

Chapter 16-90 WAC

PENALTY SCHEDULE

WAC

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[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 09-03-020, § 16-90-010, filed 1/9/09, effective 2/9/09.]

WAC 16-90-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of penalties issued under RCW 16.36.113 and to provide for fair and uniform actions taken in relation to permits or licenses issued by the department as a result of violations of chapter 16.36 RCW and the rules adopted under that statute.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 09-03-020, § 16-90-005, filed 1/9/09, effective 2/9/09.]

WAC 16-90-010 Penalty outline. (1) In accordance with RCW 16.36.113, any person who violates chapter 16.36 RCW or the rules adopted under that statute may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation.

(2) Each violation is a separate and distinct offense. Penalties may be assessed per violation or per head when pertaining to animals, depending on the unique circumstances of the violation(s). Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation and may be subject to a civil penalty. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties will be added together.

(3) Moneys collected from civil penalty payments will be deposited in the state general fund.

(4) Nothing in this chapter shall prevent the department from:

(a) Choosing not to pursue a civil penalty, permit or license denial, suspension, or revocation;

(b) Issuing a notice of correction in lieu of pursuing a civil penalty, permit or license denial, suspension, or revocation;

(c) Negotiating settlement(s) of cases on such terms and for reasons as it deems appropriate.

(5) A prior violation covered by a settlement agreement may be used by the department for the purpose of determining the appropriate penalty for future violations, if not prohibited by the agreement.

(6) A violation committed during a period when an individual's permit or license is suspended or revoked may be subject to the maximum civil penalty of one thousand dollars or revocation of the permit or license for a period of up to five years. A violation committed by an unlicensed or unpermitted person is subject to the provisions of this chapter.

(7) The department may also choose to refer a violation to any federal, state or county authority with jurisdiction over the activities in question.

WAC 16-90-015 Revoking, suspending, or denying a permit or license. (1) The department retains the sole discretion to determine when a permit or license should be revoked or suspended. In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.

(2) The department may deny an applicant a permit or license when the applicant has committed a violation of chapter 16.36 RCW or the rules adopted under the chapter. In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(3) Nothing shall prevent the department from denying an applicant a permit or license when the applicant has an outstanding civil penalty owed to the department from a previous violation of any statute or rule under the jurisdiction of the department.

(4) The department may, at its discretion, suspend a permit or license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 09-03-020, § 16-90-015, filed 1/9/09, effective 2/9/09.]

WAC 16-90-020 Issuance of a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.100, a notice of correction may be issued by the department when they become aware of conditions and/or conduct that are not in compliance with the applicable laws and rules enforced by the department.

(2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 09-03-020, § 16-90-020, filed 1/9/09, effective 2/9/09.]

WAC 16-90-030 Penalty schedule. (1) The following penalty schedule will be used for violations of Washington state animal health laws and rules, including chapter 16.36 RCW and the rules adopted under that statute. The level of civil penalty is determined by the number of prior civil penalties the person has received in the past ten years excluding notices of correction.

Violation	Procedural Violations	Disease Violations
First	\$150.00	\$250.00
Second	\$350.00	\$650.00

Violation	Procedural Violations	Disease Violations
Third and subsequent	\$1,000.00	\$1,000.00

(2) Procedural violations: A "procedural violation" is a violation of the administrative functions associated with state import regulations where the violation did not cause a threat to Washington state's livestock industry. Procedural violations include but are not limited to violations of the following statutes and rules:

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements.

WAC 16-54-032 Certificate of veterinary inspection—Required information.

WAC 16-54-068 Restrictions.

WAC 16-54-082 Domestic bovine animals—Importation requirements.

WAC 16-54-088 Temporary grazing permits.

WAC 16-54-105 Llamas and alpacas.

WAC 16-54-160 Birds other than poultry—Importation and testing requirements.

WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements.

Chapter 16-74 WAC Livestock testing—Duties of owners.

WAC 16-80-045 Identification of swine.

WAC 16-86-017 Grazing permits.

(3) Disease violations: A "disease violation" is a violation of animal health statute and rules that cause a threat to Washington state's livestock industry and include the failure to obtain required testing and vaccinations prior to entry into Washington state. Disease violations include, but are not limited to, violations of the following statutes and rules:

RCW 16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.

Chapter 16-25 WAC Disposal of dead livestock.

Chapter 16-42 WAC Biological products.

WAC 16-54-025 Transporting livestock—Sanitary requirements.

WAC 16-54-028 Testing procedure requirements.

WAC 16-54-065 Prohibited entries.

WAC 16-54-068(4) - proof of current rabies vaccination.

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements.

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements.

WAC 16-54-085 Domestic bovine tuberculosis requirements.

WAC 16-54-086 Bovine trichomoniasis requirements.

WAC 16-54-090 Goats—Importation and testing requirements.

WAC 16-54-101 Sheep—Importation and testing requirements.

WAC 16-54-111 Swine—Importation and testing requirements.

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements.

Chapter 16-59 WAC Avian diseases in Washington state.

Chapter 16-70 WAC Animal disease—Reporting.

Chapter 16-71 WAC Equine infectious anemia.

WAC 16-80-025 Disinfecting premises.

WAC 16-80-030 Disinfecting vehicles.

WAC 16-86-015 Change of ownership requirements for cattle and bison in Washington.

WAC 16-86-026 Brucellosis testing requirements for raw milk dairies.

WAC 16-86-110 Q fever testing requirements for raw milk dairies.

WAC 16-86-130 Cattle used in rodeo or timed events.

WAC 16-86-140 Tuberculosis testing requirements for raw milk dairies.

WAC 16-89-022 Scrapie identification of sheep and goats.

WAC 16-89-090 Destruction and disposal of scrapie infected animals or flocks.

WAC 16-89-120 Concealing the disease.

WAC 16-89-150 Brucellosis testing for sheep and goat dairies.

WAC 16-89-170 Q fever testing requirements for sheep and goat dairies.

WAC 16-89-180 Tuberculosis testing for goat dairies.

(4) A one thousand dollar civil penalty will be issued regardless of the number of prior violations for a violation of the following:

(a) Chapter 16-30 WAC Restricted feedlots and restricted holding facilities;

(b) WAC 16-54-071 (13) and (14) - Piroplasmosis;

(c) WAC 16-54-111 Swine—Importation and testing requirements;

(d) WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements;

(e) WAC 16-80-015 Sale of quarantined animals;

(f) WAC 16-80-040 Vaccination;

(g) WAC 16-80-047 Mandatory reporting of suspected pseudorabies;

(h) Importation of a foreign animal disease or "transboundary" diseased animal. A transboundary animal disease is a disease that has been eradicated within the borders of the United States that would cause an economic loss if detected; and

(i) All quarantine and hold order violations under chapter 16.36 RCW. The department may assess a civil penalty for these violations without first issuing a notice of correction in accordance with RCW 43.05.110.

(5) Mitigating factors: The department reserves the right to decrease the civil penalty assessed for a violation by up to one hundred dollars in circumstances that include, but are not limited to, voluntary disclosure of a violation, or voluntary taking of remedial measures that would result in increased public protection and a decreased likelihood that the violation will be repeated.

(6) Aggravating factors: The department reserves the right to increase the civil penalty assessed for a violation by up to five hundred dollars, not to exceed one thousand dollars per violation. Circumstances may include, but are not limited to, situations where the violator knowingly commits a violation, where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation, the high magnitude of the harm, or potential harm

to humans, animals, or property caused by the violation, the similarity of the current alleged violation to previous violations committed within the past ten years, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 09-03-020, § 16-90-030, filed 1/9/09, effective 2/9/09.]