



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: November 21, 2000

(2) Purpose: Changing existing rules relating to European corn borer quarantine to comply with legislative mandates such as regulatory reform and use of clear and readable format, to reflect changes in industry and program practices, and for greater consistency with federal regulations.

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

Repealed: WAC 16-478-001, -00101, -060, -070, -080, -090, -100
 Amended: WAC 16-478-010, -030, -040, -050
 Suspended:

(4) Statutory authority for adoption: Chapter 17.24 RCW

Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 00-20-068 on October 3, 2000 (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)

Jim Jesernig

Signature

Title
Director

Date
November 21, 2000

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

NOV 21 2000

TIME 1044 AM
 WSR 0023-097 PM

**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	Amended	Repealed

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

New	Amended	Repealed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

New	<u>1</u>	Amended	<u>4</u>	Repealed	<u>7</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	<u>4</u>	Repealed	<u>7</u>
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The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed			
Pilot rule making:	New	Amended	Repealed			
Other alternative rule making:	New	<u>1</u>	Amended	<u>4</u>	Repealed	<u>7</u>

AMENDATORY SECTION (Amending Order 607, effective 7/23/51)

WAC 16-478-010 ((~~Pest.~~) **Establishing quarantine for European corn borer.** European corn borer(~~(, pyrausta)~~) (*Ostrinia nubilalis* (~~((hubn.))~~)) is a nonnative, invasive insect which has infested most of North America since its introduction in the early 1900's. Its host range constitutes a wide range of plants, including important food and nursery crops grown in this state. The director of agriculture, pursuant to authorities in chapter 17.24 RCW, has determined that the exclusion of European corn borer at all stages of its life cycle is necessary to protect the environmental quality and agricultural crops of the state of Washington.

AMENDATORY SECTION (Amending Order 607, effective 7/23/51)

WAC 16-478-030 ((~~Infested area.~~) **Definitions.** (1) "European corn borer inspection certificate" means a certificate issued by an authorized agent of the agricultural regulatory agency of the state of origin, which includes all of the following information:

(a) Kind and quantity of the commodity in the shipment lot.
(b) Railway car number or vehicle identification of the carrier.

(c) Names and addresses of both the shipper and the consignee.

(d) Date issued.

(e) Identity of issuing agent.

(f) Any other information required in WAC 16-478-050. If the certificate includes information regarding fumigation as a treatment method, the certificate must include the material(s) used, the dosage schedule, temperature, period of exposure, and date of treatment.

(2) "Infested area" means any area located within the following:

(a) Entire states of Alabama, Arkansas, Connecticut, Colorado, Delaware, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, ((~~and~~)) Wyoming, or the District of Columbia; or

(b) Portions of the state of Texas in Bailey, Carson, Castro, Dallam, Deaf Smith, Floyd, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Lipscomb, Moore, Ochiltree, Oldham, Parmer,

Potter, Randall, Robers, Sherman and Swisher counties; or

(c) Portions of the state of Florida in Escambia and Santa Rosa counties.

(3) "Noninfested area" means all locations in the area under quarantine as designated in WAC 16-478-020 that are not listed as infested in WAC 16-478-030(2).

(4) "Phytosanitary certificate" means a certificate issued by a government agency under authority of state or federal statute, which declares or establishes the pest status of a shipment of plants or plant parts under accepted inspection or sampling procedures. Phytosanitary certificates are patterned after model certificates of the International Pest Protection Convention.

AMENDATORY SECTION (Amending Order 607, effective 7/23/51)

WAC 16-478-040 (~~(Commodities covered.)~~) **Regulated articles.** (~~(Restricted products)-~~) The following products and commodities are regulated under this quarantine as hosts or possible carriers of European corn borer:

(1) Corn, broomcorn, sorghums, and Sudan grass plants and (~~all~~) plant parts (~~(thereof)~~) (including, but not limited to, seed and shelled grain, and stalks, ears, cobs, and all other parts, fragments, or debris (~~(of said plants)~~)) (~~(7)~~).

(2) Beans in the pod, beets, celery, bell pepper fruits, endive, Swiss chard, and rhubarb (cut or plants with roots) (~~(7)~~).

(3) Cut flowers (~~and~~) or entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems) and gladiolus (except corms without stems) (~~(are hereby declared to be hosts or possible carriers of the pest herein quarantined against)~~).

