RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: January 22, 2020
TIME: 9:35 PM

WSR 20-03-174

Agency: Dept. of Agriculture

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: This rulemaking order adopts chapter 16-306 WAC, Hemp Program, and repeals chapter 16-305, Industrial Hemp Research Pilot, in accordance with the Agriculture Improvement Act of 2018 and Engrossed Second Substitute Senate Bill 5276 (chapter 158, Laws of 2019)

Citation of rules affected by this order:

New: Chapter 16-306 WAC, Hemp Program
Repealed: Chapter 16-305 WAC, Industrial Hemp Research Program
Amended:
Suspended:

Statutory authority for adoption: RCW 15.140.030

Other authority: Chapter 34.05 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-23-095 on November 20, 2019 (date).

Describe any changes other than editing from proposed to adopted version: There are no additional changes.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	22	Amended	____	Repealed	____
Recently enacted state statutes:	New	22	Amended	____	Repealed	36

The number of sections adopted at the request of a nongovernmental entity:

New	____	Amended	____	Repealed	____

The number of sections adopted on the agency's own initiative:

New	22	Amended	____	Repealed	36

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	22	Amended	____	Repealed	36

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date Adopted: January 22, 2020	**Signature:**
Name: Derek I. Sandison	
Title: Director	

Chapter 16-306 WAC
HEMP PROGRAM

NEW SECTION

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.

NEW SECTION

WAC 16-306-020 Activities outside the scope of the hemp program. The following activities are not subject to regulatory sanctions or penalties under this chapter, except for the limitation of THC content under chapter 15.140 RCW:

(1) Possessing, transporting, marketing or exchanging legally obtained hemp and hemp products;

(2) Growing, producing, possessing, processing, marketing or exchanging marijuana as defined in RCW 69.50.101.

NEW SECTION

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 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 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 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.

"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.

NEW SECTION

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 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 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 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 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 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.

NEW SECTION

WAC 16-306-050 Hemp producer license. (1) A person must obtain a hemp producer license prior to planting or growing hemp in this state, including growing hemp seed crop.

(2) A licensed producer may sell or exchange hemp produced under the license once the department has issued documentation declaring the hemp to meet the THC concentration requirements.

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

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

(5) No registered land 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 0.3 percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of hemp.

(6) Licenses will expire on the last day of April following the year the license is issued. This date is not tied to the harvest and planting season. Rather it is tied to the window for applications (January 1st - March 31st) and the thirty days for the department to make a decision. For example, if a producer applies for a license February 1, 2020, and is granted a license on March 1, 2020, the license would expire April 30, 2021.

(7) Unless the license is renewed, any plant material that is not harvested prior to expiration of the license must be destroyed.

(8) Upon any change to the registered land area(s) after issuance of the license, the licensee must submit to the department for approval an updated legal description, geospatial location, and a description of the changes to the registered land area(s) and required fees.

(9) At a minimum, licensees are required to post a sign on each side of every registered land area listed on the application including the following information:

(a) The department-issued license number;

(b) Crop type; and

(c) The department contact phone number.

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

NEW SECTION

WAC 16-306-060 Records retention. Licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information in the forms the licensee submitted to the department. Licensees must keep records and reports for a minimum of three years from the expiration date of the license that was in effect at the time the records were generated.

NEW SECTION

WAC 16-306-070 Hemp seed and propagules. (1) A 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.

NEW SECTION

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All 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 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 days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

NEW SECTION

WAC 16-306-090 Hemp THC testing criteria. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using post-decarboxylation or other testing methods approved by the department.

(2) Hemp testing will take place at times and on dates determined by the department.

(3) The department will apply the measurement of uncertainty to the reported THC concentration to determine if hemp material is in compliance under this chapter.

NEW SECTION

WAC 16-306-100 Voluntary certification for hemp intended for human consumption. (1) In addition to testing required under WAC 16-306-090, producers may obtain certification that hemp meets the department's standards for human consumption if tested for the following:

(a) Nonapproved pesticide or herbicide use. The list of approved pesticides and herbicides is available on the department website; and

(b) Approved limits of mycotoxin. The sample and related lot fail testing for mycotoxin if the results exceed the following limits:

(i) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance;

(ii) Ochratoxin A: 20 µg/kg of substance.

(c) Approved limits for heavy metals. The sample and related lot fail testing for heavy metals if the results exceed the following limits:

Metal	µ/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(2) The producer must inform the department if they wish to participate in the voluntary certification for human consumption at the time of sampling as specified under WAC 16-306-080.

