

# Chapter 16-305 WAC

## INDUSTRIAL HEMP RESEARCH PROGRAM

### WAC

16-305-010	Purpose of chapter.
16-305-015	Activities outside the scope of enforcement.
16-305-020	Industrial hemp research program goals.
16-305-030	Definitions.
16-305-040	Industrial hemp license application.
16-305-050	Qualifications of applicants.
INDUSTRIAL HEMP LICENSES	
16-305-060	Industrial hemp grower license.
16-305-070	Industrial hemp processor and marketer license.
16-305-080	Industrial hemp combination license.
16-305-090	Industrial hemp distributor license.
16-305-100	Industrial hemp importer certificate.
16-305-110	Industrial hemp business licenses and taxes.
16-305-120	Suspension of industrial hemp licenses for noncompliance with a child support order.
16-305-130	Fit for commerce certification.
16-305-140	Transporting industrial hemp.
16-305-150	Industrial hemp seed and propagules.
16-305-160	Industrial hemp data and reporting requirements.
16-305-170	Records retention.
16-305-180	Industrial hemp for human consumption.
16-305-190	Industrial hemp inspection and sampling criteria.
16-305-200	Industrial hemp lab testing criteria.
16-305-210	Industrial hemp testing fees.
16-305-220	Industrial hemp license fees.
16-305-230	Industrial hemp noncompliance for THC concentration.
16-305-240	Scope of enforcement.
16-305-242	Enforcement actions subject to availability of funds.
16-305-245	Determination of civil penalties and license enforcement penalties.
16-305-250	Monetary penalties, license denial, suspension or revocation, and right to adjudicative proceeding.
16-305-251	Category 1 violations.
16-305-252	Category 2 seed distributor violations.
16-305-253	Category 3 grower or processor violations.
16-305-254	Category 4 license violations.
16-305-255	Category 5 regulatory violations.
16-305-256	Penalty for failure to follow industrial hemp destruction order.
16-305-257	Other dispositions of alleged violations that the department may choose.
16-305-260	Venue for legal action.

**WAC 16-305-010 Purpose of chapter.** The purpose of this chapter is to establish the requirements for persons to participate in the department's industrial hemp research program as provided under chapter 15.120 RCW. These rules include licensing requirements. Licensing is required for persons to grow, produce, possess, process, and market or exchange industrial hemp as provided under this chapter and chapters 15.120 and 15.49 RCW and the rules adopted thereunder as related to industrial hemp seed certification.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-010, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-015 Activities outside the scope of enforcement.** The following activities are not subject to regulatory sanctions or penalties under this chapter, except as provided under WAC 16-305-180, and except for the limitation of THC content under RCW 15.120.010:

(1) Possessing, further processing, transporting, marketing and exchanging legally obtained publicly marketable hemp product;

(6/7/18)

(2) Producing, possessing, further processing, transporting, marketing and exchanging end use products legally made with publicly marketable hemp product; and

(3) Growing, producing, possessing, processing, marketing and exchanging marijuana as defined in RCW 69.50.101. Marijuana activities are regulated by the Washington state liquor and cannabis board under chapters 69.50 RCW and 314-55 WAC.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-015, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-020 Industrial hemp research program goals.** (1) The department intends to study the feasibility and desirability of industrial hemp production in Washington state based on the availability of resources and funding for such studies. Potential areas for the department's studies and research include the following:

- Growing industrial hemp grain;
- Growing industrial hemp fiber; and
- Developing a seed certification program.

(2) The industrial hemp research program deems the agricultural goals specific to crop production to be of high importance. These goals include:

- Variety trials;
- Pollen flow studies;
- Plant genetics;
- Pest and disease management;
- Beneficial insects;
- Soil quality;
- Phytoremediation and bioremediation; and
- Certified industrial hemp seed production.

(3) The main marketing and processing goals of the industrial hemp research program include:

- Animal bedding;
- Cosmetic or beauty products from seed oil;
- Fiber products;
- Biofuels;
- Bioplastics;
- Food and beverage additives from seeds and seed oil;
- Industrial hemp grain and grain products;
- Industrial hemp seed oil;
- Construction materials;
- Compost;
- Insulation; and
- Bio-char and soil amendment technologies.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-020, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-030 Definitions.** "Applicant" means a person who submits an application for a license to participate in the industrial hemp research program as required under this chapter.

[Ch. 16-305 WAC p. 1]

"Approved seed" means a variety of industrial hemp seed that is approved by the department for growing industrial hemp.