AMENDATORY SECTION (Amending Order 1476, effective 7/2/76)

WAC 16-478-050 (~~(Restrictions-)~~) **Requirements for shipping regulated articles from an area under quarantine.** (1) (~~(Certification required on shelled grain and seed. Except as provided in (2) below, and effective immediately, all~~) For shelled grain, seed, and stalks, ears, cobs and other parts, fragments, or debris from an infested area, unless the shipment is addressed in subsection (3) of this section. Shelled grain (~~and~~), seed, and stalks, ears, cobs, and other parts, fragments, or debris of corn, broomcorn, sorghums, and Sudan grass, grown in or shipped from the infested area described in WAC 16-478-030 (~~(above, arriving in the state of Washington from the area under quarantine as described in~~

~~WAC 16-478-020 above~~)), will be admitted into the state of Washington only ~~((provided))~~ when each lot or shipment is accompanied by ~~((an official))~~ a European corn borer inspection certificate ~~((see (6) below) of the state or district from which shipped, affirming either that said))~~ stating that the conveyance (such as a railcar or truck) was inspected and found free of regulated articles and that at least one of the following conditions has been complied with:

(a) The grain or seed has been passed through a 1/2 inch or less mesh screen ((or less)) or otherwise cleaned prior to loading and is believed to be free from stalks, cobs, stems or other ((portions of)) plant((s or fragments)) parts capable of harboring ((larva)) larvae of the European corn borer ((and further, that the car or truck was free from such plants or fragments at the time of loading, or affirming that said grain or seed has been fumigated with methyl bromide at the rate of 4 pounds per 1000 cubic feet for 16 hours at 60 degrees temperature, except that shelled grain and seed of corn, broomcorn, sorghums, and Sudan grass grown in and shipped from the states under quarantine and not excepted in WAC 16-478-020 above,));

(b) The grain, seed, or stalks, ears, cobs or other parts, fragments, or debris has been treated, sterilized, or disinfected in a manner approved by the director as adequate to control European corn borer.

(2) For shelled grain, seed, or stalks, ears, cobs, or other parts, fragments, or debris from a noninfested area, unless the shipment is addressed in subsection (3) of this section. Shelled grain, seed, and stalks, ears, cobs, or other parts, fragments or debris of corn, broomcorn, sorghums, and Sudan grass, grown in or shipped from the noninfested area described in WAC 16-478-030(3) will be admitted into the state of Washington ((provided)) only when each ((such)) shipment or lot is accompanied by ((an official)) a European corn borer inspection certificate ((see (6) below) of the state where produced affirming)) stating both of the following:

(a) That all grain ((or)) seed ((covered by said certificate is a product of said state wherein no)), or stalks, ears, cobs, or other parts, fragments or debris in the shipment was produced in an area where European corn borer is not known to exist ((and)) based on negative survey data; and

(b) That ((its)) the continued identity of the shipment has been maintained to assure ((no blending or mixing)) the shipment was not blended or mixed with grain, seed, plants, ((or portions thereof)) plant parts, fragments, or debris produced in or shipped from an infested area((s herein described)).

~~((2) Small lots, and packages of seed admitted without certificate.))~~ (3) For small lots and packages of seed. Individual shipments or lots of one hundred pounds or less of clean shelled grain ((and)) or seed ((covered by this regulation, or)) and shipments comprised of packages of less than ten pounds, are ((hereby)) exempted from the ((certification)) requirement((s of)) for a European corn borer inspection certificate stated in

subsections (1) ((above and will be)) and (2) of this section. These small lots are admitted into this state subject to inspection and freedom from other plant parts, fragments, and debris capable of harboring European corn borer.

