



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Washington State Department of Agriculture

- Permanent Rule
- XX Emergency Rule
- Expedited Rule Making

(1) Date of adoption:

(2) Purpose: In accordance with ESSB 5889, pertaining to the Livestock Nutrient Management Program (LNMP) passed during the 2003 legislative session, clarify that appeals of LNMP orders and penalties are not appealable using Department of Agricultural procedural rules in chapter 16-08 WAC, but instead are appealable only to the Pollution Control Hearings Board and must be served on and handled by WSDA rather than the Department of Ecology.

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

- Repealed:
- Amended:
- Suspended:

(4) Statutory authority for adoption: RCW 90.64 and RCW 34.05.

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version:

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: The 2003 Legislature passed ESSB 5889 transferring the Livestock Nutrient Management Program (LNMP) to the Washington State Department of Agriculture (WSDA). WSDA has the authority to take immediate corrective action and formal, regulatory enforcement action for violations of chapters 90.64 and 90.48 RCW. While an appeal of other agency enforcement action is to the Director of WSDA, an appeal of any WSDA action in the LNMP is under the jurisdiction of the Pollution Control Hearings Board (PCHB). The emergency rule clarifies that appeals of LNMP orders and penalties are not appealable using the procedural rules in chapter 16-08 WAC, but instead are appealable only to the PCHB under chapter 43.21B RCW and chapter 371-08 WAC and must be served on and handled by WSDA rather than the Department of Ecology.

(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

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

*If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required

Emergency Rules

- XX Immediately
- Later (specify)

CODE REVISER USE ONLY

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STATE OF WASHINGTON

DEC 5 2003

1147

04-01-014

TIME _____

WSR _____

Name (Type or Print)

Valoria Loveland

Signature

Valoria Loveland

Title

Director

Date

12/02/03

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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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	_____

NEW SECTION

WAC 16-08-003 Declaration of purpose and applicability. This chapter sets forth the rules of procedure that are applicable to adjudicative proceedings before the department. Because civil penalties and orders issued by the department pursuant to chapters 90.64 and 90.48 RCW in the livestock nutrient management program are appealable only to the pollution control hearings board (PCHB) under chapter 43.21B RCW and chapter 371-08 WAC, this chapter is not applicable to those proceedings.

NEW SECTION

WAC 16-08-004 Livestock nutrient management program (LNMP) appeals. (1) All appeals of civil penalties and orders issued by the department in the livestock nutrient management program shall be filed with the PCHB at the environmental hearings office and shall be served on the department of agriculture pursuant to RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) Pursuant to WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of agriculture in the livestock nutrient management program, all references to "department" in both chapters 43.21B RCW and 371-08 WAC shall mean department of agriculture; all references to "director" shall mean director of agriculture.