

WSR 22-16-112
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed August 3, 2022, 8:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-072.

Title of Rule and Other Identifying Information: Chapter 16-306 WAC, Hemp program. In response to changes in federal law that occurred when the United States Department of Agriculture (USDA) published its final rule for the domestic production of hemp (final rule) in January of 2021, the Washington state department of agriculture (the department) is proposing amendments to various sections of this chapter to align with USDA's final rule. The department is also proposing updates to multiple sections throughout the chapter to provide clarity and transparency to hemp producers in regard to testing, the appeals process, and enforcement, as well as revising some of the fees that are currently listed in rule.

Hearing Location(s): On September 7, 2022, at 10:00 a.m., Microsoft Teams conference line: Click here to join the meeting [contact agency for link]; or join by phone +1 564-999-2000, Phone Conference ID 229 530 375#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: September 14, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by September 7, 2022.

Assistance for Persons with Disabilities: Contact Reanna McNamara, phone 360-902-2085, fax 360-902-2085, TTY 800-833-6388, email rmcnamara@agr.wa.gov, by August 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following amendments to align with USDA's final rule.

- Adding the definitions for "Microgreen" and "Remediation" to WAC 16-306-030.
- Replacing "destruction" with "disposal" throughout the entire chapter.
- Creating WAC 16-306-075 setting the certification process for immature nonflowering hemp plants.
- Updating WAC 16-306-080 to increase the inspection window from 15 days to 30 days.
- Clarifying language in WAC 16-306-090 by adding "mature" to clarify that it is mature hemp that will be tested for THC concentration, in order to distinguish between the immature and nonflowering hemp plants that are now allowed to be certified and harvested.
- Clarifying language in WAC 16-306-120 to include "visually inspected" for immature, nonflowering hemp plants.
- Adding a new subsection (3) to WAC 16-306-170 (changing current subsection (3) to subsection (4)) to include an option for remediation of hemp that tests higher than the allowed 0.3 percent but less than 0.7 percent for THC concentration.
- Clarifying WAC 16-306-200:
 - Increasing the "negligent violation" threshold for THC concentration from 0.5 to one percent.
 - Removing the department's reporting requirements on the production of hemp without a license to the USDA and United

States Attorney General as these requirements were removed in the USDA hemp final rule.

- Clarifying 16-306-210 to specify that culpable violations will be reported to the "US Attorney General," instead of just "Attorney General."

Additionally, the department is proposing the following amendments to other sections throughout the chapter to provide clarity and transparency to hemp producers in regard to testing, the appeals process, and enforcement:

- Replacing the word "marijuana" with "cannabis" in WAC 16-306-020 and 16-306-030 due to HB 1210 which passed during the 21-22 legislative session.
- Clarifying language in WAC 16-306-080 (replacing "shall" with "may"). This change will clarify that the program retains the right to inspect a licensee on an annual basis, but the program does not always inspect every license holder annually.
- Clarifying language in WAC 16-306-100 to remove the references to hemp being certified for human consumption from the language. The department has not created a human consumption standard for hemp. Therefore, the department cannot certify a crop to the standards of human consumption. By removing the references to being certified for human consumption from this section, producers are still able to request testing for pesticides and heavy metals without assuming that they are being certified for a human consumption standard that does not currently exist. The department is also clarifying the language in this section regarding the list of pesticides that is available on the department's website.
- Expanding WAC 16-306-180 to include recipients of negligent or culpable violations amongst those who may request an adjudicative proceeding. This change will clarify that anyone violating this chapter has the right to an adjudicative proceeding.
- Amending WAC 16-306-200:
 - Including unlicensed hemp producers as those who are subject to a corrective action plan. This change will clarify that unlicensed hemp producers are also subject to corrective action plans.
 - Clarifying that producers cannot receive more than one negligent violation per growing season. This change adds the language to clarify our existing policy that wasn't in rule, and reflects changes in USDA hemp final rule.

Lastly, the department is proposing the following amendments to reduce fees for hemp producers:

- Removing the reference to a late license fee for applications received after March 31 from WAC 16-306-040(b) to reduce the cost to licensees.
- Removing late license fee and license modification fee from WAC 16-306-140 to reduce the cost to licenses [licensees].

