
HOUSE BILL 1215

State of Washington

54th Legislature

1995 Regular Session

By Representatives Clements, Chandler, Lisk, McMorris, Mastin, Schoesler, Koster, Chappell, Delvin, Honeyford, Robertson, Elliot, Kremen, Johnson, Stevens, Thompson, Backlund, Mulliken, Sheahan, L. Thomas, Mielke, D. Schmidt, Hargrove, Goldsmith, Huff, Dyer, Beeksma, Skinner, Hymes, McMahan, Boldt, Costa and Basich

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1 AN ACT Relating to rule making by the departments of ecology and
2 agriculture; amending RCW 34.05.360, 34.05.345, 34.05.350, 18.104.040,
3 19.27.097, 43.21A.080, 43.21C.110, 43.27A.090, 43.37.030, 43.83B.420,
4 43.200.070, 43.200.080, 70.93.040, 70.93.090, 70.94.410, 70.94.457,
5 70.94.470, 70.94.477, 70.94.715, 70.95.260, 70.95D.080, 70.105.140,
6 70.107.060, 70.120.120, 76.09.040, 86.16.061, 90.14.230, 90.22.020,
7 90.48.220, 90.48.230, 90.54.050, 90.56.050, 90.58.200, 90.62.110,
8 90.70.080, 15.04.020, 15.13.260, 15.13.280, 15.13.460, 15.14.020,
9 15.17.030, 15.17.120, 15.17.920, 15.36.012, 15.36.021, 15.49.005,
10 15.49.081, 15.49.310, 15.49.930, 15.53.9012, 15.54.800, 15.58.040,
11 15.60.025, 15.76.180, 15.80.410, 15.83.100, 15.85.040, 15.86.060,
12 16.49.680, 16.49A.640, 16.49A.650, 16.57.080, 16.57.090, 16.57.140,
13 16.57.220, 16.57.400, 16.57.410, 16.58.030, 16.58.050, 16.58.130,
14 16.65.020, 16.65.030, 16.65.090, 16.68.170, 16.74.590, 17.10.074,
15 17.10.260, 17.21.040, 17.24.021, 20.01.020, 22.09.011, 22.09.020,
16 22.09.040, 22.09.045, 69.04.398, 69.04.761, 69.07.070, 69.25.030, and
17 69.25.040; reenacting and amending RCW 70.105D.030 and 16.57.220;
18 adding a new section to chapter 43.21A RCW; adding a new section to
19 chapter 43.23 RCW; adding a new section to chapter 43.21C RCW; adding
20 a new section to chapter 70.94 RCW; adding a new section to chapter
21 70.95B RCW; adding a new section to chapter 70.95C RCW; adding a new

1 section to chapter 70.95E RCW; adding a new section to chapter 70.95F
2 RCW; adding a new section to chapter 70.95I RCW; adding a new section
3 to chapter 70.95J RCW; adding a new section to chapter 89.16 RCW;
4 adding a new section to chapter 90.03 RCW; adding a new section to
5 chapter 90.42 RCW; adding a new section to chapter 90.54 RCW; adding a
6 new section to chapter 90.76 RCW; adding a new section to chapter 15.08
7 RCW; adding a new section to chapter 15.60 RCW; adding a new section to
8 chapter 16.36 RCW; adding a new section to chapter 19.94 RCW; adding a
9 new section to chapter 19.112 RCW; adding a new section to chapter
10 34.05 RCW; creating new sections; providing an effective date; and
11 providing an expiration date.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 NEW SECTION. **Sec. 1.** The legislature finds that its delegation of
14 legislative authority to the executive branch of state government in
15 the form of the authority to adopt rules requires closer scrutiny to
16 ensure that the authority is exercised within the intention of the
17 legislature. It is the intent of the legislature to condition its
18 delegation of legislative authority to the department of ecology and to
19 the department of agriculture in two ways: First, by requiring that
20 the legislature be given an opportunity to review rules proposed by
21 these departments before the rules become effective; and second, by
22 ensuring that any order, directive, or regulation of general
23 applicability established by either of the departments has been subject
24 to evaluation and comment by the public under the rule-making process
25 provided by the administrative procedure act before such an order,
26 directive, or regulation is applied to any member of the public.

27 **PART 1 - RULE MAKING**

28 NEW SECTION. **Sec. 101.** A new section is added to chapter 43.21A
29 RCW to read as follows:

30 (1) A rule adopted by the department under the authority of this
31 chapter or under an authority to adopt rules granted by any other
32 statute shall be adopted in accordance with the administrative
33 procedure act, chapter 34.05 RCW, and this section.

34 Once a proposal of a rule has been published under RCW 34.05.320,
35 the rule may be adopted only after the legislature has had an

1 opportunity to consider the proposal during one full regular session,
2 as such a session is described in Article II, section 12 of the state
3 Constitution. To provide such an opportunity, the following apply:

4 (a) A proposal of a rule published on or by the first day of
5 December of one calendar year is subject to consideration by the
6 legislature during the regular session of the legislature convened in
7 the following year; and

8 (b) A proposal of a rule published after the first day of December
9 of one calendar year and before the end of the first regular session of
10 the legislature convened following that first day of December, is
11 subject to consideration by the legislature during the second regular
12 session of the legislature convened after that first day of December.

13 (2) Subsection (1) of this section does not apply to emergency
14 rules adopted in accordance with RCW 34.05.350(5).

15 (3) The department shall not take an action to enforce or apply an
16 order, directive, or regulation of general applicability that satisfies
17 the definition of a rule provided by RCW 34.05.010 unless the order,
18 directive, or regulation has been adopted as a rule. If, during the
19 judicial review of an action taken by the department, a court of
20 competent jurisdiction finds that the department has by the action or
21 some significant portion of the action violated this subsection, the
22 court may, in addition to exercising any other authorities, award a
23 party aggrieved by the violation reasonable attorneys' fees and court
24 costs incurred by the aggrieved party with regard to the violation.

25 (4) Subsection (3) of this section applies to any action taken by
26 the department after the effective date of this section.

27 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.23
28 RCW to read as follows:

29 (1) A rule adopted by the department under the authority of this
30 chapter or under an authority to adopt rules granted by any other
31 statute shall be adopted in accordance with the administrative
32 procedure act, chapter 34.05 RCW, and this section.

