

# Chapter 16-200 WAC

## FERTILIZERS

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| <p>WAC<br/>16-200-600<br/>16-200-695<br/>16-200-701<br/>16-200-703<br/>16-200-7061<br/>16-200-7062<br/>16-200-7063<br/>16-200-7064<br/>16-200-708<br/>16-200-711<br/>16-200-715<br/>16-200-721<br/>16-200-725<br/>16-200-731<br/>16-200-735<br/>16-200-739<br/>16-200-7401<br/>16-200-7402<br/>16-200-7403<br/>16-200-7404<br/>16-200-7405<br/>16-200-7406<br/>16-200-7407</p> | <p>Purpose.<br/>Definitions.<br/>What products are exempt from the definition of commercial fertilizer?<br/>How are biosolids regulated under the Commercial Fertilizer Act?<br/>What information must I include with my registration application concerning total metals and application rates?<br/>What method must I use to analyze the total metals contained in my commercial fertilizer?<br/>How will the department determine whether a commercial fertilizer meets Washington standards for metals?<br/>What are the Washington standards for metals?<br/>Unlawful acts.<br/>Plant nutrients in addition to nitrogen, phosphorus and potassium.<br/>Fertilizer labels.<br/>Slowly released plant nutrients.<br/>Commercial fertilizer definitions.<br/>Commercial value of plant nutrients.<br/>Breakdown of plant food elements within the guaranteed analysis.<br/>Brand name.<br/>Statement of purpose—Penalty assignment.<br/>Definitions—Penalty assignment.<br/>Application of RCW 43.05.100 and 43.05.110—Issuance of a civil penalty without first issuing a notice of correction.<br/>Calculation of a civil penalty.<br/>Denial or cancellation of a bulk fertilizer distribution license.<br/>Other dispositions of alleged violations.<br/>Penalty assignment schedule.</p>   | <p>16-200-660<br/>16-200-700<br/>16-200-705<br/>16-200-710<br/>16-200-720<br/>16-200-730<br/>16-200-740<br/>16-200-742<br/>16-200-743<br/>16-200-750<br/>16-200-755<br/>16-200-760</p> | <p>through 16-200-690. [Regulation 453, §§ 66, 67, and 68, effective 3/1/46.] Superseded by Order 999, now codified as WAC 16-200-700 through 16-200-740.<br/>Definition, labeling, and registration of customer-formula fertilizers. [Order 1032, Regulation 1, filed 9/13/66, effective 10/15/66; Order 999, Regulation 1, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Purpose. [Statutory Authority: RCW 15.54.325 and 15.54.800. 99-08-037, § 16-200-705, filed 3/31/99, effective 5/1/99. Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-705, filed 12/30/98, effective 1/30/99. Statutory Authority: RCW 15.54.800. 91-01-015 (Order 2066), § 16-200-705, filed 12/7/90, effective 1/7/91. Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-705, filed 9/17/87.] Repealed by 00-19-058, filed 9/18/00, effective 10/19/00. Statutory Authority: RCW 15.54.270(4) and 15.54.800.<br/>Secondary and minor plant nutrients. [Order 1032, Regulation 2, filed 9/13/66, effective 10/15/66; Order 999, Regulation 2, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Definitions, regulations, and analysis. [Order 1032, Regulation 3, filed 9/13/66, effective 10/15/66; Order 999, Regulation 3, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Specialty fertilizers. [Order 1032, Regulation 4, filed 9/13/66, effective 10/15/66; Order 999, Regulation 4, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Fertilizer brand registration. [Order 1032, Regulation 5, filed 9/13/66, effective 10/15/66; Order 999, Regulation 5, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Fertigation. [Statutory Authority: RCW 15.54.800. 91-01-015 (Order 2066), § 16-200-742, filed 12/7/90, effective 1/7/91.] Repealed by 99-22-002, filed 10/20/99, effective 11/20/99. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW.<br/>Fertilizer brand registration—Labeling. [Order 1032, Regulation 6, filed 9/13/66, effective 10/15/66; Order 999, Regulation 6, filed 12/10/65.] Repealed by 87-19-097 (Order 1952), filed 9/17/87. Statutory Authority: Chapter 15.54 RCW.<br/>Definitions and terms. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-750, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-750, filed 7/9/96, effective 8/9/96; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.<br/>Label format. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-755, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-755, filed 7/9/96, effective 8/9/96.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.<br/>Brand and product names. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-760, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-760, filed 7/9/96, effective 8/9/96; Order 1164, § 16-200-760, filed 10/17/70; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.</p> |
| <b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>   |   |  |  |
| <p>16-200-001<br/>16-200-002<br/>16-200-003,<br/>16-200-006<br/>16-200-007<br/>16-200-512<br/>16-200-640<br/>16-200-650</p>  | <p>Promulgation. [Order 453, Promulgation, effective 3/1/46.] Repealed by 81-18-058 (Order 1747), filed 9/1/81. Statutory Authority: RCW 15.53.9018.<br/>Promulgation. [Order 619, Promulgation, effective 2/11/52. Applies to WAC 16-200-512 and to chapter 16-28 WAC.] Repealed by 81-18-058 (Order 1747), filed 9/1/81. Statutory Authority: RCW 15.53.9018.<br/>16-200-004, 16-200-005, 16-200-010 through 16-200-630. [From Orders 779, 761, 629, 599, 591 and Regulations 1 through 63 and 69 of Order 453, filed 3/22/60.]<br/>Promulgation. [Order 1032, Promulgation, filed 9/13/66, effective 11/15/66; Order 999, Promulgation, filed 12/10/65. Applies to WAC 16-200-700 through 16-200-743.] Repealed by 81-18-058 (Order 1747), filed 9/1/81. Statutory Authority: RCW 15.53.9018.<br/>Promulgation. [Order 1164, § 16-200-007, filed 10/17/70; Order 1016, filed 5/20/66. Applies to WAC 16-200-750 through 16-200-870.] Repealed by 81-18-058 (Order 1747), filed 9/1/81. Statutory Authority: RCW 15.53.9018.<br/>Screenings, screenings waste or screenings refuse, defined—Established tolerances. [Order 619, Regulations 69 and 70, effective 2/11/52.] Repealed by 00-16-046, filed 7/26/00, effective 8/26/00. Statutory Authority: Chapter 15.49 RCW.<br/>Livestock remedies—Application for registration. [Order 453, Regulation 64, effective 3/1/46.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.<br/>Concentrates, minerals and medicine used in feeds. [Order 453, Regulation 65, effective 3/1/46.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.</p> | <p>16-200-742<br/>16-200-743<br/>16-200-750<br/>16-200-755<br/>16-200-760</p>  | <p></p>  |

