

WSR 21-22-098

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 2, 2021, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-073.

Title of Rule and Other Identifying Information: Chapter 16-306 WAC, Hemp program. As a result of the recently passed legislation (ESB 5372, chapter 104, Laws of 2021) the department is proposing amendments to this rule, which will create a process and fee for hemp processors to register their businesses/facilities with the Washington state department of agriculture (WSDA).

Hearing Location(s): On December 7, 2021, at 10:00 a.m., Microsoft Teams conference line. Join by link Click to Join Meeting [contact agency for link], join by phone +1 564-999-2000, Phone Conference ID 840 681 613#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: December 14, 2021.

Submit Written Comments to: Gloriann Robinson, agency rules coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by December 7, 2021.

Assistance for Persons with Disabilities: Contact Reanna McNamara, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email rmcnamara@agr.wa.gov, by November 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-306 WAC to include a new section, WAC 16-306-055, which outlines the process for hemp processors to voluntarily register with the department, including specifying the information required on the registration application as well as the registration fee.

ESB 5372 requires the department to establish a voluntary hemp processor registration which will allow persons or companies to ship transitional or final hemp products to states and countries that require a hemp processor license or registration. The bill requires the registration application to include:

(1) The physical address of all locations where hemp is processed or stored;

(2) A registration fee as set in rule; and

(3) Any other information required by the department by rule.

The bill also requires hemp processors choosing to register with the department to be a registered business entity in Washington state or a foreign entity compliant with state laws. Hemp processor is defined as a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

RCW 15.140.060 requires the department to establish fees in an amount that will fund the implementation of this chapter and sustain the hemp program. It was determined that the appropriate fee for registration with the department be set at \$1,200 for a three-year registration (\$400 per year).

Additionally, the department added clarifying language to distinguish between hemp processors and hemp producers and removed obsolete language regarding hemp producer licensing fees.

Reasons Supporting Proposal: Registration with the department provides hemp processors with the documentation necessary to reduce barriers to ship transitional and final hemp products to other states

or countries that require a hemp processor license or registration as well as for law enforcement, banking needs, insurance companies, and any other entities requesting validation of their status. Without a clear registration process, hemp producers are left with very few buyer options for their crops. The registration process will create more opportunities for processors and manufacturers to jump into the industry. It will also streamline interstate commerce, rendering Washington state hemp products legitimate in the eyes of buyers of other states. Washington state is in a prime position to carry the banner for the national hemp economy and this step is an integral piece to our state's march forward as an industry leader.

Statutory Authority for Adoption: RCW 15.140.030, 15.140.060; and chapter 104, Laws of 2021 (ESB 5372).

Statute Being Implemented: Chapter 15.140 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Trecia Ehrlich, 1111 Washington Street S.E., Olympia, WA 98504, 360-584-3711.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 34.05.310 (4)(d).

Explanation of exemptions: The department added clarifying language to distinguish between hemp processors and hemp producers and removed obsolete language regarding hemp producer licensing fees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department does not currently register hemp processors and hemp processors are not required to become registered with the department, therefore there is no requirement to be compliant with this rule. Hemp processors may voluntarily choose to become registered in order to reduce barriers to shipping their products to other states and countries, and by doing so choose to incur the \$1,200 fee for registration. There is no North American Industry Classification System (NAICS) code assigned specifically to hemp processing. Industries identified by the department as being those most likely to be affected by this rule include codes commonly utilized by marijuana processors and hemp producers.

NAICS Code	Industry Description	Minor Cost Threshold
111419	Other Food Crops Grown Under Cover	\$2,349.42
111998	All Other Misc. Crop Farming	\$9,125.33
325411	Medicinal and Botanical Manufacturing	\$10,275.35

NAICS Code	Industry Description	Minor Cost Threshold
339999	All Other Misc. Manufacturing	\$10,446.42
424590	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79

The proposed cost of \$1,200/3 yr. registration (\$400 per year) does not exceed the minor cost threshold for any of these industries and therefore a formal SBEIS is not required.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

November 2, 2021
Jessica Allenton
Assistant Director

OTS-3441.2

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-010 Purpose of chapter. Under the authority of chapter 15.140 RCW, the department adopts rules to establish a hemp program in accordance with the Agricultural Improvement Act of 2018. These rules include licensing requirements. Licensing is required for persons to produce hemp as provided under this chapter and chapter 15.140 RCW. Registration is voluntary for hemp processors that process hemp for commercial use or sale.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-010, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-030 Definitions. "Acceptable hemp THC level" means the application of the measurement of uncertainty to the reported THC concentration level on a dry weight basis producing a distribution or range that includes 0.3 percent or less.

