemp or kratom into any hemp commodity or product.

~~2.19.~~ “Non detectable” means that the amount of a tested ingredient is at or below 10 parts per million.

2.24. “Manufacturing” means compounding, converting, or processing raw hemp or kratom into any commodity or product.

2.25. ~~“Permittee” means an any person(s) or business entity/entities possessing a permit license issued by the Department to cultivate, grow, handle, or process hemp or kratom~~ means any person or entity/entities with a permit issued by the Department to manufacture, distribute or sell (sell meaning a Permittee to sell as a retailer, see “Retailer Permit” above) select plant-based derivative products.

2.26. “Person” means any corporation, individual, partnership, organization, or society.

2.27. “Plant-based” means derived or made from plants.

~~2.27.2.28.~~ “Primary label” means the part of the label to be prominently displayed to the consumer at retail.

~~2.28.2.29.~~ “Processing” means converting any agricultural commodity, or a non-agricultural commodity specified as a select-plant based derivative into a marketable form.

~~2.29.~~ Products covered under West Virginia Code §19-12E-12 and §19-12F-5 means those products which are naturally occurring, non-synthetic substances that are derived from hemp (*cannabis sativa L.*) or kratom (*mitragyna speciosa*) plants as follows:

~~2.29.a.~~ Delta 9 tetrahydrocannabinol with a total concentration of not more than 0.3 percent on a dry weight basis; or

~~2.29.b.~~ Delta 8 tetrahydrocannabinol;

~~2.29.c.~~ Delta 10 tetrahydrocannabinol;

~~2.29.d.~~ Hexahydrocannabinol (HHC);

~~2.29.e.~~ Tetrahydrocannabiphorol (THCp); and

~~2.29.f.~~ Tetrahydrocannabivarin (THCv).

~~2.22. 2.30.~~ “Registrant” means a person or entity that has registered hemp or kratom products with the Department.

2.30. “Registrant” means a person or entity that has registered hemp or kratom products with the Department.

2.31. “Retail facility” or “retail establishment” means the physical location from which select plant-based derivative products are sold direct to consumers.

~~2.32.~~ “Retail sales” means the financial metric that tracks the total consumer expenditures made on hemp or *Mitragyna speciosa* products at a retail facility or retail establishments.

2.32. “Select Plant-Based Derivative” means plant-derived compounds referring to materials or ingredients that originate from plants.

~~2.31. 2.33.~~ “Summary Suspension” are suspensions issued when the circumstances of any ~~case~~ or constitutes a hazard to public health, safety, and/or welfare, thereby requiring immediate action.

~~2.32.~~ “Retail sales” means the financial metric that tracks the total consumer expenditures made on hemp or *Mitragyna speciosa* products at a retail facility or retail establishment.

~~2.23. 2.32-2.34.~~ “THC means tetrahydrocannabinol and is used interchangeably with “Total THC.” “Total THC”. Which means the quantifiable amount of ~~delta nine~~ delta-9 THC plus 0.877% of the amount of tetrahydrocannabinolic acid in a product.

~~2.24. 2.34~~2.35. “THC-free” or “~~n~~Non-THC” means a hemp product that contains a non-detectable or non-quantifiable amount per serving of tetrahydrocannabinol.

~~2.25. 2.35~~2.36. “White label” means a manufactured hemp or *Mitragyna speciosa* product that is manufactured or ~~produced~~ processed by one person or entity but sold by another person or entity under their own label.

~~2.38~~2.37. “White labeler” means the person or entity selling hemp or kratom product under their own label but another manufacturer (not the person or entity selling the product is used to process it.

### **§61-30-3. Regulatory authority.**

3.1. 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 ~~product registration~~ of products. The Department may deny a registration of a product ~~it deems~~ considered to be potentially hazardous, and/or as well as products which pose a threat to consumer safety or otherwise are considered to be harmful.

3.2. Rules governing the requirements for licensing, cultivating, testing, processing, supervision, production, and sale of raw hemp in West Virginia are found in 61 C.S.R. 29.

3.3. The rules provided in this rule are in addition to any requirements imposed by the United States Department of Agriculture, the federal Food and Drug Administration, or any other federal agency with regulatory authority over hemp products.

### **§61-30-4. Permitting and Registration of hemp and kratom products or extracts.**

4.1. The commissioner may issue manufacturer, processor, distributor, product, and retail permits. Any person offering for sale or is selling hemp and /or kratom products must obtain the required permit, and ~~Any~~ all hemp and kratom products available for distribution or sale in West Virginia, including products manufactured in West Virginia, another state, or another country, shall be registered by permittee annually with the Department as specified by the application provisions for product registrations in 4.2 of this Rule. ~~This includes products manufactured in West Virginia, another state, or another country.~~

4.2. Applications for permittees seeking to register hemp and kratom product registrations shall be made to the Department on a registration form provided by the Department available upon the Department’s website, and shall include the following information:

4.2.a. The name and address of the registrant;

4.2.b. The name and address of the person whose name shall appear on the label, if ~~other~~ different than from the registrant’s;

4.2.c. The name of the product;

4.2.d. The origin of the raw hemp or kratom with from which the final product was manufactured;

4.2.e. A complete copy of the label that will appear on the product; and

4.2.f. The associated registration fee, as indicated below.