Reasons Supporting Proposal: Subsequent to the passage of the 2018 Farm Bill, USDA provided the interim final rule (IFR) on the Establishment of a Domestic Hemp Production Program (84 F.R. 58522), on October 31, 2019. The department hemp program created a plan in alignment with the IFR, and submitted that plan to USDA, while finalizing state rules for the hemp program. As the legalization of hemp is a recent development, the federal government provided a comment period on

IFR so that states and those subject to the regulatory requirements of IFR during the 2020 production cycle could provide feedback about how IFR was being operationalized in their jurisdictions.

IFR presented several challenges to the department and its stakeholders, as the 15-day window for inspection and sampling prior to harvest made it challenging for the hemp program to schedule inspections throughout the state. A lack of options for remediation meant that farmers with noncompliant hemp plants had to destroy their crops, despite processes available to reduce the THC concentration of their plant materials. Finally, IFR did not provide options or opportunities for farmers producing nonflowering hemp plants, including microgreens, seedlings, and clones to receive certification within the program. USDA addressed these challenges by incorporating less restrictive components in the final rule, which was published on January 19, 2021, and effective on March 22, 2021.

Since September 21, 2021, the hemp producers have been able to comply with the changes in federal standards to the 15-day window for inspection and for producing nonflowering hemp plants under the department's Policy Statement CI-21-0002 (WSR 21-20-061). These amendments will incorporate those changes into the rule.

Additionally, updating other sections throughout the chapter will provide clarity and transparency to hemp producers in regard to testing, the appeals process, and enforcement. The current rule was written when hemp production became federally legal and the program and stakeholders have since identified areas of the language that are unclear. These amendments will provide clarity and transparency for hemp producers now that the program understands the needs of its stakeholders.

Lastly, the removal of the late application fee and the license modification fee will reduce overall costs to hemp producers and make it easier for them to do business with the program.

Statutory Authority for Adoption: RCW 15.140.030.

Statute Being Implemented: Chapter 15.140 RCW.

Rule is necessary because of federal law, 7 C.F.R. 990.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Trecia Ehrlich, 1111 Washington Street S.E., Olympia, WA 98504, 360-584-3711.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 34.05.310 (4) (c).

Explanation of exemptions: All of the amendments in relation to aligning with USDA's final rule on the Establishment of a Domestic Hemp Production Program (7 C.F.R. 990), as well as changing the word "marijuana" to "cannabis" in alignment with HB [2SHB] 1210, are exempt from a small business economic impact statement under RCW 19.85.025(3)/34.05.310 (4) (c) because they are adopting or incorporating by reference, without material change, federal regulations and Washington state laws.

August 1, 2022
Jessica Allenton
Assistant Director

OTS-3910.3

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

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)) cannabis as defined in RCW 69.50.101.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-020, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

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 hemp producer 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 hemp producer 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~~) cannabis such as a Drug Enforcement Agency (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.

"Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

"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.

"Microgreen" means an immature nonflowering hemp plant harvested for sale or distribution at fewer than 12 inches in height.

"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 activi-

ties. 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.

"Remediation" means the process by which a licensed hemp producer transforms noncompliant plants into useful and compliant material.

"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.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-030, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-030, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

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)) will remain subject to the same expiration date;

(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 United States Department of Agriculture (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 60 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 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully grow-

ing 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 10 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 10 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.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-040, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-040, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

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~~) 30 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, the licensee must dispose of 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 appro-

val 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.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-050, filed 1/22/20, effective 2/22/20.]

