



RULE-MAKING ORDER

SR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Agriculture

- Permanent Rule**
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Amend WAC 16-414-005 to include Rainier Cherries or other light sweet cherry varieties under the "Mature" soluble solids requirements; WAC 16-414-011 to include size requirements for the Rainer cherry or other light sweet cherry varieties; and, amend WAC 16-461-010 to require Rainier or other light sweet cherry varieties to meet chapter WAC 16-414-05 "Mature" and chapter WAC 16-414-011(3) size requirements. Eliminate the container requirements (WAC 16-414-085) for shipping sweet cherries. These amendments bring the Rainier Cherry and other light sweet cherry varieties under state requirements for soluble solids "Mature" and establish a size requirement which is currently required under Federal Marketing Order 923. Removing the container requirements will allow growers/packers and shippers to pack and market various types of containers that may be requested or required by buyers and the consuming public.

Citation of existing rules affected by this order:

Repealed: 16-414-085 WAC
 Amended: 16-414-005, -010, -011 WAC
 Suspended:

Statutory authority for adoption: Chapter 15.17 Standards of Grades and Packs

Other authority : Chapter 15.17 Standards of Grades and Packs, Chapter 34.05 Administrative Procedure Act

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-09-098 on April 19, 2006.

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- 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.
 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:

Date adopted: June 7, 2006

NAME (TYPE OR PRINT)

Valoria Loveland

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

DATE REVISOR FILED
STATE OF WASHINGTON

JUN 7 2006

1009

06-12-116

**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 a nongovernmental entity:

New	_____	Amended	<u>3</u>	Repealed	<u>1</u>
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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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	_____	Amended	<u>3</u>	Repealed	<u>1</u>

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-005 What definitions are important to this chapter? **"Clean"** means cherries are practically free from dirt, dust, spray residue, or other foreign material. For example, clean means the product is practically free from leaves, fruit spurs, bark, twigs, dirt or foreign material.

"Condition defects" means defects that may develop or change during shipment or storage. Condition defects include, but are not limited to, decayed or soft cherries and such other factors as pitting, shriveling, sunken areas, brown discoloration and bruising that, because of its location appears to have occurred after packing.

"Damage" means any injury or specific defect described in WAC 16-414-045 or any equally objectionable variation of those defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible quality or marketing quality of the fruit.

"Department" means the Washington state department of agriculture (WSDA).

"Diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the cherry.

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Face packed" means the cherries in the top layer of any container are placed so the stem ends are pointing downward toward the bottom of the container.

"Fairly well colored" means that at least ninety-five percent of the surface of the cherry shows characteristic color for mature cherries of the variety.

"Firm" means the cherries:

- (1) Possess a firm, fleshy texture;
- (2) Retain their approximate original shape;
- (3) Are not shriveled; and
- (4) Do not show more than slight collapsed areas of flesh.

"Mature" means cherries have reached the stage of growth that will insure the proper completion of the ripening process. Rainier cherries or other varieties of "light colored sweet cherries" shall meet a minimum of seventeen percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment; provided that individual lots shall not be combined with other lots to meet soluble solids requirements.

"Permanent defects" means defects that are not subject to change during shipping or storage. Permanent defects include, but are not limited to, factors of shape, scarring, skin breaks, injury

caused by hail or insects, and mechanical injury that, because of its location, appears to have occurred before shipment.

"Off-size" means a cherry whose diameter fails to meet a designated size when measured at right angles to a line from its stem to its blossom end.

"Serious damage" means any specific defect described in WAC 16-414-065 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, edible quality or marketing quality of cherries.

"Shipping point" means:

(1) The point of origin of the shipment in the producing area or at the port of loading; or

(2) The port of entry into the United States in the case of shipments from outside the continental United States.

"Similar varietal characteristics" means the cherries in any container are similar in color and shape.

"Well formed" means a cherry has the normal shape characteristic of the variety. Mature well-developed doubles are considered well formed if the halves are approximately evenly formed with a variation of no more than 2/64 of an inch.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-011 What size requirements apply to sweet cherries? (1) The minimum diameter of each cherry must be at least 54/64 inch.

(2) The maximum diameter of the cherries in any lot may be specified according to the facts.

(3) For the Rainier variety and similar varieties commonly referred to as "light colored sweet cherries," at least ninety percent, by count, of the cherries in any lot shall measure not less than 61/64 inch in diameter and not more than five percent, by count, may be less than 57/64 inch in diameter.

(4) When containers of cherries are marked with a row count/row size designation, the row count/row size marked must comply with the corresponding minimum diameter size as shown in the following table:

If containers of cherries are marked with the following row count/row size designations:	Then minimum diameter size of the cherries in inches must be:
8	84/64
8 1/2	79/64
9	75/64
9 1/2	71/64

... containers of cherries are marked with the following row count/row size designations:	Then minimum diameter size of the cherries in inches must be:
10	67/64
10 1/2	64/64
11	61/64
11 1/2	57/64
12	54/64

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-414-085

What requirements apply to containers used to ship sweet cherries?

AMENDATORY SECTION (Amending WSR 99-14-036, filed 6/29/99, effective 7/30/99)

WAC 16-461-010 Inspection certificate and/or permit required.

(1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the plant services division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots - in closed or open containers for fresh market.

(b) Italian prunes - in closed or open containers for fresh market.

(c) Peaches - in closed or open containers for fresh market.

(d) Cherries - in closed or open containers for fresh market: Provided, That no permit shall be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples - in closed or open containers for fresh market: Provided, That apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for Apples Marketed Within Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.

(f) Pears - in closed or open containers for fresh market: Provided, That pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus - in closed or open containers for fresh market: Provided, That asparagus may be shipped or transported if accompanied by certificates of compliance issued by the shipper or packer of the asparagus, having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing: Provided, That apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance: Provided further, That apples for processing entering intrastate commerce shall not require a permit.

(i) Pears in containers or bulk, for processing: Provided, That pears for processing may be shipped or transported if

accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance: Provided further, That pears for processing entering intrastate commerce shall not require a permit.

(2) Exemptions - fruits and vegetables listed in WAC 16-461-010 shall be exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labelling, or processing; prior to entering commercial channels for resale;

(b) When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;

(c) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance, provided that such exempt sales by the producer within a farmer's market shall not be restricted to the zone of production;

(d) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries which are sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3) (a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting such authority, on such terms and conditions as he may deem appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so: Provided, That the apples, pears, cherries, and asparagus about to be shipped or transported are in full compliance with the requirements of chapter 15.17 RCW, regulations adopted thereunder and administrative directives of the director: Provided further, That apricots, cherries, peaches, prunes, or pears about to be shipped or transported are in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification;

Cherries of the dark sweet varieties shall be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" shall meet only requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) and that cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW or rules adopted thereunder, or for violation of the terms of the certificate of compliance agreement. The period of any suspension shall be determined by the director and shall be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director shall be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance shall be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture at the regular base fee equivalent to that charged by the director for a shipping permit, for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.