



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

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DATE: 03/22/2023

TO: Office of the Code Reviser

FROM:


Derek I. Sandison, Director

SUBJECT: Policy Statement CI-23-0001 – Delay in Requirement for DEA Laboratory
Registration for Conducting Testing of Hemp

On March 20, 2023, the Washington State Department of Agriculture (WSDA) signed a policy statement delaying the requirement that laboratories conducting testing of hemp obtain U.S. Drug Enforcement Administration (DEA) registration. There is currently insufficient capacity for testing of hemp in the United States. To allow the federal government sufficient time to work with industry to address this issue, the U.S. Department of Agriculture (USDA), and, therefore, WSDA will continue to delay enforcement until December 31, 2023.

A copy of the policy statement may be obtained by accessing our website or by contacting:

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POLICY STATEMENT

Number: CI- 23-0001

Subject: Delay in Requirement for DEA Laboratory Registration for Conducting Testing of Hemp

Supersedes: CI-21-0002

Contact: Jessica Allenton, Assistant Director, Commodity Inspection Division
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Approved By:

Derek I. Sandison, Director

Date Approved: 03/22/2023

To provide clarity regarding the delay of enforcement of the requirement to use laboratories registered with the U.S. Drug Enforcement Administration (DEA) for testing hemp, the Washington State Department of Agriculture (WSDA) issues this policy statement pursuant to RCW 34.05.230.

Description: Section 10113 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) legalized the commercial production of hemp nationwide after several decades of it being controlled under the Controlled Substances Act. The Final Rule on the Establishment of a Domestic Hemp Production Program (86 FR 5596), published by the United States Department of Agriculture (USDA) on March 22, 2022, requires laboratories conducting hemp testing to be registered with the DEA. However, since the passage of the 2018 Farm Bill, the DEA has not agreed to register labs that test high-THC cannabis. As Washington is a state with legal adult use cannabis, there is a conflict, as laboratories with the capacity to test for hemp also test high-THC cannabis and therefore cannot be DEA registered. The USDA acknowledges that this conflict presents a challenge for states with legal cannabis programs and has continuously delayed their DEA laboratory registration requirement in response. To allow the federal government sufficient time to work with industry to address this issue, WSDA is also delaying enforcement of the federal requirement for hemp testing laboratories to obtain DEA registration.

Delay in Requirement for DEA Laboratory Registration: The 2018 Farm Bill allows the production of hemp in the United States and no longer includes hemp as a controlled substance. Hemp with a delta-9 tetrahydrocannabinol (THC) level of 0.3% or less on a dry weight basis is not a controlled substance in Washington State. We also know that weather and other factors may affect the THC level in hemp and that labs may receive material that is over the 0.3% THC level and is, by definition, a controlled substance. USDA's FR requires that laboratory testing of hemp for the purpose of determining compliance under the U.S. Domestic Hemp Product Program be conducted by laboratories appropriately registered with DEA.

Per Washington Administrative Code (WAC) 16-306-090, THC level testing of Washington produced hemp is conducted by laboratories either run, or approved, by WSDA. In light of the USDA guidance, DEA registration is not currently a requirement for WSDA approval of a hemp testing laboratory.

USDA is permitting WSDA to delay enforcement of the requirement to use laboratories registered with the DEA for testing (7 C.F.R §§ 990.3(a)(3)(i) and 990.26(e)). Under this guidance, testing can be conducted by labs that are not yet DEA registered until December 31, 2023. This change will allow additional time to increase DEA registered analytical lab capacity.

All laboratories engaged in the testing of hemp through this interim period will be subject to the compliance requirements of chapter 16-306 WAC. Specifically, labs must adhere to the standards of performance as outlined within chapter 16-306 WAC, including the requirement to test for total THC employing post-decarboxylation or other similarly reliable methods. All labs that wish to continue hemp testing will have to make arrangements to be compliant with DEA registration requirements before this period of delayed enforcement expires.