



RULE-MAKING ORDER

CR-103 (7/10/97)

(RCW 34.05.360)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: June 29, 1999

(2) Purpose: Improve the taste and the firmness of the Red Delicious and Delicious varieties of apples by extending the soluble solids testing until October 1 of each year. In addition, all Red Delicious and Delicious varieties of apples will be inspected and certified for quality and condition on a year around basis. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection, as determined by at state lot stamp, will be required to be re-certified for meeting the minimum firmness requirement.

(3) Citation of existing rules affected by this order: Chapter 16-403 WAC and Chapter 16-461 WAC

- Repealed:
- Amended:
- Suspended:

(4) Statutory authority for adoption: Chapter 15.17 RCW Standards of Grades and Packs.

Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 99-11-096 on May 19, 1999

Describe any changes other than editing from proposed to adopted version: None

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, William E. Brookreson

Signature

Title Deputy
Director

Date
June 29, 1999

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUN 28 1999

9:12

2:14

99-14-036

AM
PM

for

**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: Two

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>2</u>	Repealed

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

	New		Amended	<u>2</u>	Repealed
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The number of sections adopted in the agency's own initiative: NONE

	New		Amended		Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New		Amended	<u>2</u>	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		Amended	<u>2</u>	Repealed

AMENDATORY SECTION (Amending WSR 95-13-038, filed 6/14/95, effective 7/15/95)

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 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.

Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for Apples Marketed Within Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.

(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, 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 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.

AMENDATORY SECTION (Amending Order 1892, filed 6/25/86)

**WAC 16-403-141 Red Delicious, Delicious, Golden Delicious--
Minimum soluble solids.** (~~Prior to the general release date~~) For
harvest of the crop of the current growing season, apples of the
Red Delicious and Delicious varieties cannot be shipped prior to
October 1, unless they have at least ten percent soluble solids as
determined by refractometer. Apples of the Golden Delicious
varieties, cannot be shipped prior to the general release as
established by the Delicious maturity committee of the Washington
state horticultural association(~~, shipment shall not be allowed of
apples of the Red Delicious and Delicious varieties having less
than~~) unless they have at least ten and one-half percent soluble
solids (~~and apples of the Golden Delicious variety having less
than ten and one-half percent soluble solids~~) as determined by
refractometer.