



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Agriculture TITLE-SERIES: 61-30
RULE TYPE: Legislative Amendment to Existing Rule: Yes
RULE NAME: Select Plant-Based Derivatives and Select Plant-Based Derivative Products-Hemp and Kratom

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§19-12E-7, 19-12E-12, 19-12F-5

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

PRIMARY CONTACT:

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West Virginia Department of Agriculture
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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Given the rapidly evolving nature of the hemp and kratom industry, it is strongly recommended that the changes below be adopted as an emergency rule. This action is necessary to ensure the safety, legality, and regulatory clarity of products available West Virginia consumers. This rule would clarify that sampling on only non-intoxicating hemp products at events be permissible to promote informed consumer engagements. Clarification and regulation of 7-OH products currently available in stores. 7-OH refers to 7-hydroxymitragynine, a psychoactive compound found in kratom. This version further distinguishes that only 7-OH must be naturally derived and cannot be sold in concentrations exceeding 2%. These revisions address critical concerns regarding public safety and product transparency while supporting the responsible sale and use of hemp and kratom products.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on general revenues of State Government. The Legislative Rule does detail the application, registration, and penalties set forth by Code which will be collected by the Department of Agriculture as Special Revenue. For estimates of total revenue, please see the Fiscal Note Detail in D.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

It is anticipated that the operation of select plant-based derivative regulation per code and proposed rule will have minimal net economic impact on the Department of Agriculture's Special Revenue Fund. Please see the fiscal note detail in D for estimated costs of revenue related to the proposed rule.

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

The activities proposed the Legislative Rule will allow the Department to ensure products containing select plant-based derivatives sold in the State of WV are properly labeled marketed allowing residents to make informed buying decisions. It will also allow potentially harmful products from being sold if not properly labeled and marketed which could prevent harm and additional costs being incurred by residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2025 Increase/Decrease (use "-")	2026 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	260,000	628,500	464,500
Personal Services	222,000	277,500	388,500
Current Expenses	38,000	51,000	76,000
Repairs and Alterations		51,000	
Assets			
Other			
2. Estimated Total Revenues	690,000	1,122,500	1,122,500

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

Personnel are needed for registration, sampling, outreach, laboratory testing, and administrative activities. Fiscal year 2026 Personal Services is estimated at 4.0 FTE for salary and benefits (Estimated at \$55,500 per FTE) for staff dedicated to this activity. Current expenses include mileage for inspections, embargoes, and general travel for the program (approximately \$18,000 for FY 2026 and \$26,000 for FY2027 and \$50,000 upon full implementation. Actual revenue will vary depending on the number of locations and products registered. Any revenue from assessed penalties cannot be reasonably estimated at this time.

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

Yes

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

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 30
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. -- May 23, 2025~~

~~1.4. Effective Date. -- May 23, 2025~~

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.

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

2.7. “Crop” means hemp or *Mitragyna speciosa* (hereafter “kratom”) grown under a single registration.

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

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 select plant-based derivative product or products.

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~~2.10. “Distributor 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.~~

2.140. “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).

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

~~2.123.~~ “Grower” means any person, joint venture, cooperative, or entity that grows hemp or kratom.

2.134. “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.

~~2.145.~~ “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.

2.156. “Hemp” means all parts and varieties of the plant *Cannabis sativa L.*, and including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total 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.~~

2.167. “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:

2.17.6.a. Hemp seed derivatives;

2.17.6.b. Hemp concentrates or extracts;

2.17.6.c. Hemp edibles and drinks;

2.17.6.d. Hemp tincture;

2.17.6.e. Hemp topicals and lotions;

2.17.6.f. Hemp transdermal patches;

2.17.6.g. Hemp fiber/fiber products;

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

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

2.17.6.j. Hemp aerosols;

2.17.6.k. Hemp vaping products;

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

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

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

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

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

2.17.6.n.3. Agricultural hemp seed.

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

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

2.2019. “Kratom” means any portion of the specified strain of botanical Mitragyna speciosa.

2.240. “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. The legal limit of 7-hydroxymitragynine (7-OH) must be no greater than 2.0 percent and naturally derived.

2.221. “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.

2.232. “Manufacturer” or “processor” means a person who or entity which compounds, converts, or processes raw hemp or kratom into any commodity or product.