~~((3) Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and Sudan grass admitted under disinfection or treatment certificate. Stalks, ears, cobs, or other parts, fragments or debris of corn, broomcorn, sorghums, and Sudan grass grown in or shipped from the area under quarantine imported as such or as packing or otherwise, will be admitted into the state of Washington only provided each lot or shipment is accompanied by an official certificate (see (6) below) of the state from which shipped affirming that all stalks, ears, cobs, or other parts, fragments, or debris of such plants accompanied thereby have been fumigated with methyl bromide at the rate of 3 pounds per 1000 cubic feet for 4 hours at 60 degrees, or have been sterilized or disinfected by a method and in a manner prescribed by the director of agriculture of the state of Washington, except that stalks, ears, cobs, or other parts, fragments, or debris of said plants grown in and shipped from states not listed in the infested area described in WAC 16-478-030 above will be admitted into the state of Washington provided each shipment or lot is accompanied by an official certificate (see (6) below) of the state where produced affirming that such product is a product of said state wherein no European corn borer is known to exist and that continued identity has been maintained to assure no handling or storage in association with stalks, ears, cobs, or other parts, fragments, or debris of such plants grown in or shipped from infested areas herein described.))~~

(4) ~~((Certification required on certain vegetable and ornamental plants and plant products produced in or shipped from infested area.))~~ For vegetable and ornamental plants and plant products. Beans in the pod, beets, celery, bell pepper fruits, endive, Swiss chard, and rhubarb (cut or plants with roots), cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia, (except tubers without stems) and gladiolus (except corms without stems), produced in or shipped from the infested area described in WAC 16-478-030 above will be admitted into the state of Washington only ~~((provided))~~ when each lot or shipment is accompanied by ~~((an official))~~ a phytosanitary certificate ~~((see (6) below) signed by an inspector of the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture or by the duly authorized official of the state where produced, affirming either))~~ stating that all ~~((such))~~ plants, products or cut flowers in the ~~((accompanying))~~ shipment or lot have been inspected and that one of the following is true:

(a) The shipment was found free from infestation by the European corn borer, or ~~((have been))~~

(b) The plants, products, or cut flowers were grown in a greenhouse in which all host plants have been regularly inspected during the growing season and no evidence of European corn borer

was found (~~(, or that such)~~); or

~~(c) The plants, products or cut flowers have been ((fumigated with methyl bromide at a rate of 3 pounds per 1000 cubic feet at 60 degrees temperature for 4 hours. No restrictions are placed by this regulation on the entry into this state of such vegetable and ornamental plants and plant products produced in and shipped from any state not listed in WAC 16-478-030 above))~~ treated, sterilized or disinfected in a manner approved by the director as adequate to control European corn borer.

(5) Exemptions.

~~(a) ((Certification requirements above are))~~ The requirement for a phytosanitary certificate is waived ((on individual)) for shipments or lots of ((certain restricted vegetables, ornamental plants and plant products under and subject to the following conditions:

~~(i) In lots or shipments of))~~ 10 pounds or less ~~((7))~~ of beans in the pod, beets, bell peppers, endive, Swiss chard ~~((and))~~ or rhubarb (cut or plants with roots). ~~((7)~~

~~(ii))~~ (b) During the period November 30 to May 1, the requirement for a phytosanitary certificate is waived for divisions without stems of the previous year's growth, rooted cuttings, seedling plants and cut flowers of ((the)) aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia and Japanese hop.

~~((5) Manufactured or processed products exempt from restrictions.))~~ (c) No restrictions are placed by this ((quarantine upon the)) chapter on movement of ((the restricted products herein defined)) regulated articles listed in WAC 16-478-040 which are processed or manufactured in such a manner as to eliminate all danger of carrying ((the pest herein quarantined against.

~~(6) Official certificates. Official certificates must be issued by the duly authorized official, or his agent, of the federal agency, state, or district, as designated, and must be signed or countersigned by him. Each certificate shall set forth, in addition to the specific facts required in (1) to (4) above, the kind and quantity of the commodity constituting the shipment or lot, method of shipment, the railway car number or license number in the case of trucks, and the names and addresses of the shipper and consignee. Fumigation certificates shall also set forth the materials used, the dosage schedule, temperature, and the period of exposure, and date of treatment))~~ European corn borer.

NEW SECTION

WAC 16-478-065 Special permits. The director may issue special permits to allow regulated articles grown in or shipped from a quarantine area to enter the state. A special permit may be issued if the director determines that the conditions of the permit are sufficient to protect the environmental quality and

agricultural crops of the state of Washington.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-478-001	Promulgation.
WAC 16-478-00101	Promulgation.
WAC 16-478-060	Enforcing powers.
WAC 16-478-070	Federal shipments exempt.
WAC 16-478-080	Commodities covered subject to other rules and regulations.
WAC 16-478-090	Disposition of violations and penalties.
WAC 16-478-100	Common carrier agents must hold shipments.