



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

January 28, 2020

To whom it may concern:

RE: PROPOSED AMENDMENTS TO TITLE SERIES 61-29 AND 61-30

Please see the following proposed amendments to the above referenced legislative rule amendments.

TITLE SERIES 61-29

1. **§61-29-2.6** - We oppose this section as it relates to “handling” hemp. W. Va. Code §19-12E prohibits the department from requiring a license to possess, handle, transport, or sell hemp.

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

2. **§61-29-3.2.d** - We oppose the requirement require landowners to submit to background checks and recommend this section be removed in its entirety.
3. **§61-29-3.4.b** - This section is overly broad. There are provisions in the code that permit the WVDA to inspect crops at any time, as well as inspect processing facilities. We recommend removing this section in its entirety.
4. **§61-29-3.4.c** - This rule is overly broad. We recommend that the language be restricted only to testing required within 61-29.

The applicant agrees to pay for any sampling and analysis costs the Department considers necessary required by this rule; and

5. **§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to the licensees continuing duty to update any changes to their application. The rules require that a licensee to report any subsequent changes to

their application in Section 4.3, which would include the background check. We recommend removing this section in its entirety.

6. **§61-29-4.1** - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently available on the Department's website for the county Sheriffs and State Police to access. We recommend removing this section in its entirety.
7. **§61-29-5** - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

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

For intact-plant samples:

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

For ground plant or ground floral material samples:

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

8. **§61-29-5.4 (b)** - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

“The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a second laboratory authorized to conduct hemp testing. Sampled material will only be sent to a second laboratory at the request and expense of the Licensee. Results from the second sample will be averaged with the sample conducted by the Department. The averaged results will be considered the final result.”

9. **§61-29-5.5** - We recommend adding a time requirement that creates accountability for the Department to provide test results within 30 days of sampling.

10. §61-29-5.5 - We propose an amendment to include a corrective action plan in the event of an adverse THC test result resulting in THC levels that do not exceed 1.0%. The WVDA should do everything possible to avoid a complete economic loss by the farmer.

§61-29-5.5 In the event of an adverse THC test result resulting in THC levels that do not exceed 1.0% Corrective action plans include:

- a. Post-harvest homogenization of the entire crop and re-testing to bring the crop into compliance with the acceptable hemp THC level.
- b. Processing the crop for other commercial uses that do not include human consumption (i.e. compost, biological feedstocks, fuel, etc.).

Rationale: The main market for harvested hemp materials is processing for the production of CBD oil. Processors and manufacturers of CBD oil will routinely process the resulting oil and either 1) remove THC entirely to create a “T Free” product or 2) dilute the resulting oil to conform with the requirement that products do not exceed the limit of 0.3% THC. To preclude the farmer from entering any available market based on a slightly high THC test is to preclude the farmers from any economic return from their investment. The industry has already suffered substantial crop loss based on THC tests that were still under the 1.0% range. Providing a “**corrective action plan**” will conform with the USDA interim rules as well as provide a second opportunity to farmers to salvage their crops and process any elevated levels of THC to ensure compliance with state and federal law.

11. §61-29-6.4b - This section is overly broad. There are provisions in the code that permit the WVDA to inspect crops at any time, as well as inspect processing facilities. We recommend removing this section in its entirety.
12. §61-29-6.4c - This rule is overly broad. We recommend that the language be restricted only to testing required within 61-29.
13. §61-29-6.11b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to the licensee's continuing duty to update any changes to their application. The rules require that a licensee report any subsequent changes to their application in Section 4.3, which would include the background check. We recommend removing this section in its entirety.
14. §61-29-8.2c - We oppose this requirement because the Department does not consider any test results not conducted by the Department's lab to be valid. We recommend removing this section in its entirety. We also recommend the addition of a “safe harbor” section that permits processors to handle materials that may contain elevated levels of THC during processing so long as the license properly safeguards the materials and does not release any such materials for public use or consumption.

TITLE SERIES 61-30

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

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

Rationale: The Department’s proposed rule is creating a “*de facto license*” for hemp retailers to sell products, which is contrary to statute. If this, however, where an “option” for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace. The Department should also provide a range of product testing including full cannabinoid profile, terpenes, pesticides, heavy metals, and mycotoxins.

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

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

”Licensee” means an individual or business entity possessing a license issued by the Department to grow, ~~handle~~, cultivate, or process hemp.

3. **§61-30-2.25** - We recommend removing this section in its entirety. The definition of hemp is contained within the statute. The Department is exceeding the scope of their regulatory authority by assigning a new definition for hemp. This power is reserved for the Legislature.
4. **§61-30-3.1** - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. §61-30-4.2.f. - We oppose this requirement because the Department does not consider any test results not conducted by the Department's lab to be valid. We recommend removing this section in its entirety. Third party certificates of analysis should not be used for regulatory purposes.
6. §61-30-4.4 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

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

7. §61-30-4.6.d. - We recommend that updates in registered products be excluded from an additional product registration fee.

§61-30-4.6.d. - A new registration fee will not be required for updating an existing registered product.

8. §61-30-5 - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.
9. §61-30-6 - We recommend removing this section in its entirety. The Department considered their lab the only legitimate lab in the state. If they want this information from processors or manufacturers, they should conduct the tests themselves.
10. §61-30-7 - We recommend the removal of this section in its entirety. The FDA already has rules for product labeling. We do support section 7.6 remaining to require a seedsman licensee to sell certified seed.
11. §61-30-9 - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department. There should also be a right of appeal for all samples taken by the Department.
12. §61-30-12.1.a - We request that the Department define "reasonable cause to believe" standard articulated in this section.

13. **§61-30-12.1.b** - We recommend the addition of a 7 day hearing requirement to force the Department to be timely in honoring the licensee's right to a hearing.

14. **§61-30-12.1.b** - We recommend the removal of this section in its entirety. The Department already has broad powers to embargo crops and products to ensure compliance, which provides protocols for bringing the crops into compliance with the code.

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

Very truly yours,



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