



RULE-MAKING ORDER

R-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Agriculture

- Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

- Emergency Rules**
 Immediately upon filing.
 Later (specify) _____

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

- Yes No If Yes, explain:

Purpose: This rulemaking order adds sections -100, -110, -120, and -130 to chapter 16-402 WAC by establishing reporting and recordkeeping requirements for nursery dealers for shipments of tree and shrub nursery stock from outside the state. It also establishes mandatory holding periods before tree and shrub nursery stock from outside the state may be sold, distributed, or transported or delivered to another location, to allow for inspection for plant pests.

Citation of existing rules affected by this order:

Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: Chapters 15.13 and 17.24 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as _____ on _____
 Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- 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.
 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 intrusion into this state of non-native, invasive plant pest species on or in association with horticultural plants is of grave and immediate concern. Several significant non-native, invasive plant pests, including citrus longhorned beetle, the pathogen (*Phytophthora ramorum*) which causes sudden oak death disease, and Japanese beetle entered the state within the last three years via this pathway. The risk of introduction appears to be increasing dramatically. An identical emergency rule was adopted on March 10, 2004, and an identical permanent rule was adopted on July 6, 2004. The intent of this filing is to provide continuity during the time between the expiration of the earlier emergency order and the implementation date of the permanent rule.

Date adopted:

July 7, 2004

NAME (TYPE OR PRINT)

Valoria H. Loveland

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE
 STATE ARCHIVIST

1055

04-14-103

**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 a nongovernmental entity:

	New	<u>4</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>0</u>	Amended	<u>0</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:

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

REPORTING AND HOLDING OF TREE AND SHRUB NURSERY STOCK

NEW SECTION

WAC 16-402-100 Purpose. The intrusion of nonnative, invasive plant pest species into Washington state is a significant public concern. Plant pest species include insects, nematodes, snails, plant diseases, weeds and other species which harm plants or plant products. If established, such plant pests have potential to cause harm to the state's forest, agricultural, horticultural, floricultural and apiary industries, to damage natural resources and the property of private landowners, to reduce environmental quality, and to threaten the diversity and abundance of native species. In recent years, many of these invasive plant pests have entered the state, in some cases causing significant private and public expense for monitoring, control or eradication. This rule is intended to aid in the exclusion, tracking, identification, control and/or eradication of invasive plant pests which may enter the state on or in association with horticultural plants, in order to protect public health, safety, welfare, and the environment.

NEW SECTION

WAC 16-402-110 Definitions. The following definitions apply to WAC 16-402-100 through 16-402-130:

(1) "Tree and shrub nursery stock" means woody forest and ornamental trees, shrubs and vines grown or kept for propagation, distribution or sale, including bareroot, balled and burlaped, and containerized plants, liners, budwood, seedlings and cuttings. Fruit, seeds and tissue culture plantlets are not considered tree and shrub nursery stock.

(2) "Business day" means Monday through Friday, excluding state holidays.

(3) "Receiving nursery" means any nursery dealer within Washington state, including landscape firms and greenhouses required to be licensed as nursery dealers, that acquires tree and shrub nursery stock via interstate or international shipment.

NEW SECTION

WAC 16-402-120 Notification requirement. (1) Receiving nurseries for tree and shrub nursery stock imported into Washington state from any out-of-state source are required to notify the Washington state department of agriculture (WSDA). Notification methods may include U.S. mail, telefacsimile, delivery service or e-mail to: Nursery Inspection Program Supervisor, Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA 98504-2560; fax 360-902-2094; e-mail: nursery@agr.wa.gov.

(2) Notification must include the species of plant(s), quantities of each species, source of each shipment and the receiving nursery's contact information including telephone numbers and e-mail address (if available). Copies of regular shipping documents, such as load lists, with this information are encouraged.

(3) Notification must arrive at WSDA no later than two business days after arrival of the shipment at the receiving nursery. Notification in advance of the shipment is encouraged.

(4) WSDA may approve alternative notification systems, if the alternative systems allow the provisions of WAC 16-401-130 to be carried out.

NEW SECTION

WAC 16-402-130 Hold requirement. (1) Tree and shrub nursery stock shipments from outside the state must be held separate from other nursery stock for a minimum of one full business day after notification is received by WSDA.

(2) WSDA will contact the nursery before or during the hold period specified in subsection (1) of this section, if the tree and shrub nursery stock must be held for inspection. WSDA will conduct the inspection as soon as practicable.

(3) Unless the receiving nursery has been instructed by WSDA to hold the shipment under subsection (2) of this section, the receiving nursery may distribute the stock before the expiration of the hold period specified in subsection (1) of this section, if the disposition of the stock is fully traceable. Retail sale to cash customers is not permitted during the hold period.