



RULE-MAKING ORDER

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

Agency: Dept. 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 amends chapter 16-623 WAC – Commission Merchant Act – Licensing Fees, Proof of Payment, Cargo Manifests and Registration of Acreage Commitments by:

- (1) increasing the license fees for commission merchants, dealers, brokers, cash buyers, and agents;
- (2) clarifying selected portions of chapter 20.01 RCW related to licensing requirements; and
- (3) rewriting the entire chapter to increase its clarity and readability.

Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 16-623-001, 010, 020, 030, 040, 050, & 060
 Suspended:

Statutory authority for adoption: Chapter 20.01 and 34.05 RCW; Chapter 25, Laws of 2003, 1st Special Session (ESSB 5404)

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 05-06-112 on March 2, 2005.
 Describe any changes other than editing from proposed to adopted version: None

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:

DATE ADOPTED

April 20, 2005

NAME (TYPE OR PRINT)

Valoria H. Loveland

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CLERK
 STATE OF WASHINGTON

APR 20 2005

7:57 AM

WSR 05-09-094 PM

(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	<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>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>7</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>2</u>	Amended	<u>7</u>	Repealed	<u>0</u>

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-001 What is the purpose((-)) of this chapter? The ~~((department of agriculture has written))~~ purpose of this chapter is to implement ~~((or))~~ and clarify selected portions of chapter 20.01 RCW. This ~~((administrative rule))~~ chapter addresses four topics.

(1) Licensing fees and requirements for commission merchants, dealers, brokers, cash buyers or agents.

(2) Recordkeeping and proof of payment requirements for licensees.

(3) Cargo manifests ~~((of cargo))~~ and shipping documents that accompany hay and straw during transportation.

(4) Rules governing the registration of processor acreage commitments made ~~((by processors))~~ to producers of annual crops.

NEW SECTION

WAC 16-623-005 What definitions are important to this chapter? In addition to the definitions listed in RCW 20.01.010, the following definitions are important to understanding this chapter:

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or their designee.

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-010 ~~((License fees, expirations, renewals and late renewal penalties.))~~ What requirements apply to licenses for commission merchants, dealers, brokers, cash buyers and agents?

(1) The following table summarizes the license fee ~~((to act as a))~~ requirements for commission merchants, dealers, brokers, cash buyers, or agents ~~((is))~~:

((LICENSE CLASS	FEE
Commission merchant	\$357
Dealer	\$357
Limited dealer	\$198
Broker	\$249
Cash buyer	\$ 79
Agent	\$ 28
Additional licenses (see subsection (2) of this section)	\$ 25))

<u>License Class</u>	<u>License Fee</u>	<u>Annual Expiration Date</u>	<u>Annual Renewal Date</u>	<u>Penalty Amount for Not Renewing Before January 1</u>
<u>Commission merchant</u>	<u>\$450.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Dealer</u>	<u>\$450.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Limited dealer</u>	<u>\$250.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Broker</u>	<u>\$300.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Cash buyer</u>	<u>\$100.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Agent</u>	<u>\$50.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>
<u>Additional license per class</u>	<u>\$25.00</u>	<u>December 31</u>	<u>Before January 1</u>	<u>A late renewal penalty of twenty-five percent of the total fees</u>

(2) A licensee can be licensed in more than one class for an additional fee of twenty-five dollars per class. The principal license must be in the class requiring the greatest fee and all requirements must be met for each class in which a license is being requested.

(3) All ~~((licenses expire December 31st of each year))~~ fees and penalties must be paid before the department issues a license.

(4) ~~((License renewals must be renewed before January 1st of each year.))~~ Applications for licenses are considered incomplete unless an effective bond or other acceptable form of security is also filed with the director.

(5) ~~((Licenses not renewed by January 1st will be assessed a penalty of twenty-five percent of the total fees. Fees and penalties must be paid before the licenses will be issued.))~~ Licenses may be obtained by contacting the department's commission merchants program at 360-902-1854 or e-mail at: commerch@agr.wa.gov. Application forms, bond forms, and forms for securities in lieu of a surety bond are available on the department's website at: <http://www.agr.wa.gov/Inspection/CommissionMerchants/default.htm>.