(3) The licensee will be required to reimburse the department or the approved laboratory for the actual costs incurred for conducting such tests.

NEW SECTION

WAC 16-306-110 Hemp for human consumption as food. The whole hemp plant may be used as food for human consumption. The department shall regulate the processing of the hemp for food products allowable under federal law, in the same manner as other food processing under chapters 15.130, 69.07, and 69.22 RCW.

NEW SECTION

WAC 16-306-120 THC certification. (1) If the hemp meets THC concentration requirements in this chapter, the department will issue a document of certification attesting that hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No hemp may leave a registered land area identified on a license without being issued THC certification by the department.

(3) Hemp plant material from different registered land areas or lots may not be combined until the department issues certification for each field, lot, or registered land area. Hemp seeds and grain are excluded from this restriction.

NEW SECTION

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 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 license.

NEW SECTION

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, license fees are as follows:

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

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

NEW SECTION

WAC 16-306-150 Hemp inspection fees. (1) Fees for hemp inspections are paid by the 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 per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

NEW SECTION

WAC 16-306-160 Hemp THC testing fees. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using testing methods approved by the department.

(2) Hemp testing will take place at times and on dates determined by the department.

(3) Fees for hemp THC tests are paid by the licensee.

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

(5) THC concentration testing fees for hemp when tested at the department's laboratory are established on a sliding rate scale. THC concentration testing will be scheduled by the department based on the availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing as shown in the following table:

Batch Size	Testing Fee Per Sample
Batch of 1 sample	$1,000
Batch of 2 samples	$500
Batch of 3 samples	$334
Batch of 4 samples	$250
Batch of 5 samples	$200

(6) When THC concentration testing is performed at department-approved laboratories, testing fees will be subject to actual laboratory costs, including sample transportation.

NEW SECTION

WAC 16-306-170 Hemp noncompliance for THC concentration. (1)(a) 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. 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 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.

NEW SECTION

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 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.

NEW SECTION

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 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.

NEW SECTION

WAC 16-306-200 Corrective action plan. (1) A hemp 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 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 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.

NEW SECTION

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 will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

NEW SECTION

WAC 16-306-220 Venue for legal action. The venue for any legal action under this chapter shall be Thurston County, Washington.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-305-010	Purpose of chapter.
WAC 16-305-015	Activities outside the scope of enforcement.
WAC 16-305-020	Industrial hemp research program goals.
WAC 16-305-030	Definitions.
WAC 16-305-040	Industrial hemp license application.
WAC 16-305-050	Qualifications of applicants.
WAC 16-305-060	Industrial hemp grower license.
WAC 16-305-070	Industrial hemp processor and marketer license.
WAC 16-305-080	Industrial hemp combination license.
WAC 16-305-090	Industrial hemp distributor license.
WAC 16-305-100	Industrial hemp importer certificate.
WAC 16-305-110	Industrial hemp business licenses and taxes.
WAC 16-305-120	Suspension of industrial hemp licenses for noncompliance with a child support order.
WAC 16-305-130	Fit for commerce certification.
WAC 16-305-140	Transporting industrial hemp.
WAC 16-305-150	Industrial hemp seed and propagules.
WAC 16-305-160	Industrial hemp data and reporting requirements.
WAC 16-305-170	Records retention.
WAC 16-305-180	Industrial hemp for human consumption.
WAC 16-305-190	Industrial hemp inspection and sampling criteria.
WAC 16-305-200	Industrial hemp lab testing criteria.
WAC 16-305-210	Industrial hemp testing fees.
WAC 16-305-220	Industrial hemp license fees.
WAC 16-305-230	Industrial hemp noncompliance for THC concentration.
WAC 16-305-240	Scope of enforcement.
WAC 16-305-242	Enforcement actions subject to availability of funds.
WAC 16-305-245	Determination of civil penalties and license enforcement penalties.
WAC 16-305-250	Monetary penalties, license denial, suspension or revocation, and right to adjudicative proceeding.
WAC 16-305-251	Category 1 violations.
WAC 16-305-252	Category 2 seed distributor violations.

WAC 16-305-253	Category 3 grower or processor violations.
WAC 16-305-254	Category 4 license violations.
WAC 16-305-255	Category 5 regulatory violations.
WAC 16-305-256	Penalty for failure to follow industrial hemp destruction order.
WAC 16-305-257	Other dispositions of alleged violations that the department may choose.
WAC 16-305-260	Venue for legal action.