



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

# 6011

**CR-103** (4/25/96)

**Agency:** Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

**(1) Date of adoption:** December 20, 1996

**(2) Purpose:** These rules provide the procedural framework for certifying organic and transition to organic producers including specifying conditions of inspection, sampling, certification and decertification as well as outlining the application fees for organic certification.

**(3) Citation of existing rules affected by this order:** Chapter 16-156 WAC

Repealed: WAC 16-156-001

Amended: WAC 16-156-010, 020, 030, 035, 040, 050, 060

Suspended:

**(4) Statutory authority for adoption:** Chapter 15.86 RCW

Other Authority:

**PERMANENT RULE ONLY**

Adopted under notice filed as WSR 96-21-144 on October 23., 1996 (date).

Describe any changes other than editing from proposed to adopted version: No changes

**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:**

**Emergency Rules**

**Permanent Rules  
or Expedited Repeal**

- 31 days after filing
- Other (specify) \_\_\_\_\_\*
- Immediately
- 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**

12/20/96

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

DEC 21 1996

TIME: 10:55 AM

WSR 97-02 008

**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:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of 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>1</u>	Amended	<u>7</u>	Repealed	<u>1</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	<u>1</u>	Amended	<u>7</u>	Repealed	<u>1</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>1</u>	Amended	<u>7</u>	Repealed	<u>1</u>

NEW SECTION

**WAC 16-156-004 Definitions.** As used in this chapter:

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

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

(3) "Drift" is defined as the movement of prohibited substances by air, water or soil from the intended target and results in residues of prohibited substances on organic or transition to organic food in excess of five percent of the EPA tolerance level.

(4) "Gross sales" means the sales of organic and transition to organic food sold during the calendar year.

(5) "Labeling" means all written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article, or used in the advertisement of such article.

(6) "New applicant" means any person or organization who or which applies for organic or transition to organic certification for the first time, or when previous certification status has expired for at least one year.

(7) "Organic food" means any agricultural product, including meat, dairy, and beverage, that:

(a) Is marketed using the term organic or any derivative of organic in its labeling or advertising; and

(b) That has had no applications of prohibited substances within three years prior to the harvest of the crop; and

(c) That is produced in compliance with standards defined in chapter 15.86 RCW and rules adopted thereunder.

(8) "Producer" means any person or organization who or which grows, raises or produces an agricultural product.

(9) "Prohibited substance" means a material which is disallowed in organic food production, handling, or processing.

(10) "Renewal applicant" means any person or organization who or which has applied for organic or transition to organic certification in the previous year.

(11) "Site" means a defined field, orchard, block, pasture, paddock, garden, circle, plot or other designed area.

(12) "Transition to organic food" means any agricultural product that:

(a) Is marketed using the term transition to organic or transitional in its labeling and advertising; and

(b) Satisfies all of the requirements of organic food except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

AMENDATORY SECTION (Amending WSR 92-11-001, filed 5/6/92, effective 6/6/92)

**WAC 16-156-010 Sampling.** A sample representative of a food product grown, raised, or produced by producers of organic and transition to organic food (~~producers and transition to organic food producers under the organic food certification program~~) may be tested for pesticide residues or other contaminants whenever the director deems it necessary to grant, renew, deny, or revoke certification.

It shall be the producer's responsibility to arrange for and bear the costs for any additional testing (in addition to one sample provided for) which is deemed necessary by the director to grant, renew, deny, or revoke certification.

AMENDATORY SECTION (Amending WSR 92-11-001, filed 5/6/92, effective 6/6/92)

**WAC 16-156-020 Inspection.** The department of agriculture shall make at least one announced visit and may make additional visits as the director deems necessary to each producer of organic and transition to organic food (~~producer and transition to organic food producer under the organic food certification program~~) each year for the purpose of inspection for compliance with the standards for certification which are found in chapter 15.86 RCW (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.

Inspections may entail survey of required records, examination of crops and fields, and any other information deemed necessary to the requirements of chapter 15.86 RCW or any rules adopted thereunder.

It shall be the producer's responsibility to arrange for and bear the costs for any additional inspections (in addition to two inspections provided for) which are deemed necessary by the director to grant, renew, deny, or revoke certification.

AMENDATORY SECTION (Amending WSR 92-11-001, filed 5/6/92, effective 6/6/92)

**WAC 16-156-030 Certification.** (1) Washington state department of agriculture certification (~~(of organic food producers and transition to organic food producers)~~) means that (~~(any analysis of the representative samples taken by the department of agriculture showed no prohibited material usage or other contaminants and inspection of the producer by the department of agriculture showed no prohibited practices being followed as defined in chapter 15.86 RCW or rules adopted thereunder.~~

~~Organic food)~~);

(a) Inspection of the producer by the department of agriculture showed no use of prohibited practices as defined in chapter 15.86 RCW or unless adopted thereunder; and

(b) Recordkeeping practices meet the requirements specified in WAC 16-156-040 or rules adopted under chapter 15.86 RCW; and

(c) Soil building programs, organic pest control programs, and buffer zones required under chapter 16-154 WAC were established on each site; and

(d) Analysis of samples taken by the department of agriculture showed no prohibited substance usage or drift from other contaminants; and

(e) No application of prohibited substances, as defined in chapter 16-154 WAC, have been used for:

- At least three years prior to the harvest of organic food; or

- At least one year prior to the harvest of transition to organic food.