- 16-200-770 Expression of guarantees. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-770, filed 7/9/96, effective 8/9/96; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-780 Definitions, sampling, and analysis. [Order 1016, filed 5/20/66.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.
- 16-200-790 Ingredient statement. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-790, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-790, filed 7/9/96, effective 8/9/96; Order 1164, § 16-200-790, filed 10/1/70; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-795 Directions for use and precautionary statements. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-795, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-795, filed 7/9/96, effective 8/9/96.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-800 Labeling. [Order 1164, § 16-200-800, filed 10/1/70; Order 1016, filed 5/20/66.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.
- 16-200-805 Tonnage fees. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-805, filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9018. 94-08-034 (Order 5038), § 16-200-805, filed 3/31/94, effective 5/1/94; 81-18-058 (Order 1747), § 16-200-805, filed 9/1/81.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-810 Minerals. [Order 1016, filed 5/20/66.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.
- 16-200-815 Adulteration. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-815, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-815, filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.902. 82-23-057 (Order 1776), § 16-200-815, filed 11/17/82.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-820 Screenings. [Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-830 Nonprotein nitrogen. [Statutory Authority: RCW 15.53.9012. 99-17-043, § 16-200-830, filed 8/13/99, effective 9/13/99; 96-15-018A (Order 5098), § 16-200-830, filed 7/9/96, effective 8/9/96; Order 1164, § 16-200-830, filed 10/1/70; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-840 Artificial color. [Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-850 Medicated feeds. [Order 1164, § 16-200-850, filed 10/1/70; Order 1016, filed 5/20/66.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.
- 16-200-860 Used sacks and containers. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-860, filed 7/9/96, effective 8/9/96; Order 1164, § 16-200-860, filed 10/1/70; Order 1016, filed 5/20/66.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-865 Commercial feed license. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-865, filed 7/9/96, effective 8/9/96.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-870 Products requiring registration. [Order 1016, filed 5/20/66.] Repealed by 96-15-018A (Order 5098), filed 7/9/96, effective 8/9/96. Statutory Authority: RCW 15.53.9012.
- 16-200-880 Promulgation. [Order 1432, § 16-200-880, filed 3/12/76.] Repealed by 81-18-058 (Order 1747), filed 9/1/81. Statutory Authority: RCW 15.53.9018.
- 16-200-885 Commercial feed label submission. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-885, filed 7/9/96, effective 8/9/96.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-887 Good manufacturing practices. [Statutory Authority: RCW 15.53.9012. 96-15-018A (Order 5098), § 16-200-887, filed 7/9/96, effective 8/9/96.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapters 16-250 and 16-252 WAC.
- 16-200-890 Definitions—Animal waste products. [Order 1432, § 16-200-890, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-900 Registration requirements. [Order 1432, § 16-200-900, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-910 Refusing or cancelling registration—Procedure. [Order 1432, § 16-200-910, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-920 Quality standards. [Order 1432, § 16-200-920, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-930 Labeling requirements of animal waste products. [Order 1432, § 16-200-930, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-940 Testing required. [Order 1432, § 16-200-940, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.
- 16-200-950 Records required. [Order 1432, § 16-200-950, filed 3/12/76.] Repealed by 03-23-129, filed 11/19/03, effective 7/1/04. Statutory Authority: Chapters 15.53 and 34.05 RCW. Later promulgation, see chapter 16-256 WAC.

**WAC 16-200-600 Purpose.** The following sections concerning the protection of groundwater, labeling requirements and examination of fertilizer minerals and limes (WAC 16-200-708 through 16-200-742) are established in this chapter under the authority of the Commercial Fertilizer Act, chapter 15.54 RCW.

This chapter also describes the requirements for registration of commercial fertilizers, including the information which must be submitted as part of the registration application, the sample preparation and analysis methods which must be used, the maximum application rates the department will use to determine whether a commercial fertilizer may be registered, the Washington standards for metals (in pounds per acre per year), and the acts which are unlawful under this chapter.

