



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/23/95)

Agency: Washington State Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: June 26, 1996

(2) Purpose: Establish the Department of Agriculture's procedures when responding to requests for public records, explain the Department's organization, costs involved to copy documents, and who the public can contact in the Department.

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

Repealed: 16-06-010 through 16-06-140
 Amended:
 Suspended:

(4) Statutory authority for adoption: Chapter 42.17 RCW

Other Authority: Chapter 43.23

PERMANENT RULE ONLY

Adopted under notice filed as WSR 96-11-119 on May 21, 1996 (date).
 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:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(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

JUL 02 1995

TIME: 10:07 AM PM
 WSR 96-14-086

Name (Type or Print)
James M. Jesernig

Signature

Title
Director

Date
July 1, 1996

**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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted* state statutes:	New	_____	Amended	_____	Repealed	_____

*(current calendar year)

The number of sections adopted at the request of nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>18</u>	Amended	_____	Repealed	<u>14</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>18</u>	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>18</u>	Amended	_____	Repealed	_____

NEW SECTION

WAC 16-06-150 The reason for the rule. The reason for this chapter is to ensure compliance by the Washington state department of agriculture with the provisions of the Public Records Disclosure Act, RCW 42.17.250 through 42.17.340, and RCW 34.05.220 through 34.05.240 and RCW 34.05.330.

NEW SECTION

WAC 16-06-155 Definitions. (1) "Denial of disclosure" denotes any exempting from disclosure of any public record.

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

(3) "Disclosure" means inspection and/or copying.

(4) "Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, telefaxing, photographing, and every other means of recording any form of communication or representation including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

NEW SECTION

WAC 16-06-160 Description of agency organization, address and telephone number of Olympia administrative offices. The administrative offices of the department are located in the Natural Resources Building, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560. The information telephone number is (360) 902-1800. The department is organized into six divisions:

- (1) Agency operations division;
- (2) Commodity inspection division;
- (3) Consumer and producer protection division;
- (4) Food safety and animal health division;
- (5) Laboratory services division; and
- (6) Pesticide management division.

The department maintains service locations or major field offices around the state. Several of these offices are headed by

a supervisor or chief. The administrative offices located in Olympia will assist in determining office locations around the state. An organization chart of the department is available upon request from the Public Records Officer, Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.

NEW SECTION

WAC 16-06-165 Agency organization description by division and program. An organizational description by division and program is as follows:

Director's office:

- Legislative affairs
- Internal program review
- Policy development and review

Agency operations division:

- Accounting, budget, payroll, forms and records, adjudicative proceedings, public disclosure, Washington administrative code filings, personnel office, data processing services, information office, international marketing and commodity commission and fairs commission activities

Commodity inspection division:

- Fruit and vegetable inspection program for quality, grade, condition, size and pack
- Conducts state-wide grain inspection

Consumer and producer protection division:

- Commission merchants program
- Livestock identification, brand registration and inspection
- Establishment of livestock markets
- Grain warehouse audit
- Weights and measures program
- Seed program regulates the quality and labeling of various crop seeds in Washington

Food safety and animal health division:

- Dairy inspection program
- Food processing program
- Organic food program
- Egg inspection program
- Animal health program

Laboratory services division:

- Performs chemical and micro-biological analyses in support of the food safety and pesticide management programs
- Administers hop inspection and analyses
- Pest management program is responsible for nonnative insect detection and control, and plant pest and disease identification; develops and enforces plant quarantines
- Apiary program provides education and registration over Washington apiarists

- Nurse program certifies nursery stock and issues phytosanitary certificates for materials moving out-of-state

Pesticide management division:

- Administers the regulations of pesticides, animal feeds and fertilizer laws, and waste disposal program broken down into three units of the division

- The compliance unit enforces state and federal pesticide laws, animal feed laws and fertilizer laws; investigates complaints of pesticide misuse

- The registration unit registers pesticides, fertilizers and animal feeds sold and used in the state

- The program development and certification unit conducts the waste pesticide disposal program; provides interagency coordination on pesticide-related issues; provides safety training on the use of pesticides, which includes public outreach and new program development; licenses pesticide application equipment, pesticide dealers, and commercial, public and private pesticide applicators, operators and consultants; approves recertification courses and tracks educational credits on pesticide licensees

NEW SECTION

WAC 16-06-170 For assistance with disclosure of agency documents, you may contact a public records designee. The department shall designate in each departmental administrative unit including each office of the department located around the state, a public records designee from among its employees, who shall have the responsibility to respond to written requests for disclosure of the department's public records located in that office; or refer the person requesting disclosure to any other office where the record is located.

If you need help locating a department office in your location, please consult your local telephone directory; call the Olympia administrative office at (360) 902-1800; or write to the public records officer at the Olympia administrative offices at: Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560.