4.3. Registrations shall expire on December 31 of the year for which the registration was issued, regardless of the date the registration is received.

4.4. ~~Beginning January 1, 2022,~~ registration The application for registration shall be due by January 1 of each calendar year.

4.5. A separate registration fee of \$200.00 ~~per~~ for each hemp and kratom product shall be paid to the Department with the submission of the application.

4.5.a. ~~Beginning January 1, 2022,~~ In lieu of the \$200.00 registration fee set forth in subsection 4.5 of this rule, a registration fee of \$100.00 per hemp product shall be paid to the Department with the submission of the application, if the hemp and kratom material are grown, harvested, and manufactured in West Virginia and the products are registered with the West Virginia Grown program.

4.5.a.1. Registration for hHemp products under this subdivision must include a copy of the registrant's West Virginia processing/cultivation license, or credible evidence of where the product was cultivated and processed.

4.5.b. A renewal fee of \$200.00 ~~per~~ for each hemp and kratom product ~~products that are registered~~ shall be submitted to renew a product's registration. Renewal fees shall be accompanied by a form provided by the Department identifying the product to which the fee corresponds.

4.5.c. The annual fee for hemp and kratom product registrations shall be capped at \$1,000 each per registrant for products that are manufactured and sold in West Virginia.

4.5.d. ~~Beginning January 1, 2022, in~~ In lieu of the \$1,000 registration cap fee stated in subdivision 4.5.c of this rule, a registration cap fee of \$500.00 per registrant shall be paid for hemp and kratom products that are grown, harvested, and manufactured in West Virginia, and registered with the WV Grown Program. Registration for hemp and kratom products under this subdivision must include a copy of the WV processing /cultivation license and the registrant's West Virginia Grown Certificate.

4.5.e. ~~The annual fee for hemp and kratom product registrations, the annual fee shall be capped at \$2,000 per registrant when such product: that are white labeled by a West Virginia vendor, are for sale in West Virginia, and contain West Virginia-grown hemp or kratom. shall be capped at \$1,000 per registrant.~~

4.5.e.1. Notwithstanding the provisions of 4.5.e., the white labeler is still responsible for, and will be subject to, all fines and enforcement actions related to white labeled products in accordance with state law.

4.5.f. Hemp and kratom products ~~that are of the~~ with the same chemical composition and concentration but of different net quantities will qualify as one product.

4.5.g. Hemp and kratom product registrations that come from an international entity shall be required to pay a foreign check fee of \$35.00.

4.6. The Department may deny or delay registrations and renewals that are incomplete or erroneous and have had no action taken for 60 calendar days.

4.7. A new registration is required for any of the following:

4.7.a. Changes in the chemical composition, concentration or formula of the hemp or kratom product; or

4.7.b. Changes to health-related label claims for active ingredients.

4.8. The person or entity registering the product is responsible for the completeness and accuracy of all information submitted.

4.9. As a condition of registration, all registrants are required to retain documentation for a minimum of two years after the final product manufacture date for each product lot demonstrating the source of the hemp or kratom that was utilized to manufacture the hemp or kratom product, including documentation that the product was grown by a licensed hemp or kratom grower. Such documentation shall be made available to the Department upon request.

~~4.10. Kratom products shall be exempt from registration requirements until January 1, 2025.~~

#### **§61-30-5. Registration to distribute and sell hemp products.**

5.1. All retail facilities, including online domains and websites, are required to register with the Department for a retail permit to sell hemp products in West Virginia. Per W. Va. Code §19-12E-12(d)(5), the commissioner shall maintain and publish a list of all permits issued on the Department's website.

5.2. Application to sell at retail and distribute hemp products shall be made to the Department on a form provided by the Department which is available on the Department's website, and shall include the following information:

5.2.a. Name and address of the applicant's retail store; or, if the applicant is selling at an on-line store, this must be indicated on the form;

5.2.b. Name and home address of the responsible party;

5.2.c. The associated registration fee.

5.2.d. For hemp products listed under West Virginia Code §19-12E-12(c)(6)(A) to (F), a letter of good standing with the West Virginia State Tax Division.

5.2.e. For hemp products listed under West Virginia Code §19-12E-12(c)(6)(A) to (F), the applicant's social security number, federal employer identification number, or individual taxpayer identification number.

5.3. A registration fee of \$100.00 shall be paid to the Department with the submission for application to sell and distribute hemp products in West Virginia.

5.4. A registration fee shall be paid annually. Registrations shall expire on December 31 of the year for which the registration was issued, regardless of the date the registration is received.

