



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (4/25/96)

Agency: Department of Agriculture	<input checked="" type="checkbox"/> Permanent Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Expedited Repeal
(1) Date of adoption: December 31, 1997	

(2) Purpose: To establish fair, uniform and equitable means for assessing civil penalties and licensing actions for violations of Chapters 16.49, 19.32, 69.04, 69.07 and 69.10 RCW.

(3) Citation of existing rules affected by this order: None
 Repealed:
 Amended:
 Suspended:

(4) Statutory authority for adoption: RCW 16.49.680, 19.32.030 69.04.730, 69.07.020, and 69.10.055
 Other Authority: N/A

PERMANENT RULE ONLY
 Adopted under notice filed as WSR 97.22.031 on October 30, 1997 (date).
 Describe any changes other than editing from proposed to adopted version: None

EMERGENCY RULE ONLY
 Under RCW 34.05.350 the agency for good cause finds:
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

 Reasons for this finding:

EXPEDITED REPEAL ONLY
 Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
 Yes No If Yes, explain:

(6) Effective date of rule:

Permanent Rules or Expedited Repeal	Emergency Rules
<input checked="" type="checkbox"/> 31 days after filing	<input type="checkbox"/> Immediately
<input type="checkbox"/> Other (specify) _____*	<input type="checkbox"/> Later (specify)

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)
James M. Jesernig

Signature
James M. Jesernig

Title
Director of Agriculture

Date
12/31/97

CODE REVISER USE ONLY

**CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED**

Dec 31, 1997

310

TIME 9:16 AM
WSR 98-07-023

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New <u>8</u>	Amended	Repealed

The number of sections adopted at the request of nongovernmental entity:

New	Amended	Repealed
-----	---------	----------

The number of sections adopted in the agency's own initiative:

New <u>8</u>	Amended	Repealed
--------------	---------	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
-----	---------	----------

The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed
Pilot rule making:	New	Amended	Repealed
Other alternative rule making:	New <u>8</u>	Amended	Repealed

Chapter 16-139 WAC

PENALTIES

NEW SECTION

WAC 16-139-001 Promulgation and purpose. This chapter is promulgated by the director of agriculture for the purpose of establishing fair, uniform and equitable means for assessing civil penalties and licensing actions authorized under RCW 16.49.444, 19.32.060, 69.04.880, 69.07.060, 69.07.110, 69.07.150(2), 69.10.030 and 69.10.050. The rules adopted in WAC 16-139-005 through 16-139-060 apply to violations of chapters 16.49 RCW (Custom slaughtering), 19.32 RCW (Food lockers), 69.04 RCW (Intrastate commerce in food, drugs, and cosmetics), 69.07 RCW, (Washington Food Processing Act) and 69.10 RCW (Food storage warehouses). The director also declares:

(1) Education and technical assistance play an important role in the prevention, correction or abatement of food safety violations and are the department's preferable alternative to regulatory action. However, at times regulatory action is necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The department initiates such actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance; and

(2) Any regulatory action taken by the department against any person who violates the provisions of chapters 16.49, 19.32, 69.04, 69.07 and 69.10 RCW, and rules adopted thereunder shall be commensurate with the seriousness of the violation under the circumstances; and

(3) Each person shall be treated fairly in accordance with the rules set forth in this chapter.

NEW SECTION

WAC 16-139-005 Definitions. (1) Definitions:

(a) "Violation" means commission of an act or acts prohibited by chapter 16.49, 19.32, 69.04, 69.07 or 69.10 RCW, including rules adopted under them.

(b) "Prior violation" means the same or a similar violation committed by a person within the previous three years.

(c) "Critical violation" means a violation resulting in food adulteration that could cause injury or illness in consumers or that has the potential to contribute to conditions resulting in such adulteration.

(d) "Significant violation" means a violation resulting in food adulteration or food being prepared under unsanitary conditions not apparently related to a public health danger or that has the potential to contribute to conditions resulting in such adulteration and if not corrected could lead to a critical violation.

(e) "Economic violation" means a violation which affects the purchaser economically, either due to misbranding or adulteration where inferior or substandard quality product is substituted, by hiding defects or by false or misleading labeling.

(f) "Other violation" means a violation of chapter 16.49, 19.32, 69.04, 69.07 or 69.10 RCW, not covered under the penalty schedules in WAC 16-139-020 or 16-139-030, including, but not limited to, violation of embargo, mutilation of embargo notices, sale of food from an unlicensed processor, operating without a required license, refusal of inspection or access, interference with the director or the director's designee, or economic and labeling violations.

(g) "Same," with respect to violations, means an identical recurrence or an exact repetition of a previous violation, or a continuation of a previous violation.

(h) "Similar," with respect to violations, means related in appearance or nature; alike though not identical.