NEW SECTION

WAC 16-06-175 You may also contact an agency public records coordinator for assistance. (1) Each assistant director of the department's divisions is designated a public records coordinator who shall have the authority to:

(a) Respond to written requests for disclosure of the department's public records located in their division;

(b) Provide input to the public records officer in cases where nondisclosure of a record is an issue;

(c) Waive the requirement that a records request shall be made in written form.

(2) The address for the public records coordinator is: Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560; or you may also contact the information number of the Olympia administrative offices at (360) 901-1800 for assistance.

NEW SECTION

WAC 16-06-180 The agency's public records officer is available for assistance, appeals of denial of disclosure and information about the agency's index. (1) The department shall designate one public records officer, located in the agency operations division who shall:

(a) Be responsible for implementing the department's process regarding disclosure of public records;

(b) Coordinate departmental staff in this regard, generally ensuring the compliance of the staff with public records disclosure requirements;

(c) Make the final decision if a records request has been denied and a petition for review is filed under the procedures in WAC 16-06-220;

(d) Have the option of waiving the requirement that a records request be in written form;

(e) Maintain the agency's index as required under chapter 42.17 RCW.

(2) The address of the public records officer is: Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560; or call the Olympia administrative office at (360) 902-1809.

NEW SECTION

WAC 16-06-185 Availability of public records. (1) All public records of the department are available for disclosure except as otherwise provided by law. Requests for public record may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays.

(2) The department shall respond promptly to requests for disclosure. Within five business days of receiving a public record request, the department shall respond by:

(a) Providing the record;

(b) Acknowledging the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request; or

(c) Deny the public record request.

(3) Additional time for the department to respond to a request may be based on the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify third persons or agencies affected by the request;

or

(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) In acknowledging receipt of a public record request that is unclear, the department may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the department need not respond to it.

(5) If the department does not respond in writing within five business days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:

- (a) Consider the request denied; and
- (b) Petition the public records officer under WAC 16-06-180.

NEW SECTION

WAC 16-06-190 Request public records in writing using a department-issued form or the format provided in this rule. (1)

All requests for the disclosure of a public record shall be in writing on a department of agriculture disclosure form as prescribed by WAC 16-06-235, or a format which substantially complies with WAC 16-06-235, and identifies the record being sought with reasonable certainty. The written request shall include but is not limited to:

- (a) The name, address and telephone number of the person requesting the record;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify documents being requested.

(2) A request for disclosure shall be made during customary office hours.

(3) In all cases in which a member of the public is making the request, it shall be the obligation of department staff to assist the member of the public to appropriately identify the public record being requested.

(4) A form for requesting department documents can be obtained from any administrative office of the department or a person can format a request in a similar format as prescribed in WAC 16-06-235.

NEW SECTION

WAC 16-06-195 Disclosure procedure. (1) The public records designee and the public records coordinator shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public records designee or coordinator shall proceed with full disclosure.

(3) If the record is not maintained in the office directly contacted, the public records designee or public records coordinator records officer will retrieve the record processing or will forward the request to the appropriate office for processing.

(4) Responses to requests for public records shall be made promptly by agencies, following RCW 42.17.320 and WAC 16-06-185.

(5) A denial of a request for disclosure shall be accompanied by a written statement of the specific exemption authorizing the withholding of the record, or part of the record, and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION

WAC 16-06-200 Costs of disclosure. (1) No fee shall be charged for the inspection of public records.

(2) The department shall charge a fee of fifteen cents per page of copy when copy charges exceed ten dollars for providing copies of public records. This charge is the amount necessary to reimburse the department for its costs incident to such copying and shall be payable at the time copies are furnished.

(3) The department may charge the actual cost involved for the duplication of tape recordings, video tapes, photographs, slides, postage, delivery, if these costs exceed ten dollars.

(4) The public records officer or the public records coordinator may waive any of the foregoing costs.

NEW SECTION

WAC 16-06-205 Protection of public records. In order to adequately protect the public records of the department, the following will apply:

(1) No public record shall be removed from the department's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated department employee.

(3) No public record may be marked or altered in any manner during inspection.

(4) Public records that are maintained in a file or jacket, or in chronological order, may not be dismantled except by a designated department employee for purposes of copying.

(5) Upon request of a member of the public to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents, the department shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by chapter 42.17 RCW is contained therein.

(6) When copying public documents, the copy machine will be operated by staff persons of the department only.

NEW SECTION

WAC 16-06-210 Exemptions. The department reserves the right to determine if a requested public record is exempt or nondisclosable under RCW 42.17.250 et seq. Nondisclosable records include, but are not limited to:

(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy pursuant to RCW 42.17.310 (1)(b).

(2) Investigative material pursuant to RCW 42.17.310 (1)(d) and (e).

(3) Test questions, scoring keys and other examination data used to administer a license, pursuant to RCW 42.17.310 (1)(f).

(4) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with action (RCW 42.17.310 (1)(i)).

(5) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(6) Lists of individuals requested for commercial purposes. The department shall not disclose such records unless specifically authorized or directed to do so by law: *Provided*, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: *Provided further*, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW.

