

**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.

[Statutory Authority: RCW 15.30.120, 69.07.020, 69.10.055, and 16.49.025. WSR 20-17-020, § 16-139-010, filed 8/6/20, effective 9/6/20. Statutory Authority: RCW 16.49.680, 19.32.030, 69.04.730, 69.07.020 and 69.10.055. WSR 98-02-023, § 16-139-010, filed 12/31/97, effective 1/31/98.]