"Agricultural Improvement Act of 2018" means sections 7605, 10113, 10114, and 12619 of the Agricultural Improvement Act of 2018, P.L. 115-334.

"Applicant" means a person who submits an application for a hemp producer license to participate in the hemp program as required under this chapter.

"Contiguous land area" means a specific field with designated boundaries that is planted with hemp. Separate parcels connected only by thin or narrow plantings of hemp or separated by physical barriers

such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means the hemp producer licensee renews their license annually prior to expiration, such that the licensee is continuously operating under a valid license.

"Corrective action plan" means a plan by the department for a licensed hemp producer to correct a negligent violation of, or noncompliance with, a hemp production plan, its terms, or any other regulation set forth under this chapter.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or rendered nonretrievable in another manner approved by the department.

"Disposal" means the material is collected for destruction by a person authorized to handle marijuana such as a Drug Enforcement Agency (DEA)-registered reverse distributor, or in another manner approved by the department.

"Hemp" means the plant *Cannabis sativa L.* and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

"Key participant" means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field, or shift managers.

"Legal description" means a method of locating or describing land in relation to the public land survey system such as section, township, and range.

"Licensee" means any person who holds a license from the department to grow or produce hemp in Washington state.

"Lot" refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this chapter, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety.

"Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. The measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/- with a number, (e.g., +/- 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range.

"Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

"Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp, including hemp seed.

"Registered land area" means a contiguous land area, including greenhouses and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, or storage area so long as those fields, greenhouses, or storage areas are at the same physical address.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store hemp.

"THC concentration" means the percent of total delta-9 tetrahydrocannabinol, which is the conversion of delta-9 tetrahydrocannabinolic acid into THC.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-030, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-040 Hemp producer license application. (1) An applicant for a hemp producer license must:

(a) Provide the information required for a hemp producer license on a form provided by the department that at a minimum includes the following:

(i) The name and business address of the applicant;

(ii) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(iii) The legal description (section, township, and range) in which any proposed registered land area is located; and

(iv) Geospatial location coordinates of any proposed field, greenhouse, or other site where hemp is produced.

(b) Apply to the department for participation in the program between January 1st and March 31st. Applications may be received after March 31st but are subject to a late license fee;

(c) Pay fees as required under this chapter;

(d) Consent to entrance of their property by the department to inspect their registered land area with or without prior notice; and

(e) Report hemp crop acreage to USDA Farm Service Agency (FSA). A link to FSA information on how to report hemp crop acreage to FSA is available on the United States Department of Agriculture (USDA) hemp production program website.

(2) Licenses will expire on the last day of April following the year the license is issued.

(3) All applications must be accompanied by a criminal history report completed within (~~sixty~~) 60 days of the application date. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

(a) The criminal history report must indicate the applicant has not been convicted of a state or federal felony related to a controlled substance for the (~~ten~~) 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(b) A person with a prior felony related to controlled substances within (~~ten~~) 10 years of applying for a producer license is not eligible for the license. Key participants of associations, corporations, and other business entities with a prior felony related to a controlled substance within (~~ten~~) 10 years of applying for a producer license are not eligible for the license under this felony drug conviction limitation. Business entities may still be eligible if the key participant with a prior felony is discharged.

(4) Any person who materially falsifies information in the application shall be ineligible to participate in the program.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-040, filed 1/22/20, effective 2/22/20.]

NEW SECTION

WAC 16-306-055 Voluntary hemp processor registration. A hemp processor that processes hemp for commercial use or sale may register with the department if they are a registered business entity in Washington state or a foreign entity compliant with state laws.

(1) An applicant for hemp processor registration must provide the information required for a hemp processor registration on a form provided by the department that at a minimum includes the following:

(a) The name and business address of the registrant;

(b) For corporate registrants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(c) The physical address and the legal description (section, township, and range) of the locations where the hemp is processed or stored; and

(d) If applicable, the Washington state liquor and cannabis board I-502 license number.

(2) The fee for a processor registration is \$1,200.

(3) Processor registrations are valid for three years from date of issuance.

(4) Processors will be provided with a certificate of registration, that includes the business name, registered address, and expiration date.