[Statutory Authority: RCW 15.54.270(4) and 15.54.800. 00-19-058, § 16-200-600, filed 9/18/00, effective 10/19/00.]

**WAC 16-200-695 Definitions.** The definitions set forth in this section shall apply throughout this chapter unless context otherwise requires:

(1) "Organic" means a material containing carbon and one or more elements (other than hydrogen and oxygen) essential for plant growth. When the term "organic" is utilized in the label or labeling of any commercial fertilizer, it shall be qualified as either "synthetic organic" or "natural organic," with the percentage of each specified.

(2) "Natural organic" means a material derived from either plant or animal products containing carbon and one or more elements (other than hydrogen and oxygen) essential for plant growth.

(3) "Synthetic organic" means a material that is manufactured chemically (by synthesis) from its elements and other chemicals, containing carbon and one or more elements (other than hydrogen and oxygen) essential for plant growth.

(4) "Unit" means one percent (by weight) of a ton.

(5) "AOAC" means the association of official analytical chemists.

(6) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(7) "Fertigation" means a method of applying commercial fertilizers with irrigation water to fertilize land or plants.

(8) "Fertilizer component" means a commercial fertilizer ingredient containing one or more recognized plant nutrients which is incorporated in the commercial fertilizer for its plant nutrient value.

(9) "Maximum acceptable cumulative metals additions to soil" means the amount of total metals that can be added to soil over a forty-five-year period of time without exceeding the Canadian standards which have been adopted in RCW 15.54.800(3) as Washington standards for metals.

(10) "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.

(11) "Maximum application rate" means the maximum amount of commercial fertilizer expressed by weight (such as: Pounds, ounces, kilograms, or milligrams) or volume (such as: Gallons, quarts, fluid ounces, liters, or milliliters) to be applied to an area of a specified size (such as: Acres, square feet, hectares, or square meters) in a period of time stated in years.

(12) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process that can be beneficially recycled, including material derived from biosolids, and septic tank sludge, also known as septage. For the purposes of this rule, semisolid products include biosolids or products derived from biosolids ranging in character from mostly liquid to fully dried solids.

(13) "Unpackaged biosolids" means biosolids distributed in a loose, unpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, railcars, and pick-up truckloads or other containers provided by the final user solely for transport of the material.

(14) "Packaged biosolids" means biosolids distributed in a container provided by the distributor of the material.

[Statutory Authority: RCW 15.54.270(4) and 15.54.800. 00-19-058, § 16-200-695, filed 9/18/00, effective 10/19/00. Statutory Authority: RCW 15.54.325 and 15.54.800. 99-08-037, § 16-200-695, filed 3/31/99, effective 5/1/99. Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-695, filed 12/30/98, effective 1/30/99. Statutory Authority: RCW 15.54.800. 91-01-015 (Order 2066), § 16-200-695, filed 12/7/90, effective 1/7/91. Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-695, filed 9/17/87.]

**WAC 16-200-701 What products are exempt from the definition of commercial fertilizer?** In addition to unmanipulated animal and vegetable manures and organic waste-derived materials, the following materials are exempt from the definition of commercial fertilizer:

(1) Unpackaged biosolids if they comply with biosolids regulation under chapter 173-308 WAC, and they do not use the term "fertilizer" in the labeling of the biosolids, except to disclaim them as commercial fertilizer;

(2) Packaged biosolids if they do not meet the definition for commercial fertilizer, do not use the term "fertilizer" in the labeling of the biosolids, except to disclaim them as commercial fertilizer, and comply with biosolids regulation under chapter 173-308 WAC.

[Statutory Authority: RCW 15.54.270(4) and 15.54.800. 00-19-058, § 16-200-701, filed 9/18/00, effective 10/19/00.]

**WAC 16-200-703 How are biosolids regulated under the Commercial Fertilizer Act?** (1) Unpackaged biosolids and packaged biosolids that do not meet the definition for commercial fertilizer must include a legible and conspicuous disclaimer on their labeling. The disclaimer must specifically state that the product is not a commercial fertilizer, and that any nutrient claims are estimates or averages and are not guaranteed.

(2) Packaged biosolids that meet the definition for commercial fertilizer must be registered as commercial fertilizer.

[Statutory Authority: RCW 15.54.270(4) and 15.54.800. 00-19-058, § 16-200-703, filed 9/18/00, effective 10/19/00.]

**WAC 16-200-7061 What information must I include with my registration application concerning total metals and application rates?** (1) You are required to submit the following metals information with your registration application:

(a) Total concentration of each metal in each commercial fertilizer reported in parts per million (PPM) which is equivalent to milligrams of metal per kilogram of fertilizer (mg/kg), or micrograms per gram;

(b) Copy of the laboratory report on total metals analysis;

(c) Method of analysis;

(d) Method of sample preparation; and

(e) Minimum detection limits for each method used.

(2) The department may request quality assurance and quality control documentation for analytical procedures and/or for the laboratory which performed the analyses.

(3) The analytical data and maximum application rate will be used to determine if a commercial fertilizer meets or exceeds the Washington standards for metals.

(4) For all commercial fertilizers that have application rates on their labels, the maximum application rate shall be disclosed for each commercial fertilizer on the registration application form.

[Statutory Authority: RCW 15.54.325 and 15.54.800. 99-08-037, § 16-200-7061, filed 3/31/99, effective 5/1/99. Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-7061, filed 12/30/98, effective 1/30/99.]

