



WSDA's Hemp Regulatory Plan outline

1. How will the Department show a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years?

Washington State law requires a license to grow hemp. Our application requires the global positioning location coordinates from which the legal description can be obtained. WSDA's record retention policy requires information such as this to be maintained for seven years. The WSDA uses an online application portal to collect the contact information and harvest information for all licensed hemp producers, this data will then be placed into the AMS-23 form and forwarded to the USDA on a monthly basis in the form of a monthly report of licensees and destructions. The online portal maintains the status of the licensed producers, and can account for any changes in producer status.

WAC 16-306-040- Hemp producer license application, states an applicant must provide the information required for a hemp license on a form provided by the department that, at a minimum, includes:

- The name, email address, telephone number, and business address of the applicant;
- For Individuals, a social security number
- For businesses, the type of business entity (LLC, partnership, etc.), business license number, EIN, the state or country where the business is incorporated and the name and address of the entity's agent in Washington State;
- The legal description (section, township, and range) in which the proposed registered land area is located;
- Geospatial location coordinates of proposed fields, greenhouses, or other sites where hemp is produced. A background check is required to be included within the application to insure that licensees have not had a controlled substance felony conviction within the last ten years.

Any person found to materially falsify any information in their application shall be deemed ineligible to participate in the WSDA Hemp Program.

WSDA rules also require applicants to consent to entrance of their property by the department to inspect their registered land area with or without prior notice, report hemp crop acreage, greenhouse or indoor square footage, street address, license number, and total acreage of

hemp planted, harvested, disposed, or remediated to the USDA Farm Service Agency (FSA), and submit a criminal history report that is completed within 60 days of the application date.

Additionally, WAC 16-306-060-Records retention, states licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program for a minimum of three years from the expiration date of the license.

2. Does the Department have a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe?

Trained WSDA inspectors will be responsible for collecting samples from the flowering tops of plants, specifically the top five to eight inches of the plant, from the main stem, including the leaves and flowers, terminal bud, or central cola. WSDA inspectors will receive training in how to collect a representative sample such that procedures are sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level of 0.3 percent. Inspectors will be provided with the USDA's Sampling Guidelines for Hemp as the standard with which they collect samples. The WSDA will require that the producer or an authorized contact or representative shall be present for the scheduled hemp inspection whenever possible. WSDA inspectors will then transport that sample to a laboratory that is contracted with the WSDA. Contracted labs must show intent to register with the DEA as a part of the contracting process. Labs must be registered with the DEA by December 31, 2022 in order to maintain their contracts with the WSDA.

Licensed hemp producers cannot harvest any of their crop prior to inspection. Evidence of harvest prior to inspection may result in a violation or loss of license. Once a sample is collected by a WSDA inspector, a hemp licensee may harvest, however, they will not be eligible for a retest if their sample is non-compliant, though they will still be eligible for remediation options. Non-harvested hemp that tests below 0.5% THC can be retested at the licensee's request.

WSDA contracts with laboratories that test hemp for Total THC using High-Performance Liquid Chromatography (HPLC) for the determination of Δ 9-Tetrahydrocannabinol (THC) and Δ 9-Tetrahydrocannabinolic Acid (THC-A). Testing Laboratories must provide COA's to the WSDA. Testing laboratories will have test results reported to USDA for determining compliance. The WSDA and our contracted laboratories are aware of, and understand the information that must be provided in the AMS 22 form. The WSDA will work with contracted testing laboratories to make sure that all information needed in the AMS 22 form is provided to USDA.

WAC 16-306-090- Hemp THC testing criteria, states that 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. The department will apply the measurement of uncertainty to the reported THC concentration to determine if hemp material is in compliance.

No hemp may leave a registered land area or be combined with hemp plant material from different registered land areas or lots until WSDA issues certification for each field, lot or registered land area.

The WSDA will send an inspector to sample a hemp crop within 30 days of its anticipated harvest date. The WSDA will also provide options for hemp producers who grow non-flowering plants:

- The WSDA will conduct visual inspections for all producers growing non-flowering plants in order to certify non-flowering or immature plants including seedlings, clones, greens, and microgreens. While non-flowering plants will not be subject to sampling or THC testing during visual inspections, these plants may still be subject to random sampling and testing.

3. Does the Department have a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle; and products derived from those plants?

Under WAC 16-306-170- Hemp noncompliance for THC concentration, 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. Licensees whose hemp tests higher than the acceptable hemp THC level will be provided with a Corrective Action Plan that provides options for retesting, remediation, and or disposal. The Licensee must fulfill the requirements set forth in the Corrective Action Plan in order to avoid suspension or revocation of their license. The lot must be remediated, retested, or disposed of in a manner approved by the department. If determined to be appropriate, WSDA may give notice of noncompliance to the appropriate law enforcement agency and the Washington State Liquor and Cannabis Board which regulates marijuana, with a summary of the actions taken to destroy the noncompliant hemp. The WSDA will notify the USDA of non-compliant plants and disposal by providing Certificates of Analysis and the AMS-24 form.