"Authorized representative" means any person identified in writing by a licensee who may act as agent on behalf of the licensee for purposes of the license subject to any limitations stated in writing by the licensee. The licensee remains responsible for compliance with the license requirements irrespective of the acts or omissions of an authorized representative.

"Certified seed" means an industrial hemp seed variety that has been bred to comprise satisfactory genetic purity and varietal identity and has been accepted by Association of Seed Certifying Agencies (AOSCA), Organization for Economic Cooperation and Development (OECD) or other certifying entity as determined by the department.

"Civil penalty" under this chapter means a monetary penalty imposed by the department for violations of the industrial hemp laws, chapters 15.120 RCW and 16-305 WAC, and applicable sections of chapters 16-302 and 16-303 WAC.

"Contiguous land area" means a specific field with designated boundaries that is planted with industrial hemp. Separate parcels connected only by thin or narrow plantings of industrial hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means annual licenses renewed in such a way that the licensee is continuously operating under a valid license.

"DEA" means the federal Drug Enforcement Administration.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or another manner approved by the department.

"Deviatalization" means the process of sterilizing viable industrial hemp seed in such a way that the seed is unable to grow into new plants. Devitalization may happen through steam sterilization, dehulling, pressing, or another method approved by the department. If using steam sterilization, the seeds must be steamed to one hundred eighty degrees Fahrenheit for at least fifteen minutes.

"End use product" means a product that contains publicly marketable hemp product and requires no further processing to be sold to a consumer. End use products include animal bedding, animal feed, beverages, biofuel, bioplastics, clothing, compost, construction materials, cosmetics, food, grain and grain products, insulation, seed oil, soil amendments and other products containing publicly marketable hemp products. End use products are subject to the limitations on the uses of industrial hemp under RCW 15.120.020.

"Field" means a contiguous land area, registered with the department, on which a licensee plans to grow industrial hemp.

"Grain" means any devitalized industrial hemp seeds that are not intended for replanting, but will be used for food, feed, fiber, oil or other products.

"Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower,

whether growing or not, containing a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101.

"Industrial hemp research program" means the department's "agricultural pilot program" established under chapter 15.120 RCW, this chapter, and the industrial hemp seed rules under chapters 16-302 and 16-303 WAC.

"Leadership position" means any board member, manager, or leader in a business or organization who will provide oversight and monitoring of subordinates.

"Licensee" means any person who holds a license from the department to grow, produce, possess, process, or exchange or sell industrial hemp. A licensee may be a person who is authorized to carry out department supervised research on the feasibility and desirability of industrial hemp production in Washington state.

"Notice of correction" means a document issued by the department to a licensee, consistent with RCW 43.05.100, that describes a condition or conduct that is not in compliance with chapter 15.120 RCW or the rules adopted thereunder and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record. Violations of THC content are not subject to a notice of correction and will result in a notice of intent.

"Notice of intent" means a document issued by the department to an alleged violator that identifies specific violations of chapter 15.120 RCW or the rules adopted thereunder. A notice of intent states any proposed civil penalty or any intent to suspend, deny or revoke the alleged violator's industrial hemp license.

"Processing area" means any area, building, plant or facility registered with and approved by the department in which a licensee will make industrial hemp into a marketable product. For the purposes of this definition, a person's domicile, home or residence is not considered a processing area.

"Publicly marketable hemp product" means industrial hemp that has been processed in compliance with department regulations, or under an equivalent regulatory program recognized by the department, for which a processor or marketer license is not required. Publicly marketable hemp products include bare stalks that have been pressed or decorticated, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils and seed coats separated from the seed, and hemp plant extracts. Under RCW 15.120.020, only industrial hemp seed may be processed as "food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans."

"Registered land area" means a contiguous land area, including greenhouses, processing areas 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, processing area or storage area so long as those fields, greenhouses, processing areas or storage areas are at the same physical address.

"Report" means any data, statistics or information required to be provided to the department by a licensee under an industrial hemp license.

"Seed distributor" means any person licensed by the department to distribute or sell viable industrial hemp seed.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store industrial hemp.

"THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera *Cannabis*.

"Unprocessed industrial hemp" means any raw, unprocessed part of the industrial hemp plant, including viable seed, that has been harvested but has not been sufficiently processed to be transferred to an unlicensed person. Unprocessed industrial hemp includes industrial hemp that is green, dried, baled or pelletized, that is in the form of living hemp plants, viable seed, leaf materials, floral materials, and raw stalks.

