



**RULE-MAKING ORDER
(RCW 34.05.360)**

Adm Order 5068

CR-103 (10/1/89)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule

(1) Date of adoption: June 19, 1995

(2) Purpose: To amend chapter 16-158 WAC and bring it up to date with currently accepted organic food processing standards

(3) Citation of existing rules affected by this order: Chapter 16-158 WAC

Repealed: WAC 16-158-070

Amended: Chapter 16-158 WAC

Suspended:

(4) Authority for adoption: Chapter 15.86 RCW

Statute:

Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR ~~95-10-99~~ ⁰⁵ on May 3, 1995 (date).

Describe any changes other than editing from proposed to adopted version: Proposed amendments to WAC 16-158-060 are not being adopted at this time due to comments received at the hearings.

(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:

CODE REVISER USE ONLY

Permanent Rules

Emergency Rules

31 days after filing

Immediately

Other (specify)*:

Later (specify):

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

Name (Type or Print)

Jim Jesernig

Signature

Title
Director

Date

6/19/95

CODE REVISER USE ONLY
STATE OF WASHINGTON
FILE

JUN 20 1995

12:20

WSR 95-13-0120

Chapter 16-158 WAC

((PROCESSED ORGANIC FOODS CERTIFICATION AND LABELING)) STANDARDS
FOR THE CERTIFICATION OF PROCESSORS OF ORGANIC FOOD

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-010 Purpose. This chapter is promulgated pursuant to RCW 15.86.060 wherein the director is authorized to adopt rules for the proper administration of the Organic Food Products Act and pursuant to RCW 15.86.070 wherein the director is authorized to adopt rules establishing a certification program for processors of organic food.

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-020 Definitions. As used in this chapter:

~~((1) "Processed organic food" means food that in whole or in part is organically grown and which in its processing has not been treated with synthetically or artificially derived preservatives, colorings, flavorings, or any other artificial or synthetic additive.~~

~~(2) "Processed organic food certification" means that a food product complies with the processed organic food standards and has been inspected and tested as set forth in this chapter.~~

~~(3) "Food processing" is as defined under RCW 69.07.010 and means the handling or processing of any food in any manner in preparation for sale for human consumption: Provided, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared for sale in their natural state.~~

~~(4) "Director" means the director of the department of agriculture or his or her designee.~~

~~(5) "Food processing plant" is as defined under RCW 69.07.010 and includes but is not limited to any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: Provided, That retail outlets, as set forth herein, processing foods in any manner for resale shall be considered a food processing plant as to such processing.) (1) "Approved" means any material or practice which meets the required criteria or~~

standards for use in the processing or handling of organic agricultural products.

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

(3) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(4) "Facility" includes, but is not limited to, any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where organic food is prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer.

(5) "Material" means any substance or mixture of substances that is used in the processing or handling of organic agricultural products.

(6) "Organic food product" means any food product, including fruit, vegetable, meat, dairy, beverage and grocery, that is marketed using the term organic or any derivative of the term organic in its labeling or advertising.

(7) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any other member, officer, or employee thereof or assignee for the benefit of creditors.

(8) "Procedure" means an act, method, or manner of proceeding in some process or course of action.

(9) "Processed organic food" means food that in whole or in part is organically grown and which in its processing has not been treated with synthetically or artificially derived preservatives, colorings, flavorings, or any other artificial or synthetic additive, except as otherwise approved for use under WAC 16-158-060.

(10) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing organic food.

(11) "Prohibited" means any material or practice which is disallowed in the processing or handling of organic agricultural products.

(12) "Recognized organic certification agency" means any third-party organization that is accepted by the director as being one which verifies compliance with standards consistent with chapter 15.86 RCW or rules adopted thereunder.

NEW SECTION

WAC 16-158-025 Organic certification of processors. All processors must be certified by the department or through a recognized organic certification agency, except for processors who use less than fifty percent organic ingredients in their product(s). Producers who process and sell only their own product are not required to obtain certification under this chapter. Processors must complete an application for certification and

submit it with the required fee to the department of agriculture on an annual basis.