**WAC 16-200-7062 What method must I use to analyze the total metals contained in my commercial fertilizer?** (1) You must prepare your sample of commercial fertilizer using U.S. Environmental Protection Agency ("EPA") sample preparation method 3050B (except when preparing a sample for analysis of mercury\*). You must analyze your commercial fertilizer for the total concentration of each of the following nine metals in each commercial fertilizer using one or more of the EPA analysis methods listed in Table 1. All methods are described in EPA's SW-846, Third Edition.

**Table 1. Acceptable Sample Preparation and Analysis Methods for Total Metals**

| <b>Metal</b>       | <b>Inductively Coupled Plasma (ICP)</b> | <b>Atomic Absorption</b> | <b>Inductively Coupled Plasma Mass Spectroscopy (ICP/MS)</b> |
|--------------------|---|--------------------------|--|
| Arsenic (As)       | 6010, 6010A, 6010B                      | 7060A, 7061A             | 6020   |
| Cadmium (Cd)       | 6010, 6010A, 6010B                      | 7131A                    | 6020   |
| Cobalt (Co)        | 6010, 6010A, 6010B                      | 7201                     | 6020   |
| Lead (Pb)          | 6010, 6010A, 6010B                      | 7420, 7421               | 6020   |
| Molybdenum (Mo)    | 6010, 6010A, 6010B                      | 7480                     | 6020   |
| Nickel (Ni)        | 6010, 6010A, 6010B                      | 7520, 7521               | 6020   |
| Selenium (Se)      | 6010, 6010A, 6010B                      | 7740, 7741A              | 6020   |
| Zinc (Zn)          | 6010, 6010A, 6010B                      | 7951                     | 6020   |
| Mercury (Hg)       |   | 7470A*, 7471A*           |  |
| Sample Preparation | 3050B                                   | 3050B                    | 3050B  |

Copies of SW-846 Third Edition and all associated updates are available from: The Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 512-1800, and from the Department of Commerce, National Technical Information Center, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650 or 800-553-NTIS.

\*Since sample preparation method 3050B cannot provide for an analysis of mercury, when you prepare a sample for analysis of mercury you must use the sample preparation method established for analysis method 7470A when using method 7470A to analyze your sample and the sample preparation method established for analysis method 7471A when using method 7471A to analyze your product.

(2) Other sample preparation and analysis methods for total concentration of each metal in each commercial fertilizer may be used only under the following conditions:

(a) You must submit a request to the department, in writing, detailing the sample preparation and analysis methods, minimum detection limits and quality assurance, quality con-

trol documentation and a side-by-side comparison of the analysis results from the alternative method to one of the approved methods' analysis results of the same material; and

(b) The department, after reviewing the request, may approve the sample preparation or analysis method only if the capability of the method meets or exceeds the sensitivity and accuracy of the applicable method listed in the Table 1.

(3) Any commercial fertilizer product registered prior to the enactment of these provisions using any sample preparation or analysis method not authorized by subsection (1) or (2) must be registered in accordance with subsection (1) or (2) in the next annual commercial fertilizer registration cycle.

[Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-7062, filed 12/30/98, effective 1/30/99.]

**WAC 16-200-7063 How will the department determine whether a commercial fertilizer meets Washington standards for metals?** (1) To determine whether a commercial fertilizer meets Washington standards for metals, the department will use the following formula:

$$\frac{\text{Pounds of product applied per acre per year} \times \text{metal content of product (ppm)}}{1,000,000}$$

The number used for pounds of product applied per acre per year will be the maximum application rate allowed by the commercial fertilizer label. If specific label directions for use are not available, the department will use the Washington application rates listed in subsection (2) of this section, divided by four.

(2) Using normal agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington

state, the department developed the following Washington application rates:

| <b>Nutrient</b>       | <b>4 Yr. Cumulative Total (lbs./acre)</b> |
|-----------------------|---|
| Nitrogen (N)          | 1600                                      |
| Phosphorous (as P2O5) | 700                                       |
| Potassium (as K2O)    | 1600                                      |
| Boron (B)             | 12  |

|                         |        |
|-------------------------|--------|
| Calcium (Ca)            | 800    |
| Chlorine (Cl)           | 300    |
| Copper (Cu)             | 10     |
| Iron (Fe)               | 80     |
| Magnesium (Mg)          | 400    |
| Manganese (Mn)          | 40     |
| Molybdenum (Mo)         | 4      |
| Sulfur (S)              | 400    |
| Zinc (Zn)               | 30     |
| Lime (CaCO3 equivalent) | 20,000 |
| Gypsum (CaSO4)          | 16,000 |

(3) To ensure that the maximum acceptable cumulative metals additions to soil are not exceeded, the department will assume the commercial fertilizer will be applied at the maximum rate as stated on the label or established in this rule.

[Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-7063, filed 12/30/98, effective 1/30/99.]

**WAC 16-200-7064 What are the Washington standards for metals?** (1) The standards for metals in Washington are the maximum acceptable annual metals additions to soils adopted in RCW 15.54.800 and are presented in Table 2. Because the Canadian standards contained in the Canadian Trade Memorandum T-4-93 dated August 1996 are based on long-term (forty-five-year) cumulative metals additions to soils, the maximum acceptable annual metals additions to soils are determined by dividing the Canadian standards by forty-five. The Washington standards are expressed as pounds per acre per year.