(2) Producers of organic food who apply under this program will be able to use the words, "produced (~~under~~) in accordance with the Washington state department of agriculture organic food certification program" in their labeling as long as their practices comply with chapter 15.86 RCW or any rules adopted thereunder.

Food produced under this organic food certification program may be identified by the use of one of the attached logos (WAC 16-156-060, Illus. 1, 1A). ~~((This))~~ These logos shall only be used for food produced by producers who have been certified by the Washington state department of agriculture organic food certification program.

~~((Transition to organic food))~~ (3) Producers of transition to organic food who apply under this program will be able to use the words "produced (~~under~~) in accordance with the Washington department of agriculture transition to organic food certification program" in their labeling as long as their practices comply with this chapter and chapter 15.86 RCW and rules adopted thereunder.

Food produced under this transition to organic food certification program may be identified by use of one of the attached logos (WAC 16-156-060, Illus. 2, 2A). ~~((This))~~ These logos shall only be used for transition to organic food produced by producers who have been certified by the Washington state department of agriculture's (~~transition to~~) organic food certification program.

(4) In no event shall food be sold as Washington certified organic or Washington certified transition to organic prior to (~~an on-site inspection made~~) the issuing of an organic or transition to organic food producer certificate by the department of agriculture (~~and a grower information form being filed with the department of agriculture and organic food producer certification being granted~~) for that crop year. First year applicants and new sites shall be inspected by the department before an organic or transition to organic food producer certificate is issued.

(5) The logos to identify organic food and transition to organic food (~~produced under this certification programs~~) shall not be changed except for increases or decreases in size, as appropriate.

AMENDATORY SECTION (Amending WSR 92-11-001, filed 5/6/92, effective 6/6/92)

**WAC 16-156-035 Decertification.** Whenever the director finds that a producer 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) Filed an application for certification which is false or misleading in any particular;

(3) Violated any of the provisions of this chapter; or

(4) Failed to provide records as required by this chapter, WAC 16-154-060 or 16-162-100;

The director may issue an order revoking that producer's certification under this program or he may issue an order directing the producer to take other appropriate action to correct the violation. If appropriate action is taken, the producer will be returned to its previous status under the program.

Any producer 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.

AMENDATORY SECTION (Amending WSR 90-02-001, filed 12/21/89, effective 1/21/90)

**WAC 16-156-040 ((Certified producer number.)) Recordkeeping requirements.** ((Organic food producers and transition to organic food producers who make application to the certification program shall be assigned a grower identification number by the department of agriculture. All sales from the producer to the first handler shall include the grower number on the invoice and/or other sales document.)) (1) All producers who sell products identified as organic and/or transition to organic shall keep accurate records of:

(a) The acreage used for growing such products;

(b) The materials applied to the plants and/or soil where the crop is being produced;

(c) The sales records for all organic and transition to organic food products produced and sold by the producer;

(d) Labeling and production records that enable the products to be tracked from production to shipment or sale.

(2) Such records shall be retained for two years and be available to the department for inspection.

(3) Inadequate recordkeeping may constitute cause for the director to prohibit labeling or marketing products as organic and/or transition to organic.

(4) 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.

AMENDATORY SECTION (Amending WSR 92-11-001, filed 5/6/92, effective 6/6/92)

**WAC 16-156-050 Application for certification.** (~~Organic food producers and transition to organic food~~) Producers who wish to apply for the organic food certification program must apply to the department by (~~January 15~~) March 1 of each year. The application, accompanied by the appropriate fee shall be submitted to the department on forms furnished by the department. This application must include a sworn statement that they fully comply with the statute and rules for production of organic food and/or transition to organic food. Organic food producer and transition to organic food producer 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 producer may still conduct business as provided in RCW 15.86.050~~). Except for producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers, all producers of organic or transition to organic food must be certified by the department.

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

**WAC 16-156-060 Fee schedule.** (1) The cost per application shall be based on (~~a sliding scale of gross dollar volume~~) the following fee schedule.

For renewal applicants -

Application fees shall be based on the previous calendar year's gross sales of organic and transition to organic food. In the event that the current calendar year's gross sales exceed the previous year's gross sales, the department may bill the producer for the additional fee. In the event that the current calendar year's gross sales is less than the previous year's gross sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1, shall pay a late fee of fifty dollars.