5.5. Registrations shall be due on January 1 annually.

5.6. Retail establishments ~~that sell only~~ which exclusively sell self-manufactured products (products made “in-house” by the same retail establishment) that they manufactured themselves are exempt from the requirement to pay a distribution fee, to distribute, but annual registration is still required. ~~are not exempt from the requirement to register annually.~~

5.6.a. Retail establishments ~~that~~ which solely exclusively sell products that are as defined under in subsection ~~2.10:~~ 2.14 of this rule are exempt from registration requirements.

5.6.b. Hemp retail registrations ~~that come~~ from a foreign entity shall be required to pay a foreign check fee of \$35.00.

5.6.c. Retail registration excludes restaurant sales for the on-site consumption of foods and drinks containing hemp or ~~hemp-derived~~ hemp-derived products. Restaurants selling take-home products are not exempt from registering as ~~a hemp sellers~~ retailers.

5.7. The Department may deny or delay registrations for incomplete applications.

5.8. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products. This certificate will be issued renewed annually. The correct and accurate certificate must be displayed at all times at the retail facility.

5.9. A distributor of hemp products that does not itself engage in retail sales is not required to register under this section.

5.10 The Department may revoke the registration of a retail facility to sell hemp products if it determines they the facility has sold products to individuals not meeting requirements of subsection ~~7.14:~~ 8.14 of this rule. The commissioner shall keep a list of any persons or entities that have been subject to a permit revocation, withdrawal, suspension, non-renewal, or other process whereby the person or entity has ceased to be a permit holder in good standing with the commissioner. The commissioner shall keep a list of all hemp-derived cannabinoid products that have been approved for sale or distribution in this state. The list of approved hemp-derived cannabinoid products shall be public information and shall be published initially on or before June 30, 2024, by the commissioner on its website from time to time so as to reflect a current listing.

**§61-30-6. Reserved for future use. Registration to distribute and sell kratom products.**

6.1. All retail facilities, including online domains and websites, are required to register with the Department for a permit to sell kratom products in West Virginia. Per W. Va. Code §19-12F-8(g), the commissioner shall maintain and publish a list of all permits issued each year, which is available on the Department’s website

6.2. Application to sell and distribute kratom products shall be made to the Department on a form provided by the Department, which is available on the Department’s website, and shall include the following information:

6.2.a. Name and address of the applicant’s retail store; or, if the applicant is selling through an online store, such must be indicated on the form;

6.2.b. Name and home address of the responsible party;

6.2.c. The associated registration fee;

6.2.d. Letter of good standing with the West Virginia State Tax Division; and

6.2.e. The applicant's social security number, federal employer identification number, or individual taxpayer identification number.

6.3. A nonrefundable application fee of \$1,500 shall be paid to the Department to manufacture, process, distribute, or sell kratom products in West Virginia.

6.4. An annual registration fee of \$300 shall be paid to the Department with the submission for application to manufacture, process, distribute, or sell kratom products in West Virginia.

6.5. A registration fee shall be paid annually. Registrations shall expire on December 31 of the year for which the registration was issued, regardless of the date the registration is received.

6.6. Registrations shall be due on January 1 annually.

6.7. Retail establishments that sell only kratom products that they manufacture themselves are exempt from the requirement to pay the fee to distribute but are not exempt from the requirement to register annually.

6.8. Kratom retail registrations that come from a foreign entity shall be required to pay a foreign check fee of \$35.00.

6.9. The Department may deny or delay registrations for incomplete or erroneous applications and have had no action taken for 60 calendar days.

6.10. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of kratom products. This certificate will be issued annually. The correct and accurate certificate must be displayed at all times at the retail facility.

6.11. The Department may revoke the registration of a retail facility to sell kratom products if it determines the facility has sold products to individuals not meeting requirements of subsection 8.14 of this rule. The Commissioner shall keep a list of any persons or entities that have been subject to a permit revocation, withdrawal, suspension, non-renewal, or other process whereby the person or entity has ceased to be a permit holder in good standing with the commissioner. The commissioner shall keep a list of all hemp-derived cannabinoid products that have been approved for sale or distribution in this state. Such list shall be public information and shall be published, by the commissioner on its website from time to time so as to reflect a current listing.

#### **§61-30-7. Displays, Advertising, and Marketing.**

7.1. For establishments selling hemp and kratom derived products intended for consumption, items shall be displayed only in areas that the store staff can see in direct sign or behind counters that deny public access.

7.2. For establishments, stores at fairs and festivals, farmers' markets, etc., products must be in a controlled environment and not accessible to children.

7.3. Advertising on television, online, by radio, and in print is prohibited when 30% or more of the listener/viewer/user group is comprised of persons under the age of 21.

7.4. The distribution of free samples of hemp and kratom products intended for consumption is prohibited, except for products distributed in an "adult-only facility."