**Table 2. Washington Standards For Metals.**

| Metals          | Lbs./acre/yr. |
|-----------------|---------------|
| Arsenic (As)    | .297          |
| Cadmium (Cd)    | .079          |
| Cobalt (Co)     | .594          |
| Mercury (Hg)    | .019          |
| Molybdenum (Mo) | .079          |
| Nickel (Ni)     | .713          |
| Lead (Pb)       | 1.981         |
| Selenium (Se)   | .055          |
| Zinc (Zn)       | 7.329         |

(2) To be registered with the department and distributed in Washington, a commercial fertilizer must not exceed the above standards. Because cobalt (Co), molybdenum (Mo), and zinc (Zn) are also plant nutrients, higher concentrations than those presented in the table may be permitted. Commercial fertilizers which contain cobalt (Co), molybdenum (Mo), and/or zinc (Zn) concentrations may be registered and distributed in Washington if those metals are used as plant nutrients and those metals meet all applicable minimum guarantees and labeling requirements of chapter 15.54 RCW and the rules adopted thereunder.

(3) If a commercial fertilizer contains cobalt (Co), molybdenum (Mo), or zinc (Zn) and any one or more of those metals are not intended to be used as a plant nutrient, then the nonplant nutrient metals must meet the Standards shown in Table 2.

(12/1/03)

[Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-7064, filed 12/30/98, effective 1/30/99.]

**WAC 16-200-708 Unlawful acts.** (1) It shall be unlawful for any person to refuse or neglect to comply with the provisions of the applicable sections of chapter 15.54 RCW, the rules adopted thereunder, or any lawful order of the department.

(2) It is unlawful to distribute a commercial fertilizer in Washington that exceeds the standards for nonnutritive substances established in RCW 15.54.800(3). The department will determine if a commercial fertilizer exceeds the standards by using the maximum application rates and by either:

(a) Comparing data submitted by the registrant to the standards established in WAC 16-200-7064; or

(b) Comparing the results of the analysis of an official sample to the standards established in WAC 16-200-7064. Official samples will be analyzed by the methods set forth in these rules.

[Statutory Authority: Chapter 15.54 RCW. 99-02-035, § 16-200-708, filed 12/30/98, effective 1/30/99. Statutory Authority: RCW 15.54.800. 91-01-015 (Order 2066), § 16-200-708, filed 12/7/90, effective 1/7/91.]

**WAC 16-200-711 Plant nutrients in addition to nitrogen, phosphorus and potassium.** (1) Plant nutrients, other than nitrogen, phosphorus and potassium, when mentioned in any form or manner shall be registered and shall be guaranteed on the label. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the label. Proof of availability shall be provided the director upon request. Except guarantees for those water soluble nutrients labeled solely for hydroponic or continuous liquid feed programs, the minimum percentages which will be accepted for registration are as follows:

| Element         | %      |
|-----------------|--------|
| Calcium (Ca)    | 1.0000 |
| Magnesium (Mg)  | 0.5000 |
| Sulfur (S)      | 1.0000 |
| Boron (B)       | 0.0200 |
| Chlorine (Cl)   | 0.1000 |
| Cobalt (Co)     | 0.0005 |
| Copper (Cu)     | 0.0500 |
| Iron (Fe)       | 0.1000 |
| Manganese (Mn)  | 0.0500 |
| Molybdenum (Mo) | 0.0005 |
| Sodium (Na)     | 0.1000 |
| Zinc (Zn)       | 0.0500 |

(2) Guarantees or claims for the plant nutrients listed in subsection (1) of this section are the only ones which shall be accepted by the department. Proposed labels and directions for the use of the fertilizer shall be furnished to the department with the application for registration upon request. Any of the above listed elements which are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphorus and potassium.

(3) A warning or caution statement may be required on the label for any commercial fertilizer containing more than 0.1% boron or more than 0.001% molybdenum. The following are examples of possible warning or caution statements:

(a) Boron:

(i) This fertilizer contains boron which may be injurious to certain crops. Contact your local county agent or field consultant for specific information.

(ii) WARNING: This fertilizer carries added borax and is intended for use only on alfalfa. Its use on any other crops or under conditions other than those recommended may result in serious injury to the crops.

(b) Molybdenum: CAUTION: This fertilizer is to be used only on crops which respond to molybdenum. Crops high in molybdenum are toxic to grazing animals (ruminants).

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-711, filed 9/17/87.]

**WAC 16-200-715 Fertilizer labels.** The following information, in the format presented, is the minimum information required for all fertilizer labels. For packaged products, this information shall either appear on the front or back of the package; or occupy at least the upper-third side of the package; or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery.

- (1) Net weight.
- (2) Brand.
- (3) Grade (provided that the grade shall not be required when no primary nutrients are claimed.)
- (4) Guaranteed analysis\*

|  |       |      |
|--|-------|------|
| Total Nitrogen (N)**                                       | ..... | ___% |
| ___% ammoniacal nitrogen                                   |       |      |
| ___% nitrate nitrogen                                      |       |      |
| ___% water insoluble nitrogen                              |       |      |
| ___% urea nitrogen   |       |      |
| ___% (other recognized and determined forms of N)          |       |      |
| Available Phosphoric Acid (P <sub>2</sub> O <sub>5</sub> ) | ..... | ___% |
| Soluble Potash (K <sub>2</sub> O)                          | ..... | ___% |
| (Other nutrients, elemental basis)***                      | ..... | ___% |

(5) Sources of nutrients guaranteed on the label shall be listed below the completed guaranteed analysis statement.

