

**WSR 22-11-072**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF AGRICULTURE**  
[Filed May 17, 2022, 9:04 a.m.]

Subject of Possible Rule Making: Chapter 16-306 WAC, Hemp program. In response to changes in federal law that occurred when the United States Department of Agriculture (USDA) published its final rule for the domestic production of hemp (final rule) in January of 2021, the department is considering the following amendments:

- Updating various sections of this chapter to align with the USDA's final rule;
- Updating multiple sections throughout the chapter in order to add clarity and transparency to the existing language; and
- Revising current fees listed in rule.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.140.030 and 15.140.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Subsequent to the passage of the 2018 Farm Bill, USDA provided the interim final rule (IFR) on the establishment of a domestic hemp production program (84 F.R. 58522), on October 31, 2019. The Washington state department of agriculture (WSDA) hemp program created a plan in alignment with the IFR, and submitted that plan to USDA, while finalizing state rules for the hemp program. As the legalization of hemp is a recent development, the federal government provided a comment period on the IFR so that states and those subject to the regulatory requirements of the IFR during the 2020 production cycle could provide feedback about how the IFR was being operationalized in their jurisdictions.

The IFR presented several challenges to the department and its stakeholders, as the 15-day window for inspection and sampling prior to harvest made it challenging for the hemp program to schedule inspections throughout the state. A lack of options for remediation meant that farmers with noncompliant hemp plants had to destroy their crops, despite processes available to reduce the THC concentration of their plant materials. Finally, the IFR did not provide options or opportunities for farmers producing nonflowering hemp plants, including microgreens, seedlings, and clones to receive certification within the program. USDA addressed these challenges by incorporating less restrictive components in the final rule, which was published on January 19, 2021, and effective on March 22, 2021.

Since September 21, 2021, the hemp producers have been able to comply with these federal standards under WSDA's Policy Statement CI-21-0002 (WSR 21-20-061). These amendments will incorporate those changes into the hemp program rule in chapter 16-306 WAC. Additionally, updating other sections throughout the chapter will provide clarity and transparency to hemp licensees in regard to testing, the appeals process, and enforcement.

The department must establish license fees in an amount that will fund the implementation of chapter 15.140 RCW and sustain the hemp program. The level of fees currently exceeds the needs of the program, and may be decreased. Revising some of the current fees listed in rule will reduce overall costs to hemp producers, and therefore make it easier for hemp producers to conduct business with the program.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: USDA, Washing-

ton state liquor and cannabis board, and the Washington state department of health. The department will provide notice to these agencies of our rule-making process via email.

Process for Developing New Rule: The department will discuss any proposed amendments with affected stakeholders and individual businesses that may be affected. Affected stakeholders will also have an opportunity to submit written comments on the proposed rule during the public comment period, and will be able to present oral testimony at the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Trecia Ehrlich, Hemp Program Manager, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, phone 360-584-3711, fax 360-902-2085, TTY 800-833-6388, email [tehrlich@agr.wa.gov](mailto:tehrlich@agr.wa.gov), website [www.agr.wa.gov](http://www.agr.wa.gov).

May 10, 2022  
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