



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Department of Agriculture Permanent Rule
 Emergency Rule

(1) Date of adoption: July 20, 2001 Expedited Adoption
 Expedited Repeal

(2) Purpose: The rules provide the application, inspection, sampling, fee schedule and certification criteria for obtaining organic and transitional certification.

(3) Citation of existing rules affected by this order: Chapter 16-156 WAC
Repealed:
Amended: WAC 16-156-004, 16-156-030, 16-156-035, 16-156-050 and 16-156-060
Suspended:

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

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
Adopted under notice filed as WSR 01-12-100 on June 6, 2001 (date).
Describe any changes other than editing from proposed to adopted version: See attachment *MPW*

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 or Expedited Repeal **Emergency Rules**
 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)
Jim Jesernig
Signature
Jim Jesernig
Title Director **Date** 6-20-01

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUL 23 2001

TIME 1:31 AM
WSR 01-16-032 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	Repealed	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>0</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	Repealed	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>1</u>	Amended	<u>5</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>5</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	-----

Chapter 16-156 WAC

ORGANIC PRODUCER AND (~~TRANSITION TO ORGANIC~~) TRANSITIONAL
PRODUCER CERTIFICATION

AMENDATORY SECTION (Amending Order 6011, filed 12/20/96, effective 1/20/97)

WAC 16-156-004 Definitions. As used in this chapter:

(1) "Crop" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

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

~~((2))~~ (3) "Director" means the director of the department of agriculture or his or her duly authorized representative.

~~((3))~~ (4) "Drift" is defined as the movement of prohibited substances by air, water or soil from the intended target and results in residues of prohibited substances on organic or transition to organic food in excess of five percent of the EPA tolerance level.

~~((4))~~ (5) "Gross sales" means the sales of organic (~~and transition to organic~~) food sold during the calendar year.

~~((5))~~ (6) "Labeling" means all written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article, or used in the advertisement of such article.

~~((6))~~ (7) "New applicant" means any person or organization who or which applies for organic or (~~transition to organic~~) transitional certification for the first time, or when previous certification status has expired for at least one year.

~~((7))~~ (8) "Organic food" means any agricultural product, including meat, dairy, and beverage, that:

(a) Is marketed using the term organic or any derivative of organic in its labeling or advertising; and

(b) That has had no applications of prohibited substances within three years prior to the harvest of the crop; and

(c) That is produced in compliance with standards defined in chapter 15.86 RCW and rules adopted thereunder.

~~((8))~~ (9) "Pasture" means ground covered with vegetation that is used by animals for grazing purposes.

(10) "Producer" means any person or organization who or which grows, raises or produces an agricultural product.

~~((9))~~ (11) "Prohibited substance" means a material which is

disallowed in organic food production, handling, or processing.

~~((+10+))~~ (12) "Renewal applicant" means any person or organization who or which has applied for organic or ~~((transition to organic))~~ transitional certification in the previous year.

~~((+11+))~~ (13) "Site" means a ~~((defined))~~ designated farm field, orchard, block, pasture, paddock, garden, circle, plot or other ((designed area)) contiguous area under the same management (e.g., organic or transitional). A site may contain multiple crops.

~~((+12+ "Transition to organic"))~~ (14) "Transitional food" means any agricultural product that:

(a) Is marketed using the term ~~((transition to organic or))~~ transitional in its labeling and advertising; and

(b) Satisfies all of the requirements of organic food except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

AMENDATORY SECTION (Amending Order 6011, filed 12/20/96, effective 1/20/97)

WAC 16-156-030 Certification. (1) ~~((Washington state department of agriculture certification means that:))~~ The conditions for obtaining organic and transitional food producer certification are as follows:

(a) Inspection of the producer by the department of agriculture showed no use of prohibited practices as defined in chapter 15.86 RCW or unless adopted thereunder; and

(b) Recordkeeping practices meet the requirements specified in WAC 16-156-040 or rules adopted under chapter 15.86 RCW; and

(c) Soil building programs, organic pest control programs, and buffer zones required under chapter 16-154 WAC were established on each site; and

(d) Completion of the organic farm plan and verification that it has been implemented; and

(e) Analysis of samples taken by the department of agriculture showed no prohibited substance usage or drift from other contaminants; and

~~((+e+))~~ (f) No application of prohibited substances, as defined in chapter 16-154 WAC, have been used for:

- At least three years prior to the harvest of organic food; or
- At least one year prior to the harvest of ~~((transition to organic))~~ transitional food.

