



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Department of Agriculture	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: January 10, 2003	<input type="checkbox"/> Emergency Rule
	<input type="checkbox"/> Expedited Adoption
	<input type="checkbox"/> Expedited Repeal

(2) Purpose: The Washington State Department of Agriculture (WSDA) is amending chapter 16-160 WAC to be in compliance with the National Organic Program, Title 7 CFR Part 205. Registration fees are increased to cover the cost of reviewing materials and maintaining the Brand Name Materials List. Fee increases account for increases in the department's cost of registering materials.

(3) Citation of existing rules affected by this order:
 Repealed: WAC 16-160-025
 Amended: WAC 16-160-010, 16-160-020, 16-160-035, 16-160-060, 16-160-070
 Suspended:

(4) Statutory authority for adoption: Chapter 15.86 RCW
 Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
 Adopted under notice filed as WSR 02-22-087 (11/5/02) and 02-24-005 on 11/21/02 (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 *myw* If Yes, explain: RCW 15.86.070(2) as amended. Reference chapter 220, Laws of 2002 legislative permission was granted to exceed the fiscal growth factor requirements.

(6) Effective date of rule:
Permanent Rules or Expedited Repeal
 31 days after filing
 Other (specify) _____ *
Emergency Rules
 Immediately
 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)
 Valoria H. Loveland

Signature

Title
 Director

Date
 1/10/05

CODE REVISER USE ONLY

TIME: 4:15
 WSR: 03-03-045
 AM/PM: 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	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>5</u>	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</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		Amended		Repealed	

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-010 What is the purpose of this rule? This chapter specifies the review process and criteria for registering brand name materials used in organic food production, processing and handling. This chapter is promulgated pursuant to RCW 15.86.060 in which the director is authorized to adopt rules for the proper administration of chapter 15.86 RCW and (~~establish a list of approved substances that may be used in the production, processing and handling of organic food and~~) RCW 15.86.070 in which the director is authorized to adopt rules governing the certification of producers of organic food.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-020 Definitions. As used in this chapter:

(1) (~~"Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.~~

~~(2))~~ "Animal manure" means a material composed of excreta, with or without bedding materials and/or animal drugs and collected from poultry, ruminants or other animals except humans.

~~((3))~~ (2) "Applicant" means the person who submits an application to register a material pursuant to the provisions of this chapter.

~~((4) "Approved generic material" means any material which is approved for use in organic food production, processing or handling under chapter 15.86 RCW (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.~~

~~(5))~~ (3) "Brand name material" means any material that is supplied, distributed or manufactured by a person.

~~((6))~~ (4) "Compost" means a material produced from a controlled process in which organic materials are digested aerobically or anaerobically by microbial action.

~~((7))~~ (5) "Crop production aid" means any substance, material, structure, or device, that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

~~((8) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.~~

~~(9))~~ (6) "Department" means the department of agriculture of

the state of Washington.

~~((10)) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.~~

~~(11))~~ (7) "Director" means the director of the department of agriculture or his or her duly authorized representative.

~~((12))~~ (8) "Distribute" means to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.

~~((13)) "EPA" means the United States Environmental Protection Agency.~~

~~(14))~~ (9) "Fertilizer" means any substance containing one or more recognized plant nutrients.

~~((15)) "Generic material" means any type, class or group of materials that is specified under chapter 15.86 RCW or rules adopted pursuant to chapter 15.86 RCW.~~

~~(16) "Genetic engineering" means techniques that alter the molecular or cell biology of an organism by means that are not possible under natural conditions or processes. Genetic engineering includes recombinant DNA, cell fusion, micro- and macro-encapsulation, gene deletion, and doubling, introducing a foreign gene, and changing the positions of genes. It does not include breeding, conjugation, fermentation, hybridization, in-vitro fertilization and tissue culture.~~

~~(17) "Inert ingredient" means an ingredient which is not an active ingredient.~~

~~(18))~~ (10) "Label" means the written, printed, or graphic matter on, or attached to, the material or its immediate container.

~~((19))~~ (11) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a material, or advertisement, brochures, posters, television, and radio announcements used in promoting the distribution or sale of the material.

~~((20))~~ (12) "Livestock production aid" means any substance, material, structure, or device, that is used to aid a producer in the production of livestock (e.g., parasiticides, medicines, feed additives).

~~((21))~~ (13) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing or handling.

~~((22))~~ (14) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids as defined in chapter 70.95 RCW.

~~((23))~~ (15) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((24))~~ (16) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus (except virus on or in living man or other

animal) which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by regulation.

~~((25) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculant, or soil amendments.~~

~~(26))~~ (17) "Post-harvest material" means any substance, material, structure, or device, that is used in the post-harvest handling of agricultural products.

~~((27))~~ (18) "Processing aid" means any material used in processing that does not become an ingredient in the food product (e.g., enzymes, boiler water additives, pressing aids, and filtering aids).

~~((28) "Prohibited material" means any material which is prohibited for use in organic food production, handling, or processing under chapter 15.86 RCW (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.~~

~~(29))~~ (19) "Registered material" means any material that has applied for registration under this chapter, has met the criteria for approval and has been issued written approval by the department.

~~((30))~~ (20) "Registrant" means the person registering any material pursuant to the provisions of this chapter.

~~((31))~~ (21) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

~~((32))~~ (22) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect, and which is in a package or container separate from that of the pesticide with which it is to be used.

