



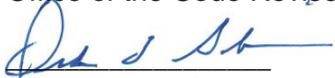
STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

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

DATE: April 3, 2020

TO: Office of the Code Reviser

FROM: 
Derek I. Sandison, Director

SUBJECT: Policy Statement CI-20-0001 – Delay in Requirement for DEA Laboratory Registration for Conducting Testing of Hemp

On April 3, 2020, a policy statement regarding the Washington State Department of Agriculture (WSDA) delaying the requirement for DEA laboratory registration for conducting testing of hemp was signed. 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 be delaying enforcement until USDA's final rule is published, or Oct. 31, 2021, whichever comes first.

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

Gloriann Robinson, Agency Rules Coordinator
1111 Washington Street SE
PO Box 42560
Olympia, WA 98504-2560
Phone: 360-902-1802
Email: wsdarulescomments@agr.wa.gov

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
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WSR 20-09-015



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DEPARTMENT OF AGRICULTURE

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POLICY STATEMENT

Number: CI- 20-0001

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

Supersedes: Not Applicable

Contact: Jessica Allenton, Assistant Director, Commodity Inspection Division
Email: jallenton@agr.wa.gov Phone: (360) 902-1828

Approved By:

Derek I. Sandison, Director

Date Approved: April 3, 2020

To provide clarity regarding the delay of enforcement of the requirement to use laboratories registered with the 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 Interim Final Rule (IFR) on the Establishment of a Domestic Hemp Production Program (84 FR 58522), published by the United States Department of Agriculture (USDA) on October 31, 2019, 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. 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.

USDA is allowing this enforcement discretion based on comment received in response to the IFR and in discussions with states and tribes as they pursue USDA-approval of their plans. Through these conversations, USDA has learned that this provision will serve as a significant hindrance to the growth of a domestic hemp market at this emergent stage. For instance, it is now better understood how the limited number of DEA-registered labs will hinder testing.

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 IFR 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 USDA's final rule is published, or Oct. 31, 2021, whichever comes first. 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.