"Violation" means any act or omission prohibited under chapter 15.120 RCW or the rules adopted thereunder.

"Volunteer plant" means an industrial hemp plant that results from a previous crop.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-030, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-030, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-040 Industrial hemp license application.** (1) A person wishing to participate in the industrial hemp research program must submit a license application on a form provided by the department. A person wishing to obtain an application form for an industrial hemp research license may contact the department at: 509-249-6950, hemp@agr.wa.gov, 21 North 1st Avenue, Suite 203, Yakima, WA 98902 or download the application form from the department's web site at <http://agr.wa.gov/>. The department will post on its web site any deadline for submitting an application.

(2) Each applicant for a license to grow, produce, possess, process, or market or exchange industrial hemp shall submit a signed, complete, accurate, and legible application on a form provided by the department. Applications must be submitted at least thirty days prior to commencing industrial hemp operations regulated under this chapter. To maintain continuous licensing, an applicant must submit an application for a renewal license at least thirty days prior to the expiration of the previous license. The application must include the following information:

(a) The name and business address of the applicant;

(b) 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;

(c) If applicable, the legal description (section, township, and range) in which any proposed registered land area is located;

(d) The global positioning location coordinates taken at the approximate center of any proposed registered land area;

(e) The results of a soil quality test for each field, which, at a minimum, provides test results on the soil for pH, nitrogen, phosphorus and potassium. This requirement is not applicable for greenhouses;

(6/7/18)

(f) A map of the proposed registered land area, showing the boundaries and dimensions of the proposed registered land area in acres or square feet, and the proposed location of any variety of industrial hemp crop to be grown in the registered land area(s); and

(g) The applicant's signature accepting the license terms and conditions including the following:

(i) That the applicant agrees to collect, retain and transmit to the department data gathered while conducting each licensed activity as specified in the license for use by the department in studying the feasibility and desirability of industrial hemp production in Washington state. Such information shall be retained and transmitted to the department in a schedule and a format identified in each license;

(ii) That the applicant agrees to allow the department to inspect and sample any industrial hemp, or inspect any registered lands, facilities, and records required of the licensee under the terms of each license;

(iii) That the applicant is responsible to pay any fees adopted under the department's rules applicable to the licensed activities;

(iv) If applicable, the applicant must have the legal right which includes, but is not limited to, a valid deed or lease, to the registered land area, including the legal authority to grant the department access for inspection and sampling; and

(v) That the individual grower or combination license applicant or any member of the applicant's business occupying a leadership position has not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in the United States or any other country within ten years of the date of the application.

(3) In addition to the completed application form, each applicant must submit a nonrefundable application fee. If the application fee does not accompany the application, the application will be deemed incomplete.

(4) An application may be deemed incomplete if the applicant does not include information sufficient for the department to make a determination about the nature and scope of the applicant's proposed uses or activities.

(5) The department may deny an application where the applicant seeks to conduct activities or uses outside the scope of these rules and chapter 15.120 RCW; where the applicant has not met a material requirement identified in the application requirements; or where the applicant proposes a use or activity in conflict with local, state, or federal law. An application may be denied should the application contain goals or information that the department could reasonably conclude would be out of conformance with state or federal laws.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-040, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-050 Qualifications of applicants.** (1) For any type of license, the applicant must include a signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor.

(2) A person with a prior felony drug conviction within ten years of applying for a grower or combination license is not eligible for the license. Associations, corporations and other business entities employing persons in leadership positions with a prior felony drug conviction within ten years of

[Ch. 16-305 WAC p. 3]

applying for a grower or combination license are not eligible for the license under this felony drug conviction limitation.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-050, filed 4/13/17, effective 5/14/17.]

### INDUSTRIAL HEMP LICENSES

#### **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) 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) 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 amend-

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

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-060, filed 4/13/17, effective 5/14/17.]

#### **WAC 16-305-070 Industrial hemp processor and marketer license.** (1)

A person shall obtain an industrial hemp processor and marketer license prior to obtaining industrial hemp for processing or marketing purposes.

(2) The department may inspect and sample and must have unrestricted access to all industrial hemp plants, parts, grain, seeds and products within a registered land area, and all documents and records pertaining to the licensee's industrial hemp business. A person's domicile, home or residence may not be used as a processing area.

(3) An inspection of a licensee's facilities may be conducted at least once by the department during a license period. The inspection activities may include:

(a) An inspection of the licensee's facilities, including any processing and storage areas;

(b) An inspection of all industrial hemp in the possession of the licensee;

(c) Sampling of industrial hemp for testing;

(d) An inspection of any industrial hemp products being produced under the license; and

(e) An inspection of any records and reports pertaining to the licensee's industrial hemp business.

