

WAC 16-228-1120 Calculation of penalties. (1) For recordkeeping violations described in WAC 16-228-1126, licensing violations described in WAC 16-228-1127, and violations of chapter 16-233 WAC described in WAC 16-228-1128, the department will assess the civil penalty according to the schedule unless circumstances warrant a deviation from the penalty calculation rules as allowed under subsection (5) of this section.

(2) For the penalties assessed under WAC 16-228-1129, the department will select the level of violation and use the appropriate base penalty according to the type of pesticide violation as the starting point for calculating penalties. The base penalty shall be assessed unless either an adjustment is warranted, or there are aggravating or mitigating factors present, or both.

(3) Adjustment of base penalty for violations calculated under WAC 16-228-1129:

(a) The department reserves the right to increase the civil penalty and decrease the licensing action under certain circumstances. Such circumstances include situations where the licensing actions(s) are ineffective as a deterrent and include, but are not limited to:

(i) Violations involving unlicensed or during a license suspension;

(ii) Situations where the civil penalty assessed is not substantially equivalent to the economic benefit derived by the violator from the violation; and

(iii) Where the violation is the result of a business or other management decision(s).

(b) The department may decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent.

(4) Each violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, are separate and distinct violations. When a person has committed multiple violations in a single incident, each violation is individually and separately subject to the maximum civil penalty of \$7,500. Penalties for separate violations related to a single event are added together for the purpose of the notice of intent.

(5) The department may, in its discretion, deviate from the penalty calculation rules adopted in this chapter. The department has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the penalty calculation rules in this chapter, in the notice of intent.

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

(a) Adjusting either a licensing action to a level greater than the maximum licensing action listed in any penalty assignment schedule, or a civil penalty to a level greater than the maximum civil penalty listed in any penalty assignment schedule; or

(b) Aggravating either a licensing action or civil penalty, or both, to either a level greater than the maximum licensing action listed in any penalty assignment schedule or a civil penalty to a level greater than the maximum civil penalty in any penalty assignment schedule or both.

(7) When adjusting a penalty, the department may aggravate, mitigate, or proportionally adjust either the civil penalty or the license suspension, or both. Generally, the department will aggravate, mitigate, or proportionally adjust both the civil penalty and the license suspension when the department determines such factors are present; however, the department retains the discretion to aggravate, mitigate, or proportionally adjust a civil penalty without also aggravating,

mitigating, or proportionally adjusting the license suspension, and may aggravate, mitigate, or proportionally adjust the license suspension without aggravating, mitigating, or proportionally adjusting the civil penalty. In the event the department aggravates, mitigates, or proportionally adjusts either the civil penalty or the license suspension without aggravating, mitigating, or proportionally adjusting the other, the department will indicate its basis for doing so in the notice of intent.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 23-04-041, § 16-228-1120, filed 1/26/23, effective 4/1/23. Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1120, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1120, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1120, filed 10/20/99, effective 11/20/99.]