~~§61-30-7.~~ §61-30-8. Labeling.

~~7.1.~~ 8.1. Hemp and kratom products for human consumption as a food or dietary supplement shall be labeled in accordance with FDA guidelines for food or dietary supplement labeling.

~~7.2.~~ 8.2. Hemp and kratom products produced for topical absorption by humans shall be labeled in accordance with FDA guidelines for Cosmetic Products Warning Statements.

~~7.3.~~ 8.3. Hemp and kratom products shall not contain disease or drug claims on the label that are not approved by the FDA.

~~7.4.~~ 8.4. The product lot on the label must be traceable to the plant origin.

~~7.5.~~ 8.5. Hemp products meant for animal consumption shall be labeled and comply with the West Virginia Commercial Feed Law, West Virginia Code §19-14-1 *et seq.*

~~7.6.~~ 8.6. Hemp seed products intended for cultivation shall be labeled in accordance with the West Virginia Seed Law, West Virginia Code §19-16-1 *et seq.*

~~7.7.~~ 8.7. Product labels must be clear and legible.

~~7.8.~~ 8.8. Labels must be printed in English.

~~7.9.~~ 8.9. The following labeling is forbidden:

~~7.9.a.~~ 8.9.a. Unless at least 51% of the hemp or kratom in the product is grown in the state of West Virginia, the product cannot be labeled as a West Virginia product.

~~7.9.b.~~ 8.9.b. The product cannot be attractive to children. This includes, but is not limited to:

~~7.9.e.~~ 8.9.b.1. The use of cartoons;

~~7.9.b.2.~~ 8.9.b.2. The use of images popularly used to advertise to children; or

~~7.9.b.3.~~ 8.9.b.3. The imitation of a candy or food label.

~~7.9.e.~~ 8.9.c. The label cannot include false or misleading information. This includes untrue or unproven information that leads consumers to have an inaccurate impression.

~~7.9.d.~~ 8.9.d. The label cannot include the use of the word "organic" unless referencing certified organic products that have been certified as organic in accordance with the National Organic Program, as provided for by the USDA.

7.10.8.10. Labels-Hemp product labels will be considered misbranded when, upon analysis, a WVDA the Department finds that the claim is either above or below 2015% of the cannabinoid amount of cannabinoid as declared on the label. Kratom product labels will be considered misbranded when, upon analysis, the Department finds that the claim is either above or below 2015% of the alkaloid amount declared on the label.

7.11.8.11. The following requirements must be met for the primary label:

7.11.a.8.11.a. The product must be identified with the generic or common name; and

7.11.b.8.11.b. If the product label claim contains any amount of cannabinoid and/or mitragynine or 7-hydroxymitragynine, the label must properly identify them.

7.12.8.12. The following requirements must be met for the information panel:

7.12.a.8.12.a. Manufacturer's name and contact information;

7.12.b.8.12.b. Batch or lot number;

7.12.c.8.12.c. Instructions for use and any preparation needed, if applicable;

7.12.d.8.12.d. List of all ingredients in descending order by weight or volume;

7.12.e.8.12.e. Allergens if applicable;

7.12.f.8.12.f. Artificial food coloring, if applicable;

7.12.g.8.12.g. Expiration or use by date, if applicable;

7.12.h.8.12.h. Refrigeration or refrigerate after opening warnings, if perishable after opening; and

7.12.i.8.12.i. For edible products, sodium, sugar, carbohydrates, and total fat per serving.

7.12.j.8.12.j. The net weight or volume of the contents of the package, in both metric and US customary units must be displayed.

7.12.j.1.8.12.j.1. For capsules, soft gels, or similar products the ~~net quantity~~ of contents statement can be weight, volume, numerical count, or a combination of numerical count and weight or volume.

7.13.8.13. The cannabinoid content, in milligrams, may be posted on either the primary or informational panel, and must include:

7.13.a.8.13.a. Any product label claiming a guaranteed cannabinoid (if applicable) shall provide all cannabinoids, and the total amount of the claimed cannabinoid content per package for all manufactured products; and

7.13.b.8.13.b. Cannabinoid (if applicable) content per serving for all hemp products with designated serving sizes.

~~7.14.8.14.~~ Any product containing ~~more than 0.3% of tetrahydrocannabinols,~~ hemp-derived cannabinoids or kratom derivatives must declare on the label, “NOT INTENDED FOR SALE TO PERSONS UNDER THE AGE OF ~~18~~21”; “Keep out of reach of children”. “Consult your physician before use if you are pregnant or taking any medication” and “Use of this product may impact drug testing results.” ~~(or more restrictive on the label.)~~

~~7.14.a.8.14.a.~~ It is unlawful to manufacture, package, import, distribute, or sell any hemp-derived or kratom product without the required label. The label is to be written in English using legible type and shall be placed in a conspicuous location on the outer packaging.