(4) 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 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.

(5) A processor and marketer must obtain industrial hemp from a licensed Washington grower or from legally imported sources of industrial hemp. Each licensee must obtain a copy of the grower's license and fit for commerce certificate (WAC 16-305-130) from any licensed Washington grower with whom the processor and marketer conducts business before processing or marketing the industrial hemp.

(6) It is the duty of any processor to devitalize any industrial hemp seed received.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-070, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-080 Industrial hemp combination license.** (1) A person wishing to grow and process or market industrial hemp in this state may apply for separate licenses or for a combination license. A person who is granted a combination license is subject to all applicable requirements in this chapter, including under WAC 16-305-060 and 16-305-070.

(2) Under a combination license, industrial hemp seed harvested and processed without transporting the seed from the registered land area must be devitalized.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-080, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-090 Industrial hemp distributor license.** (1) Any person wishing to solely distribute or sell viable industrial hemp seed or propagules in Washington state must be licensed by the department as an industrial hemp distributor. A person must obtain an industrial hemp distributor license prior to exchanging, distributing, selling or reselling viable industrial hemp seed or propagules in Washington state.

(2) This license type may not be combined with licenses described in WAC 16-305-060, 16-305-070, or 16-305-080.

(3) Where appropriate, licensed industrial hemp distributors shall follow seed certification rules in chapter 16-302 WAC.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-090, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-100 Industrial hemp importer certificate.** Any person wishing to import viable industrial hemp seed or propagules into the state must obtain an importer certificate from the department. Only those persons holding a valid license issued by the department may obtain an importer certificate. There is no charge for this certificate.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-100, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-110 Industrial hemp business licenses and taxes.** (1) Licensees must maintain all proper state, county and local business licenses and permits and comply with all applicable zoning regulations.

(2) Licensees must comply with business and occupation tax requirements set forth in chapter 82.04 RCW and regulations adopted thereunder.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-110, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-120 Suspension of industrial hemp licenses 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 industrial 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 industrial hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(6/7/18)

(2) The department may renew, reinstate or otherwise extend the licensee's industrial hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-120, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-130 Fit for commerce certification.** (1) A fit for commerce certificate is a document issued by the department attesting that industrial hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No industrial hemp may leave a registered land area identified on a license without a fit for commerce certificate.

(3) No processor may acquire or process industrial hemp grown within the state of Washington without acquiring a legible copy of all fit for commerce certificates issued by the department to the grower or growers with whom the processor conducts business and specific to the industrial hemp purchased.

(4) A person who is issued an applicable combination license must obtain fit for commerce certificates before any industrial hemp may be processed.

(5) For the purposes of this section, "processing" does not include drying industrial hemp if the drying takes place on the registered land area as identified in the license.

(6) Industrial hemp plants, pieces or parts from different fields or registered land areas may not be combined into one lot until a fit for commerce certificate for each field or registered land area is issued. Industrial hemp seeds and grain are excluded from this restriction.

(7) Processor licensees using industrial hemp which was obtained from outside of the state of Washington must maintain a bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported into the state.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-130, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-140 Transporting industrial hemp.** (1) Industrial hemp subject to any applicable license issued under this chapter may not be transported from a registered land area as identified on the license until a fit for commerce certificate (WAC 16-305-130) is obtained by the applicable licensee prior to transport. During transport of industrial hemp off a grower's registered land area, including to a processor, the person in possession of the industrial hemp during transport must have in his or her possession either:

(a) Copies of the industrial hemp license and fit for commerce certificates, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to industrial hemp.

(2) Any industrial hemp from a licensed Washington grower that is found in Washington state at any location off the premises of a registered land area of a licensee without a fit for commerce certificate (WAC 16-305-130) is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband

[Ch. 16-305 WAC p. 5]

material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the license.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-140, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-150 Industrial hemp seed and propagules.** (1) A licensee must use approved varieties of certified industrial hemp seed or propagules.

(2) A licensee may only obtain industrial hemp capable of propagation as follows:

(a) From a licensed distributor of industrial hemp seed or propagules under WAC 16-305-090; or

(b) Directly from the department as outlined in subsection (3) of this section.