(6) Name and address of registrant.

(7) At a minimum, one of the following label statements:

(a) "Information received by the Washington state department of agriculture regarding the components in this product is available on the internet at <http://agr.wa.gov>."

Through June 30, 2006, you may use the following label statement: "Information received by the Washington state department of agriculture regarding the components in this product is available on the internet at <http://www.wa.gov/agr/>."

(b) "Information regarding the contents and levels of metals in this product is available on the internet at <http://agr.wa.gov>."

Through June 30, 2006, you may use the following label statement: "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.wa.gov/agr/>."

(c) "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.regulatory-info-xx.com>."

Each registrant must substitute a unique alphanumeric identifier for "xx." This statement may be used only if the registrant establishes and maintains the internet site and the internet site meets the following criteria:

(i) There is no advertising or company-specific information on the site; and

(ii) There is a clearly visible, direct hyperlink to the department's internet site specified in (a) and (b) of this subsection.

(d) "Information regarding the contents and levels of metals in this product is available on the internet at: "<http://www.aapfco.org/metals.htm>."

Note: The department's Uniform Resource Locator (URL) changed in 2003, thus requiring a revision to the labeling statements required in subsection (7)(a) and (b) of this section. (The new URL is "<http://agr.wa.gov>." The old URL was "<http://www.wa.gov/agr/>." In order for companies to deplete existing stocks and revise labels, the department will allow either URL to be referenced on labels distributed through June 30, 2006. During this "phase-in" period, the department will maintain a redirect link to ensure that people are directed to the appropriate web site when they enter the old URL. Beginning July 1, 2006, all labels distributed in Washington using the statement in subsection (7)(a) or (b) of this section must include the new URL.

- \* Zero guarantees shall not be made and shall not appear in the statement.
- \*\* If chemical forms of nitrogen are claimed or required, the form shall be shown and the percentages of the individual forms shall add up to the total nitrogen percentage.
- \*\*\* As prescribed by WAC 16-200-711.

[Statutory Authority: Chapters 15.54 and 34.05 RCW. 03-24-053, § 16-200-715, filed 12/1/03, effective 1/1/04. Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-715, filed 9/17/87.]

**WAC 16-200-721 Slowly released plant nutrients.** (1)

No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the nutrient or nutrients are identified and guaranteed.

(2) Types of products with slow release properties recognized are:

(a) Water insoluble (nitrogen products only), such as natural organics, ureaform materials, urea-formaldehyde products, IBDU, oxamide, etc.;

(b) Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers;

(c) Occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and

(d) Products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), etc.

(3) The terms "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive of the products listed in subsection (2) of this section; however the registrant can show a testing program sub-

stantiating the claim (testing under guidance of experiment station personnel or a recognized reputable researcher acceptable to the director). A laboratory procedure, acceptable to the director for evaluating the release characteristics of the product(s) shall also be provided by the registrant upon request.

(4) When the nitrogen is organic, it shall be established that if a label states the amount of organic nitrogen present in a phrase, such as "nitrogen in organic form equivalent to X% N," then the water insoluble nitrogen guarantee shall not be less than sixty percent of the nitrogen so designated. For example: If the total nitrogen guarantee for a fertilizer is ten percent and the label states "Nitrogen in organic form equivalent to 2.5% N" then the water insoluble nitrogen guarantee shall not be less than 1.5% (2.5% x 0.6 = 1.5%).

(5) When a slowly released nutrient is less than fifteen percent of the guarantee for either total nitrogen (N), available phosphoric acid (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O), as appropriate, the label shall bear no reference to such designations.

(6) AOAC method 2.074 (13th Edition), or as designated in subsequent editions, shall be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size. AOAC method 2.072 (13th Edition) or as designated in subsequent editions, shall be used to determine the water insoluble nitrogen of organic materials.

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-721, filed 9/17/87.]

**WAC 16-200-725 Commercial fertilizer definitions.**

Except as the director designates otherwise in specific cases, the names and definitions for commercial fertilizers shall be those adopted by the Association of American Plant Food Control Officials.

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-725, filed 9/17/87.]

**WAC 16-200-731 Commercial value of plant nutrients.** The commercial values used in assessing penalties for plant nutrient deficiencies are as follows:

| (1) Fertilizer Materials  | Commercial | Value                         | (\$/Unit)        |
|---|------------|-------------------------------|------------------|
|   | N          | P <sub>2</sub> O <sub>5</sub> | K <sub>2</sub> O |
| Urea  | 4.20       |                               |                  |
| Ammonium Nitrate<br>(33.5% -34% N)                                | 4.75       |                               |                  |
| Ammonium Sulfate  | 3.27       |                               |                  |
| Ammonium Phosphate:   |            |                               |                  |
| 16-20-0   | 5.61       | 5.61                          |                  |
| 18-46-0   | 4.81       | 4.81                          |                  |
| 11-52-0   | 4.68       | 4.68                          |                  |
| 11-55-0   | 4.63       | 4.63                          |                  |
| Triple Superphosphate<br>(45%-46% P <sub>2</sub> O <sub>5</sub> ) |            | 5.25                          |                  |
| Muriate of Potash<br>(60%-62% K <sub>2</sub> O)                   |            |                               | 2.17             |
| Potassium Sulfate<br>(50%-53% K <sub>2</sub> O)                   |            |                               | 6.64             |
| Sulfate of Potash-Magnesia  |            |                               | 8.20             |
| Anhydrous Ammonia<br>(82% N)                                      | 3.00       |                               |                  |
| Urea ammonium nitrate (32-0-0)                                    | 4.62       |                               |                  |
| Aqua Ammonia (20-0-0)   | 3.00       |                               |                  |
| Ammonium Thiosulfate (12-0-0)                                     | 5.00       |                               |                  |

