



**RULE-MAKING ORDER**  
(RCW 34.05.360)

**CR-103** (10/1/89)

Agency: Washington State Dept. of Agriculture

- Permanent Rule  
 Emergency Rule

(1) Date of adoption: April 29, 1993

(2) Purpose: To adopt into rule a pesticide penalty assignment schedule to determine penalties for violations of the pesticide laws and rules.

(3) Citation of existing rules affected by this order:

- Repealed:  
Amended:  
Suspended:

(4) Authority for adoption:

Statute: RCW 15.58.260 and RCW 17.21.315  
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 93-06-075 on 3/3/93 (date).

Describe any changes other than editing from proposed to adopted version:  
Typographical error in Table A.

(5.2) EMERGENCY RULE ONLY

Pursuant to 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:

(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  | 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

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON

APR 29 1993

TIME: 4:00  
BY: [Signature]

NAME (TYPE OR PRINT)

Peter J. Goldmark

SIGNATURE

TITLE

Director

DATE

4/29/93

NEW SECTION

**WAC 16-228-905 Statement of purpose--Penalty assignment.** For the purpose of fair, uniform determination of penalty as set forth in WAC 16-228-910 through 16-228-930, the director hereby declares:

(1) Regulatory action is necessary to deter violations of the pesticide laws and rules, and to educate persons about the consequences of such violation(s); and

(2) Any regulatory action taken by the department against any person who violates the provisions of chapter 17.21 RCW, chapter 15.58 RCW, and/or 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 16-228-910 Definitions--Penalty assignment.** In addition to the definitions set forth in RCW 17.21.020, RCW 15.58.030, and WAC 16-228-010, the following shall apply to WAC 16-228-905 through 16-228-930:

(1) "Adverse effect(s)" means a possibility of pesticide exposure that could cause damage or injury to humans, animals, plants, or the environment.

(2) "Knowingly" means that the alleged violator knew or should have known that conditions existed that would result in adverse effect(s) or knew that a violation would occur.

(3) "Level of violation" means that the alleged violation is a first, second, third, fourth, fifth, or more violation(s).

(a) First violation. This means the alleged violator has committed no prior incident(s) which resulted in a violation or violations within three years of committing the current alleged violation.

(b) Second violation. This means the alleged violator committed one prior incident which resulted in a violation or violations within three years of committing the current alleged violation.

(c) Third violation. This means the alleged violator committed two prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.

(d) Fourth violation. This means the alleged violator committed three prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.

(e) Fifth or more violation. This means the alleged violator committed at least four prior incidents which resulted in a

violation or violations within three years of committing the current alleged violation.

(4) "Not probable" means that the alleged violator's conduct more likely than not would not have an adverse effect.

(5) "Probable" means that the alleged violator's conduct more likely than not would have an adverse effect.

(6) "Unknowingly" means that the alleged violator did not act knowingly.

(7) "Violation" means commission of an act or acts prohibited by chapter 17.21 RCW, chapter 15.58 RCW, and/or rules adopted thereunder.

## NEW SECTION

**WAC 16-228-915 Calculation of penalty.** (1) Median penalty selection. In the disposition of administrative cases, the department shall determine the penalty by first determining the penalty assignment schedule table listed in either WAC 16-228-920 or 16-228-925 that is applied based on the type of violation alleged. The department shall then determine the penalty range based on the level of violation, adverse effect(s) at the time of the incident(s) giving rise to the violation, and the knowledge of the alleged violator. The median penalty is then selected as the penalty unless a proportionate adjustment is required and/or there are aggravating or mitigating factors as provided herein. The median penalty under Table A listed in WAC 16-228-920 may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation in the penalty assignment schedule table. The median penalty under Table B listed in WAC 16-228-925 may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation. The median penalty under Table A and B may not be proportionately adjusted and/or mitigated to a level less than the minimum penalty listed for the violation.

(2) Proportionate adjustment of median penalty. The department reserves the right to proportionately increase the civil penalty and proportionately decrease the licensing action when circumstances in the particular case demonstrate the ineffectiveness of the licensing action as a deterrent including but not limited to violations by persons who are not licensed and violations by certified private applicator(s), or proportionately decrease the civil penalty and proportionately increase the licensing action when circumstances in the particular case demonstrate the ineffectiveness of a civil penalty action as a deterrent.

(3) Aggravating factors. The department may consider circumstances enhancing the seriousness of the violation, including, but not limited to, the following:

(a) Each separate additional incident of violation(s) alleged within a single notice of intent to have been committed by the alleged violator within the same calendar year.

(b) The high magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.

(c) The similarity of the current alleged violation to previous violations that occurred within three years of the current alleged violation.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct by others which necessitates a greater deterrent factor.

(4) Mitigating factors. The department may consider circumstances reducing the seriousness of the violation including, but not limited to, the following:

(a) A voluntary disclosure of a violation by the alleged violator.