(3) If an approved industrial hemp seed variety cannot be acquired within the state of Washington, a licensee may request in writing that the department import the approved seed under the department's DEA registration number. If the licensee does not currently hold an importer certificate (WAC 16-305-100), the licensee must request such a certificate in writing from the department.

(4) If the department agrees to request the importation of industrial hemp seed on behalf of the licensee, the licensee agrees to the following conditions:

(a) That the department is not liable for and does not warrant that the seed is fit for any purpose;

(b) That the industrial hemp seed shall be a certified seed variety;

(c) That the licensee must pay when due all costs associated with the importation of such industrial hemp seed; and

(d) That upon suspension, revocation, expiration or non-renewal of a licensee's license, any industrial hemp seed that is not used by a licensee must be transported to a DEA approved storage facility without charge or reimbursement. Continuous licensing is required. If a licensee fails to renew their license, any industrial hemp seed in the licensee's possession will become the property of the department without charge or reimbursement. At the department's discretion, and before the termination of the licensing period, the licensee may request in writing the department hold, on behalf of the licensee, the viable industrial hemp seed at a DEA approved storage location for a period of no greater than six months from the expiration of the license.

(5) Industrial hemp seed imported under the department's DEA registration number may either be stored in a DEA approved storage facility under the industrial hemp research program or it may be delivered directly to the licensee's address as identified on the license.

(6) Industrial hemp seed delivered directly to the grower's address must be planted immediately upon receipt or transported to a DEA approved storage facility.

(7) Industrial hemp seed collected by a grower from a DEA approved seed storage facility must be planted or returned to a DEA approved storage facility within twenty-four hours of receipt. The grower must provide a signed declaration on a form provided by the department declaring all the seed will be planted, returned to a DEA approved storage facility or destroyed within twenty-four hours of receipt.

(8) Before collecting from storage or receiving industrial hemp seed at the licensee's address, a licensee must make arrangements with the department to have a department rep-

resentative present to verify the receipt of the industrial hemp seed.

(9) During industrial hemp seed collection, the licensee must present to the department:

(a) A valid industrial hemp license;

(b) A valid form of photo identification;

(c) A signed declaration on a form provided by the department declaring the grower will take all steps necessary to prevent diversion;

(d) If applicable, a valid industrial hemp importer certificate (WAC 16-305-100);

(e) Copies of all seed importation documents; and

(f) Other documents as required by the department.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-150, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-160 Industrial hemp data and reporting requirements.** (1) The licensee shall submit all reports required by the department in the format and by the due dates specified in the terms and conditions of each license.

The data to be retained and transmitted to the department by each licensee will be used by the department to study the feasibility and desirability of industrial hemp production in Washington state.

(2) Each field inspection or processing area inspection may include an audit of the licensee's records and data, including the system used by the licensee to preserve required classes of records and data in a timely manner, using a format that facilitates meeting the terms and conditions of the license.

(3) The department may require a licensee to submit responses to a questionnaire or survey at the end of each licensing period. This questionnaire must be completed and returned to the department within thirty business days of transmittal to the licensee by the department. A licensee's failure to return the completed questionnaire or survey may be good cause for the department to deny a license renewal application.

(4) The licensee must maintain records regarding the sale of any industrial hemp grown under the license.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-160, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-170 Records retention.** Records, data and reports required to be collected or maintained by the licensee or provided by the licensee to the department must be retained by the licensee for a period of three years from the expiration date of the license that was in effect at the time the records were generated.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-170, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-180 Industrial hemp for human consumption.** Industrial hemp processed for human consumption must follow food safety requirements as set forth in chapters 69.04, 69.07 and 69.10 RCW and regulations adopted thereunder. As provided under RCW 15.120.020, "processing any part of industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for

topical use, oral consumption, or inhalation by humans is prohibited."

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-180, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-190 Industrial hemp inspection and sampling criteria.** (1) All licensees are subject to inspection by the department. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for industrial hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type industrial hemp plants;
- (d) Identification of any industrial hemp activities not listed on the license;
- (e) Audits of existing business data and reports related to industrial hemp;
- (f) Identifying compliance with required signage (WAC 16-305-060);
- (g) Assessing compliance with other applicable licensing terms and conditions; and
- (h) Obtaining samples for lab testing.

(2) Registered land areas under a grower or combination license must be inspected by the department no less than two times during each license period. 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. Industrial hemp samples from registered land areas licensed under a grower or combination license must be taken by the department no less than once during any growing period. Industrial hemp samples from registered land areas shall be tested by the department for THC concentration at least once during any growing period.

