

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.]