(7) Information on commercial fertilizer distribution, pursuant to RCW 42.17.317.

(8) Information on commercial feed pursuant to RCW 15.53.9018.

(9) Confidential information regarding individual company operations or production found in the Washington State Seed Act, RCW 15.49.370(8).

(10) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for such certification, which is found under RCW 15.86.110.

(11) Privileged or confidential information or data required under the Washington Pesticide Control Act which contains trade secrets, commercial or financial information, which is found under RCW 15.58.065.

(12) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(13) Pursuant to chapter 43.23 RCW, except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. For purposes of this section, persons include any natural person, joint venture, firm, partnership or association, private or public corporation, or governmental entity.

(14) The following agricultural business and commodity commission records are exempt from the disclosure requirements of chapter 42.17 RCW:

(a) Production or sales records required to determine assessment levels and actual assessment payments to commodity commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW or required by the department of agriculture under RCW 15.13.310(4) or 15.49.370(6);

(b) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49 and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture or on applications for phytosanitary certification required by the department of agriculture; and

(c) Financial and commercial information and records supplied by persons to commodity commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information.

NEW SECTION

WAC 16-06-215 Qualifications on nondisclosure. (1) To the extent that nondisclosable information can be deleted from the specific record sought, the remainder of the record shall be disclosed.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310(2).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of a superior court.

(4) Denial of disclosure of a public record will be in writing accompanied by a written statement of the reason the document was withheld.

(5) A person who is denied a request for a public record shall have the right to appeal the denial to the public records officer of the department in the manner prescribed by WAC 16-06-220.

NEW SECTION

WAC 16-06-220 Review of denial of request for inspection for copying of public records. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by submitting a written request for review to the department's public records officer located in the Olympia administrative office. The written request shall specifically refer to the written statement that constituted or accompanied the denial of disclosure.

(2) Immediately after receiving a petition for review of a decision denying a public record, the public records designee or public records coordinator denying the request shall refer it to the public records officer. The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the department of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320. If the public records officer neither approves nor disapproves the denial of the request before the end of the second business day following the denial of inspection, the denial of inspection shall be deemed approved by the department, and constitutes a final agency action pursuant to RCW 42.17.320.

NEW SECTION

WAC 16-06-225 Records index. The public records officer of the department, located in the Olympia administrative office, shall develop and maintain an agency index of:

- (1)(a) Records issued prior to July 1, 1990, by relying on agency records retention schedules;
- (b) Final orders;
- (c) Declaratory orders entered after June 30, 1990;
- (d) Interpretative statements;
- (e) Policy statements;
- (f) Agency rule docket; and
- (g) Other agency information as required.

The schedule for revising and/or updating the index will occur annually on June 30 of each year.

(2) Information on obtaining or viewing the department's index should be directed to the public records officer at the department's headquarters office located at: Department of Agriculture, 1111 Washington Street, SE, P.O. Box 42560, Olympia, Washington 98504-2560.

NEW SECTION

WAC 16-06-230 Interagency disclosure. (1) Unless prohibited by law, information may be disclosed by the department to outside agencies, including other state of Washington agencies or other states.

(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be subject to the same standards of disclosure as are required of the department.

NEW SECTION

WAC 16-06-235 Request for public records disclosure form. The department adopts the following "request for public records disclosure form" for use by all persons requesting inspection and/or copying of department public records. The form may be secured from any office of the department by contacting the office in or near your area; calling the Olympia administrative office at (360) 902-1800; or writing to the public records officer in Olympia at: Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2460.



REQUEST FOR PUBLIC RECORDS DISCLOSURE

Name of Requester: _____

Mailing Address of Requester: _____

Telephone Number of Requester: (_____) _____

Date of Request: _____ Time of Request: _____

Identification of record(s) requested: _____

AGREEMENT TO PROTECT RECORDS FROM USE FOR COMMERCIAL PURPOSES

I hereby agree that the list of individuals and/or information provided to me by the:

shall not be used for any commercial purpose by myself or by any organizations I represent. I will protect the list of individuals and/or information from access by anyone who may use it for purposes of contacting the individuals named therein or otherwise personally affecting them in furtherance of any profit-seeking activity.

I also understand that I may be charged for each page copied, or in the case of copied tape recordings and video tapes, the actual cost of duplication.

I understand the contents of the above provisions and will comply with the terms thereof.

Requester's Signature _____

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-06-010	Purpose.
WAC 16-06-020	Definitions.
WAC 16-06-030	Description of organization.
WAC 16-06-040	Operations and procedures.
WAC 16-06-050	Public records designees.
WAC 16-06-060	Availability of public records.
WAC 16-06-070	Requests for public records.
WAC 16-06-080	Fees.
WAC 16-06-090	Protection of public records.
WAC 16-06-100	Exemptions.
WAC 16-06-110	Denial of request.
WAC 16-06-120	Review of denial of request for inspection or copying of public records.
WAC 16-06-130	Records index.
WAC 16-06-140	Public records request form.