Producers will have the option to remediate noncompliant hemp on the registered land area. After remediation, producers must contact the WSDA to perform another inspection sampling. Producers will have the following options for remediation:

- Removing and destroying the flowers and retaining stalk, stem, and leaf material for retest and use. This will also require a destruction report.
- Creating a mulch-like biomass that creates a homogenous mix of flower, leaf, stalk, and stem which is then retested as a whole plant sample.

Producers must document the disposal of all noncompliant hemp. This documentation must be submitted to WSDA following the completion of the destruction or disposal process. WSDA will

allow the licensee to request a resampling or retest within 30-days. The destruction of any controlled substance shall be in accordance with the following requirements:

- On-site destruction.
- Transfer to a person registered or authorized to accept controlled substances for the purpose of destruction or disposal.
- The method of destruction or disposal shall be consistent with the purpose of rendering all controlled substances to a non-retrievable state in order to prevent diversion of any such substance to illicit purposes and to protect the public health and safety.

While WSDA has legal authority over hemp and for manufactured products derived from hemp that fall within the definition of food, WSDA does not have legal authority over all manufactured products.

4. Does the Department have a procedure to comply with the enforcement procedures under the 2018 amendments to the Agricultural Marketing Act of 1946 Section 297A subsection (e)?

WSDA has included language in rule that will establish enforcement action procedures, specifically corrective action plans as well as WSDA's authority to suspend or revoke a license for violations of state law or for failing to comply with a corrective action plan. All enforcement actions will be conducted with proper due process as guaranteed by Washington law. Negligent violations occurring within the hemp program will not be subject to criminal enforcement action.

WAC 16-306-200- Corrective Action Plan, mirrors the language provided in the 2018 Farm Bill and the USDA interim rules by stating a licensee may be subject to a corrective action plan established by WSDA to correct negligent violations including, but not limited to:

- Failing to provide a legal description of land on which hemp is produced.
- Failing to obtain a license or other required authorization from the department.
- Producing Cannabis sativa L. with delta-9 tetrahydrocannabinol concentration of more than 0.3% on a dry weight basis.

WSDA has a corrective action template which provides hemp producers with 30 days to correct the negligent violation and requires that the licensee periodically reports their compliance with WSDA regulations for at least two calendar years. Producers shall not receive more than one negligent violation per growing season. The WSDA may inspect a licensee to ensure compliance with their corrective action plan. Additionally, licensees may be subject to license suspension or revocation for violations of WSDA rules or for failing to comply with a corrective action plan.

WSDA rules also include enforcement procedures for violations that are committed with a culpable mental state greater than negligence. Violations made with a culpable mental state greater than negligence shall be reported to the U.S. Attorney General and chief law enforcement officer of the state.

5. Does the Department have a procedure for conducting annual inspection of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of the limits on THC found in the farm bill?

Per Washington Authorization Code (WAC) 16-306-080, 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.

WSDA inspectors will take hemp samples from registered land areas within 30 days prior to the anticipated harvest to test for THC concentration. The inspections include the following:

- Unauthorized plant growth;
- Hemp in any form on the registered land area;
- Rogue, volunteer, or off-type hemp plants;
- Audits of existing business data and reports related to hemp;
- Compliance with required signage; and
- Assessing compliance with other applicable license terms and conditions.

WSDA has created a testing protocol (attached) that provides procedures for entering a growing area and collecting the hemp sample as well as necessary equipment and supplies and sampling guidelines which includes sample size based on estimate of plants as well as what part of the plant the sample must come from. Our sampling protocol is based directly off the USDA interim rules.

6. Does the Department have a procedure for submitting the information described in the Agricultural Marketing Act of 1946 Section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received?

WSDA collects the information required as part of its state hemp program and will share information on licensed hemp producers with the USDA in any required format. Additionally, the WSDA website maintains a list of licensees including contact information and registered land areas.

7. Can the Department certify that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in 1 through 6 above?

WSDA's hemp program is a fee-for-service program. The department has the authority to raise fees as needed to pay for the costs incurred by the department. The department anticipates having one full-time employee along with seasonal inspection staff. The department certifies that it can and will perform all the duties outlined above and required in the 2018 Farm Bill. The program's current fees can be found in WAC 16-306-140 – WAC 16-306-160.

8. Has the Department included any other practice or procedure established by a State or Indian tribe as applicable, to the extent that the practice or procedure is consistent with this subtitle?

As part of WSDA's hemp regulatory plan, the department has included all portions of its current program in the attachments that follow. Our current state regulations as provided in Chapter 16-306 of the Washington Authorization Code, as well as the attached Policy Statement are considered part of our state's Hemp Plan. Additionally, WSDA has included regulations for additional voluntary hemp testing. Those regulations can be found in WAC 16-306-100 and include testing hemp for non-approved pesticide or herbicide use, approved limits of mycotoxin and approved limits of heavy metals.

9. Who is the Department's contact for this program?

- Jessica Allenton
Assistant Director- Commodity Inspection Division
Washington State Department of Agriculture
(360) 902-1828
Jallenton@agr.wa.gov

Trecia Ehrlich
Hemp Program Manager – Commodity Inspection Division
360-584-3711
tehrlich@agr.wa.gov