(3) Registered land areas licensed under a processor and marketer or combination license must be inspected by the department no less than once during each license period. Industrial hemp seed being stored under a processor and marketer or combination license will be inspected by the department for devitalization practices no less than once per year.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-190, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-200 Industrial hemp lab testing criteria.** (1) Industrial hemp will be tested in a department run or contracted laboratory as determined by the department using testing methods approved by the department.

(2) Industrial hemp seed stored under a processor and marketer or combination license may be sampled and tested by the department for viability or THC concentration. The licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(3) Industrial hemp for food for human consumption must be tested for nonapproved pesticide or herbicide use. The grower or combination licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(4) Industrial hemp testing will take place at times and on dates determined by the department.

(6/7/18)

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-200, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-210 Industrial hemp testing fees.** (1) Fees for industrial hemp tests are the responsibility of the licensee.

(2) No fit for commerce certificates (WAC 16-305-130) will be issued until all test fees due the department are paid in full.

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

(4) THC concentration testing fees for industrial hemp production 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	\$2,000
Batch of 2 samples	\$1,000
Batch of 3 samples	\$667
Batch of 4 samples	\$500
Batch of 5 samples	\$400
Batch of 6 samples	\$333
Batch of 7 samples	\$286
Batch of 8 samples	\$250
Batch of 9 samples	\$222
Batch of 10 samples	\$200

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-210, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-220 Industrial hemp license fees.**

License Type	Annual Application Fee	Initial License Fee	Renewal License Fee	THC Testing Fee	Other Testing Fee	Other Fee	Inspection Fee
Combination	\$800	\$300 /1	\$300 /1	/2	\$400 pesticide testing fee /3	\$200 per additional field, processing area or storage area	\$200 fee + travel time and mileage /4
Distributor	\$450	\$300	\$300 /5	/2	N/A	N/A	\$200 fee + travel time and mileage /4
Grower	\$450	\$300 /6	\$300 /6	/2	\$400 pesticide testing fee /3	\$200 per additional field	\$200 fee + travel time and mileage /4
Processor and Marketer	\$450	\$300 /7	\$300 /7	/2	/8	\$200 per additional processing area or storage area	\$200 fee + travel time and mileage /4
Specialty Grower - Seed Certification	\$450	\$300 /1	\$300 /1	/2	/8	/9	/9

- /1 Fee includes one field, one processing area, and one storage area.
- /2 See WAC 16-305-210 for THC concentration testing fees.
- /3 Applicable if growing industrial hemp for human consumption.
- /4 See WAC 16-303-250 for travel time and mileage rates.
- /5 Fee includes one storage area.
- /6 Fee includes one field.
- /7 Fee includes one processing area and one storage area.
- /8 See WAC 16-303-200 for seed testing fees.
- /9 See WAC 16-303-320 for seed certification fees.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-220, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-230 Industrial hemp noncompliance for THC concentration.** (1) If a licensee's industrial hemp tests higher than three-tenths of one percent THC concentration, the licensee may be subject to suspension or revocation of the license. The crop must be destroyed or utilized on-site 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 industrial hemp.

(2) If a licensee's industrial hemp tests higher than three-tenths of one percent but less than one percent THC concentration, the department may run appropriate genetic tests, at the licensee's expense, to verify the industrial hemp was from a variety of approved seed. If the industrial hemp was from a variety of approved seed, at the licensee's expense the licensee may either request a THC retest within thirty days or resampling of the same field.

(3) If at any time a licensee's industrial hemp tests higher than one percent THC concentration, the licensee may be subject to revocation or suspension of the license. The licensee, or any legal entity subsequently employing the licensee, may be ineligible for a license to grow or process industrial hemp for a period of three years from the termination date of the license held at the time of noncompliance.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-230, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-240 Scope of enforcement.** Licensees may be subject to monetary penalties and license suspension or revocation for violations of chapter 15.120 RCW or the rules adopted thereunder. Unlicensed persons may be subject to monetary penalties and denial of a license application for violations of chapter 15.120 RCW or the rules adopted thereunder.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-240, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-240, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-242 Enforcement actions subject to availability of funds.** Any enforcement action considered by the department under this chapter is subject to the department's determination as to the availability of sufficient resources and funds.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-242, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-245 Determination of civil penalties and license enforcement penalties.** (1) Penalty selection. The department will use the penalty assessment schedule

tables listed in WAC 16-305-251 through 16-305-255 to determine appropriate monetary penalties and license enforcement penalties. The department will determine any penalty based on the type of violation at the time of the incident(s) giving rise to any violation. An applicable listed penalty will be used unless the department identifies aggravating or mitigating factors and how those factors change the assessed penalty. For violations not expressly included in any of the penalty category tables, the department will identify any penalty that it determines most closely approximates the seriousness of the violation in comparison with penalties expressly identified in the penalty tables.