Upon approval of the application by the director, the applicant shall be issued an organic food processor certification.

NEW SECTION

WAC 16-158-027 Application for certification--Expiration date. Organic food processors must apply to the department for organic food certification by March 1 of each year. The application, accompanied by the appropriate fee shall be submitted to the department on forms furnished by the department. Organic food processor certificates shall expire on March 31st of the year following their issuance.

Applications made after the set deadline may be processed as the department can schedule the initial inspections, provided that the applicant pays a late fee of fifty dollars.

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-030 Organic processing standards. (1) Ingredients for processed organic foods:

~~((All processed foods and raw materials labeled as organic must comply with chapter 15.86 RCW and chapter 16-154 WAC. A copy of grower affidavits for raw materials must be placed on file at the time of purchase as part of the organic food processor's audit.))~~ All organic ingredients used in processed organic food must be produced in compliance with organic food production standards as required by rules adopted under chapter 15.86 RCW. Organic food producer or processor certificates for all organic ingredients used in processing must be kept on file by the processor and available to the department upon request. All organic producers or processors that supply ingredients must be certified by a recognized organic certifying agent.

All nonorganic ingredients which are used in product formulation and that are not specifically approved under WAC 16-158-060 must be approved by the director and their sources must be listed as part of the audit process.

~~((The source(s) of any "approved ingredients" which are not organically grown and are used as less than two percent by weight of the total product because these ingredients or additives are vital to product formulation and the organic ingredient is unavailable, extremely difficult to obtain, or impractical to substitute, must be listed as part of the organic food processor's audit.))~~

(2) Identification and storage:

All organic food products must be clearly identified as organic at all times on all boxes, bins, bags, or other containers

that contain organic food products. All ~~(ingredients in an organic food processing facility)~~ organic food products must be stored so that there is no cross contamination from or confusion with ~~((a)) nonorganic food ((substance))~~ products.

Insect and rodent control programs must be in place for organic product storage areas. Any ~~((insecticides and rodenticides))~~ materials used in the organic product storage areas must be approved for ~~((organic production))~~ use in organic food production under chapter 16-154 WAC or this chapter.

In areas where entire ~~((manufacturing plants))~~ facilities are periodically fumigated, the processor must demonstrate that any fumigants used will not ~~((form toxic residues on))~~ contaminate organic products.

Compounds for cleaning storage areas must be used in a manner that ~~((leaves no contamination of organically grown or approved nonorganic products by such synthetically formulated compounds))~~ does not contaminate organic food products.

Organic and nonorganic food products may be stored in the same storage room as long as there is adequate separation of products and product identification assures no mixing of products.

Storage techniques may be used to alter the nitrogen, oxygen, and carbon dioxide levels in the storage room atmosphere. Organic food products shall not be stored in controlled atmosphere storage with diphenylamine treated food products.

(3) ~~((Food processing plant:))~~ Processing of organic food products:

In addition to meeting all state and federal manufacturing standards, the processor of organic foods must submit a complete description of the processing method to the director. This description should detail how all ingredients are handled, changed, and ultimately packaged. ~~((It should detail each machine, its ability to be thoroughly cleaned, the introduction of all ingredients, including water, into the product, packaging procedures, and cleanup procedures~~.

~~The organic food processor should demonstrate that once packaged, the product has not been contaminated by any step in the process. Organic food processors must be aware of possible contamination by various forms of packaging.)~~

All packaging and products must be free of fungicides, preservatives, fumigants, and ~~((contaminants))~~ any other materials which are not approved for use on organic products under chapter 16-154 WAC or this chapter.

All water used in processing ~~((must be noted in the organic food processor's audit. Source(s) and the additives chlorine and fluoride are to be monitored and comply with all applicable state regulations~~.

In any event cleaning must be accomplished with adequate sanitizers including unstable chlorine compounds to adequately clean and sanitize equipment, and as needed to maintain ~~satisfactory sanitary practices))~~ must be potable and comply with all local, state, and federal guidelines for potable water.