(2) For each site, the director must review the application, inspection report and results of any samples collected to determine that the producer has complied with the conditions for certification on that site.

(3) For each site, a certificate will be issued when the

director determines that the producer has complied with the conditions for organic or transitional food producer certification on that site.

(4) Beginning in the year 2002, prior to the issuance of an organic food producer certificate:

(a) The site must have been previously certified as organic;
or

(b) The site must have been certified as second year transitional in the previous year; or

(c) The producer has documentation that verifies that the site was in pasture or not being farmed during the previous two years.

(5) Beginning in the year 2003, prior to the issuance of a second year transitional food producer certificate:

(a) The site must have been certified as first year transitional in the previous year; or

(b) The producer has documentation that verifies that the site was in pasture or not being farmed during the previous year.

(6) Producers of organic food who (~~apply~~) are certified under this program will be able to use the words, "produced in accordance with the Washington state department of agriculture organic food certification program" in their labeling as long as their practices comply with chapter 15.86 RCW or any rules adopted thereunder.

Food produced under this organic food certification program may be identified by the use of (~~one of~~) the attached organic logo(~~s~~) (WAC 16-156-060(~~, Illus. 1, 1A~~)). (~~These~~) This logo(~~s~~) shall only be used for food produced by producers who have been certified organic by the Washington state department of agriculture (~~organic food certification program~~).

~~(3)~~ (7) Producers of (~~transition to organic~~) transitional food who (~~apply~~) are certified under this program will be able to use the words "produced in accordance with the Washington department of agriculture (~~transition to organic~~) transitional food certification program" in their labeling as long as their practices comply with this chapter and chapter 15.86 RCW and rules adopted thereunder.

Food produced under this (~~transition to organic~~) transitional food certification program may be identified by use of (~~one of~~) the attached transitional logo(~~s~~) (WAC 16-156-060(~~, Illus. 2, 2A~~)). These logos shall only be used for (~~transition to organic~~) transitional food produced by producers who have been certified transitional by the Washington state department of agriculture(~~s organic food certification program~~).

~~(4)~~ (8) In no event shall food be sold as Washington certified organic or Washington certified (~~transition to organic~~) transitional prior to the issuing of an organic or (~~transition to organic~~) transitional food producer certificate by the department of agriculture for that crop year. First year applicants and new sites shall be inspected by the department before an organic or (~~transition to organic~~) transitional food producer certificate is issued.

~~(5)~~ (9) The logos to identify organic food and (~~transition to organic~~) transitional food shall not be changed

except for increases or decreases in size, as appropriate.

AMENDATORY SECTION (Amending Order 6011, filed 12/20/96, effective 1/20/97)

WAC 16-156-035 Decertification. Whenever the director finds that a producer who has been certified under this program has:

(1) Violated the standards for certification which are set forth in RCW 15.86.030 or any rules adopted under chapter 15.86 RCW;

(2) Filed an application for certification which is false or misleading in any particular;

(3) Violated any of the provisions of this chapter; ((or))

(4) Failed to provide records as required by this chapter, WAC 16-154-060 or 16-162-100; or

(5) Failed to allow inspection to take place.

The director may issue an order revoking that producer's certification under this program or he may issue an order directing the producer to take other appropriate action to correct the violation. If appropriate action is taken, the producer will be returned to its previous status under the program.

Any producer who has received notice that its certification may be revoked under this section may apply for a hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending Order 6011, filed 12/20/96, effective 1/20/97)

WAC 16-156-050 Application for certification. ((Producers who wish to apply for the organic food certification program must apply to the department by March 1 of each year. The application, accompanied by the appropriate fee shall be submitted to the department on forms furnished by the department. This application must include a sworn statement that they fully comply with the statute and rules for production of organic food and/or transition to organic food. Organic food producer and transition to organic food producer certificates shall expire on March 31st of the year following their issuance.

Applications made after the set deadline may be processed as the department can schedule the initial inspections. Except for producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers, all producers of organic or transition to organic food must be certified by the department.)) (1) All producers of organic food products must be

certified by the department or through a recognized organic certification agency, except for producers that sell less than five thousand dollars annually in value of agricultural products directly to consumers.