(2) In addition to any penalties provided for under WAC 16-305-250 through 16-305-256, any industrial hemp crop or material, processed or unprocessed, containing a THC concentration greater than 0.3 percent by dry weight is subject to a destruction order, regardless of whether any other penalty is assessed.

(3) Adjustment of penalty.

(a) The department may increase or decrease any penalties for identified aggravating or mitigating circumstances, including circumstances where licensing action(s) as a deterrent are ineffective. Factors for increasing or decreasing penalties include the following:

- (i) Violations by persons who are not licensed; and
- (ii) Situations where a listed civil penalty assessed is not substantially equivalent to the violator's estimated economic benefit derived from the violation.

(b) The department may decrease the civil penalty and increase the licensing enforcement penalty when the department determines that the civil penalty is an inadequate enforcement option to respond to a violation, including to serve as a deterrent.

(4) Aggravating factors. The department may consider circumstances for increasing a penalty based on the seriousness of the violation. Aggravating factors include the following:

- (a) The number of separate alleged violations contained within a single notice of intent;
- (b) The similarity of the current alleged violation to previous violations committed within the last three years;
- (c) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct;
- (d) Violations benefiting the violator or license applicant economically that are expressly prohibited under chapter 15.120 RCW and the rules adopted thereunder. Such violations include conducting grower, processor, or distributor operations without a license; processing and marketing industrial hemp products in violation of the limitation under RCW 15.120.020; or importing viable industrial hemp seed or propagules without department authorization.

(5) When the department determines that one or more aggravating factors are present, the department may assess the penalty as listed within the type of violation or may, in its discretion, increase the penalty to a level greater than the listed penalty, including suspension, revocation or denial of a license.

(6) Mitigating factors. The department may consider circumstances for decreasing a penalty based upon the seriousness of the violation. Mitigating factors include the following:

- (a) Voluntary disclosure of a violation;
- (b) Voluntary taking of remedial measures that will result in a decreased likelihood that the violation will be repeated;

(c) The status of the alleged violator as a small business under chapter 19.85 RCW and any circumstances that justify decreasing a listed penalty based on the status as a small business.

(7) When the department determines that one or more mitigating factors are present, and that those factors outweigh any aggravating factors, the department may decrease the listed penalty.

(8) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Each notice of intent will identify all applicable alleged violations and penalties to be imposed.

(9) Violation(s) committed during a period when a licensee's license is suspended or revoked may be subject to the maximum civil penalty of fifteen thousand dollars for each violation and revocation or denial of a license for a period of up to three years.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-245, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-250 Monetary penalties, 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; notice of intent to impose a monetary penalty; 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.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-250, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-250, filed 4/13/17, effective 5/14/17.]

**WAC 16-305-251 Category 1 violations.** Category 1 violations are considered the most serious because they compromise required conformance of the industrial hemp research program with the program's federal enabling authority, 7 U.S.C. Sec. 5940.

Violation Type	Penalty
<b>Conducting activities outside the scope of chapter 15.120 RCW and this chapter</b>	Destruction of crop or hemp material AND \$15,000
<b>Licensee's industrial hemp tests higher than 0.3% THC concentration by dry weight (RCW 15.120.-010(3))</b>	Destruction of crop AND \$15,000
<b>Operating as an industrial hemp seed distributor without a license</b>	Destruction of industrial hemp seed AND \$15,000

Violation Type	Penalty
<b>Planting or growing industrial hemp without a grower license or combination license</b>	Destruction of crop AND \$15,000
<b>Processing any part of industrial hemp other than seed for human consumption</b>	Destruction of hemp material or unlawful end use product AND \$15,000
<b>Processing industrial hemp without a processor or combination license</b>	Destruction of hemp material AND \$15,000

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-251, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-252 Category 2 seed distributor violations.** Category 2 violations are violations involving the manufacture, supply, processing, or distribution of viable industrial hemp seed by industrial hemp seed distributor licensees and prohibited practices between an industrial hemp seed distributor and grower or processor. Any industrial hemp seed in the possession of a licensed distributor that is not certified seed is subject to a destruction order, regardless of whether any other penalty is assessed. The department will not issue a notice of correction prior to issuing a destruction order.