Cleaning and sanitizing must be done with appropriate cleansers and sanitizers that will ensure clean and sanitary facilities and do not leave any residues of cleansers or sanitizers on the organic food products.

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-040 Labeling. All processed organic foods processed or sold in Washington state must comply with the following labeling regulations.

(1) All organically processed foods must be labeled in accordance with Title 21, C.F.R., Part 101.

(2) No organic food product may be labeled "organic when available."

(3) For foods which are composed of one hundred percent organic ingredients: The terms "organic" or "organically grown" may be used without restriction on the principal display panel of a processed food product if that product is a single or multi-ingredient food where all ingredients, excluding water and salt, are organically grown.

(4) For foods which are composed of more than ninety-five percent organic ingredients: The terms "organic" or "organically grown" may be used in the product identity on the principal display panel when less than five percent by weight of the total product contains minor ingredients or additives which are approved under WAC 16-158-060 or by the director.

(5) For foods which are composed of between fifty percent and ninety-five percent organic ingredients: In multi-ingredient food products which contain some nonorganic ingredients, excluding water and salt, the use of the terms "organic" or "organically grown" can only be used to modify the organic ingredient(s) and must restrict the type size of the words organic or organically grown etc., to not larger than three-quarters type size of the product identity.

(6) For foods which are composed of less than fifty percent organic ingredients: If organically grown ingredients comprise less than fifty percent by weight, excluding water and salt, of the ingredients in a multi-ingredient food the word organic or any derivative of the word organic can only be used on the ingredients list.

~~((5) The terms "organic" or "organically grown" may be used in the product identity when less than two percent by weight of the total product contains minor ingredients or additives which are:~~

~~From a list approved by the Washington state department of agriculture.))~~

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-050 Recordkeeping requirements. ~~((All processed organic food must be completely followed by an audit control system.~~

~~Organic food processors must keep records of products bought and sold that will enable the department to trace processed food products from the farm to the market. Such records must include but are not limited to, invoices, bill of ladings, and grower affidavits of incoming raw product; repack data and production run reports; and invoices and bill of ladings of processed products~~

shipped out. These records must be kept for a minimum of two years. The audit control must be complete enough so that any product suspected of contamination can be immediately traced from point of origin to buyer.) (1) All organic food products must be clearly identified through appropriate labeling on all boxes, bins, bags, or other containers that contain organic food products from the time of receiving through the sale of the final product. Records must be maintained that track product from receiving through distribution or sale. Such records must include when applicable, invoices, bills of lading, and grower certificates for incoming raw product; date and quantity of product processed; repack data and production run reports; and invoices and bills of lading of products shipped out. These records must be maintained for a minimum of five years from date of processing.

(2) All processors shall have available to the department the following documents and information for the organic ingredients used in processing:

(a) For raw ingredients a copy of the producer's organic food producer certificate.

(b) For ingredients from intermediate processors or copackers a copy of the processor's or copacker's organic food processor certificate. All organic food producer and processor certificates shall be from recognized organic certification agencies.

(3) Except for applications for organic certification or lab analysis pertaining to that certification, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying consistent with RCW 15.86.110 and 42.17.310 (1) (dd).

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-080 Use of processed organic food certification ((label)) logo. Organic food processors certified under the Washington department of agriculture organic food program will be able to use the words "processed ((under)) in accordance with the Washington state department of agriculture organic food certification program" in their labeling as long as their practices comply with this chapter, chapter 15.86 RCW, and chapter 16-154 WAC. Food processed and sold under this organic food processor certification program and which are composed of more than ninety-five percent organic ingredients may be identified by the use of one of the attached logos adopted in WAC 16-158-140.

AMENDATORY SECTION (Amending Order 2042, fi. d 6/5/90, effective 7/6/90)

WAC 16-158-090 Inspection. The director shall make at least one visit and any additional visits deemed necessary to each ~~((organic food processor under the organic food certification program))~~ facility each year for the purpose of inspection for compliance with this chapter and chapter 15.86 RCW and ~~((chapter 16-154 WAC))~~ rules adopted pursuant to chapter 15.86 RCW.