(i) "Knowingly" means that the alleged violator had previous warning, knew or reasonably should have known that a condition could result in adverse effects or that a violation would occur.

(j) "Potential," with respect to violations, means that a violation may result in food adulteration or a risk to health or that the violation supports conditions that may contribute to food adulteration or a risk to health.

(k) "Probable," with respect to violations, means that a violation is reasonably likely to result in food adulteration or a risk to health.

(2) Additional definitions for terms used in this chapter are found in the following provisions of law:

(a) Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW.

(b) Washington Food Processing Act, chapter 69.07 RCW.

(c) Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food, Title 21, Code of Federal Regulations, Chapter 1, Subchapter B, Part 110.

(d) Food storage warehouses, chapter 69.10 RCW.

(e) Custom Slaughter Act, chapter 16.49 RCW.

NEW SECTION

WAC 16-139-010 Calculation of penalty. (1) Median penalty selection. In the disposition of administrative cases, the department shall determine the penalty as follows:

(a) The department shall first determine the correct penalty assignment schedule table listed in either WAC 16-139-020 (critical violations), WAC 16-139-030 (significant violations), or WAC 16-139-040 (economic and other violations), that is applied based on the type of violation alleged.

(b) The department shall then determine the penalty range based on whether there have been prior violations in last three years.

(c) The department shall then determine:

(i) The probability of a violation causing a risk to health under WAC 16-139-020 (critical violations); or

(ii) The probability of a violation resulting in food adulteration under WAC 16-139-030 (significant violations); or

(iii) Whether the violation was knowing under WAC 16-139-040 (economic and other violations).

(d) The scheduled penalty is then applied unless a proportionate adjustment is made. In no case will a penalty less than the minimum penalty listed for the violation be applied.

(2) Proportionate adjustment of median penalty. The department reserves the right to proportionately increase the civil penalty and proportionately decrease the licensing action under certain circumstances. Such circumstances include situations where licensing action as a deterrent is ineffective and includes but is not limited to violations by persons who are not licensed. Likewise, the department reserves the right to proportionately decrease the civil penalty and proportionately increase the licensing action when circumstances in a particular case demonstrate the ineffectiveness of a civil penalty action as a deterrent.

NEW SECTION

WAC 16-139-020 Penalty assignment schedule--Critical violations.

LEVEL	DEGREE OF RISK TO HEALTH	PENALTY
1st Violation in a 3-year period	A. POTENTIAL	\$200 and 2-day license suspension
	B. PROBABLE	\$1000 and 7-day license suspension
2nd Violation in a 3-year period	A. POTENTIAL	\$400 and 4-day license suspension
	B. PROBABLE	\$1000 and 14-day license suspension
3rd Violation in a 3-year period	A. POTENTIAL	\$800 and 8-day license suspension
	B. PROBABLE	\$1000 and 30-day license suspension

NEW SECTION

WAC 16-139-030 Penalty assignment schedule--Significant violations.

LEVEL	POTENTIAL FOR FOOD ADULTERATION	PENALTY
1st Violation in a 3-year period	A. POTENTIAL B. PROBABLE	\$100 and 1-day license suspension \$200 and 2-day license suspension
2nd Violation in a 3-year period	A. POTENTIAL B. PROBABLE	\$200 and 2-day license suspension \$400 and 4-day license suspension
3rd Violation in a 3-year period	A. POTENTIAL B. PROBABLE	\$400 and 4-day license suspension \$800 and 8-day license suspension

NEW SECTION

WAC 16-139-040 Penalty assignment schedule--Economic and other violations of chapters 16.49, 19.32, 69.04, 69.07, and 69.10 RCW.

LEVEL	DEGREE OF KNOWLEDGE OF VIOLATION	PENALTY
1st Violation in a 3-year period	A. UNKNOWING B. KNOWING	\$100 and 1-day license suspension \$200 and 2-day license suspension
2nd Violation in a 3-year period	A. UNKNOWING B. KNOWING	\$200 and 2-day license suspension \$400 and 4-day license suspension
3rd Violation in a 3-year period	A. UNKNOWING B. KNOWING	\$300 and 3-day license suspension \$1000 and 10-day license suspension

NEW SECTION

WAC 16-139-050 Other dispositions of alleged violations.

Nothing herein shall prevent the department from:

(1) Choosing not to pursue a case administratively.

(2) Issuing a notice of correction in lieu of pursuing administrative action.

(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 the current alleged violation(s) if not prohibited by the agreement.

NEW SECTION

WAC 16-139-060 Disposition of collected penalty money. Money collected by the department as civil penalties for violation of chapters 16.49, 69.04, and 69.10 RCW shall be directed to the state general fund. Money collected by the department as civil penalties for violations of chapter 69.07 RCW shall be utilized for food processing industry technical advisement and assistance in meeting food safety regulations and requirements and food safety education and training of food safety program personnel.