NEW SECTION

WAC 16-306-075 Immature nonflowering hemp plants. Licensed hemp producers that grow hemp for certain purposes that do not bring plants to their flowering stage, like clones and microgreens, are not required to meet the same sampling and testing requirements as operations that grow flowering hemp, as these immature, nonflowering plants do not exceed 0.3 percent THC when the plants are harvested before reaching 12 inches in height. Immature plants must meet the following requirements for THC certification:

- (1) The hemp producer licensee must notify the department of their intent to grow microgreens, lettuces, or cut immature plants in their license application, or email hemp@agr.wa.gov with their intent to grow upon the start of their first planting.
- (2) At least seven days prior to a hemp producer licensee's immature hemp plant harvest, the licensee must notify the department and may be subject to inspection. An inspection may include:
 - (a) Visual inspection of all the hemp plants to be harvested to ensure they are immature plants of less than 12 inches; and
 - (b) Licensee compliance with chapter 15.140 RCW, Hemp Production, and this chapter.
- (3) After visual inspection, the department may issue a THC certification required by WAC 16-306-120. This certification is specifically for immature cut hemp plants, and will expire one month after inspection. Certification permits the transport of immature hemp plants under WAC 16-306-130 for the time period of the certification.

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AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All hemp producer licensees are subject to inspection by the department. The department (~~shall~~) may 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 ~~((15))~~ 30 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 365 days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104). WSR 22-01-137, § 16-306-080, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-080, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-090 Hemp THC testing criteria. (1) Mature 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.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-090, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-100 Voluntary (~~((certification))~~) testing for ((hemp intended for human consumption)) pesticides and heavy metals. (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))~~ request voluntary testing for the following:

(a) ~~((Nonapproved pesticide or herbicide use.))~~ A link to the list of ((approved)) pesticides ((and herbicides)) that are allowed for use on hemp 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))~~ receive voluntary testing for pesticides and heavy metals at the time of sampling ((as specified under WAC 16-306-080)) and in their harvest report.

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

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-100, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

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 or visually inspected 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.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-120, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-140 Hemp producer license fees. ~~((+1))~~ Hemp producer annual license fee ~~((s are as follows:))~~ is \$1,200.

((Annual License Fee	License Modification Fee	Late License Fee (After March 31)
\$1,200	\$200	\$200

~~(2) The license modification fee is required when a licensee submits changes to the registered land area(s) as specified in WAC 16-306-050(8).~~

~~(3) The late license fee is added to any application submitted after March 31st and is in addition to the annual license fee.)~~

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104). WSR 22-01-137, § 16-306-140, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-140, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-170 Hemp noncompliance for THC concentration. (1) (a) If a hemp producer 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))~~ dispose of the non-compliant 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 30 days or resampling of the same lot, at their own expense.

(3) If a licensee's hemp tests higher than 0.3 percent but less than 0.7 percent THC concentration, the licensee may remediate their crop using methods approved by the department. The remediated crop then must be resampled and retested within 30 days, at the licensee's own expense.

(4) 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.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-170, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-170, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

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 hemp producer 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))~~ disposal of non-

compliant hemp, or notice of a department finding that the licensee has committed a negligent or culpable violation, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-180, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-180, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-200 Corrective action plans. (1) ~~((A hemp producer licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including))~~ When the department determines that a hemp producer has committed a negligent violation, the department will issue a notice of violation. This notice will include a corrective action plan. Producers shall not receive more than one negligent violation per calendar year. Negligent violations include, but are not limited to:

(a) Failing to provide ~~((a))~~ an accurate 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 producer ~~((licensee))~~ shall comply with a corrective action plan established by the department to correct the negligent violation ~~((, including))~~. The corrective action plan will include:

(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, or for failing to comply with a corrective action plan.

(4) A hemp producer ~~((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))~~ 1.0 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))~~ 1.0 percent if the hemp producer has made reasonable efforts to grow hemp), ~~((USDA considers this as))~~ this is considered one negligent vi-

olation. 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))~~ is subject to the same disposal ~~((or destruction))~~ requirements as for hemp above the acceptable hemp THC level.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-200, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-200, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-210 Culpable violations. If ~~((it is determined))~~ the department determines a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, the department will report the violation to USDA, the U.S. Attorney General, and the local law enforcement officer as applicable.

[Statutory Authority: RCW 15.140.030, 15.140.060 and 2021 c 104. WSR 22-01-137, § 16-306-210, filed 12/14/21, effective 1/14/22. Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-210, filed 1/22/20, effective 2/22/20.]