For new applicants -

Application fees shall be based on an estimate of the current year's gross sales of organic and transition to organic food. In the event that the current calendar year's gross sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's gross sales is less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants pay a seventy-five dollar new applicant fee. The fee shall accompany the application.

Gross (( <del>Income</del> ) Sales	Annual Fee
(\$ 0 - \$ 12,000	\$ 150
\$ 12,000 - \$ 15,000	\$ 185
\$ 15,000 - \$ 20,000	\$ 200
\$ 20,000 - \$ 25,000	\$ 275
\$ 25,000 - \$ 35,000	\$ 350
\$ 35,000 - \$ 50,000	\$ 500

\$ 50,000 - \$ 65,000	\$ 600
\$ 65,000 - \$ 80,000	\$ 750
\$ 80,000 - \$ 100,000	\$ 900
\$ 100,000 - \$ 150,000	\$ 1,000
\$ 150,000 - \$ 200,000	\$ 1,200
\$ 200,000 - \$ 280,000	\$ 1,400
\$ 280,000 - \$ 375,000	\$ 1,500
\$ 375,000 - \$ 500,000	\$ 2,000
\$ 500,000 and up	\$ 2,500)

\$ 0 - \$ 12,000	\$ 150
\$ 12,001 - \$ 15,000	\$ 185
\$ 15,001 - \$ 20,000	\$ 200
\$ 20,001 - \$ 25,000	\$ 250
\$ 25,001 - \$ 30,000	\$ 300
\$ 30,001 - \$ 35,000	\$ 350
\$ 35,001 - \$ 42,500	\$ 425
\$ 42,501 - \$ 50,000	\$ 500
\$ 50,001 - \$ 65,000	\$ 600
\$ 65,001 - \$ 80,000	\$ 750
\$ 80,001 - \$ 100,000	\$ 900
\$ 100,001 - \$ 125,000	\$ 1,000
\$ 125,001 - \$ 150,000	\$ 1,044
\$ 150,001 - \$ 175,000	\$ 1,200
\$ 175,001 - \$ 200,000	\$ 1,251
\$ 200,001 - \$ 240,000	\$ 1,400
\$ 240,001 - \$ 280,000	\$ 1,450
\$ 280,001 - \$ 325,000	\$ 1,500
\$ 325,001 - \$ 375,000	\$ 1,565
\$ 375,001 - \$ 425,000	\$ 2,000
\$ 425,001 - \$ 500,000	\$ 2,089
\$ 500,001 - \$ 750,000	\$ 2,500
\$ 750,001 and up	\$ 2,611

As of December 1, 1997 for gross sales:

\$ 0 - \$ 12,000	\$ 150
\$ 12,001 - \$ 15,000	\$ 185
\$ 15,001 - \$ 20,000	\$ 200
\$ 20,001 - \$ 25,000	\$ 250
\$ 25,001 - \$ 30,000	\$ 300
\$ 30,001 - \$ 35,000	\$ 350
\$ 35,001 - \$ 42,500	\$ 425
\$ 42,501 - \$ 50,000	\$ 500
\$ 50,001 - \$ 65,000	\$ 600
\$ 65,001 - \$ 80,000	\$ 750
\$ 80,001 - \$ 100,000	\$ 900
\$ 100,001 - \$ 125,000	\$ 1,000
\$ 125,001 - \$ 150,000	\$ 1,085
\$ 150,001 - \$ 175,000	\$ 1,200
\$ 175,001 - \$ 200,000	\$ 1,300
\$ 200,001 - \$ 240,000	\$ 1,400
\$ 240,001 - \$ 280,000	\$ 1,450
\$ 280,001 - \$ 325,000	\$ 1,500
\$ 325,001 - \$ 375,000	\$ 1,625
\$ 375,001 - \$ 425,000	\$ 2,000
\$ 425,001 - \$ 500,000	\$ 2,171
\$ 500,001 - \$ 750,000	\$ 2,500
\$ 750,001 and up	\$ 2,714

(2) Two inspections per year within the state of Washington are provided for under the above fee schedule. Additional inspections (in addition to two inspections provided for), if required for certification or maintenance of certification by the director, or requested by the producer, shall be at \$20/hr. 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 \$20/hr. plus transportation costs.

(3) One sample per year is provided for under the above fee schedule. Additional samples (in addition to one sample provided for), if required for certification or maintenance of certification by the director, or requested by the organic producer, shall cost an additional lab fee of one hundred ten dollars. If an additional visit must be arranged to obtain a sample, it shall be at \$20/hr. plus mileage set at the rate established by the state office of financial management.



(WAC 16-156-060, Illus. 1)



(WAC 16-156-060, Illus. 1A)



(WAC 16-156-060, Illus. 2)



(WAC 16-156-060, Illus. 2A)

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-156-001 Application.