



STATE OF WASHINGTON  
DEPARTMENT OF AGRICULTURE  
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DATE: September 21, 2021  
TO: Office of the Code Reviser

FROM:   
Derek I. Sandison, Director

SUBJECT: Policy Statement– Incorporating changes from the USDA Final Rule into the WSDA Hemp Program

On September 21, 2021, a policy statement incorporating changes from the United States Dept. of Agriculture (USDA) Final Rule into the Washington State Dept. of Agriculture (WSDA) Hemp Program was signed. In January of 2021, the USDA published the Final Rule for the Domestic Production of Hemp (Final Rule), with an effective date of March 22, 2021. Prior to the publication of the Final Rule, the WSDA had implemented rules in alignment with the USDA's Interim Final Rule. The Final Rule provides a series of leniencies that will be beneficial to hemp producers in Washington State. These include: increasing the period of time for the inspection of hemp plants prior to their harvest; creating options for the remediation of non-compliant hemp plants, and inspection of microgreens, clones, and seedlings; and a delay in the enforcement date for DEA registration of hemp testing laboratories. By issuing a policy statement, hemp producers in Washington State will be able to take advantage of these changes immediately, while we work to incorporate them into rule.

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

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OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
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WSR 21-20-061



STATE OF WASHINGTON

## DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800


### POLICY STATEMENT

Number: CI-21-0002

**Subject:** Incorporating changes from the USDA Final Rule into the WSDA Hemp Program: Increasing the time period for inspection and sampling of hemp plants prior to harvest; providing options for the remediation of non-compliant cannabis, and inspections for microgreens, clones, and seedling; and a delay in the enforcement of DEA registration for testing laboratories.

**Supersedes:** CI-20-0001 Delay in Requirement for DEA Laboratory Registration for Conducting Testing of Hemp

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

**Date Approved:** September 21, 2021

**Purpose:** To provide clarity regarding the incorporation of the United States Department of Agriculture (USDA) Final Rule for the Domestic Production of Hemp (Final Rule), which provides an increased period of time for the inspection of hemp plants prior to their harvest, options for remediation of non-compliant hemp plants, options for the inspection of non-flowering hemp plants and further delay of enforcement of the requirement for DEA laboratory registration for hemp testing laboratories.

The Washington State Department of Agriculture (WSDA) issues this policy statement pursuant to RCW 34.05.230. It is the intention of the Hemp Program to update rules to formally incorporate improvements and updates offered by the USDA Final Rule; however, this policy statement will provide information on current WSDA approaches to hemp regulation enforcement, enabling the program to incorporate leniencies offered by the USDA Final Rule into the harvest season of 2021 and prior to the completion of rule updates.

**Description:** Subsequent to the passage of the 2018 Farm Bill, the USDA provided the Interim Final Rule (IFR) on the Establishment of a Domestic Hemp Production Program (84 FR 58522), on October 31, 2019. The WSDA Hemp Program created a plan in alignment with the IFR, and submitted that plan to the 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. In response to feedback, the USDA published its Final Rule on January 19, 2021, with an effective date of March 22, 2021.

The IFR presented several challenges to the WSDA Hemp Program 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 non-compliant 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 non-flowering hemp plants, including microgreens, seedlings, and clones to receive certification within the program. The USDA addressed these challenges by incorporating less restrictive components in the Final Rule. In order to allow farmers access to the less restrictive components of the Final Rule, WSDA will increase the 15-day harvest inspection window, provide options for remediation, and offer inspection options for producers of microgreens, seedlings, and clones.

**Increase to the 30-day inspection and sampling window:** Currently, per **WAC 16-306-080 (2)** *The department shall take hemp samples from registered land areas licensed under a producer license within fifteen days prior to the anticipated harvest of cannabis plants to test for THC concentration.* Per USDA Final Rule Subpart C 990.26, a producer now has thirty (30) days to harvest their crop after the date of sample collection. WSDA will update WAC 16-306-080 to incorporate this change, but will also immediately exercise its enforcement discretion to allow hemp farmers to harvest within 30 days after their inspection.

**Remediation options for non-compliant plants:** The USDA IFR did not provide options for remediation of non-compliant plants; therefore, WAC 16-306-170 (1)(a) stated *If a 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, and (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.*

Per Subpart C 990.27 of the USDA Final Rule, licensed hemp producers may utilize techniques to transform non-compliant plants into useful and compliant material, by removing and destroying flower material while retaining stalk, stem, leaf material, and seeds, OR by shredding the entire plant into a bio-mass like material. Either option requires that the remediated material is re-sampled and re-tested after remediation. Hemp cannot be transported off of the licensed property until it has received a WSDA THC Certificate. WSDA will update WAC 16-306-170 to incorporate this change, but will also be immediately updating its policies regarding the disposal of non-compliant plants to reflect this guidance.

**Inspection options for microgreens, clones, and seedlings:** The IFR did not provide states authority to test or certify non-flowering hemp plants including microgreens, clones, and seedlings. These types of hemp plants contain negligible amounts of THC by definition; and, due to the small size of the plant, it is extremely challenging to collect a sample large enough for analytical testing.

Final Rule section 990.3(a)(2)(iii) provides states authority to incorporate performance-based sampling methods that identify hemp plant varieties that have consistently demonstrated compliance. Therefore, WSDA will allow producers to obtain a WSDA THC certificate for

microgreens, clones, and seedlings fewer than 12 inches in height, based on a visual inspection. WSDA will not certify the variety, seed, or strain of clones and seedlings based on this inspection, only that the plants have been inspected.

**Delay of Enforcement of DEA Registration Requirement for Testing Laboratories:** The Final Rule requires laboratories conducting hemp testing to be registered by the DEA. Because this legalization is a recent development, there is currently insufficient capacity in the United States for testing of hemp. In Washington State, the DEA had previously excluded laboratories who had tested state legalized cannabis from registering with the DEA; which created a challenge as most hemp testing laboratories also test for cannabis. To allow the federal government sufficient time to work with industry to address this issue, WSDA is delaying enforcement of the federal requirement for hemp testing laboratories to obtain DEA registration until December 31, 2022, in alignment with the deadline provided by the USDA Final Rule. This Policy Statement supersedes policy statement CI-20-0001 *Delay in Requirement for DEA Laboratory Registration for Conducting Testing of Hemp* and provides additional time for laboratories to come into compliance with this requirement.