~~8.14.b.~~ A temporary provision shall be made until January 1, 2025, on the above subsection 8.14 statement requirement on packaging, so long as the seller prominently displays a sign with the warnings listed until all labels and packaging are compliant.

~~7.15.8.15.~~ Any product label claiming “THC-free” or “non-THC” shall not contain levels of THC above detectable levels as determined by the Department.

~~7.16.8.16.~~ A QR code, or similar tool, may be used in lieu of labeling requirements on the physical label’s informational panel for all required information except that required by subsections ~~7.13~~ 8.13 and ~~7.14. 8.14~~ and subdivision ~~7.12.i~~ 8.12.i of this rule.

~~§61-30-8.~~ **§61-30-9. Handling and transport.**

~~8.1.9.1.~~ It is lawful in West Virginia to transport and possess kratom, CBD and THC products, so long as the THC content does not exceed that permitted by law.

~~8.2.9.2.~~ Hemp and kratom products may be legally transported across state lines and exported to foreign countries in a manner that is consistent with federal law and laws of respective foreign countries.

~~8.3.9.3.~~ For time- and temperature-controlled products for human consumption, sellers must meet FDA guidance for maintaining safe handling, storage, and preservation of the product.

~~8.4.9.4~~ Hemp and Kratom products cannot be legally sold to anyone under the verified age of 21. Hemp and Kratom products cannot further be sold by anyone under the verified age of 21.

~~8.4.a.9.4.a.~~ The Alcohol Beverage and Control Administration Commissioner may utilize its enforcement agents or persons at least 18 years of age to purchase or possess hemp or kratom products when he or she is acting under the direction and control of any state, federal, or local law enforcement agency or the Alcohol Beverage Control Administration Commissioner. Such investigations may be in person or online.

~~§61-30-9.~~ **§61-30-10. Inspection and testing.**

~~9.1.10.1.~~ The Department shall conduct random inspections of hemp and kratom products distributed or made available for distribution in the state.

~~9.2.10.2.~~ The Department shall periodically sample, analyze, and test hemp and kratom products distributed within the state for compliance with registration, labeling requirements, and product safety, if applicable.

~~9.3.10.3.~~ The Department may conduct inspection of hemp and kratom products distributed or available for distribution for any reason that the Department deems necessary.

~~9.4.10.4.~~ Samples taken by the Department shall be the official samples.

~~9.5.10.5.~~ Unofficial samples of any kind (including unofficial samples submitted by law enforcement and consumers) must be submitted to the Department's laboratory, and are subject to associated fees as set by the Commissioner (if submitted by agents other than the Commissioner or those employed by the Department). Submitted samples will also include documentation for chain of custody.

~~9.6.10.6.~~ Samples that are found to contain contaminants in excess of the following levels shall be considered ~~adulterated~~ <https://agriculture.wv.gov>.

~~9.6.a.10.6.a.~~ Pesticide Limits. The following list of contaminants does not constitute authorization to use or apply any of the following during ~~Hemp~~hemp or kratom cultivation or processing: <https://agriculture.wv.gov>.

~~9.6.b.10.6.b.~~ Residual Solvent and Processing Chemical Limits

~~9.6.b.1.10.6.b.1.~~ The limit for ethanol does not apply to products that are intended to be orally consumed products containing alcohol.

~~9.6.b.2.10.6.b.2.~~ The limit for ethanol or isopropyl alcohol does not apply to products that are intended to be topical products.

~~9.6.c.10.6.c.~~ Toxic Metals Limits

~~9.6.d.10.6.d.~~ Microbiological Limits for ingestible and inhalable products

~~9.6.d.1.10.6.d.1.~~ Shiga toxin-producing *Escherichia coli* (STEC E. coli) and other pathogenic *E. coli*, none present.

~~9.6.d.2.10.6.d.2.~~ *Listeria monocytogenes*, none present.

~~9.6.d.3.10.6.d.3.~~ *Salmonella* and *Shigella*, none present.

~~9.6.d.4.10.6.d.4.~~ *Clostridium botulinum* and related neurotoxins, none present.

~~9.6.d.5.10.6.d.5.~~ *Staphylococcus aureus* and related toxins, none present.

~~9.5.d.6.~~ Coliforms greater than 10 colony forming units per gram.

~~9.6.e.10.6.e.~~ Mycotoxin Limits.

~~9.6.e.1.10.6.e.1.~~ Total Aflatoxin (B1, B2, G1, G2) - 20 µg/kg

~~9.6.e.2.10.6.e.2.~~ Ochratoxin - 20 µg/kg

~~9.6.f.10.6.f.~~ Water Activity Limits

~~9.6.f.1.10.6.f.1.~~ Dried flower products – The water activity shall not exceed 0.65 Aw.

~~9.6.f.2.10.6.f.2.~~ Edible products – The water activity shall not exceed 0.85 Aw.

