



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: July 3, 2001

(2) Purpose: To amend the existing rules relating to apple maggot quarantine in Chapter 16-470 WAC in order to align with international plant protection definitions, to address changes in pest distribution by adding Whatcom County to the area under quarantine for apple maggot, and to comply with legislative mandates such as regulatory reform and use of clear and readable format.

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

Repealed: WAC 16-470-100, 16-470-110, 16-470-120
 Amended: WAC 16-470-010, 16-470-130
 Suspended:

(4) Statutory authority for adoption: Chapter 17.24 RCW
Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 01-11-145 on May 23, 2001.
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 _____

(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**

or Expedited Repeal

- 31 days after filing Immediately
- Other (specify) _____ * 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)
William Brookreson

Signature
William Brookreson

Title
Deputy Director

Date
July 3, 2001

CODE REVISER USE ONLY

SEARCHED _____ INDEXED _____

SERIALIZED _____ FILED _____

JUL 3 2001

10:50 AM

01-11-075 PM

TIME _____ WSR _____

**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	<u>11</u>	Amended	<u>2</u>	Repealed	<u>3</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	<u>11</u>	Amended	<u>2</u>	Repealed	<u>3</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>11</u>	Amended	<u>2</u>	Repealed	<u>3</u>

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of agriculture of this state, or a duly authorized representative.

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

(3) "Interior quarantine" means a quarantine within the state of Washington established against the movement of designated plant pests, life stages, their hosts, and possible carriers from areas identified by the Washington state department of agriculture.

(4) "Exterior quarantine" means a quarantine established against the movement into Washington state of designated plant pests, life stages, their hosts, and possible carriers from areas identified by the Washington state department of agriculture.

(5) "Commercial orchard" means an orchard in which fruit is grown for commercial purposes and with the use of approved and accepted integrated pest management programs pursuant to statutes, guidelines or rules approved by the agricultural extension service or regulatory officials of the state of origin.

(6) "Commercial fruit" means fruit that is:

(a) Grown in a commercial orchard and commercially packed and labeled;

(b) Fruit grown in a commercial orchard and destined to a commercial processing plant or packing plant.

(7) "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.

(8) "Pest free area" means an officially identified area in which a target pest is not established and which is maintained in such a manner as to prevent establishment of the target pest.

(9) "Plant protection organization" means an agency established by a government to discharge functions such as inspection of plants and plant products for pests, issuing phytosanitary certificates, and other actions specified in this rule.

NEW SECTION

WAC 16-470-101 Establishing quarantine for apple maggot and plum curculio. Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets. The director of agriculture, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environmental quality and agricultural crops of the state.

NEW SECTION

WAC 16-470-103 Definitions. The following definitions shall apply to WAC 16-470-101 through 16-470-130:

(1) "Established" means present in a country, state, county or other area, multiplying and expected to continue.

(2) "Threatened with infestation" means that any life stage of apple maggot or plum curculio has been found within one-half mile of an orchard or other production site, including any portion of an orchard outside or beyond the one-half mile area. Orchards or production sites in a quarantined area, which are not surveyed by a plant protection organization, are considered to be threatened with infestation. An orchard or other production site will be removed from threatened with infestation status, if control measures are performed at the detection site, and survey by the department shows no further detection(s) within the one-half mile area around the orchard or other production site throughout the subsequent full growing season. Once an orchard or other production site meets the criteria for threatened with infestation status, it must remain in that status through at least two harvest seasons.

NEW SECTION

WAC 16-470-105 Area under order for apple maggot--Pest free area--Quarantine areas. (1) A pest free area for apple maggot is declared for the following counties of Washington state: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, Whitman, and Yakima.

(2) A quarantine for apple maggot is declared for the following counties of Washington state: Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

NEW SECTION

WAC 16-470-108 Distribution of infested or damaged fruit is prohibited. Regulated commodities described in WAC 16-470-111 and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

NEW SECTION

WAC 16-470-111 What commodities are regulated for apple maggot? All fresh fruit of apple (including crab apple), cherry, hawthorn (haw), pear (except commercial pears from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

NEW SECTION

WAC 16-470-113 What do you need to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot? Shipment of regulated commodities, as described in WAC 16-470-111, from an area under quarantine, as described in WAC 16-470-105(3), into the pest free area for apple maggot, as described in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment is composed of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (37.9) degrees Fahrenheit or less.

(b) The shipment is composed of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (32) degrees Fahrenheit or less.

(c) The shipment is composed of regulated commodities from Oregon, Idaho, or Utah, certified by the state of origin in compliance with WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The fruit is frozen solid.

NEW SECTION

WAC 16-470-115 Within Washington state, what is required to ship fruit into the pest free area for apple maggot from quarantined counties? Shipment of regulated commodities, as described in WAC 16-470-111, from an area under quarantine, as described in WAC 16-470-105(2), into the pest free area for apple maggot, as described in WAC 16-470-105(1), is prohibited, unless

one of the following conditions is met:

(1) The shipment is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment is accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

NEW SECTION

WAC 16-470-118 Within Washington state, what is required to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation? All regulated commodities, as described in WAC 16-470-111, from an orchard or production site that is infested or threatened with infestation by apple maggot must be sampled and inspected (except graded culls - see subsection (4) of this section) by the department following accepted agency standards.

(1) If regulated commodities are inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If regulated commodities are found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of regulated commodities found to be infested with apple maggot into the pest free area for apple maggot.

(3) If regulated commodities are found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the commodity is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) Regulated commodities cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) and (b).

NEW SECTION

WAC 16-470-122 What are the requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot? Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the subsections of this section are complied with:

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not established, was grown in a commercial orchard, and has not been placed under quarantine.

NEW SECTION

WAC 16-470-125 Area under quarantine for plum curculio--**Regulated commodities.** (1) A quarantine for plum curculio is declared for any commodity named in subsection (2) of this section entering the state of Washington from any area where plum curculio is established. The area under quarantine includes, but is not limited to, the entire state of Utah, and, in the eastern United States, all states and districts east of and including the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where plum curculio is established.

(2) The following commodities are regulated under this quarantine as possible hosts or carriers of plum curculio: All fresh fruit of apple (including crab apple), apricot, blueberry, cherry, currant, grape, hawthorn (haw), huckleberry, nectarine, peach, pear, persimmon, plum, prune, and quince.

NEW SECTION

WAC 16-470-127 What do you need to ship commodities regulated for plum curculio into Washington? Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by an official certificate

issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (37.9) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (32) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for plum curculio and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.

(4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:

(a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detections in counties where plum curculio has not previously been detected; and

(b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

AMENDATORY SECTION (Amending Order 1822, filed 5/1/84, effective 7/1/84)

WAC 16-470-130 Special permits. The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities ((covered)) described in WAC ((16-470-110)) 16-470-111 and 16-470-125(2), which would not

otherwise be eligible for entry from the area under quarantine, or
for transportation or distribution, subject to conditions and
provisions which the director may prescribe to prevent
introduction, escape or spread of the quarantined pests.

REPEALER

The following sections of the Washington Administrative Code
are repealed:

WAC 16-470-100	Quarantine--Apple maggot and plum curculio--Area under order.
WAC 16-470-110	Commodities under quarantine--Apple maggot hosts and carriers.
WAC 16-470-120	Apple maggot and plum curculio quarantine restrictions-- Interior/exterior.