(2) Applications to the department for organic food certification must be made on an annual basis at least sixty days prior to the harvest of organic food products. The application, accompanied by the appropriate fee, must be submitted to the department on forms furnished by the department.

(3) Organic food producer and transitional food producer certificates shall expire on March 31st of the year following their issuance.

AMENDATORY SECTION (Amending WSR 97-24-006, filed 11/21/97, effective 12/22/97)

WAC 16-156-060 Fee schedule. (1) The cost per application shall be based on the following fee schedule.

~~((For))~~ Renewal applicants -
Application fees shall be based on the previous calendar year's gross sales of organic (~~(and transition to organic)~~) food. In the event that the current calendar year's gross sales exceed the previous year's gross sales, the department may bill the producer for the additional fee. In the event that the current calendar year's gross sales is less than the previous year's gross sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1, shall pay a late fee of fifty dollars. Renewal applicants that are adding additional sites to their organic certification must pay a new site fee of fifty dollars for each additional site.

~~((For))~~ New applicants -
Application fees shall be based on an estimate of the current year's gross sales of organic (~~(and transition to organic)~~) food. In the event that the current calendar year's gross sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's gross sales is less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants pay a seventy-five dollar new applicant fee. New applicants that are seeking organic certification for more than one site must pay a site fee of fifty dollars for each additional site. The fee shall accompany the application.

Gross Sales	Annual Fee
\$ 0 - \$ 12,000	\$ 165
\$ 12,001 - \$ 15,000	\$ 200
\$ 15,001 - \$ 20,000	\$ 220
\$ 20,001 - \$ 25,000	\$ 275
\$ 25,001 - \$ 30,000	\$ 330

Gross Sales	Annual Fee
\$ 30,001 - \$ 35,000	\$ 385
\$ 35,001 - \$ 42,500	\$ 465
\$ 42,501 - \$ 50,000	\$ 550
\$ 50,001 - \$ 65,000	\$ 660
\$ 65,001 - \$ 80,000	\$ 825
\$ 80,001 - \$ 100,000	\$ 990
\$ 100,001 - \$ 125,000	\$ 1,100
\$ 125,001 - \$ 150,000	\$ 1,150
\$ 150,001 - \$ 175,000	\$ 1,320
\$ 175,001 - \$ 200,000	\$ 1,375
\$ 200,001 - \$ 240,000	\$ 1,540
\$ 240,001 - \$ 280,000	\$ 1,595
\$ 280,001 - \$ 325,000	\$ 1,650
\$ 325,001 - \$ 375,000	\$ 1,720
\$ 375,001 - \$ 425,000	\$ 2,200
\$ 425,001 - \$ 500,000	\$ 2,300
\$ 500,001 - \$ 750,000	\$ 2,750
\$ 750,001 and up	\$ 2,000
	plus one-tenth of one percent (0.10%) of gross organic sales

(2) Transitional acreage fee - Each applicant shall pay a fee of five dollars per acre for the land for which they are requesting transition to organic certification.

(3) Two inspections per year within the state of Washington are provided for under the above fee schedule. Additional inspections (in addition to two inspections provided for), if required for certification or maintenance of certification by the director, or requested by the producer, shall be at \$30/hr. plus mileage set at the rate established by the state office of financial management.

Out-of-state inspections, if necessary or requested, shall be at the rate of \$30/hr. plus transportation costs.

~~((+3+))~~ (4) One sample per year is provided for under the above fee schedule. Additional samples (in addition to one sample provided for), if required for certification or maintenance of certification by the director, or requested by the organic producer, shall cost an additional lab fee of one hundred ten dollars. If an additional visit must be arranged to obtain a sample, it shall be at \$30/hr. plus mileage set at the rate established by the state office of financial management.

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Department of Agriculture
Organic Food Certification Program



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Certified Organic
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Organic Food Certification Program
TRANSITIONAL





NEW SECTION

WAC 16-156-070 Export and transaction certificates. (1) Organic export and transaction certificates are issued to verify that a specific shipment of organic food products has been produced, processed, and handled in accordance with chapter 15.86 RCW and rules adopted thereunder.

(2) Applications for export and transaction certificates must be submitted on forms furnished by the department. The applicant must furnish all information requested on the application. A separate application must be made for each export and transaction certificate.

(3) The fee for export and transaction certificates shall be thirty dollars per application.