33 Once a proposal of a rule has been published under RCW 34.05.320,
34 the rule may be adopted only after the legislature has had an
35 opportunity to consider the proposal during one full regular session,
36 as such a session is described in Article II, section 12 of the state
37 Constitution. To provide such an opportunity, the following apply:

1 (a) A proposal of a rule published on or by the first day of
2 December of one calendar year is subject to consideration by the
3 legislature during the regular session of the legislature convened in
4 the following year; and

5 (b) A proposal of a rule published after the first day of December
6 of one calendar year and before the end of the first regular session of
7 the legislature convened following that first day of December, is
8 subject to consideration by the legislature during the second regular
9 session of the legislature convened after that first day of December.

10 (2) Subsection (1) of this section does not apply to emergency
11 rules adopted in accordance with RCW 34.05.350(5).

12 (3) The department shall not take an action to enforce or apply an
13 order, directive, or regulation of general applicability that satisfies
14 the definition of a rule provided by RCW 34.05.010 unless the order,
15 directive, or regulation has been adopted as a rule. If, during the
16 judicial review of an action taken by the department, a court of
17 competent jurisdiction finds that the department has by the action or
18 some significant portion of the action violated this subsection, the
19 court may, in addition to exercising any other authorities, award a
20 party aggrieved by the violation reasonable attorneys' fees and court
21 costs incurred by the aggrieved party with regard to the violation.

22 (4) Subsection (3) of this section applies to any action taken by
23 the department after the effective date of this section.

24 **Sec. 103.** RCW 34.05.360 and 1988 c 288 s 311 are each amended to
25 read as follows:

26 The order of adoption by which each rule is adopted by an agency
27 shall contain all of the following:

28 (1) The date the agency adopted the rule;

29 (2) A concise statement of the purpose of the rule;

30 (3) A reference to all rules repealed, amended, or suspended by the
31 rule;

32 (4) A reference to the specific statutory or other authority
33 authorizing adoption of the rule;

34 (5) Any findings required by any provision of law as a precondition
35 to adoption or effectiveness of the rule; and

36 (6) The effective date of the rule if other than that specified in
37 RCW 34.05.380(2).

1 Except as provided in section 101(2) of this act, a rule may not be
2 adopted by the department of ecology or by the director of the
3 department unless the legislature and the public have had an
4 opportunity to consider the proposed rule during one full regular
5 session as provided in section 101 of this act.

6 Except as provided in section 102(2) of this act, a rule may not be
7 adopted by the department of agriculture or by the director of the
8 department unless the legislature and the public have had an
9 opportunity to consider the proposed rule during one full regular
10 session as provided in section 102 of this act.

11 **Sec. 104.** RCW 34.05.345 and 1988 c 288 s 308 are each amended to
12 read as follows:

13 (1) Except for emergency rules adopted under RCW 34.05.350, when
14 twenty days notice of intended action to adopt, amend, or repeal a rule
15 has not been published in the state register, as required by RCW
16 34.05.320, the code reviser shall not publish such rule and such rule
17 shall not be effective for any purpose.

18 (2) If the legislature and the public have not been given an
19 opportunity to consider a proposal of a rule by the department of
20 ecology as required by RCW 34.05.360 and section 101 of this act, the
21 code reviser shall not publish the rule and the rule shall not be
22 effective for any purpose.

23 (3) If the legislature and the public have not been given an
24 opportunity to consider a proposal of a rule by the department of
25 agriculture as required by RCW 34.05.360 and section 102 of this act,
26 the code reviser shall not publish the rule and the rule shall not be
27 effective for any purpose.

28 **Sec. 105.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
29 read as follows:

30 (1) If an agency for good cause finds:

31 (a) That immediate adoption, amendment, or repeal of a rule is
32 necessary for the preservation of the public health, safety, or general
33 welfare, and that observing the time requirements of notice and
34 opportunity to comment upon adoption of a permanent rule would be
35 contrary to the public interest; or

36 (b) That state or federal law or federal rule or a federal deadline
37 for state receipt of federal funds requires immediate adoption of a

1 rule, the agency may dispense with those requirements and adopt, amend,
2 or repeal the rule on an emergency basis. The agency's finding and a
3 concise statement of the reasons for its finding shall be incorporated
4 in the order for adoption of the emergency rule or amendment filed with
5 the office of the code reviser under RCW 34.05.380 and with the rules
6 review committee.

7 (2) An emergency rule adopted under this section takes effect upon
8 filing with the code reviser, unless a later date is specified in the
9 order of adoption, and may not remain in effect for longer than one
10 hundred twenty days after filing. Identical or substantially similar
11 emergency rules may not be adopted in sequence unless conditions have
12 changed or the agency has filed notice of its intent to adopt the rule
13 as a permanent rule, and is actively undertaking the appropriate
14 procedures to adopt the rule as a permanent rule. This section does
15 not relieve any agency from compliance with any law requiring that its
16 permanent rules be approved by designated persons or bodies before they
17 become effective.

18 (3) Within seven days after the rule is adopted, any person may
19 petition the governor requesting the immediate repeal of a rule adopted
20 on an emergency basis by any department listed in RCW 43.17.010.
21 Within seven days after submission of the petition, the governor shall
22 either deny the petition in writing, stating his or her reasons for the
23 denial, or order the immediate repeal of the rule. In ruling on the
24 petition, the governor shall consider only whether the conditions in
25 subsection (1) of this section were met such that adoption of the rule
26 on an emergency basis was necessary. If the governor orders the repeal
27 of the emergency rule, any sanction imposed based on that rule is void.
28 This subsection shall not be construed to prohibit adoption of any rule
29 as a permanent rule.

30 (4) In adopting an emergency rule, the agency shall comply with
31 section 4 of this act or provide a written explanation for its failure
32 to do so.

33 (5) An emergency rule may be adopted and filed with the code
34 reviser by the director or department of ecology or by the director or
35 department of agriculture only if the filing is accompanied by a
36 written declaration by the governor that an emergency exists that
37 justifies the adoption of the rule on an emergency basis under this
38 section.