Violation Type	Penalty
<b>Interstate transfer of viable hemp seed or propagules</b>	Destruction of seed or propagules AND \$15,000
<b>Distributing noncertified seed</b>	\$5,000
<b>Importing noncertified seed</b>	Destruction of noncertified seed AND \$1,000
<b>Importing industrial hemp seed or propagules without a valid importer certificate</b>	\$500

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-252, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-253 Category 3 grower or processor violations.** Category 3 violations are violations involving the growing, manufacture, supply, processing, or distribution of industrial hemp or hemp seed by industrial hemp grower, processor, or combination licensees.

Violation Type	Penalty
<b>Failure to comply with chapter 16-302 WAC when growing industrial hemp for seed certification</b>	\$1,000
<b>Growing industrial hemp within 4 miles of any field or facility being used to grow marijuana</b>	\$1,000
<b>Failure to devitalize seed under a combination license</b>	\$500

[Ch. 16-305 WAC p. 10]

Violation Type	Penalty
<b>Using domicile, home or residence to process industrial hemp</b>	Destruction of hemp material
<b>Licensee's industrial hemp tests higher than 0.3% THC concentration by dry weight (RCW 15.120.010(3))</b>	Destruction of crop
<b>Plant material found not harvested during license period</b>	Destruction of unharvested crop
<b>Processing industrial hemp without a fit for commerce certificate or bill of lading or not otherwise obtained through legal means</b>	Destruction of publicly marketable hemp product or end use product
<b>Transporting industrial hemp without a fit for commerce certificate or bill of lading</b>	Destruction of publicly marketable hemp product or end use product
<b>Industrial hemp seed not planted within 24 hours of receipt</b>	Return of seed to DEA approved storage facility

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-253, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-254 Category 4 license violations.** Category 4 violations are violations involving licensing requirements, license classification, and terms and conditions of industrial hemp licenses.

Violation Type	Penalty
<b>Failure to collect, retain, or transmit research data to the department</b>	\$500
<b>Failure to maintain required records, data and reports for 3 years from expiration date of license, including records regarding the sale of any industrial hemp grown under a grower or combination license</b>	\$500
<b>Failure to make research data available under the license conditions</b>	\$500
<b>Failure to post department-provided signs on at least every side of every field</b>	\$500

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-254, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-255 Category 5 regulatory violations.** Category 5 violations are violations involving general regulation and administration of industrial hemp licenses. Category

(6/7/18)

5 penalties imposed on a grower, processor, distributor, or combination licensee may include license suspension. Any industrial hemp crop may be subject to a destruction order during a license suspension.

Violation Type	Penalty
<b>Failure to comply with a child support order</b>	Suspension of license until licensee complies with child support order
<b>Failure to pay fees or penalties adopted under this chapter</b>	Suspension of license until fees or penalties are paid
<b>Refusal to allow the department to inspect and sample any industrial hemp or inspect any registered lands, facilities, and records required of the licensee</b>	Suspension of license until the department is allowed to inspect and sample any industrial hemp or inspect any registered land, facilities, and records required of the licensee

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-255, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-256 Penalty for failure to follow industrial hemp destruction order.** The penalty for a licensee or unlicensed person who fails to follow a crop or hemp product destruction order issued by the department within five business days is five hundred dollars per day for each day the destruction is delayed beyond five business days from the date of the destruction order.

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-256, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-257 Other dispositions of alleged violations that the department may choose.** Nothing herein shall prevent the department from:

- (1) Choosing not to pursue a civil penalty, license suspension or license revocation.
- (2) Issuing a notice of correction in lieu of pursuing a civil penalty, license suspension or license revocation.
- (3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. Prior violation(s) covered by a prior settlement agreement may be used by the department for the purpose of determining the appropriate penalty for subsequent violation(s).
- (4) Referring violations or alleged violations to any federal, state or local government agency with jurisdiction over the activities in question including, but not limited to, the federal Drug Enforcement Administration (DEA) and the Washington state patrol (WSP).

[Statutory Authority: RCW 15.120.030, 15.120.035 and chapter 34.05 RCW. WSR 18-13-013, § 16-305-257, filed 6/7/18, effective 7/8/18.]

**WAC 16-305-260 Venue for legal action.** The venue for any legal action under this chapter shall be Thurston County, Washington.

[Statutory Authority: RCW 15.120.030 and chapter 34.05 RCW. WSR 17-09-034, § 16-305-260, filed 4/13/17, effective 5/14/17.]