~~9.6.g.10.6.g.~~ Foreign Material Limits for ingestible and inhalable products

~~9.6.h-10.6.h.~~ The Department shall have the ability to set acceptable maximum limits for products derived from ~~hemp kratom, hemp,~~ and hemp seed derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers

**§61-30-11. Enforcement actions on all hemp product violations and related penalties.**

11.1. The Commissioner may assess administrative penalties in accordance with violation of this rule per W.Va. Code §19-12E-12, §19-12F-5, and §19-12E-7, et. seq.

11.2. Violations shall be classified according to severity, as follows:

11.2.a. Class I Violations can include, but are not limited to, the following:

11.2.a.1. Hemp products that are unsafe or adulterated or show cause for immediate human or animal health concern; and

11.2.a.2. Hemp products that contain more than the THC content authorized by law.

11.2.a.3. Third offense registration violations as defined in subsection ~~10.4.11.4~~ of this ~~rule~~; and

11.2.a.4. Improper labeling, as defined in subdivision 8.9.b and subsection 8.14 of this rule.

11.2.a.5. Advertising or Marketing violations, as defined in §61-30-7. Of this rule.

11.2.b. Class II Violations include, but are not limited to:

11.2.b.1. Falsification of information on an application;

11.2.b.2. No serving size and frequency of use listed on labeling; and

11.2.b.3. Failure of the product to meet label claims.

11.2.c. Class III Violations can include, but are not limited to, the following:

11.2.c.1. Improper labeling; and

11.2.c.2. Misbranding.

11.3. Class III Violations.

11.3.a. Upon the initial Class III violation of a manufacturer:

11.3.a.1. The Commissioner shall send a written “First Notice” to the registrant. This notice shall notify the registrant that a violation of West Virginia Code §19-12E-7 et. seq. of this rule and the enforcement policy established by this section of the rule has been violated.

11.3.a.2. The manufacturer shall be assessed a ~~\$100.00~~\$200.00 penalty for the Class III violation.

11.3.a.3. The manufacturer shall be given 30 calendar days following the date of correspondence to address the Class III violation, and evidence must be provided to the Department in the form of a written or emailed response to hempproducts@wvda.us to show that the violation has been remedied or that effort to do so has been made by the registrant manufacturer.

11.3.b. If a second Class III violation is found ~~in regard to the same product~~ within a one-year period, the Commissioner shall send a written “Second Notice” to the registrant. The ~~registrant~~ manufacturer must develop a written plan to remedy the violation and implement such written plan within ~~7 days~~ 10 business days after the Second Notice has been sent. An additional ~~\$100.00~~ \$500.00 penalty will be assessed for the second and any further subsequent Class III violation in regards to a product.

11.3.c. If a third or subsequent Class III violation is found ~~in regard to the same product~~ within a one-year period, the Commissioner will issue an immediate Order to suspend the registrant’s Permit.

11.3.c.1. The “Suspension of Permit Order” (“Suspension Order”) will state clearly the reason for the order, the effective date of the Suspension Order, as well as the length of time for which the Suspension Order will be in effect (which can be indefinite following multiple Class III violation).

11.3.c.2. In the case of a summary suspension, the permit holder subject to suspension shall have the right to request a hearing, and such hearing shall be held in accordance with the Administrative Procedures Act ~~the Commissioner may give the manufacturer an opportunity to request a an informal hearing in the matter~~ subsequent to the notification of the suspension.

#### 11.4. Class II Violations.

11.4.a. Upon the initial Class II violation being committed by a manufacturer:

11.4.a.1. The Commissioner shall send a written “First Notice” to the registrant. This notice shall notify the registrant that a violation of West Virginia Code §19-12E-7 *et. seq.* of this rule, and the enforcement policy established by this section of the rule.

11.4.a.2. The manufacturer shall be assessed a ~~\$200.00~~ \$400.00 penalty for the Class II violation.

11.4.a.3. The manufacturer shall be given 30 calendar days following the date of correspondence to address the Class II violation, and evidence must be provided to the Department in the form of a written or emailed response to hempproducts@wvda.us to show that the violation has been remedied or that effort to do so has been made by the registrant manufacturer.

11.4.b. If a second Class II violation is found ~~in regards to the same product~~ within a ~~one-year~~ one year period, the Commissioner shall send a written “Second Notice” to the registrant. The registrant manufacturer must develop a written plan to correct the violation and implement such written plan within ~~7 days~~ 10 business days after the Second Notice has been sent. An additional ~~\$200.00~~ \$800.00 penalty will be assessed for the second Class II violation in regards to a product.

11.4.c. If a third Class II violation has not been resolved within the time frame specified by the Department, the Commissioner will issue an immediate Order to suspend the registrant’s Permit.

11.4.c.1. The “Suspension of Permit Order” (“Suspension Order”) will state clearly the reason for the order, the effective date of the Suspension Order, as well as the length of time for which the Suspension Order will be in effect

11.4.c.2. In the case of a summary suspension, the Commissioner may give the manufacturer the opportunity to request a hearing in this matter after notification of the suspension.