PART 2 - DEPARTMENT OF ECOLOGY
CONFORMING AMENDMENTS

Sec. 201. RCW 18.104.040 and 1993 c 387 s 4 are each amended to read as follows:

The department shall have the power:

(1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;

(2) At all reasonable times, to enter upon lands for the purpose of inspecting, taking measurements from, or tagging any well, constructed or being constructed;

(3) To call upon or receive professional or technical advice from the department of health, the technical advisory group created in RCW 18.104.190, or any other public agency or person;

(4) To adopt rules, in consultation with the department of health and the technical advisory group created in RCW 18.104.190, governing licensing and well construction as may be appropriate to carry out the purposes of this chapter. The rules adopted by the department may include, but are not limited to:

(a) Standards for the construction and maintenance of wells and their casings;

(b) Methods of capping, sealing, and decommissioning wells to prevent contamination of ground water resources and to protect public health and safety;

(c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;

(e) Requirements for the filing of notices of intent, well reports, and the payment of fees;

(f) Reporting requirements of well contractors;

(g) Limitations on well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource;

(5) To require the operator in the construction of a well and the property owner in the maintenance of a well to guard against waste and contamination of the ground water resources;

1 (6) To require the operator to place a well identification tag on
2 a new well and on an existing well on which work is performed after the
3 effective date of rules requiring well identification tags and to place
4 or require the owner to place a well identification tag on an existing
5 well;

6 (7) To require the well owner to repair or decommission any well:

7 (a) That is abandoned, unusable, or not intended for future use; or

8 (b) That is an environmental, safety, or public health hazard.

9 Rules adopted by the department shall be adopted in accordance with
10 section 101 of this act.

11 **Sec. 202.** RCW 19.27.097 and 1991 sp.s. c 32 s 28 are each amended
12 to read as follows:

13 (1) Each applicant for a building permit of a building
14 necessitating potable water shall provide evidence of an adequate water
15 supply for the intended use of the building. Evidence may be in the
16 form of a water right permit from the department of ecology, a letter
17 from an approved water purveyor stating the ability to provide water,
18 or another form sufficient to verify the existence of an adequate water
19 supply. In addition to other authorities, the county or city may
20 impose conditions on building permits requiring connection to an
21 existing public water system where the existing system is willing and
22 able to provide safe and reliable potable water to the applicant with
23 reasonable economy and efficiency. An application for a water right
24 shall not be sufficient proof of an adequate water supply.

25 (2) Within counties not required or not choosing to plan pursuant
26 to RCW 36.70A.040, the county and the state may mutually determine
27 those areas in the county in which the requirements of subsection (1)
28 of this section shall not apply. The departments of health and ecology
29 shall coordinate on the implementation of this section. Should the
30 county and the state fail to mutually determine those areas to be
31 designated pursuant to this subsection, the county may petition the
32 department of community, trade, and economic development to mediate or,
33 if necessary, make the determination.

34 (3) Buildings that do not need potable water facilities are exempt
35 from the provisions of this section. The department of ecology, after
36 consultation with local governments, may adopt rules to implement this
37 section, which may recognize differences between high-growth and low-

1 growth counties. Any rules adopted by the department of ecology shall
2 be adopted in accordance with section 101 of this act.

3 **Sec. 203.** RCW 43.21A.080 and 1970 ex.s. c 62 s 8 are each amended
4 to read as follows:

5 The director of the department of ecology is authorized to adopt
6 such rules (~~and regulations~~) as are necessary and appropriate to
7 carry out the provisions of this chapter. Rules shall be adopted in
8 accordance with section 101 of this act.

9 NEW SECTION. **Sec. 204.** A new section is added to chapter 43.21C
10 RCW to read as follows:

11 Rules adopted by the department of ecology under this chapter shall
12 be adopted in accordance with section 101 of this act.

13 Rules adopted by the department of agriculture under this chapter
14 shall be adopted in accordance with section 102 of this act.

15 **Sec. 205.** RCW 43.21C.110 and 1983 c 117 s 7 are each amended to
16 read as follows:

17 It shall be the duty and function of the department of ecology,
18 which may utilize proposed rules developed by the environmental policy
19 commission:

20 (1) To adopt and amend thereafter rules of interpretation and
21 implementation of this chapter (the state environmental policy act of
22 1971), subject to the requirements of section 101 of this act and
23 chapter 34.05 RCW, for the purpose of providing uniform rules and
24 guidelines to all branches of government including state agencies,
25 political subdivisions, public and municipal corporations, and
26 counties. The proposed rules shall be subject to full public hearings
27 requirements associated with rule promulgation. Suggestions for
28 modifications of the proposed rules shall be considered on their
29 merits, and the department shall have the authority and responsibility
30 for full and appropriate independent promulgation and adoption of
31 rules, assuring consistency with this chapter as amended and with the
32 preservation of protections afforded by this chapter. The rule making
33 powers authorized in this section shall include, but shall not be
34 limited to, the following phases of interpretation and implementation
35 of this chapter (the state environmental policy act of 1971):

1 (a) Categories of governmental actions which are not to be
2 considered as potential major actions significantly affecting the
3 quality of the environment, including categories pertaining to
4 applications for water right permits pursuant to chapters 90.03 and
5 90.44 RCW. The types of actions included as categorical exemptions in
6 the rules shall be limited to those types which are not major actions
7 significantly affecting the quality of the environment. The rules
8 shall provide for certain circumstances where actions which potentially
9 are categorically exempt require environmental review.

10 (b) Rules for criteria and procedures applicable to the
11 determination of when an act of a branch of government is a major
12 action significantly affecting the quality of the environment for which
13 a detailed statement is required to be prepared pursuant to RCW
14 43.21C.030.

15 (c) Rules and procedures applicable to the preparation of detailed
16 statements and other environmental documents, including but not limited
17 to rules for timing of environmental review, obtaining comments, data
18 and other information, and providing for and determining areas of
19 public participation which shall include the scope and review of draft
20 environmental impact statements.

21 (d) Scope of coverage and contents of detailed statements assuring
22 that such statements are simple, uniform, and as short as practicable;
23 statements are required to analyze only reasonable alternatives and
24 probable adverse environmental impacts which are significant, and may
25 analyze beneficial impacts.

26 (e) Rules and procedures for public notification of actions taken
27 and documents prepared.

28 (f) Definition of terms relevant to the implementation of this
29 chapter including the establishment of a list of elements of the
30 environment. Analysis of environmental considerations under RCW
31 43.21C.030(2) may be required only for those subjects listed as
32 elements of the environment (or portions thereof). The list of
33 elements of the environment shall consist of the "natural" and "built"
34 environment. The elements of the built environment shall consist of
35 public services and utilities (such as water, sewer, schools, fire and
36 police protection), transportation, environmental health (such as
37 explosive materials and toxic waste), and land and shoreline use
38 (including housing, and a description of the relationships with land
39 use and shoreline plans and designations, including population).

