



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: October 3, 2000

(2) Purpose: To amend the existing rules regarding barberry and black stem rust quarantine. Amendments reflect changes in federal quarantine regulations/practices and bring the rule into compliance with legislative mandates such as regulatory reform and use of clear and readable format

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

Repealed: 16-472-050
 Amended: 16-472-010, 16-472-020, 16-472-030, 16-472-040,
 Suspended:

(4) Statutory authority for adoption: RCW 17.24, 15.13, and 15.08

Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 00-16-110 on August 2, 2000 (date).
 Describe any changes other than editing from proposed to adopted version: None

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

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

- Yes No If Yes, explain:

(6) Effective date of rule:

Permanent Rules **Emergency Rules**
or Expedited Repeal

- 31 days after filing
- Other (specify) _____ *
- 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)

Jim Jesernig

Signature

Title
Director

Date
October 3, 2000

CODE REVISER USE ONLY

STATE OF WASHINGTON
 RCW 34.05.360
 9:40
 01-20-067

**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Federal statute:	New	Amended	Repealed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 <u>3</u>	Repealed
Recently enacted state statutes:	New	Amended	Repealed

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

New	Amended	Repealed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

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	Repealed 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

New	Amended <u>4</u>	Repealed <u>1</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 <u>4</u>	Repealed <u>1</u>

AMENDATORY SECTION (Amending Order 556, effective 9/1/49)

WAC 16-472-010 Establishing quarantine--Promulgation. ((+1)

~~Whereas, the fact has been determined and notice is hereby given that)) The common barberry, (*Berberis vulgaris*) and many of its horticultural varieties as well as certain other species of *Berberis*, *Mahonia*, and *Mahoberberis* are the alternate host plants of the disease ((known as)) black stem rust, caused by ((an)) the organism *Puccinia graminis*((, which)). Black stem rust attacks wheat, oats, barley ((and)), rye, and many other cultivated and wild grasses, often resulting in material financial loss to growers of these crops in Washington((, and whereas, the spread of this plant disease throughout the state of Washington would entail great loss to the agricultural interests of this state,~~

(2) Now, therefore, I, Sverre N. Omdahl,)). Without access to alternate host plants, *Puccinia graminis* cannot reproduce, and black stem rust is eliminated or greatly decreased. The director of agriculture ((of the state of Washington)), under authority ((vested in me by RCW 17.24.030, in order to prevent the spread of black stem rust caused by an organism *Puccinia graminis*, do hereby proclaim and establish a quarantine effective throughout the state of Washington prohibiting the maintenance, propagation, sale or movement throughout the state of Washington, of species and varieties of *Berberis*, *Mahonia*, and *Mahoberberis* determined to be alternate hosts of this disease, including any plants, cuttings, stalks, scions, buds, fruits, seeds or parts of these plants capable of propagation)) granted by chapters 17.24, 15.13 and 15.08 RCW, has determined that the regulation and exclusion of rust susceptible varieties of barberry and related *Berberis*, *Mahonia*, and *Mahoberberis* species is necessary to protect agricultural crops of the state of Washington.

AMENDATORY SECTION (Amending Order 556, effective 9/1/49)

WAC 16-472-020 Duty to destroy rust susceptible barberry bushes. ((It shall be the duty of all firms, corporations, private individuals, and other persons)) (1) Persons owning or controlling ((lands, or places in this state, and all public authorities having jurisdiction over streets, highways, parks, public lands, irrigation canals, diking districts, and other public places, to forthwith)) public or private lands in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane,

Stevens, Walla Walla, Whitman, or Yakima counties are required to destroy all rust-susceptible barberry bushes ((from said premises)) and to keep the ((same)) land free from such plants.

(2) No person who is or should be licensed as a nursery dealer under provisions of chapter 15.13 RCW may sell, offer for sale, ship or grow any rust susceptible variety of barberry or related *Berberis*, *Mahonia*, and *Mahoberberis* species, as defined in 7 C.F.R. 301.38-2.

AMENDATORY SECTION (Amending Order 556, effective 9/1/49)

WAC 16-472-030 ((No restrictions placed on the growing or intrastate movement of)) This rule does not apply to rust-resistant ((barberry)) *Berberis*, *Mahonia*, and *Mahoberberis* plants or seeds. No restrictions are placed by ((these regulations)) this rule on the growing or intrastate movement of rust-resistant ((*Barberry*)) *Berberis*, *Mahonia*, and *Mahoberberis* plants, plant parts or seeds ((7 however, these shall consist only of those species and horticultural varieties designated as rust-resistant by the chief of the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture in section 301.38-5 of Federal Quarantine No. 38)), as defined in United States Department of Agriculture Animal and Plant Health Inspection Service regulations in 7 C.F.R. 301.38-2.

This rule does not apply to cuttings (without roots) of *Mahonia* shipped for decorative purposes and not for propagation ((do not come under these restrictions)).

AMENDATORY SECTION (Amending Order 556, effective 9/1/49)

WAC 16-472-040 All packages to be plainly labelled or stamped. (1) All intrastate and interstate shipments and/or individual packages of *Berberis*, *Mahonia* or *Mahoberberis* plants, seeds, or parts ((thereof)) capable of propagation must be plainly labelled or stamped on the outside of the package ((as to)) with botanical species or horticultural variety and ((must be plainly marked with)) the name and address of the consignee and consignor. In addition, when required by federal ((quarantine No. 38, revised)) regulations in 7 C.F.R. 301.38, each shipment and/or individual package containing *Berberis*, *Mahonia* or *Mahoberberis* plants or seeds ((shall)) must have securely attached to the outside ((thereof)), a valid shipping permit issued by the United States Department of Agriculture authorizing ((the)) its interstate movement ((of regulated products)).

(2) Any (~~and all employees and designated agents of the horticultural division of the state department of agriculture, are hereby empowered and instructed to intercept, condemn, and destroy, or return to shipper at his expense,)) *Berberis, Mahonia and Mahoberberis* plants, plant parts or seeds ((moved)) that are in violation of ((and not marked in accordance with the above regulations. All authorized persons mentioned above also are empowered and instructed to enforce all other provisions of this order.~~

(3) ~~Articles subject to destruction in these regulations may be moved interstate and intrastate by the United States Department of Agriculture for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the Bureau of Entomology and Plant Quarantine. The container of articles so moved shall have securely attached to the outside thereof an identifying tag from the Bureau of Entomology and Plant Quarantine, showing compliance with such conditions)) this barberry and black stem rust quarantine are subject to destruction, shipment out-of-state or other disposition in a manner prescribed by the department. Any such action will be at the expense of the owner or owner's agent and without compensation.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-472-050

Revisions of previous conflicting regulations.