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AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-070 Hemp seed and propagules. (1) A hemp producer licensee must notify the department of the source of the hemp seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones being used or having been used for hemp production in this state.

(2) The department is not responsible for obtaining seeds on behalf of the licensee.

(3) The department is not liable for and does not warrant that the seed is fit for any purpose.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-070, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All hemp producer licensees are subject to inspection by the department. The department shall inspect registered land areas under a producer license at least once during each license period. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type hemp plants;
- (d) Audits of existing business data and reports related to hemp;
- (e) Identifying compliance with required signage as specified in WAC 16-306-050; and
- (f) Assessing compliance with other applicable licensing terms and conditions.

(2) The department shall take hemp samples from registered land areas licensed under a producer license within (~~fifteen~~) 15 days prior to the anticipated harvest of cannabis plants to test for THC concentration.

(3) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.

(4) Registered land areas may be inspected by the department for a period of (~~three hundred sixty five~~) 365 days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-080, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-130 Transporting hemp. (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the hemp producer license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in his or her possession either:

- (a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or
- (b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp producer license.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-130, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-140 Hemp producer license fees. (1) ((Effective January 1, 2020, license fees are as follows:

Annual License Fee	License Modification Fee
\$750	\$200/1

(2) ~~Effective June 1, 2020,~~) Hemp producer license fees are as follows:

Annual License Fee	License Modification Fee	Late License Fee (After March 31)
((1200)) \$1,200	((200/1)) \$200	((200/2)) \$200

~~((1 See WAC 16-306-050(8).
/2 In addition to license fee.))~~

(2) The license modification fee is required when a licensee submits changes to the registered land area(s) as specified in WAC 16-306-050(8).

(3) The late license fee is added to any application submitted after March 31st and is in addition to the annual license fee.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-140, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-150 Hemp inspection fees. (1) Fees for hemp inspections are paid by the hemp producer licensee.

(2) No renewal licenses will be issued until all fees due to the department are paid in full.

(3) Hemp inspection fees are:

(a) \$200.00 per inspection; plus

(b) Time and mileage per inspection. All time will be charged at a rate of ~~((forty dollars))~~ \$40 per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-150, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-170 Hemp noncompliance for THC concentration. (1) (a) If a hemp producer licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to suspension or revocation of their license. The lot must be destroyed or disposed of in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant hemp.

(b) Producers must document the destruction or disposal of all noncompliant hemp. This documentation must be submitted to the department following the completion of the destruction or disposal process.

(2) If a licensee's hemp tests higher than 0.3 percent but less than 0.5 percent THC concentration, the licensee may either request a THC retest within (~~thirty~~) 30 days or resampling of the same lot, at their own expense.

(3) If at any time a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to revocation or suspension of their license.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-170, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-180 License denial, suspension or revocation, and right to adjudicative proceeding. Upon notice of intent by the department to an applicant to deny a hemp producer license, notice of intent to a licensee to suspend or revoke a license, or notice of intent for destruction of a hemp material or crop, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-180, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-190 Suspension of hemp license for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a hemp producer licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's hemp license(s) until the department of social and health

services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate, or otherwise extend the licensee's hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-190, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-200 Corrective action plan. (1) A hemp producer licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including, but not limited to:

(a) Failing to provide a legal description of land on which the producer produces hemp;

(b) Failing to obtain a license or other required authorization from the department; or

(c) Producing *Cannabis sativa* L. with delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(2) A hemp producer licensee shall comply with a corrective action plan established by the department to correct the negligent violation, including:

(a) A reasonable date by which the hemp producer shall correct the negligent violation;

(b) A requirement that the hemp producer shall periodically report to the department, as applicable, on the compliance of the hemp producer with the regulations under this chapter for a period of at least two calendar years.

(3) Licensees may be subject to license suspension or revocation for violations of chapter 15.140 RCW or this chapter for failing to comply with a corrective action plan.

(4) A hemp producer licensee that negligently fails to comply with the regulations under this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) The department will not consider hemp producers as committing a negligent violation by producing plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. For sampling and testing violations, the department will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

(6) Negligent violations are not subject to criminal enforcement. However, the department will report the production of hemp without a

license issued by the department to the United States Department of Agriculture (USDA) and the Attorney General.

(7) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-200, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-210 Culpable violations. If it is determined a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, (~~WSDA~~) the department will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-210, filed 1/22/20, effective 2/22/20.]