This inspection may entail survey of required records, examination of ~~((processing equipment))~~ handling, processing and storage areas, and any other information deemed necessary to the requirements of this chapter.

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-100 Sampling. A representative sample ~~((representative of a processed product processed by organic food processors under the organic food certification program))~~ of the product processed, packed, sold, or distributed may be tested for pesticide residues or other contaminants whenever the director deems it necessary for certification or maintenance of certification.

It shall be the processor's responsibility to arrange for and bear the costs for any additional testing which is deemed necessary by the director.

AMENDATORY SECTION (Amending WSR 91-09-028, filed 4/11/91, effective 5/12/91)

WAC 16-158-120 Decertification. Whenever the director finds that ~~((an organic food))~~ a processor who has been certified under this program has:

(1) Violated the standards for certification which are set forth in RCW 15.86.030 or any rules adopted under chapter 15.86 RCW;

(2) Has filed an application for certification which is false or misleading in any particular;

(3) Has violated any of the provisions of this chapter;

(4) Has failed to provide records as required by WAC 16-158-

050 ~~((or~~

~~((5) Has violated any provisions of chapter 69.04 or 69.07 RCW;))~~ or rules adopted under chapter 15.86 RCW.

The director may issue an order suspending or revoking that processor's certification under this program or he may issue an order directing the ~~((organic food))~~ processor to take other appropriate action to correct the violation. If the appropriate

action is taken, the processor will be returned to its previous status under the program.

Any (~~organic food~~) processor who has received notice that its certification may be revoked under this section may apply for a hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW. (~~Such application must be in writing, addressed to the director of the Washington department of agriculture and be received in the Olympia administrative offices not later than twenty days from the date of the notice of the opportunity to apply for a hearing.~~)

~~This shall not preclude the department of agriculture from taking whatever action they deem appropriate under chapter 69.04 or 69.07 RCW for violations of those statutes.)~~

AMENDATORY SECTION (Amending Order 2042, filed 6/5/90, effective 7/6/90)

WAC 16-158-130 Fees ((schedule)). (~~Application for a license shall be on a form prescribed by the director and accompanied by a three hundred dollar annual license fee. In addition, one quarter of one percent of gross receipts of the previous years' sales of processed organic food must accompany the application.)~~) (1) The cost per application shall be one hundred fifty dollars per facility. In addition, an assessment fee based on the following fee schedule shall accompany the application. Gross value of production means the value of processed organic food produced during the previous calendar year. In the event that the current calendar year's production exceeds the previous year's production, the department may bill the processor for the additional fee. In the event that the current calendar year's production is less than the previous year's production, the processor may request a refund for the reduced fee. The appropriate fee shall accompany the application.

FEE SCHEDULE

<u>GROSS VALUE OF PRODUCTION</u>	<u>ASSESSMENT RATE</u>
For up to one million dollars	0.25%
For over one million:	
<u>1st one million dollars</u>	<u>0.25%</u>
<u>Value over one million dollars</u>	<u>0.10%</u>

(2) Initial inspections within the state of Washington are provided for under the above fee schedule.

Additional inspections, (in addition to two inspections provided for), if necessary or requested, shall be at the rate of thirty dollars per hour plus mileage set at the rate established by the state office of financial management. Out-of-state inspections, if necessary or requested, shall be at the rate of thirty dollars per hour plus transportation costs.

(3) Samples, (in addition to one sample provided for) if required for certification or maintenance of certification by the director, or requested by the applicant, shall be charged to the applicant at a rate established by the laboratory services division

of the department of agriculture. If an additional visit must be arranged to obtain a sample, it shall be at the rate of thirty dollars per hour plus mileage set at the rate established by the state office of financial management.

NEW SECTION

WAC 16-158-150 Processed organic food certification logo.

(WAC 16-158-150, Illus. 1)



(WAC 16-158-150, Illus. 2)



REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-158-070 Processed organic food certification.