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

2.24. “Non-intoxicating cannabinoids” means substances extracted from certified hemp plants that do not produce intoxicating effects when consumed. Cannabinoids that do not cause impairment, such as CBD, are considered non-intoxicating.

2.25. “Permittee” 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.

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

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

2.30. “Products covered under West Virginia Code §19-12E-12 and 19-12F-5” means products which are naturally occurring, non-synthetic substances that are derived from hemp (Cannabis sativa L) or kratom (Mitragyna speciosa) plants.

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

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

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

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

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

~~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 registration 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 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.

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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 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.

4.2. Applications for permittees seeking to register hemp and kratom product(s) 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 different from the registrant's;

4.2.c. The name of the product;

4.2.d. The origin of the raw hemp or kratom 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. The application for registration shall be due by January 1 of each calendar year.

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

4.5.a. 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 or kratom product shall be paid to the Department with the submission of the application, if the hemp and kratom material(s) 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 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 for each hemp and kratom product 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. 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. For hemp and kratom product registrations, the annual fee shall be capped at \$2,000 per registrant when such product: are white labeled by a West Virginia vendor, are for sale in West Virginia, and contain West Virginia-grown hemp or kratom.

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 with the same chemical composition and concentration but 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.

§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.

5.2.f. List of all distributors that retailers receive product(s).

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 which exclusively sell self-manufactured products (products made "in-house" by the same retail establishment) are exempt from the requirement to pay a distribution fee, but annual registration is still required.

5.6.a. Retail establishments which exclusively sell products as defined in subsection ~~2.13~~⁴ of this rule are exempt from registration requirements.

5.6.b. Hemp retail registrations 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 products. Restaurants selling take-home products are not exempt from registering as hemp 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 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 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. 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.

6.2.f. List of all distributors that retailers receive product(s).

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~~ products 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."

7.4.1. Non-intoxicating products are allowed to be offered reasonably for sampling at events by vendors, with prior approval from the Department. The vendor is responsible for checking the ID of all individuals and for the security, restriction of the samples, and not being accessible to children. The event venue has the right to deny sampling.

§61-30-8. Labeling.

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.

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.

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

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

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.*

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.*

8.7. Product labels must be clear and legible.

8.8. Labels must be printed in English.

8.9. The following labeling is forbidden:

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.

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

8.9.b.1. The use of cartoons;

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

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

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.

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.

8.10. Hemp product labels will be considered misbranded when, upon analysis, a the Department finds that the claim is either above or below 15% of the 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 15% of the alkaloid amount declared on the label.

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

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

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.

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

8.12.a. Manufacturer’s name and contact information;

8.12.b. Batch or lot number;

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

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

8.12.e. Allergens if applicable;

8.12.f. Artificial food coloring, if applicable;

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

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

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

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

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

8.13. The cannabinoid content, of hemp derived cannabinoid products, in milligrams, and for kratom products, the mitragyna and 7-hydroxymitragynine content in percentage form may be posted on either the primary or informational panel, and must include:

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

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

8.14. Any product containing hemp-derived cannabinoids or kratom derivatives must declare on the label, “NOT INTENDED FOR SALE TO PERSONS UNDER THE AGE OF 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.”

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.

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

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 8.13 and 8.14 and subdivision 8.12.i of this rule.

§61-30-9. Handling and transport.

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.

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.

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.

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.~~

~~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.~~

§61-30-10. Inspection and testing.

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

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.

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.

10.4. Samples taken by the Department shall be the official samples.

10.5. ~~Any~~ Unofficial samples submitted by law enforcement, any agents other than the commissioner, or by consumers, must be submitted to the Departments laboratory, but are subject to associated fees as set by the commissioner. Unofficial samples must also be accompanied by a chain of custody. ~~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.~~

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

10.6.a. ~~Pesticide Limits, Residual Solvent and Processing Chemical Limits, Toxic Metal Limits, Microbiological Limits for ingestible and inhalable products, Mycotoxin Limits, Water Activity, and Foreign Materials and may be found at <https://agriculture.wv.gov>. The following~~ list of contaminants does not constitute authorization to use or apply any of the following during hemp or kratom cultivation or processing ~~<https://agriculture.wv.gov>~~.

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

10.6.a.1. The limit for ethanol does not apply to products that are intended to be orally consumed products containing alcohol.

10.6.a.2. The limit for ethanol or isopropyl alcohol does not apply to products that are intended to be topical products.