1 (g) Rules for determining the obligations and powers under this
2 chapter of two or more branches of government involved in the same
3 project significantly affecting the quality of the environment.

4 (h) Methods to assure adequate public awareness of the preparation
5 and issuance of detailed statements required by RCW 43.21C.030(2)(c).

6 (i) To prepare rules for projects setting forth the time limits
7 within which the governmental entity responsible for the action shall
8 comply with the provisions of this chapter.

9 (j) Rules for utilization of a detailed statement for more than one
10 action and rules improving environmental analysis of nonproject
11 proposals and encouraging better interagency coordination and
12 integration between this chapter and other environmental laws.

13 (k) Rules relating to actions which shall be exempt from the
14 provisions of this chapter in situations of emergency.

15 (l) Rules relating to the use of environmental documents in
16 planning and decisionmaking and the implementation of the substantive
17 policies and requirements of this chapter, including procedures for
18 appeals under this chapter.

19 (2) In exercising its powers, functions, and duties under this
20 section, the department may:

21 (a) Consult with the state agencies and with representatives of
22 science, industry, agriculture, labor, conservation organizations,
23 state and local governments and other groups, as it deems advisable;
24 and

25 (b) Utilize, to the fullest extent possible, the services,
26 facilities, and information (including statistical information) of
27 public and private agencies, organizations, and individuals, in order
28 to avoid duplication of effort and expense, overlap, or conflict with
29 similar activities authorized by law and performed by established
30 agencies.

31 (3) Rules adopted pursuant to this section shall be subject to the
32 review procedures of RCW (~~34.05.538~~ and) 34.05.240.

33 **Sec. 206.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
34 read as follows:

35 The department shall be empowered as follows:

36 (1) To represent the state at, and fully participate in, the
37 activities of any basin or regional commission, interagency committee,
38 or any other joint interstate or federal-state agency, committee or

1 commission, or publicly financed entity engaged in the planning,
2 development, administration, management, conservation or preservation
3 of the water resources of the state.

4 (2) To prepare the views and recommendations of the state of
5 Washington on any project, plan or program relating to the planning,
6 development, administration, management, conservation and preservation
7 of any waters located in or affecting the state of Washington,
8 including any federal permit or license proposal, and appear on behalf
9 of, and present views and recommendations of the state at any
10 proceeding, negotiation or hearing conducted by the federal government,
11 interstate agency, state or other agency.

12 (3) To cooperate with, assist, advise and coordinate plans with the
13 federal government and its officers and agencies, and serve as a state
14 liaison agency with the federal government in matters relating to the
15 use, conservation, preservation, quality, disposal or control of water
16 and activities related thereto.

17 (4) To cooperate with appropriate agencies of the federal
18 government and/or agencies of other states, to enter into contracts,
19 and to make appropriate contributions to federal or interstate projects
20 and programs and governmental bodies to carry out the provisions of
21 this chapter.

22 (5) To apply for, accept, administer and expend grants, gifts and
23 loans from the federal government or any other entity to carry out the
24 purposes of this chapter and make contracts and do such other acts as
25 are necessary insofar as they are not inconsistent with other
26 provisions hereof.

27 (6) To develop and maintain a coordinated and comprehensive state
28 water and water resources related development plan, and adopt, with
29 regard to such plan, such policies as are necessary to insure that the
30 waters of the state are used, conserved and preserved for the best
31 interest of the state. There shall be included in the state plan a
32 description of developmental objectives and a statement of the
33 recommended means of accomplishing these objectives. To the extent the
34 director deems desirable, the plan shall integrate into the state plan,
35 the plans, programs, reports, research and studies of other state
36 agencies.

37 (7) To assemble and correlate information relating to water supply,
38 power development, irrigation, watersheds, water use, future

1 possibilities of water use and prospective demands for all purposes
2 served through or affected by water resources development.

3 (8) To assemble and correlate state, local and federal laws,
4 regulations, plans, programs and policies affecting the beneficial use,
5 disposal, pollution, control or conservation of water, river basin
6 development, flood prevention, parks, reservations, forests, wildlife
7 refuges, drainage and sanitary systems, waste disposal, water works,
8 watershed protection and development, soil conservation, power
9 facilities and area and municipal water supply needs, and recommend
10 suitable legislation or other action to the legislature, the congress
11 of the United States, or any city, municipality, or to responsible
12 state, local or federal executive departments or agencies.

13 (9) To cooperate with federal, state, regional, interstate and
14 local public and private agencies in the making of plans for drainage,
15 flood control, use, conservation, allocation and distribution of
16 existing water supplies and the development of new water resource
17 projects.

18 (10) To encourage, assist and advise regional, and city and
19 municipal agencies, officials or bodies responsible for planning in
20 relation to water aspects of their programs, and coordinate local water
21 resources activities, programs, and plans.

22 (11) To (~~promulgate~~) adopt, in accordance with section 101 of
23 this act, such rules (~~and regulations~~) as are necessary to carry out
24 the purposes of this chapter.

25 (12) To hold public hearings, and make such investigations, studies
26 and surveys as are necessary to carry out the purposes of the chapter.

27 (13) To subpoena witnesses, compel their attendance, administer
28 oaths, take the testimony of any person under oath and require the
29 production of any books or papers when the department deems such
30 measures necessary in the exercise of its rule-making power or in
31 determining whether or not any license, certificate, or permit shall be
32 granted or extended.