(12/1/03)

| (1) Fertilizer Materials            | Commercial | Value                         | (\$/Unit)        |
|-------------------------------------|------------|-------------------------------|------------------|
|                                     | N          | P <sub>2</sub> O <sub>5</sub> | K <sub>2</sub> O |
| Ammonium Polyphosphate<br>(10-34-0) | 6.00       | 6.10                          |                  |

If the commercial value of any of the fertilizer materials listed above varies by more than 10% of the actual invoice value of the lot sampled, the registrant may request that the invoice be used in determining the commercial value of the fertilizer. The request must be accompanied by a copy of the invoice.

| (2) Relative values for macro-nutrients:                          | Commercial | Value                         | (\$/Unit)        |
|---|------------|-------------------------------|------------------|
|   | N          | P <sub>2</sub> O <sub>5</sub> | K <sub>2</sub> O |
| Dry blend nonspecialty fertilizer<br>(not listed in (1) above)    | 4.48       | 5.16                          | 2.74             |
| Liquid blend nonspecialty fertilizer<br>(not listed in (1) above) | 3.93       | 5.96                          | 2.74             |
| Dry blend specialty fertilizer                                    | 18.96      | 18.96                         | 18.96            |
| Liquid blend specialty fertilizer                                 | 18.96      | 18.96                         | 18.96            |

(3) Values used for determining and assessing penalties for secondary and minor plant nutrients shall be determined from the sales invoice.

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-731, filed 9/17/87.]

**WAC 16-200-735 Breakdown of plant food elements within the guaranteed analysis.** When a plant nutrient guarantee is broken down into the component forms, the percentage for each component shall be shown before the name of the form. For example: 4% Nitrate Nitrogen.

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-735, filed 9/17/87.]

**WAC 16-200-739 Brand name.** The addition of another prominent name or design to a registered brand (other than descriptive words associated with the grade) shall constitute a new and different brand. For example: Blue Bird 5-10-10 vs. John Doe Blue Bird 5-10-10.

[Statutory Authority: Chapter 15.54 RCW. 87-19-097 (Order 1952), § 16-200-739, filed 9/17/87.]

**WAC 16-200-7401 Statement of purpose—Penalty assignment.** For the purpose of fair, uniform determination of penalty as set forth in WAC 16-200-7401 through 16-200-7407, the director hereby declares:

(1) Regulatory action is necessary to deter violations of the Fertilizer Regulation Act and rules adopted under it, and to educate persons about the consequences of such violation(s); and

(2) Any regulatory action taken by the department against any person who violates the provisions of chapter 15.54 RCW and/or rules adopted under it shall be commensurate with the seriousness of the violation under the circumstances; and

(3) Each person shall be treated fairly in accordance with the rules set forth in this chapter and in adherence with the Administrative Procedure Act (chapter 34.05 RCW).

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7401, filed 1/2/03, effective 2/2/03.]

**WAC 16-200-7402 Definitions—Penalty assignment.**

In addition to the definitions set forth in RCW 15.54.270 and WAC 16-200-695, the following shall apply to WAC 16-200-7401 through 16-200-7407.

(1) "Adverse effect(s)" means that the effects resulting from violations of chapter 15.54 RCW or the rules adopted under it actually causes, or creates the possibility of damage or injury to humans, animals, plants, property or the environment, or causes or creates the possibility of a threat to public health.

(2) "Level of violation" means that the alleged violation is a first, second, third, fourth, or more violation(s).

(a) First violation. This means the alleged violator has committed no prior violation within three years of committing the current alleged violation.

(b) Second violation. This means the alleged violator committed one prior violation within three years of committing the current alleged violation.

(c) Third violation. This means the alleged violator committed two prior violations within three years of committing the current alleged violation.

(d) Fourth violation. This means the alleged violator committed three or more prior violations within three years of committing the current alleged violation.

(e) For purposes of calculating the level of violation, prior violations will be measured from the date that a final action was taken by the department and not from the date that the violation(s) occurred.

(3) "Not probable" means that the alleged violator's conduct more likely than not would not have an adverse effect.

(4) "Probable" means that the alleged violator's conduct more likely than not would have an adverse effect.

(5) "Violation" means commission of an act or acts prohibited by chapter 15.54 RCW, and/or rules adopted under it.

(6) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage assessment, wages, premiums, taxes owed, interest or late fees on any existing obligation.

(7) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.54 RCW, or the rules adopted under it and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record.

(8) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.54 RCW, or any rules adopted under it. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to deny or cancel a license issued under the authority of chapter 15.54 RCW.

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7402, filed 1/2/03, effective 2/2/03.]

