



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Dept. of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: April 20, 2004

(2) Purpose: This rulemaking order amends chapter 16-402 WAC by adding language that fulfills the mandate in RCW 15.13.260(2) to adopt standards for the marking or tagging of horticultural plants offered for sale in Washington State. In addition, this rulemaking order adds language regarding horticultural plants not in compliance with tagging requirements, corrects an erroneous RCW reference, re-titles the chapter so the title more accurately describes the chapter's contents, and clarifies existing language so that it is easier to read and understand.

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

- Repealed:
- Amended: WAC 16-402-010 & WAC 16-402-020
- Suspended:

(4) Statutory authority for adoption: Chapters 15.13 and 34.05 RCW

Other Authority:

### PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-06-083 on March 3, 2004.

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:

(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

- Immediately
- Later (specify) \_\_\_\_\_

#### CODE REVISER USE ONLY

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_

APR 20 2004

TIME 10:51

WSR 04-09-084

FILED \_\_\_\_\_

Name (Type or Print)  
Valoria H. Loveland

Signature  
*Valoria H. Loveland*

Title: Director Date: April 20, 2004

**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:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a 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>2</u>	Amended	<u>2</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>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>2</u>	Amended	<u>2</u>	Repealed	<u>0</u>

Chapter 16-402 WAC

~~((FREEDOM FROM INFESTATION BY))~~

PLANT PEST ~~((S))~~ INFESTATIONS AND PLANT LABELING

AMENDATORY SECTION (Amending WSR 98-17-069, filed 8/17/98, effective 9/17/98)

**WAC 16-402-010 Definitions.** The definitions in this section shall apply throughout this chapter.

"Collected horticultural plant" means a noncultivated native plant, collected in its native habitat and sold for horticultural purposes.

~~((1))~~ "Department" means the Washington state department of agriculture.

~~((2))~~ "Director" means the director of the Washington state department of agriculture or the director's duly authorized representative.

~~((3))~~ "Established" means a reproducing population of a pest that is expected to have a permanent presence.

~~((4))~~ "Harmful" means injurious or potentially injurious to horticultural plants.

~~((5))~~ ~~"Quarantine pest" means any pest listed in current Washington state quarantines as promulgated in chapter 17.24 RCW.~~

~~((6))~~ "Practically free" means horticultural plants which do not exceed:

(a) A 2% infestation level; or

(b) An infestation in an amount expected to result from and be consistent with good culturing and handling practices employed in the production and marketing of the horticultural plants.

"Quarantine pest" means any pest listed in current Washington state quarantines as promulgated in chapter 17.24 RCW.

"Tag" means to identify a horticultural plant or a group of horticultural plants by a bill of lading, invoice, label or other package marking.

"Unit of sale" means a group of the same plant variety or of mixed varieties placed together at a specific site for retail sale.

AMENDATORY SECTION (Amending WSR 98-17-069, filed 8/17/98, effective 9/17/98)

**WAC 16-402-020 Compliance with standards required.** (1) Horticultural plants sold, held for sale, shipped or transported in the state must comply with the standards described in (~~this chapter~~) WAC 16-402-015.

(2) The director may deny, suspend or revoke the license of any person selling, holding for sale, shipping or transporting horticultural plants in violation of this (~~chapter~~) standard, pursuant to RCW (~~15.13.350~~) 15.13.490. The director may also issue civil penalties in accordance with RCW 15.13.490 for violations of this (~~chapter~~) standard.

(3) Any horticultural plant sold, held for sale, shipped or transported in violation of (~~this chapter~~) WAC 16-402-015 shall be subject to a hold order, issued pursuant to RCW 15.13.430, or an order of condemnation, issued pursuant to RCW 15.13.440. Upon issuance of a hold order or an order of condemnation, the seller or holder of the plant material is entitled to request a hearing under chapter 34.05 RCW.

(4) The department shall issue a nursery inspection record or other official document(s) certifying compliance to (~~this chapter~~) WAC 16-402-015.

NEW SECTION

**WAC 16-402-030 Standards for plant labeling.** (1) Nursery dealers transporting horticultural plants into the state must legibly tag or identify each species or variety of plant in the shipment in a conspicuous manner with the botanical name and/or the common name.

(2) Nursery dealers displaying horticultural plants for retail sale must tag or identify each variety or species of each unit of sale in a conspicuous manner with the botanical name, and/or the common name, or provide this information to any person upon request.

This requirement does not apply to containers or baskets with mixed species of perennials, annuals or biennials.

(3) Nursery dealers must tag or identify collected horticultural plants with the botanical name, the common name and designate the plants as collected.

(4) To determine compliance with state and federal quarantines, the botanical name of each horticultural plant transported or sold in the state must be made available to the director upon request.

NEW SECTION

**WAC 16-402-040 Horticultural plants not in compliance.**

Pursuant to RCW 15.13.410, the director may order any horticultural plant, not properly tagged or identified, off sale or returned to the consignor for proper tagging. Upon issuance of an order requiring horticultural plants to be removed from sale or returned to the consignor, the seller or holder of the plant material is entitled to request a hearing under chapter 34.05 RCW.