33 **Sec. 207.** RCW 43.37.030 and 1973 c 64 s 2 are each amended to read
34 as follows:

35 In the performance of its functions the department may, in addition
36 to any other acts authorized by law:

1 (1) Establish advisory committees to advise with and make
2 recommendations to the department concerning legislation, policies,
3 administration, research, and other matters;

4 (2) Establish by (~~regulation~~) rule or order such standards and
5 instructions to govern the carrying out of research or projects in
6 weather modification and control as the department may deem necessary
7 or desirable to minimize danger to health or property; and make such
8 rules (~~and regulations~~) as are necessary in the performance of its
9 powers and duties;

10 (3) Make such studies, investigations, obtain such information, and
11 hold such hearings as the department may deem necessary or proper to
12 assist it in exercising its authority or in the administration or
13 enforcement of this chapter or any (~~regulations~~) rules or orders
14 issued thereunder;

15 (4) Appoint and fix the compensation of such personnel, including
16 specialists and consultants, as are necessary to perform its duties and
17 functions;

18 (5) Acquire, in the manner provided by law, such materials,
19 equipment, and facilities as are necessary to perform its duties and
20 functions;

21 (6) Cooperate with public or private agencies in the performance of
22 the department's functions or duties and in furtherance of the purposes
23 of this chapter;

24 (7) Represent the state in any and all matters pertaining to plans,
25 procedures, or negotiations for interstate compacts relating to weather
26 modification and control.

27 Rules adopted by the department under this chapter shall be adopted
28 in accordance with section 101 of this act.

29 **Sec. 208.** RCW 43.83B.420 and 1989 c 171 s 5 are each amended to
30 read as follows:

31 The department shall adopt, in accordance with section 101 of this
32 act, such rules as are necessary to ensure the successful
33 implementation of this chapter.

34 **Sec. 209.** RCW 43.200.070 and 1989 c 322 s 5 are each amended to
35 read as follows:

36 The department of ecology shall adopt such rules as are necessary
37 to carry out responsibilities under this chapter. The department of

1 ecology is authorized to adopt such rules as are necessary to carry out
2 its responsibilities under chapter 43.145 RCW. Such rules shall be
3 adopted in accordance with section 101 of this act.

4 **Sec. 210.** RCW 43.200.080 and 1991 sp.s. c 13 s 60 are each amended
5 to read as follows:

6 The director of ecology shall, in addition to the powers and duties
7 otherwise imposed by law, have the following special powers and duties:

8 (1) To fulfill the responsibilities of the state under the lease
9 between the state of Washington and the federal government executed
10 September 10, 1964, covering one thousand acres of land lying within
11 the Hanford reservation near Richland, Washington. The department of
12 ecology may sublease to private or public entities all or a portion of
13 the land for specific purposes or activities which are determined,
14 after public hearing, to be in agreement with the terms of the lease
15 and in the best interests of the citizens of the state consistent with
16 any criteria that may be developed as a requirement by the legislature;

17 (2) To assume the responsibilities of the state under the perpetual
18 care agreement between the state of Washington and the federal
19 government executed July 29, 1965 and the sublease between the state of
20 Washington and the site operator of the Hanford low-level radioactive
21 waste disposal facility. In order to finance perpetual surveillance
22 and maintenance under the agreement and ensure site closure under the
23 sublease, the department of ecology shall impose and collect fees from
24 parties holding radioactive materials for waste management purposes.
25 The fees shall be established by rule (~~adopted under chapter 34.05~~
26 RCW)) and shall be an amount determined by the department of ecology to
27 be necessary to defray the estimated liability of the state. Such fees
28 shall reflect equity between the disposal facilities of this and other
29 states. A site closure account and a perpetual surveillance and
30 maintenance account is hereby created in the state treasury. The site
31 closure account shall be exclusively available to reimburse, to the
32 extent that moneys are available in the account, the site operator for
33 its costs plus a reasonable profit as agreed by the operator and the
34 state, or to reimburse the state licensing agency and any agencies
35 under contract to the state licensing agency for their costs in final
36 closure and decommissioning of the Hanford low-level radioactive waste
37 disposal facility. If a balance remains in the account after
38 satisfactory performance of closure and decommissioning, this balance

1 shall be transferred to the perpetual surveillance and maintenance
2 account. The perpetual surveillance and maintenance account shall be
3 used exclusively by the state to meet post-closure surveillance and
4 maintenance costs, or for otherwise satisfying surveillance and
5 maintenance obligations. Appropriations are required to permit
6 expenditures and payment of obligations from the site closure account
7 and the perpetual surveillance and maintenance account. All moneys,
8 including earnings from the investment of balances in the site closure
9 and the perpetual surveillance and maintenance account, less the
10 allocation to the state treasurer's service (~~(account-[fund])~~) fund,
11 pursuant to RCW 43.08.190 accruing under the authority of this section
12 shall be directed to the site closure account until December 31, 1992.
13 Thereafter receipts including earnings from the investment of balances
14 in the site closure and the perpetual surveillance and maintenance
15 account, less the allocation to the state treasurer's service account
16 [fund], pursuant to RCW 43.08.190 shall be directed to the site closure
17 account and the perpetual surveillance and maintenance account as
18 specified by the department. Additional moneys specifically
19 appropriated by the legislature or received from any public or private
20 source may be placed in the site closure account and the perpetual
21 surveillance and maintenance account;

22 (3) To assure maintenance of such insurance coverage by state
23 licensees, lessees, or sublessees as will adequately, in the opinion of
24 the director, protect the citizens of the state against nuclear
25 accidents or incidents that may occur on privately or state-controlled
26 nuclear facilities;

27 (4) To institute a user permit system and issue site use permits,
28 consistent with regulatory practices, for generators, packagers, or
29 brokers using the Hanford low-level radioactive waste disposal
30 facility. The costs of administering the user permit system shall be
31 borne by the applicants for site use permits. The site use permit fee
32 shall be set at a level that is sufficient to fund completely the
33 executive and legislative participation in activities related to the
34 Northwest Interstate Compact on Low-Level Radioactive Waste Management;

35 (5) To make application for or otherwise pursue any federal funds
36 to which the state may be eligible, through the federal resource
37 conservation and recovery act or any other federal programs, for the
38 management, treatment or disposal, and any remedial actions, of wastes

1 that are both radioactive and hazardous at all Hanford low-level
2 radioactive waste disposal facilities; and

3 (6) To develop contingency plans for duties and options for the
4 department and other state agencies related to the Hanford low-level
5 radioactive waste disposal facility based on various projections of
6 annual levels of waste disposal. These plans shall include an analysis
7 of expected revenue to the state in various taxes and funds related to
8 low-level radioactive waste disposal and the resulting implications
9 that any increase or decrease in revenue may have on state agency
10 duties or responsibilities. The plans shall be updated annually. The
11 department shall report annually on the plans and on the balances in
12 the site closure and perpetual surveillance accounts to the energy and
13 utilities committees of the senate and the house of representatives.