NEW SECTION

WAC 16-623-015 What securities are acceptable in lieu of a surety bond? An applicant or licensee may file an assignment of savings or irrevocable letter of credit with the director in lieu of a surety bond. These instruments are subject to the same requirements and provisions as bonds stated in RCW 20.01.210, 20.01.211, and 20.01.212.

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-020 What are the recordkeeping ~~((and proof of payment.))~~ requirements for commission merchants, dealers and cash buyers? ~~((1))~~ Every commission merchant, dealer, and cash buyer ~~((taking))~~ who takes possession of or ~~((purchasing))~~ purchases agricultural products must ~~((make and))~~ keep ~~((for three years))~~ accurate records ~~((showing the following.))~~

~~((a))~~ The name and address of the consignor.
~~((b))~~ The date received.
~~((c))~~ The quality and quantity delivered by the consignor and where applicable the dockage, tare, grade, size, net weight or quantity.

~~((d))~~ An itemized statement of the charges to be paid by the consignor, dealer or cash buyer to be paid by the consignor in connection with the sale.

~~((e))~~ These records must be made available to the director and the consignor or their authorized representatives.

~~((2))~~ In addition to subsection (1) of this section, the commission merchant's records must include:

~~((a))~~ An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold and proof of payments received on behalf of the consignor.

~~((b))~~ The terms of payment to the producer.

~~(c) The names and addresses of all purchasers if the commission merchant has any financial interest in the business of the purchaser or if the purchaser has any financial interest in the business of the commission merchant. The business interest may be direct or indirect such as holders of the other's corporate stock, as a copartner or as a lender or borrower of money. The interest must be noted in the records following the name of the purchaser.~~

~~(d) A lot number or identifying mark for each consignment which will appear on all sales tags and other records showing the price for which the agricultural products actually sold.~~

~~(e) If there is a pooling arrangement, the consignor must have agreed in writing to the pooling arrangement before the commission merchant may handle the agricultural product.~~

~~(f) In cases where a pooling arrangement is in place, the requirements of subsections (1)(c) and (d) and (2)(b) and (d) of this section apply.~~

~~(g) Keep and make available to the director or consignor or their representative claims filed by the commission merchant against any person for overcharges or damages resulting from the injury or deterioration of agricultural products.~~

~~(3) In addition to subsection (1) of this section, dealers and cash buyers must include:~~

~~(a) Terms of the sale.~~

~~(b) Name and address of the purchaser. The name and address of the purchaser may be deleted from the record furnished to the consignor.~~

~~(4) Commission merchants will furnish consignors with proof of payment. Proof of payment will be a listing of payments received by the commission merchant on behalf of any consignor whether through an individual accounting or pool arrangement)). The recordkeeping requirements for:~~

~~(1) Commission merchants are specified in RCW 20.01.370;~~

~~(2) Dealers and cash buyers are specified in RCW 20.01.380;~~

~~and~~

~~(3) Brokers are specified in RCW 20.01.400.~~

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-030 Is a cargo manifest ((of cargo for)) required for transporting hay and straw(--Forms and exceptions.)? (1) All commission merchants, dealers, their employees or licensed agents ((transporting hay or straw on equipment owned or under their control)) must have a copy of the cargo manifest ((of cargo)) with each load when transporting hay or straw on equipment owned or under their control.