(b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.

#### NEW SECTION

WAC 16-228-920 Penalty assignment schedule--Table A.



WAC 16-228-920 Penalty Assignment Schedule - TABLE A

Pesticide use, application, disposal, licensing, distribution, recommendations, and label violations  
 (See WAC 16-228-930 for other dispositions of alleged violations, including warning letters.)

LEVEL OF VIOLATION	ADVERSE EFFECT(S)	UNKNOWINGLY			KNOWINGLY		
		MINIMUM	MEDIAN	MAXIMUM	MINIMUM	MEDIAN	MAXIMUM
First	a. Not probable	\$100	\$200 and	\$300	\$200	\$300 and	\$400
		1 day	3 days	5 days	3 days	5 days	7 days
		SUSPENSION			SUSPENSION		
	b. Probable	\$150	\$250 and	\$350	\$250	\$350 and	\$450
1 day		3 days	5 days	3 days	5 days	7 days	
	SUSPENSION			SUSPENSION			
Second	a. Not probable	\$200	\$300 and	\$400	\$300	\$400 and	\$500
		3 days	5 days	7 days	5 days	7 days	9 days
		SUSPENSION			SUSPENSION		
	b. Probable	\$300	\$350 and	\$450	\$350	\$450 and	\$550
3 days		5 days	7 days	5 days	7 days	9 days	
	SUSPENSION			SUSPENSION			
Third	a. Not probable	\$400	\$700 and	\$1000	\$500	\$1000 and	\$1500
		10 days	15 days	20 days	10 days	20 days	30 days
		SUSPENSION			SUSPENSION		
	b. Probable	\$500	\$1000 and	\$1500	\$600	\$1300 and	\$2000
10 days		15 days	20 days	10 days	20 days	30 days	
	SUSPENSION			SUSPENSION			
Fourth	a. Not probable	\$600	\$1800 and	\$3000	\$700	\$2100 and	\$3500
		15 days	20 days	25 days	20 days	30 days	40 days
		SUSPENSION			SUSPENSION		
	b. Probable	\$700	\$2100 and	\$3500	\$800	\$2400 and	\$4000
20 days		30 days	40 days	30 days	40 days	50 days	
	SUSPENSION			SUSPENSION			
Fifth or More	a. Not probable	\$800	\$3400 and	\$6000	\$900	\$3700 and	\$6500
		20 days	40 days	60 days	50 days	60 days	70 days
		SUSPENSION			SUSPENSION		
	b. Probable	\$900	\$3700 and	\$6500	\$1000	\$4250 and	\$7500
50 days		60 days	70 days	50 days	70 days	90 days	
	SUSPENSION			SUSPENSION			
		OR			OR		
		DENIAL OR REVOCATION			DENIAL OR REVOCATION		

(WAC 16-228-920, Table A)

NEW SECTION

WAC 16-228-925 Penalty assignment schedule--Table B.

**WAC 16-228-925 Penalty Assignment Schedule - TABLE B**

Records, posting, storage for category one pesticides, removal of contamination material, and impersonating state official other violations not listed in Table A  
 (See WAC 16-228-930 for other dispositions of alleged violations, including warning letters.)

LEVEL OF VIOLATION	ADVERSE EFFECT(S)	UNKNOWINGLY			KNOWINGLY		
		MINIMUM	MEDIAN	MAXIMUM	MINIMUM	MEDIAN	MAXIMUM
First	la. Not probable	\$100	\$150 and 1 day	\$200	\$150	\$200	\$250
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
	lb. Probable	\$150	\$200 and 1 day	\$250	\$200	\$250	\$300
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
Second	la. Not probable	\$200	\$250 and 2 days	\$300	\$250	\$300	\$350
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
	lb. Probable	\$250	\$300 and 2 days	\$350	\$300	\$350	\$400
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
Third	la. Not probable	\$300	\$350 and 3 days	\$400	\$350	\$400	\$450
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
	lb. Probable	\$350	\$400 and 3 days	\$450	\$400	\$450	\$500
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
Fourth	la. Not probable	\$400	\$450 and 4 days	\$500	\$450	\$500	\$550
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
	lb. Probable	\$450	\$500 and 4 days	\$550	\$500	\$550	\$600
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
Fifth or More	la. Not probable	\$500	\$550 and 5 days	\$600	\$550	\$600	\$650
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	
	lb. Probable	\$550	\$600 and 5 days	\$650	\$600	\$650	\$750
			<b>SUSPENSION</b>			<b>SUSPENSION</b>	





NEW SECTION

**WAC 16-228-930 Other dispositions of alleged violations.**

Nothing herein shall prevent the department from:

(1) Choosing not to pursue a case administratively.

(2) Issuing a warning letter 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-228-900 Penalties.