14 **Sec. 211.** RCW 70.93.040 and 1971 ex.s. c 307 s 4 are each amended
15 to read as follows:

16 In addition to his other powers and duties, the director shall have
17 the power to propose and to adopt pursuant to section 101 of this act
18 and chapter 34.05 RCW rules (~~(and regulations)~~) necessary to carry out
19 the provisions, purposes, and intent of this chapter.

20 **Sec. 212.** RCW 70.93.090 and 1979 c 94 s 5 are each amended to read
21 as follows:

22 The department shall design and the director shall adopt by rule
23 (~~(or regulation)~~) one or more types of litter receptacles which are
24 reasonably uniform as to size, shape, capacity and color, for wide and
25 extensive distribution throughout the public places of this state.
26 Each such litter receptacle shall bear an anti-litter symbol as
27 designed and adopted by the department. In addition, all litter
28 receptacles shall be designed to attract attention and to encourage the
29 depositing of litter.

30 Litter receptacles of the uniform design shall be placed along the
31 public highways of this state and at all parks, campgrounds, trailer
32 parks, drive-in restaurants, gasoline service stations, tavern parking
33 lots, shopping centers, grocery store parking lots, parking lots of
34 major industrial firms, marinas, boat launching areas, boat moorage and
35 fueling stations, public and private piers, beaches and bathing areas,
36 and such other public places within this state as specified by rule
37 (~~(or regulation)~~) of the director (~~(adopted pursuant to chapter 34.05~~

1 RCW)). The number of such receptacles required to be placed as
2 specified herein shall be determined by a formula related to the need
3 for such receptacles.

4 It shall be the responsibility of any person owning or operating
5 any establishment or public place in which litter receptacles of the
6 uniform design are required by this section to procure and place such
7 receptacles at their own expense on the premises in accord with rules
8 ((and regulations)) adopted by the department.

9 The department shall establish a system of grants to aid cities,
10 towns, and counties with populations under twenty-five thousand in
11 procuring and placing such litter receptacles. Such grants shall be on
12 a matching basis under which the local government involved electing to
13 participate in this program shall be required to pay at least fifty
14 percent of the total costs of procurement of receptacles sufficient in
15 number to meet departmental guidelines established by rule pursuant to
16 this section. The amount of the grant shall be determined on a case-
17 by-case basis by the director after consideration of need, available
18 departmental and local government funds, degree of prior compliance by
19 the local government involved in placement of receptacles, and other
20 relevant criteria. The responsibility for maintaining and emptying
21 such receptacles shall remain with the unit of local government.

22 Any person, other than a political subdivision, government agency,
23 or municipality, who fails to place such litter receptacles on the
24 premises in the numbers required by rule ((or regulation)) of the
25 department, violating the provisions of this section or rules ((or
26 regulations)) adopted thereunder shall be subject to a fine of ten
27 dollars for each day of violation.

28 **Sec. 213.** RCW 70.94.410 and 1991 c 199 s 715 are each amended to
29 read as follows:

30 (1) If, after thirty days from the time that the department issues
31 a report or order to an authority under RCW 70.94.400 and 70.94.405,
32 such authority has not taken action which indicates that it is
33 attempting in good faith to implement the recommendations or actions of
34 the department as set forth in the report or order, the department may,
35 by order, declare as null and void any or all ordinances, resolutions,
36 rules or regulations of such authority relating to the control and/or
37 prevention of air pollution, and at such time the department shall
38 become the sole body with authority to make and enforce rules ((and

1 ~~regulations~~)) for the control and/or prevention of air pollution within
2 the geographical area of such authority. If this occurs, the
3 department may assume all those powers which are given to it by law to
4 effectuate the purposes of this chapter. The department may, by order,
5 continue in effect and enforce provisions of the ordinances,
6 resolutions, or rules of such authority which are not less stringent
7 than those requirements which the department may have found applicable
8 to the area under RCW 70.94.331, until such time as the department
9 adopts its own rules. Any rules promulgated by the department shall be
10 subject to the provisions of chapter 34.05 RCW and section 101 of this
11 act. Any enforcement actions shall be subject to RCW 43.21B.300 or
12 43.21B.310.

13 (2) No provision of this chapter is intended to prohibit any
14 authority from reestablishing its air pollution control program which
15 meets with the approval of the department and which complies with the
16 purposes of this chapter and with applicable rules and orders of the
17 department.

18 (3) Nothing in this chapter shall prevent the department from
19 withdrawing the exercise of its jurisdiction over an authority upon its
20 own motion if the department has found at a hearing held in accordance
21 with chapters 42.30 and 34.05 RCW, that the air pollution prevention
22 and control program of such authority will be carried out in good
23 faith, that such program will do all that is possible and reasonable to
24 control and/or prevent air pollution within the geographical area over
25 which it has jurisdiction, and that the program complies with the
26 provisions of this chapter. Upon the withdrawal of the department, the
27 department shall prescribe certain recommendations as to how air
28 pollution prevention and/or control is to be effectively accomplished
29 and guidelines which will assist the authority in carrying out the
30 recommendations of the department.

31 **Sec. 214.** RCW 70.94.457 and 1991 c 199 s 501 are each amended to
32 read as follows:

33 The department of ecology shall establish by rule (~~under~~) adopted
34 in accordance with section 101 of this act and chapter 34.05 RCW:

35 (1) State-wide emission performance standards for new solid fuel
36 burning devices. Notwithstanding any other provision of this chapter
37 which allows an authority to adopt more stringent emission standards,
38 no authority shall adopt any emission standard for new solid fuel

1 burning devices other than the state-wide standard adopted by the
2 department under this section.

3 (a) After January 1, 1995, no solid fuel burning device shall be
4 offered for sale that does not meet the following particulate air
5 contaminant emission standards under the test methodology of the United
6 States environmental protection agency in effect on January 1, 1991, or
7 an equivalent standard under any test methodology adopted by the United
8 States environmental protection agency subsequent to such date: (i)
9 Two and one-half grams per hour for catalytic wood stoves; and (ii)
10 four and one-half grams per hour for all other solid fuel burning
11 devices. For purposes of this subsection, "equivalent" shall mean the
12 emissions limits specified in this subsection multiplied by a
13 statistically reliable conversion factor determined by the department
14 that compares the difference between the emission test methodology
15 established by the United States environmental protection agency prior
16 to May 15, 1991, with the test methodology adopted subsequently by the
17 agency. Subsection (a) of this subsection does not apply to
18 fireplaces.

