



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Agriculture

- Permanent Rule
 Emergency Rule

(1) Date of adoption: 6/1/95

(2) Purpose: To duplicate the federal marketing order (FMO) with identical standards for cherries but include all production areas of WA. Add container marking requirements, and row count/row size to container marking. Create new NW No. 1 grade reflective of FMO and WA No. 1 grades. Duplicate current FMO for inspection, establish inspection requirements for dark cherry varieties.

(3) Citation of existing rules affected by this order: WAC 16-414 and WAC 16-461

Repealed:
Amended: X
Suspended:

(4) Authority for adoption: Standards of Grades and Packs

Statute: Chapter 15.17 RCW
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 95-09-038 on 4/14/95 (date).

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

(5.2) EMERGENCY RULE ONLY

Pursuant to 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

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUN 14 1995

TIME: 10:32
WSR 95-13-038

Name (Type or Print)

Jim Jesernig

Signature

Title
Director

Date

JUNE 1, 1995

AMENDATORY SECTION (Amending Order 1550, filed 3/31/78)

WAC 16-414-010 Washington No. 1 grade and tolerances defined.

(1) Washington No. 1 shall consist of sweet cherries which meet the following requirements: Similar varietal characteristics; mature; fairly well colored; well formed and clean; free from decay insect larvae or holes caused by them, soft overripe or shriveled, underdeveloped doubles and sunscald; and free from damage by any other cause.

(2) Size. (~~Unless otherwise specified,~~)

(a) The minimum diameter of each cherry shall be not less than (~~three-fourths~~) $54/64$ inch. The maximum diameter of the cherries in any lot may be specified in accordance with the facts.

(b) When containers of cherries are marked with a row count/row size designation, the row count/row size marked shall be one of those shown in column 1 of the following table and shall be of the corresponding minimum diameter size shown in column 2:

<u>Column 1</u> <u>Row count/Row size</u>	<u>Column 2</u> <u>Diameter in inches</u>
<u>9</u>	<u>75/64</u>
<u>9 1/2</u>	<u>71/64</u>
<u>10</u>	<u>67/64</u>
<u>10 1/2</u>	<u>64/64</u>
<u>11</u>	<u>61/64</u>
<u>11 1/2</u>	<u>57/64</u>
<u>12</u>	<u>54/64</u>

(3) Tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:

(a) For defects at shipping point. Washington No. 1. Eight percent for cherries which fail to meet the requirements for this grade: *Provided*, That included in this amount not more than four percent shall be allowed for defects causing serious damage, including in this latter amount not more than one-half of one percent for cherries which are affected by decay.

Note: Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

(b) For defects en route or at destination.

Washington No. 1. Twenty-four percent for cherries in any lot which fail to meet the requirements for this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) Eight percent for cherries which fail to meet the requirements for this grade because of permanent defects; or

(ii) Six percent for cherries which are seriously damaged, including therein not more than four percent for cherries which are seriously damaged by permanent defects and not more than two percent for cherries which are affected by decay.

(c) For off-size. (~~Five percent for cherries which fail to meet the specified minimum diameter and ten percent for cherries that fail to meet any specified maximum diameter.~~)

(i) Not more than ten percent, by count, of cherries in any inspection lot shall measure less than 54/64 inches in diameter.

(ii) Ten percent, by count, for cherries which fail to meet any specified maximum diameter when such maximum diameter is marked on the container or specified in terms of fractions of inches.

(iii) When the containers are marked with row count/row size or the lot is specified by row count/row size, not more than ten percent, by count, of the cherries in any inspection lot may fail to meet the corresponding diameter size as defined in subsection (2) (b) of this section.

NEW SECTION

WAC 16-414-015 Northwest No. 1 grade and tolerances defined.

(1) Northwest No. 1 shall consist of sweet cherries which meet the requirements of Washington No. 1 as defined in WAC 16-414-010 (1) and (2), except for tolerances.

(2) Tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:

(a) For defects at shipping point. Northwest No. 1. Ten percent for cherries in any inspection lot which fail to meet the requirements for this grade: *Provided*, That included in this amount not more than five percent shall be allowed for defects causing serious damage, including in this latter amount not more than one percent for cherries which are affected by decay. The contents of individual samples or containers in any lot shall not be limited to the percentage of grade defects as defined in WAC 16-414-020(1).

Note: Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

(b) For defects en route or at destination. Northwest No. 1. Twenty-four percent for cherries in any inspection lot which fail to meet the requirements for this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) Ten percent, by count, for cherries which fail to meet the requirement for this grade because of permanent defects; or

(ii) Seven percent, by count, for cherries which are seriously damaged, including therein not more than five percent for cherries which are seriously damaged by permanent defects and not more than two percent for cherries which are affected by decay.

(c) For off-size.

(i) Not more than ten percent, by count, of cherries in any inspection lot shall measure less than 54/65 inches in diameter.

(ii) Ten percent, by count, for cherries which fail to meet any specified maximum diameter when such maximum diameter is marked on the container or specified in terms of fractions of inches.

(iii) When the containers are marked with row count/row size or the lot is specified by row count/row size, not more than ten percent, by count, of the cherries in any inspection lot may fail to meet the corresponding diameter size as defined in WAC 16-414-010 (2) (b).