~~((33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.)~~

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-035 Brand name materials list. The department maintains a list of registered materials (~~((and brand name materials that have been denied registration))~~) that are approved for use in organic food production, processing or handling. The list is provided to all producers, processors and handlers of organic food who apply for certification with the department. A registered material that appears on the brand name materials list has been reviewed to verify that all of its ingredients comply with organic standards.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-060 What criteria are used to determine if a brand name material is approved? The director reviews the information provided under WAC 16-160-040. A brand name material that meets the ~~((following criteria))~~ requirements under the 2001 National Organic Program final rule, section 205.105 and sections 205.600 through 205.606 will be registered.

- ~~((1) General requirements.~~
- ~~(a) Its composition is such as to warrant the proposed claims for it;~~
- ~~(b) Its labeling and other material required to be submitted comply with state and federal laws;~~
- ~~(c) It does not contain ingredients that are genetically engineered;~~
- ~~(d) It does not contain ingredients that appear on the EPA's List 1 or 2 of inert pesticide ingredients.~~
- ~~(2) Pesticide and spray adjuvants.~~
- ~~(a) The material does not contain ingredients that are prohibited under chapter 16-154 WAC; and~~
- ~~(b) The ingredients are approved under chapter 16-154 WAC, or The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or~~
~~The ingredients meet the following conditions:~~
 - ~~(i) Would not be harmful to human health or the environment;~~
 - ~~(ii) Are necessary to the production or handling of organic products; and~~
 - ~~(iii) Are consistent with organic principles.~~
- ~~(3) Fertilizers, organic waste derived materials, compost, animal manures, soil amendments, and crop production aids.~~
- ~~(a) All fertilizers, organic waste derived materials, compost, animal manures and soil amendments must meet standards for~~

~~allowable levels of nonnutritive substances under chapter 15.54 RCW. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.~~

~~(b) All organic waste derived materials, compost and animal manures must consist of acceptable feedstocks. Acceptable feedstocks include materials approved under WAC 16-154-070. Prohibited feedstocks include mixed municipal solid waste, sewage sludge, biosolids, glossy paper, recycled gypsum, dangerous waste, special waste, waste or by-product from processes that create organochlorines, cement kilns, secondary steel mills, waste categorically excluded from the dangerous waste regulations and other materials prohibited under this chapter. Applications for registering organic waste derived materials, composts and animal manures must include an inspection of the facility. Inspections of facilities entail an examination of the feedstocks and may entail an examination of any other information deemed necessary to the requirements of chapter 15.86 RCW and this chapter.~~

~~(c) The material does not contain ingredients that are prohibited under chapter 16-154 WAC.~~

~~(d) The ingredients are approved under chapter 16-154 WAC; or the ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or the ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or the ingredients meet the following conditions:~~

- ~~(i) Would not be harmful to human health or the environment;~~
- ~~(ii) Are necessary to the production of organic products; and~~
- ~~(iii) Are consistent with organic principles.~~

~~(4) **Post harvest materials.**~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-164 WAC or WAC 16-154-120, and~~

~~(b) The ingredients are approved under WAC 16-154-120 or chapter 16-164 WAC; or~~

~~The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or~~

~~The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or~~

~~The ingredients meet the following conditions:~~

- ~~(i) Would not be harmful to human health or the environment;~~
- ~~(ii) Are necessary to the handling of the organic products;~~

~~and~~

~~(iii) Are consistent with organic principles.~~

~~(5) **Processing aids.**~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-158 WAC; and~~

~~(b) The ingredients are approved under chapter 16-158 WAC; or The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-158 WAC; or~~

~~The ingredients appear on the United States Food and Drug Administration list of food additives generally regarded as safe;~~

~~or~~

~~The ingredients meet the following conditions:~~

- ~~(i) Would not be harmful to human health or the environment;~~
- ~~(ii) Are necessary to the processing of organic products; and~~
- ~~(iii) Are consistent with organic principles.~~

~~(6) Livestock production aids (parasiticides and medicines, vitamins, minerals, livestock feed additives).~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-162 WAC; and~~

~~(b) The ingredients are approved under chapter 16-162 WAC; or
The ingredients are naturally derived, except for those~~

~~naturally derived materials prohibited under chapter 16-162 WAC; or
The ingredients appear on the United States Food and Drug~~

~~Administration list of food additives generally regarded as safe,
or~~

~~The ingredients meet the following conditions:~~

- ~~(i) Would not be harmful to human health or the environment;~~
- ~~(ii) Are necessary to the production or handling of the organic livestock products; and~~

~~(iii) Are consistent with organic principles.)~~

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-070 Application fees. Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.

The application fee for initial registration of a pesticide, spray adjuvant, processing aid or post-harvest material is ~~((two))~~ three hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid is ~~((one))~~ two hundred dollars per material.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid or post-harvest material is ~~((one))~~ two hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid is ~~((fifty))~~ one hundred dollars per material.

Renewal registrations postmarked after October 31 pay a late fee of ~~((twenty))~~ thirty dollars ~~((per pesticide, spray adjuvant, processing aid or post harvest material, and ten dollars per fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock~~

~~production aid.~~

~~Additional))~~. Inspections, if required, will be billed at ~~((twenty))~~ forty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

~~((Additional))~~ Samples ~~((in addition to one sample provided for), if required shall cost an additional lab fee of one hundred ten dollars))~~, if required for registration, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged, it shall be at ~~((twenty))~~ forty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-160-025

What materials are approved for use in organic food production, processing and handling?