19 (b) After January 1, 1997, no fireplace, except masonry fireplaces,
20 shall be offered for sale unless such fireplace meets the 1990 United
21 States environmental protection agency standards for wood stoves or
22 equivalent standard that may be established by the state building code
23 council by rule. Prior to January 1, 1997, the state building code
24 council shall establish by rule a methodology for the testing of
25 factory-built fireplaces. The methodology shall be designed to achieve
26 a particulate air emission standard equivalent to the 1990 United
27 States environmental protection agency standard for wood stoves. In
28 developing the rules, the council shall include on the technical
29 advisory committee at least one representative from the masonry
30 fireplace builders and at least one representative of the factory-built
31 fireplace manufacturers.

32 (c) Prior to January 1, 1997, the state building code council shall
33 establish by rule design standards for the construction of new masonry
34 fireplaces in Washington state. In developing the rules, the council
35 shall include on the technical advisory committee at least one
36 representative from the masonry fireplace builders and at least one
37 representative of the factory-built fireplace manufacturers. It shall
38 be the goal of the council to develop design standards that generally
39 achieve reductions in particulate air contaminant emissions

1 commensurate with the reductions being achieved by factory-built
2 fireplaces at the time the standard is established.

3 (d) Actions of the department and local air pollution control
4 authorities under this section shall preempt actions of other state
5 agencies and local governments for the purposes of controlling air
6 pollution from solid fuel burning devices, except where authorized by
7 (~~this act~~) chapter 199, Laws of 1991.

8 (e) Subsection (1)(a) of this section shall not apply to
9 fireplaces.

10 (f) Notwithstanding (a) of this subsection, the department is
11 authorized to adopt, by rule, emission standards adopted by the United
12 States environmental protection agency for new wood stoves sold at
13 retail. For solid fuel burning devices for which the United States
14 environmental protection agency has not established emission standards,
15 the department may exempt or establish, by rule, state-wide standards
16 including emission levels and test procedures for such devices and such
17 emission levels and test procedures shall be equivalent to emission
18 levels per pound per hour burned for other new wood stoves and
19 fireplaces regulated under this subsection.

20 (2) A program to:

21 (a) Determine whether a new solid fuel burning device complies with
22 the state-wide emission performance standards established in subsection
23 (1) of this section; and

24 (b) Approve the sale of devices that comply with the state-wide
25 emission performance standards.

26 **Sec. 215.** RCW 70.94.470 and 1991 c 199 s 502 are each amended to
27 read as follows:

28 (1) The department shall establish, by rule (~~under~~) adopted in
29 accordance with section 101 of this act and chapter 34.05 RCW, (a) a
30 state-wide opacity level of twenty percent for residential solid fuel
31 burning devices for the purpose of enforcement on a complaint basis and
32 (b) a state-wide opacity of ten percent for purposes of public
33 education.

34 (2) Notwithstanding any other provision of this chapter which may
35 allow an authority to adopt a more stringent opacity level, no
36 authority shall adopt or enforce an opacity level for solid fuel
37 burning devices other than established in this section.

1 (3) Actions of the department and local air pollution control
2 authorities under this section shall preempt actions of other state
3 agencies and local governments for the purposes of controlling air
4 pollution from solid fuel burning devices, except where authorized by
5 (~~this act~~) chapter 199, Laws of 1991.

6 **Sec. 216.** RCW 70.94.477 and 1990 c 128 s 3 are each amended to
7 read as follows:

8 (1) Unless allowed by rule, (~~under~~) in accordance with section
9 101 of this act and chapter 34.05 RCW, a person shall not cause or
10 allow any of the following materials to be burned in any residential
11 solid fuel burning device:

- 12 (a) Garbage;
- 13 (b) Treated wood;
- 14 (c) Plastics;
- 15 (d) Rubber products;
- 16 (e) Animals;
- 17 (f) Asphaltic products;
- 18 (g) Waste petroleum products;
- 19 (h) Paints; or
- 20 (i) Any substance, other than properly seasoned fuel wood, which
21 normally emits dense smoke or obnoxious odors.

22 (2) On or after July 1, 1995, a local authority may geographically
23 limit the use of solid fuel burning devices, except fireplaces as
24 defined in RCW 70.94.453(3), wood stoves meeting the standards set
25 forth in RCW 70.94.457 or pellet stoves issued an exemption certificate
26 by the United States environmental protection agency in accordance with
27 Title 40, Part 60 of the code of federal regulations. An authority
28 shall allow an exemption from this subsection for low-income persons
29 who reside in a geographical area affected by this subsection. In the
30 exercise of this limitation, a local authority shall consider the
31 following factors:

32 (a) The contribution of solid fuel burning devices that do not meet
33 the standards set forth in RCW 70.94.457 to nonattainment of national
34 ambient air quality standards;

35 (b) The population density of geographical areas within the local
36 authority's jurisdiction giving greater consideration to urbanized
37 areas; and

1 (c) The public health effects of use of solid fuel burning devices
2 which do not meet the standards set forth in RCW 70.94.457.

3 **Sec. 217.** RCW 70.94.715 and 1990 c 128 s 4 are each amended to
4 read as follows:

5 The department of ecology is hereby authorized to develop an
6 episode avoidance plan providing for the phased reduction of emissions
7 wherever and whenever an air pollution episode is forecast. Such an
8 episode avoidance plan shall conform with any applicable federal
9 standards and shall be effective state-wide. The episode avoidance
10 plan may be implemented on an area basis in accordance with the
11 occurrence of air pollution episodes in any given area.

12 The department of ecology may delegate authority to adopt source
13 emission reduction plans and authority to implement all stages of
14 occurrence up to and including the warning stage, and all intermediate
15 stages up to the warning stage, in any area of the state, to the air
16 pollution control authority with jurisdiction therein.