(2) ((The manifest must be on a form prescribed by the director. The form is available from the department. Exceptions

to the manifest form are outlined in subsections (3) and (4) of this section. The form, as a minimum, will state the following:

~~(a) Purchaser's name and address.~~

~~(b) Hauler's name and address.~~

~~(c) Business or person the products were received from and their address.~~

~~(d) The commodity, unit count, unit price, total price, total weight, tare weight and weight of the commodity.~~

~~(e) Terms of the settlement.~~

~~(f) Date.~~

~~(3) Any common carrier transporting hay or straw for a commission merchant or dealer may use shipping documents required by the Washington public utilities and transportation commission, or interstate commerce commission.~~

~~(4) Any common carriers, commission merchants, dealers, their employees or licensed agents transporting hay or straw may use other shipping documents that have been reviewed and authorized by the department of agriculture. The alternate shipping documents must be authorized by the department prior to their use.)~~ Any common carrier transporting hay or straw for a commission merchant or dealer may use shipping documents required by either the Washington public utilities and transportation commission or interstate commerce commission instead of the department form described in subsection (5) of this section.

(3) Any common carriers, commission merchants, dealers, their employees or licensed agents transporting hay or straw may use shipping documents other than the department form described in subsection (5) of this section if they have been reviewed and authorized by the department before their use.

(4) Unless the exceptions in subsections (2) and (3) of this section apply, the manifest must be on a form prescribed by the director which is available from the department.

(5) At a minimum, the form requires the following information:

(a) Purchaser's name and address;

(b) Hauler's name and address;

(c) Business or person the products were received from and their address;

(d) The commodity, unit count, unit price, total price, total weight, tare weight and weight of the commodity;

(e) Terms of the settlement;

(f) Date;

(g) Signature of the licensee or their agent; and

(h) Signature of the consignor or their authorized representative.

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-040 How must a processor's plant capacity ~~((reporting-))~~ be reported? ~~((when reporting plant capacity as provided for under))~~ (1) According to RCW 20.01.510, a processor must report the daily total capacity in tons, cases or other legal and customary measure for:

(a) Each crop ~~((for))~~; and

(b) All plants that process any Washington agricultural product.

(2) For each processing plant reported, the report must include the:

(a) Name ~~((r))~~;

(b) Site address ~~((r))~~;

(c) Business address; and

(d) Name of the person(s) who may receive legal service ~~((for each processing plant reported))~~.

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-050 What notification requirements apply to grower-processor ~~((notification of))~~ commitments ~~((by processor(s)-))~~? (1) ~~((Any))~~ (a) Within ten days after a commitment with a processor is made, a grower ~~((may))~~ must notify the director that ~~((he has))~~ they have an oral commitment ~~((with a processor))~~ for a specified amount of product ~~((within ten days after the commitment was made))~~.

(b) The grower's notification ~~((will))~~ to the director must be in writing and sent by certified mail to the Washington State Department of Agriculture, c/o the Commission Merchants Program, P.O. Box 42591, Olympia, Washington 98504-2591.

(2) ((When the director receives the notification, he shall notify the processor within five days)) Once the grower's notification is received, the director has five days to notify the processor by certified mail.

(3) Regardless of whether or not the processor confirms the director's notice, the processor ~~((will))~~ must simultaneously notify the director and ~~((the))~~ grower, by certified mail, within ten days ~~((by certified mail))~~ of receipt of the director's notice ~~((whether or not he confirms the notice))~~.

(4) The processor may accept all, none, or any portion of the acreage and/or tonnage stated in the notice.

(5) Once the oral commitment is confirmed for all or for a portion of the acreage and/or tonnage, the processor is committed to receive the acreage or tonnage specified.

(6) If the contract is ~~((that))~~ the processor's standard

contract and the terms of the contract, price or other conditions later offered to the grower are unacceptable to the grower, then the agreement is not binding upon the processor.

AMENDATORY SECTION (Amending WSR 00-22-071, filed 10/30/00, effective 11/30/00)

WAC 16-623-060 (~~(Basis for establishing)~~) How are contract volumes(~~(-)~~) established? (~~(In)~~) For contracts (~~(for the purchase of)~~) purchasing the production of a specific number of acres, the:

(1) Amount contracted for will be based on the crop yield for the comparable area for the most recent five-year average(~~(-~~
~~The)~~); and

(2) Crop yield will be determined by using data from the USDA's National Agricultural Statistics Service.