**WAC 16-200-7403 Application of RCW 43.05.100 and 43.05.110—Issuance of a civil penalty without first issuing a notice of correction.** (1) Pursuant to RCW 43.05.-100, a notice of correction may be issued by the department when they become aware of conditions and/or conduct that are not in compliance with the applicable laws and rules

enforced by the department. The issuance of a notice of correction by the department shall not constitute a previous violation for purposes of WAC 16-200-7402(2), but may, at the discretion of the department, be considered as an aggravating factor for the purposes of WAC 16-200-7404(2).

(2) Prior to issuing a civil penalty for a violation of chapter 15.54 RCW and/or the rules adopted under it, the department shall comply with the requirements of RCW 43.05.110. RCW 43.05.110 allows the department of agriculture to issue a civil penalty provided for by law without first issuing a notice of correction if:

(a) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given a previous notice of the same or similar type of violation of the same statute or rule; or

(b) Compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; or

(c) The violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or

(d) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7403, filed 1/2/03, effective 2/2/03.]

**WAC 16-200-7404 Calculation of a civil penalty.** (1)

In the disposition of administrative cases, the department shall use the penalty assignment schedules listed in WAC 16-200-7407 to determine the appropriate penalty. The department shall calculate the appropriate penalty based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless an adjustment is warranted due to aggravating or mitigating factors. The median penalty may be adjusted to a level greater than the maximum penalty listed for the violation in the penalty assignment schedule table, but shall not exceed seven thousand five hundred dollars per violation. The median penalty may be adjusted to a lesser amount due to mitigating factors, but not less than the minimum penalty listed for the violation.

(2) Adjustment of median penalty.

(a) The department reserves the right to increase the civil penalty when certain aggravating factors are present. Such aggravating factors include, but are not limited to:

(i) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation;

(ii) The number of separate alleged violations contained within a single notice of intent;

(iii) The high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s);

- (iv) The similarity of the current alleged violation to previous violations committed within the last three years;
- (v) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.
- (b) The department also reserves the right to decrease the civil penalty when certain mitigating factors are present. Such mitigating factors include, but are not limited to:
  - (i) Situations involving voluntary disclosure of a violation;
  - (ii) Situations involving a low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation;
  - (iii) Voluntary taking of remedial measures that will result in increased public protection, or that will result in a decreased likelihood that the violation will be repeated.

(3) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate civil penalty. The penalties are added together.

(4) Violation(s) committed during the period when a bulk fertilizer distribution license is denied or canceled shall be subject to the maximum civil penalty of seven thousand five hundred dollars and/or cancellation of the bulk fertilizer distribution license for a period of up to five years.

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7404, filed 1/2/03, effective 2/2/03.]

**WAC 16-200-7405 Denial or cancellation of a bulk fertilizer distribution license.** (1) The department retains the sole discretion to determine when a bulk fertilizer distribution license should be canceled. Cancellation of a license shall be an option for the department in those circumstances where:

- (a) The penalty schedule allows for cancellation; and/or
- (b) One or more aggravating factors are present.

**WAC 16-200-7407 Penalty assignment schedule.** This assignment schedule shall be used for violations of chapter 15.54 RCW and rules adopted under it.

| Level of Violation | Adverse Effects Not Probable                 |  |  | Adverse Effects Probable                     |  |  |
|--------------------|--|--|--|--|--|--|
|                    | Minimum                                      | Median                                       | Maximum                                      | Minimum                                      | Median                                       | Maximum                                      |
| First              | \$400  | \$600  | \$1000                                       | \$700  | \$900  | \$1100                                       |
| Second             | \$700  | \$1000                                       | \$2000                                       | \$1200                                       | \$2600                                       | \$4000 and/or license denial or cancellation |
| Third              | \$1400                                       | \$2000                                       | \$4000                                       | \$1600 and/or license denial or cancellation | \$4800 and/or license denial or cancellation | \$7500 and/or license denial or cancellation |
| Fourth or more     | \$1800 and/or license denial or cancellation | \$4000 and/or license denial or cancellation | \$6000 and/or license denial or cancellation | \$2000 and/or license denial or cancellation | \$7500 and/or license denial or cancellation | \$7500 and license denial or cancellation    |

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7407, filed 1/2/03, effective 2/2/03.]

(2) In circumstances where the department determines cancellation to be appropriate, the period of cancellation shall be determined at the discretion of the department, but in no instance shall exceed five years.

(3) The department may deny an applicant a license when the applicant has committed a violation(s) of chapter 15.54 RCW and/or the rules adopted under that chapter. The duration of denial shall be determined based upon the penalty provisions of this chapter. In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(4) Nothing shall prevent the department from denying an applicant a license when the applicant has an outstanding civil penalty owed to the department from a previous violation(s).

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7405, filed 1/2/03, effective 2/2/03.]

**WAC 16-200-7406 Other dispositions of alleged violations.** Nothing herein shall prevent the department from:

(1) Choosing not to pursue a civil penalty or bulk fertilizer distribution license denial or cancellation.

(2) Issuing a notice of correction in lieu of pursuing a civil penalty, or bulk fertilizer distribution license denial or cancellation.

(3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. Prior violation(s) covered by a prior settlement agreement may be used by the department for the purpose of determining the appropriate penalty for the current alleged violation(s) if not prohibited by the agreement.

(4) Referring violations or alleged violations to any federal, state or county authority with jurisdiction over the activities in question.

[Statutory Authority: Chapters 15.54, 34.05 RCW. 03-02-100, § 16-200-7406, filed 1/2/03, effective 2/2/03.]