

WSR 21-24-071

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed November 30, 2021, 10:52 a.m., effective November 30, 2021, 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To create a temporary hemp extract certification process, which will enable Washington state hemp processors to comply with other states' and countries' regulatory requirements that hemp extracts intended for use in consumable products must be sourced from a state that inspects or regulates hemp under a food safety program, until a permanent rule can be adopted.

The rule-making order creates chapter 16-171 WAC, Hemp extract certification.

Citation of Rules Affected by this Order: New WAC 16-171-100, 16-171-110, 16-171-120, 16-171-130, 16-171-140, 16-171-150, and 16-171-160.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In 2021, the legislature passed SB [ESB] 5372 (chapter 104, Laws of 2021) authorizing the department to conduct rule making to establish the voluntary hemp extract certification process to allow for hemp extract products to be used as a food ingredient in another state that allows its use. This voluntary certification will allow a manufacturer to apply for a hemp extract certification, which will evaluate a hemp manufacturer's compliance with Washington state's inspection and good manufacturing practices requirements. Other states are also making changes to their hemp programs and establishing new markets for hemp products at an unprecedented pace. Many of these new opportunities require that hemp extracts intended for use in consumable products be sourced from a state that regulates hemp extracts under a food safety program.

One crucial example of this is the recent passage of California's Assembly Bill 45 (AB 45), which will allow for the inclusion of hemp extract in consumable products within the state. California will require out-of-state hemp extracts to be inspected under a food safety program. This opening of the California market presents a substantial opportunity and it is expected that many major national consumer product companies will rapidly introduce a number of food, beverage, and other branded products in the state. Supply lines and relationships for hemp ingredients to be included in these products will form rapidly. The California bill went into effect immediately upon signature by the governor.

The passage of AB 45 and the opening of the California market will undoubtedly draw hemp processors from around the country who are seeking to export their hemp products to California. Those processors who are able to promptly establish supply relationships to provide hemp products early on will have the opportunity to secure a market position that could last for many years to come. This presents a very significant opportunity for Washington's hemp processors, but the timeline necessary to establish permanent rules regarding hemp extract certification will put hemp extract processors in this state at a se-

vere disadvantage to processors in those states that already have similar regulations in place.

California has the largest market in the country and the economic consequences of failing to have Washington's hemp extract certification process in place at the time of California's regulations are implemented would be expansive. Not only are Washington's hemp processors currently prevented from exporting their products into numerous existing markets until the permanent rules are in place, but if the processors miss out on the opportunity to establish key supply relationships at the onset of the California market, it will set Washington hemp industry back significantly and will exacerbate the existing competitive differences between the states. This setback will have a long lasting effect that will likely take many years to remedy, if in fact it can be remedied at all.

The department has determine[d] that establishing a temporary hemp certification process until the permanent rule can be adopted is necessary to protect the general welfare of Washington's hemp industry.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 7, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.

Date Adopted: November 30, 2021.

Derek I. Sandison  
Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-01](#) issue of the Register.