AMENDATORY SECTION (Amending Order 1550, filed 3/31/78)

WAC 16-414-020 Application of tolerances. (1) Individual samples shall have not more than double the tolerances specified, except that at least two defective and two off-size specimens may be permitted in any sample: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade.

(2) When containers are marked with row count/row size or the lot is specified by row count/row size, the individual samples or containers shall not be limited as to the percentage of cherries which are smaller than the diameter corresponding to the particular row count/row size, except that not more than twenty percent, by count, of the cherries in any sample or container shall measure less than 54/64 inches in diameter.

AMENDATORY SECTION (Amending Order 1550, filed 3/31/78)

WAC 16-414-030 Definitions. (1) Similar varietal characteristics. "Similar varietal characteristics" means that the cherries in any container are similar in color and shape.

(2) Mature. "Mature" means that the cherries have reached the stage of growth which will insure the proper completion of the ripening process.

(3) Fairly well colored. "Fairly well colored" means that at least ninety-five percent of the surface of the cherry shows characteristic color for mature cherries of the variety.

(4) Well formed. "Well formed" means that the cherry has the normal shape characteristic of the variety, except that mature well developed doubles shall be considered well formed when each of the halves is approximately evenly formed.

(5) Clean. "Clean" means that the cherries are practically free from dirt, dust, spray residue, or other foreign material.

(6) "Face packed" means that the cherries in the top layer in any container are placed so that the stem ends are pointing downward toward the bottom of the container.

NEW SECTION

WAC 16-414-085 Container requirements. All sweet cherries except Rainier, Royal Anne, and similar varieties commonly known as "light sweet cherries," shall be placed in containers which meet the following requirements:

(1) The net weight of loose packed (jumble filled) cherries in any container shall be twelve pounds or less, or twenty pounds or more. The net weight of face-packed cherries in any container shall be fifteen pounds, or twelve pounds or less: *Provided*, That containers with a net weight of twelve pounds or less may be packed together with like containers in a master shipping container.

(2) The director may, upon the recommendation by the Washington state horticultural association's cherry committee, allow the use of containers not specified in subsection (1) of this section, as experimental containers for the purpose of test or trial marketing: *Provided*, That cherries placed in such containers shall meet the quality requirements of the Washington No. 1, U.S. No. 1, or Northwest No. 1 grade, and that at least ninety percent, by count, of the cherries in any lot of such containers shall measure not less than 54/64 inches in diameter, by requesting a waiver.

AMENDATORY SECTION (Amending Order 1550, filed 3/31/78)

WAC 16-414-090 Marking containers. Containers shall be conspicuously and legibly stamped with the name and the address of the grower, packer or shipper, the net weight, and (~~may~~) shall be marked with the true variety name (~~of~~) or "sweet cherries." The containers may be marked with the grade name Washington No. 1, U.S. No. 1, or Northwest No. 1.

NEW SECTION

WAC 16-414-095 Adoption of United States standards as state standards. In addition to the standards for cherries prescribed in WAC 16-414-010 through 16-414-090, there are hereby adopted, as additional standards of the state of Washington for cherries, the United States standards for grades of sweet cherries, effective May 7, 1971, as they apply to U.S. No. 1, provided, the minimum size of cherries and tolerances for undersize shall meet the requirements of the Washington No. 1 grade.

AMENDATORY SECTION (Amending WSR 92-18-103, filed 9/2/92, effective 10/3/92)

WAC 16-461-010 Inspection certificate and/or permit required.

(1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the (~~commodity inspection~~) plant services division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots - in closed or open containers for fresh market.

(b) Italian prunes - in closed or open containers for fresh market.

(c) Peaches - in closed or open containers for fresh market.

(d) Cherries - in closed or open containers for fresh market:

Provided, That no permit shall be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples - in closed or open containers for fresh market:

Provided, That apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

(f) Pears - in closed or open containers for fresh market:

Provided, That pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus - in closed or open containers for fresh market:

Provided, That asparagus may be shipped or transported if accompanied by certificates of compliance issued by the shipper or packer of the asparagus, having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing: *Provided*,

That apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance: *Provided further*, That apples for processing entering intrastate commerce shall not require a permit.

(i) Pears in containers or bulk, for processing: *Provided*,

That pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance: *Provided further*, That pears for processing entering intrastate commerce shall not require a permit.

(2) Exemptions - Fruits and vegetables listed in WAC 16-461-010 shall be exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labelling, or processing; prior to entering commercial channels for resale;

(b) When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;

(c) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance, provided that such exempt sales by the producer within a farmer's market shall not be restricted to the zone of production;

(d) When daily quantities do not exceed one hundred pounds net weight of dark varieties of sweet cherries which are sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3) (a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting such authority, on such terms and conditions as he may deem appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so: *Provided*, That the apples (~~and/or~~), pears, cherries, and asparagus about to be shipped or transported are in full compliance with the requirements of chapter 15.17 RCW, regulations adopted thereunder and administrative directives of the director: *Provided further*, That apricots, cherries, peaches, prunes, or pears about to be shipped or transported are in full compliance with ~~(the)~~ an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification;

Cherries of the dark sweet varieties shall be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Cherries.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) and that cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3) (b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW or rules adopted thereunder, or for violation of the terms of the certificate of compliance agreement. The period of any suspension shall be determined by the director and shall be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director shall be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance shall be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture at the regular base fee equivalent to that charged by the director for a shipping permit, for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.