~~10.6.c. Toxic Metals Limits~~

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

~~10.6.d.1. Shiga toxin producing *Escherichia coli* (STEC *E. coli*) and other pathogenic *E. coli*, none present.~~

~~10.6.d.2. *Listeria monocytogenes*, none present.~~

~~10.6.d.3. *Salmonella* and *Shigella*, none present.~~

~~10.6.d.4. *Clostridium botulinum* and related neurotoxins, none present.~~

~~10.6.d.5. *Staphylococcus aureus* and related toxins, none present.~~

~~10.6.e. Mycotoxin Limits.~~

~~10.6.e.1. Total Aflatoxin (B1, B2, G1, G2) 20 µg/kg~~

~~10.6.e.2. Ochratoxin 20 µg/kg~~

~~10.6.f. Water Activity Limits~~

~~10.6.f.1. Dried flower products—The water activity shall not exceed 0.65 Aw.~~

~~10.6.f.2. Edible products—The water activity shall not exceed 0.85 Aw.~~

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

10.6.hb. The Department shall have the ability to set acceptable maximum limits for products derived from 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 are flagrant violations and can include, but are not limited to, the following:

11.2.a.1. Hemp or kratom 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, 7-hydroxymitragynine products over 2 percent and non-naturally occurring/synthetic products.

11.2.a.3. Third offense registration violations as defined in subsection 1344.4 of this 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 are violations which the person acted in a faulty or careless manner and 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 are negligent violations and 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 (Negligent) Violations .

11.3.a. Upon the initial Class III violation being committed by ~~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 \$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 within a one-year period, the Commissioner shall send a written “Second Notice” to the registrant. The manufacturer must develop a written plan to remedy the violation and implement such written plan within 10 business days after the Second Notice has been sent. An additional \$500.00 penalty will be assessed for ~~the second and~~ any further subsequent Class III violation(s) in regards to a product.

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

11.3.c.1. The ~~“Suspension of Permit Order”~~ Summary Suspension Order (~~“Suspension Order”~~) will state clearly the reason for the order, the effective date of the Summary Suspension Order, as well as the length of time for which the Summary 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 subsequent to the notification of the suspension.

11.4. Class II (Faulty or Careless) 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.

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11.4.a.2. The manufacturer shall be assessed a \$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 with 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 correct the violation and implement such written plan within 10 business days after the Second Notice has been sent. An additional \$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"~~ "Summary Suspension Order" (~~"Suspension Order"~~) will state clearly the reason for the order, the effective date of the Summary Suspension Order, as well as the length of time for which the Summary 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 (Flagrant) 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 embargoed, 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 §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 \$1,000.00.

11.5.b. Any person knowingly processing, manufacturing, distributing, or selling hemp-derived or kratom products that is contaminated with a toxic or illegal substance is guilty of a felony and shall be fined or imprisoned, as defined in West Virginia Code §19-, Articles 12E and 12F, as determined by the commissioner.

11.5.~~b~~c. 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 conduct investigations and enforcement related to underage sales of products. Such investigations shall be made aware to the Department before, during, and after enforcement actions occur. ~~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. Enforcement actions on unregistered sellers, distributors, and product manufacturers on products covered under West Virginia Code §19-12E-7

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.

12.2 Upon the first offense:

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

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

12.2.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~~ 14 of this rule.

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

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

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;

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

12.3.d. If the seller, distributor, or product manufacturer does not register with the Department in the allotted time, the hemp products shall be embargoed and removed from the shelves in accordance with section ~~12~~ 14 of this rule.

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

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

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12.4.b. The product shall be embargoed and removed from shelves in accordance with section ~~12~~14 of this rule;

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

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 and kratom products shall be embargoed and removed from the shelves in accordance with section ~~12~~14 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~~14 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, within 14 days 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, within 14 days 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.~~

§61-30-14. Embargos.

14.1. Embargo orders.

14.1.a. When the Commissioner has reasonable cause to believe any lot of hemp or kratom product is being 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.

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.

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.

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.

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.

14.2. Condemnation and Confiscation

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14.2.a. Any hemp or kratom product not in compliance with the provisions of this rule may be subject to condemnation, confiscation, and destruction.

14.2.b. The Department has the authority to destroy ~~adulterated~~ products after 60 days holding ~~provided that the prosecuting attorney has not taken possession of said products.~~

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.