11.5. Class I Violations.

11.5.a. Upon the first Class I violation being committed by a manufacturer:

11.5.a.1. The Commissioner shall notify the registrant that the product has or have been embargoe, and this notice shall serve to inform the registrant of the pertinent product and violation.

11.5.a.2. Embargo of product shall occur in accordance with ~~§12~~ §61-30-14 of this rule.

11.5.a.3. The manufacturer of a product with a Class I violation shall be assessed a penalty of ~~\$250,000~~\$1,000.00.

11.5.b. The embargo notice will establish the date effective and give the reason for the embargo.

11.6. A person who performs a recall by voluntarily removing product from sale or distribution in an effective manner, to limit the potential harm to the health and well-being of the public, may be eligible for exemptions from the normal enforcement policy. The Commissioner shall review the facts of each case when considering an exemption.

11.7. The Commissioner may suspend the standard enforcement policy in cases where such action is necessary to protect the public health, safety, and welfare.

11.8. Law enforcement or any agents other than the commissioner shall work in consultation with the Department prior to and post investigations of any retail establishment or manufacturer.

11.8.a. The Alcohol Beverage Control Administration Commissioner may utilize its enforcement agents or persons to assist in conducting investigations and conducting enforcement activities related to criminal and / or administrative enforcement. Such investigations may be in person or online.

~~§61-30-10~~§61-30-12. Enforcement actions on unregistered sellers, ~~and products~~ distributors, and product manufacturers on products covered under West Virginia Code §19-12E-7

~~40.1.12.1~~ Excluding select plant-based derivatives as described in section 13 of this rule, ~~if~~ the seller, distributor, or a manufacturer does not renew its registration annually, the Commissioner is authorized to take enforcement actions against the seller or manufacturer as set forth in this section.

~~40.2.12.2~~ Upon the first offense:

~~40.2.a.12.2.a.~~ The seller, distributor, or product manufacturer will be notified in writing that they must register with the Department; ~~and~~

~~10.2.b.12.2.b.~~ The seller, distributor, or product manufacturer will be given 14 days from correspondence date to register with the Department; and

~~10.2.b.12.c.~~ If the seller, distributor, or product manufacturer does not register with the Department in the allotted time, their hemp products shall be embargoed and removed from the shelves in accordance with section 12 of this rule.

~~10.3.12.3.~~ Upon the second offense within a ~~one-year~~ five-year period:

~~10.3.a.12.3.a.~~ The seller, distributor, or product manufacturer will be notified in writing that they must register with the Department;

~~10.3.b.12.3.b.~~ The seller, distributor, or product manufacturer will be given 14 days from the date of correspondence to register with the Department, and will then be subject to the regular registration fee in addition to a penalty as set forth in subdivision c of this subsection;

~~10.3.e.12.3.c.~~ The seller, distributor, or product manufacturer will be required to pay a penalty of \$250.00\$500.00; and

~~10.12.4.12.3.d.~~ If the seller, distributor, or product manufacturer does not register with the Department in the allotted time, the ~~The~~ hemp products shall be embargoed and removed from the shelves in accordance with section 12 of this rule.

~~10.4.12.4.~~ Upon a third offense in a ~~one-year~~ five-year period:

~~10.4.a.12.4.a.~~ The seller, distributor, or product manufacturer will be notified in writing that they must register with the Department;

~~10.4.b.12.4.b.~~ The product shall be embargoed and removed from shelves in accordance with section 12 of this rule;

~~10.4.e.12.4.c.~~ The seller, distributor, or product manufacturer shall be required to pay a penalty of \$250.00\$1,000.00; and

~~10.4.d.~~ For unregistered sellers, the eligibility to obtain a permit to sell hemp products shall be suspended for ne year. The permit holder shall have the right to request an optional hearing.

~~10.4.e.~~ For unregistered products, the ability to obtain a permit shall be suspended for one yar. The product permit holder shall have the right to request an optional hearing.

~~10.4.f.~~ Embargoes and offenses shall be specific to the individual product and not the entire manufacturer's line of products.

~~10.4.d.12.4.d.~~ The permit shall be suspended for one year. A hearing can be requested and shall be held in accordance with the Administrative Procedures Act to consider reinstatement of a suspended permit.

12.5. Law enforcement, or any agents other than the commissioner, shall work in consultation with the Department prior to, and at the conclusion of, investigations of any retail establishment, distributor, or manufacturer.

**§61-30-13. Enforcement actions on unregistered sellers, manufacturers, and products covered under West Virginia Code §19-12E-12 and §19-12F-5.**

13.1. If the seller, distributor, or a manufacturer does not register at all, or does not renew the registration annually, the commissioner is authorized to take enforcement actions against the seller, distributor, or manufacturer as set forth in this section.

