



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 20, 2019

TIME: 10:06 AM

WSR 19-05-088

Agency: Department of Agriculture

Title of rule and other identifying information: (describe subject) Chapter 16-305 WAC, Industrial Hemp Research Program

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to repeal WAC 16-305-150 to provide an orderly transition to account for changes in federal law. The 2018 Farm Bill, Public Law No. 115-334, took effect December 20, 2018 replacing the 2014 Farm Bill. The 2018 Farm Bill requires the United States Department of Agriculture to assume oversight of hemp production. Previously, oversight was provided by the Federal Drug Enforcement Agency. Additionally, under the 2018 Farm Bill interstate commerce of industrial hemp is no longer prohibited. Repealing WAC 16-305-150 will allow licensees to obtain seed without having to import seed from foreign suppliers. This proposal also repeals WAC 16-305-060(6) to eliminate unnecessarily restrictive setbacks.

Reasons supporting proposal: The 4-mile buffer in WAC 16-305-060(6) did not provide a benefit to either hemp or marijuana crops and it significantly reduced the area available for production. The current rule does not distinguish between indoor growing operations and outdoor growing operations, potential fields for industrial hemp would not qualify if there is an indoor marijuana grower within 4 miles of their field. Repealing the buffer will allow more Washingtonians to participate in the Industrial Hemp Research Pilot Program.

Repealing WAC 16-305-150 will allow licensees to obtain seed for the 2019 growing season. Under current rules, licensees must import certified seed from foreign seed suppliers. This practice is inconsistent with the 2018 Farm Bill which allows interstate commerce of industrial hemp. By repealing this section, Washington state licensees will be able to obtain seed from other sources within the US as well as utilize foreign suppliers should they choose in time for the 2019 growing season.

Statutory authority for adoption: RCW 15.120.030

Statute being implemented: Chapter 15.120 RCW

Is rule necessary because of a:

- | | | |
|-------------------------|---|--|
| Federal Law? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Washington State Department of Agriculture

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Rachel Furth	1111 Washington St SE, Olympia, WA 98504	360-902-1997
Implementation:	Jessica Allenton	1111 Washington St SE, Olympia, WA 98504	360-902-1828
Enforcement:	Jessica Allenton	1111 Washington St SE, Olympia, WA 98504	360-902-1828

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The agency believes the expedited rule-making process is appropriate in order to allow a transition to the 2018 Farm Bill, Public Law No. 115-334, which took effect December 20, 2018.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Gloriann Robinson

Agency: Washington State Department of Agriculture

Address: PO Box 42560, Olympia, WA 98504-2560

Phone: 360-902-1802

Fax: 360-902-2092

Email: wsdarulescomments@agr.wa.gov

Other:

AND RECEIVED BY (date) April 22, 2019

Date: February 20, 2019

Name: Jessica Allenton

Title: Assistant Director

Signature:



WAC 16-305-060 Industrial hemp grower license. (1) A person must obtain an industrial hemp grower license prior to planting or growing any industrial hemp in this state, including growing any industrial hemp seed crop. A licensed grower may sell or exchange industrial hemp produced under the license to any licensed industrial hemp processor or grower. A fit for commerce certificate issued by the department under WAC 16-305-130 must be obtained by a grower prior to transporting any industrial hemp from the grower's registered land area.

(2) Any information obtained by the department regarding a grower's growth of industrial hemp may be provided to law enforcement agencies and fire and rescue agencies by the department without further notice to the licensee.

(3) The department may inspect and sample a grower's licensed operations and must have unrestricted access to all industrial hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by a grower for the growing and storage of industrial hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's industrial hemp business operations.

(4) The licensee must pay all applicable fees adopted under this chapter and under the industrial hemp seed rules for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area or storage area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than three-tenths of one percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of industrial hemp.

~~(6) ((Industrial hemp may not be grown within four miles of any field or facility being used to grow marijuana as licensed under chapter 314-55 WAC. For calculation purposes, for outdoor fields licensed under chapter 314-55 WAC, four miles means from any field border of any registered land area, and for indoor facilities licensed under chapter 314-55 WAC, four miles means from any exterior or interior border wall.~~

~~(7))~~ All licenses are valid for one year from date of issuance, and may be renewed in successive years. Each annual renewal shall require the payment of application renewal fees and license renewal fees.

~~((8))~~ (7) Unless approved by the department for continuous licensing, any plant material that is not harvested during the license period in which it was planted must be destroyed.

~~((9))~~ (8) Any licensee that wishes to change the registered land area(s) after issuance of the license, must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to the registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

~~((10))~~ (9) A copy of each license issued by the department under this section shall be forwarded by the department to the sheriff of each county where the industrial hemp is licensed to be grown.

~~((11))~~ (10) Signs provided by the department must be posted by each grower stating that the grower is a licensed industrial hemp research program participant. The grower must post such signs on at least each side of every field listed on the application, including the principal entry point(s) of each field.

~~((12))~~ (11) Licensees growing industrial hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-305-150 Industrial hemp seed and propagules.