. 13.2. Upon the first offense:

. 13.2.a. The seller, distributor, or product manufacturer will be notified in writing, via certified mail, that they must register with the Department; and

13.2.b. The seller, distributor, or product manufacturer will be given 14 business days from the date of attempted delivery of notice to register with the Department.

. 13.3. Upon the second offense (first violation) within a one-year period:

. 13.3.a. The distributor, seller and/or product manufacturer will be notified in writing that they must register with the Department;

. 13.3.b. The distributor, seller and/or product manufacturer will be required to pay a fine of \$1,000; and

13.3.c. The hemp products shall be embargoed and removed from the shelves in accordance with section 12 of this rule.

13.3.d. Any person in violation of this section shall be guilty of a crime and subject to criminal penalties in accordance with West Virginia Code §19-12E-12(m) to (o).

13.4. Upon a third offense (second violation) in a one-year period:

13.4.a. The distributor, seller and/or product manufacturer will be notified in writing that they must register with the Department;

13.4.b. The product shall be embargoed and removed from shelves in accordance with section 12 of this rule;

13.4.c. The distributor, seller and/or product manufacturer shall be required to pay a penalty of \$5,000; and

. 13.4.d. For unregistered sellers and/or distributors, the eligibility to obtain a permit to sell hemp and kratom products shall be suspended for one year. The unregistered distributors and/or sellers shall have the right to request a hearing, and such hearing shall be held in accordance with the Administrative Procedures Act.

13.4.e. For unregistered products, the ability to obtain a product permit shall be suspended for one year. Those facing such suspension as to seeking a permit due to unregistered product shall have the right to request a hearing, and such hearing shall be held in accordance with the Administrative Procedures Act.

13.4.f. Embargoes and offenses shall be specific to the individual product and not the entire manufacturer's line of products.

13.4.g. Any person in violation of this section shall be guilty of a crime and subject to criminal penalties in accordance with West Virginia Code §19-12E-12(m) to (o).

13.4.h. Law enforcement or any agents other than the commissioner shall work in consultation with the Department prior to and post investigations of any retail establishment, distributor, or manufacturer.

13.4.i. The Commissioner, The Alcohol Beverage Control Administration Commissioner, Tax Commissioner, and law enforcement may jointly utilize its enforcement agents or persons to assist in conducting investigations and conducting enforcement activities related to criminal and / or administrative enforcement. Such investigations may be in person or online.

~~§61-30-12~~§61-30-14. Embargos.

~~12.1.14.1.~~ 14.1. Embargo orders.

~~12.1.a.~~14.1.a. When the Commissioner has reasonable cause to believe any lot of hemp or kratom product is being ~~manufactured distributed offered for sale~~ exposed for sale manufactured, distributed, offered for sale, or used in this state in violation of the provisions of this rule a written embargo order may be issued and enforced warning the custodian of the hemp or kratom product not to manufacture, distribute, use, remove, or dispose of such product in any manner until the embargo is released by the Commissioner or by court order.

~~12.1.b.~~14.1.b. When the embargo is issued, the Commissioner shall affix a tag or other marking to the hemp or kratom product, warning that such product is under embargo and shall notify the custodian of the right to request a hearing.

~~12.1.c.~~14.1.c. The Commissioner shall release the hemp or kratom product so embargoed when said product has been brought into compliance with this article and its rules.

~~12.1.d.~~14.1.d. The Commissioner shall have the authority to issue an embargo against a perishable product even if the result is the involuntary disposal of the product.

~~12.1.e.~~14.1.e. The Commissioner may take action to seize and condemn any product if not brought into compliance with this rule within the aforesaid time frame.

~~12.2.14.2.~~ 14.2. Condemnation and Confiscation

~~12.2.a.~~14.2.a. Any hemp or kratom product not in compliance with the provisions of this rule ~~shall~~ may be subject to condemnation, confiscation, and destruction. Condemnation and confiscation on ~~complaint of the Commissioner to the circuit court of the county in which the product in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.~~

14.2.b. The Department has the authority to destroy adulterated products after 60 days holding.

14.2.c. Any aggrieved party subject to the administrative provisions as set forth in this rule shall respond to the Department within 14 calendar days of receipt of notice of a violation. The party shall have the right to request a hearing, and such hearing shall be held in accordance with the Administrative Procedures Act.

~~12.2.b. If the court finds that the hemp product is in violation of the provisions of this rule and should be confiscated, the court shall order the condemnation and confiscation of such product and its disposition~~

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~~in a manner consistent with the quality of such product which is not in violation of any other laws of this state: Provided That the owner thereof must first be given an opportunity to process or relabel such hemp product or dispose of the same in full compliance with the provisions of this rule.~~

### ~~12.3. Injunctions.~~

~~—12.3.a. Upon application by the Commissioner, the circuit court of the county in which the violation is occurring has occurred, or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this rule.~~

~~—12.3.b. An injunction shall be issued without bond.~~