17 The episode avoidance plan, which shall be established by
18 (~~regulation~~) rule in accordance with section 101 of this act and
19 chapter 34.05 RCW, shall include, but not be limited to the following:

20 (1) The designation of episode criteria and stages, the occurrence
21 of which will require the carrying out of preplanned episode avoidance
22 procedures. The stages of occurrence shall be (a) forecast, (b) alert,
23 (c) warning, (d) emergency, and such intermediate stages as the
24 department shall designate. "Forecast" means the presence of
25 meteorological conditions that are conducive to accumulation of air
26 contaminants and is the first stage of an episode. The department
27 shall not call a forecast episode prior to the department or an
28 authority calling a first stage impaired air quality condition as
29 provided by RCW 70.94.473(1)(b) or calling a single-stage impaired air
30 quality condition as provided by RCW 70.94.473(2). "Alert" means
31 concentration of air contaminants at levels at which short-term health
32 effects may occur, and is the second stage of an episode. "Warning"
33 means concentrations are continuing to degrade, contaminant
34 concentrations have reached a level which, if maintained, can result in
35 damage to health, and additional control actions are needed and is the
36 third level of an episode. "Emergency" means the air quality is posing
37 an imminent and substantial endangerment to public health and is the
38 fourth level of an episode;

1 (2) The requirement that persons responsible for the operation of
2 air contaminant sources prepare and obtain approval from the director
3 of source emission reduction plans, consistent with good operating
4 practice and safe operating procedures, for reducing emissions during
5 designated episode stages;

6 (3) Provision for the director of the department of ecology or his
7 authorized representative, or the air pollution control officer if
8 implementation has been delegated, on the satisfaction of applicable
9 criteria, to declare and terminate the forecast, alert, warning and all
10 intermediate stages, up to the warning episode stage, such declarations
11 constituting orders for action in accordance with applicable source
12 emission reduction plans;

13 (4) Provision for the governor to declare and terminate the
14 emergency stage and all intermediate stages above the warning episode
15 stage, such declarations constituting orders in accordance with
16 applicable source emission reduction plans;

17 (5) Provisions for enforcement by state and local police, personnel
18 of the departments of ecology and social and health services, and
19 personnel of local air pollution control agencies; and

20 (6) Provisions for reduction or discontinuance of emissions
21 immediately, consistent with good operating practice and safe operating
22 procedures, under an air pollution emergency as provided in RCW
23 70.94.720.

24 Source emission reduction plans shall be considered orders of the
25 department and shall be subject to appeal to the pollution control
26 hearings board according to the procedure in chapter 43.21B RCW.

27 NEW SECTION. **Sec. 218.** A new section is added to chapter 70.94
28 RCW to read as follows:

29 Rules adopted under this chapter shall be adopted in accordance
30 with section 101 of this act and chapter 34.05 RCW.

31 **Sec. 219.** RCW 70.95.260 and 1989 c 431 s 9 are each amended to
32 read as follows:

33 The department shall in addition to its other powers and duties:

34 (1) Cooperate with the appropriate federal, state, interstate and
35 local units of government and with appropriate private organizations in
36 carrying out the provisions of this chapter.

1 (2) Coordinate the development of a solid waste management plan for
2 all areas of the state in cooperation with local government, the
3 department of community, trade, and economic development, and other
4 appropriate state and regional agencies. The plan shall relate to
5 solid waste management for twenty years in the future and shall be
6 reviewed biennially, revised as necessary, and extended so that
7 perpetually the plan shall look to the future for twenty years as a
8 guide in carrying out a state coordinated solid waste management
9 program. The plan shall be developed into a single integrated document
10 and shall be adopted no later than October 1990. The plan shall be
11 revised regularly after its initial completion so that local
12 governments revising local comprehensive solid waste management plans
13 can take advantage of the data and analysis in the state plan.

14 (3) Provide technical assistance to any person as well as to
15 cities, counties, and industries.

16 (4) Initiate, conduct, and support research, demonstration
17 projects, and investigations, and coordinate research programs
18 pertaining to solid waste management systems.

19 (5) Develop state-wide programs to increase public awareness of and
20 participation in tire recycling, and to stimulate and encourage local
21 private tire recycling centers and public participation in tire
22 recycling.

23 (6) ~~May(, under the provisions of the Administrative Procedure~~
24 ~~Act, chapter 34.05 RCW, as now or hereafter amended, from time to time~~
25 ~~promulgate))~~ adopt such rules ((and regulations)) as are necessary to
26 carry out the purposes of this chapter. Such rules shall be adopted in
27 accordance with section 101 of this act.

28 NEW SECTION. Sec. 220. A new section is added to chapter 70.95B
29 RCW to read as follows:

30 Rules adopted by the department under this chapter shall be adopted
31 in accordance with section 101 of this act.

32 NEW SECTION. Sec. 221. A new section is added to chapter 70.95C
33 RCW to read as follows:

34 Rules adopted by the department under this chapter shall be adopted
35 in accordance with section 101 of this act.

1 **Sec. 222.** RCW 70.95D.080 and 1989 c 431 s 72 are each amended to
2 read as follows:

3 To carry out the provisions and purposes of this chapter, the
4 director may:

5 (1) Enter into agreements, contracts, or cooperative arrangements,
6 under such terms and conditions as the director deems appropriate, with
7 other state, federal, or interstate agencies, municipalities,
8 educational institutions, or other organizations or individuals.

9 (2) Receive financial and technical assistance from the federal
10 government, other public agencies, and private agencies.

11 (3) Participate in related programs of the federal government,
12 other states, interstate agencies, other public agencies, or private
13 agencies or organizations.

14 (4) Upon request, furnish reports, information, and materials
15 relating to the certification program authorized by this chapter to
16 federal, state, or interstate agencies, municipalities, educational
17 institutions, and other organizations and individuals.

18 (5) Establish adequate fiscal controls and accounting procedures to
19 assure proper disbursement of and accounting for funds appropriated or
20 otherwise provided for the purpose of carrying out this chapter.

21 (6) Adopt rules (~~under~~) in accordance with section 101 of this
22 act and chapter 34.05 RCW.

23 NEW SECTION. **Sec. 223.** A new section is added to chapter 70.95E
24 RCW to read as follows:

25 Rules adopted by the department under this chapter shall be adopted
26 in accordance with section 101 of this act.

27 NEW SECTION. **Sec. 224.** A new section is added to chapter 70.95F
28 RCW to read as follows:

29 Rules adopted by the department of ecology under this chapter shall
30 be adopted in accordance with section 101 of this act.

31 NEW SECTION. **Sec. 225.** A new section is added to chapter 70.95I
32 RCW to read as follows:

33 Rules adopted by the department under this chapter shall be adopted
34 in accordance with section 101 of this act.

1 NEW SECTION. **Sec. 226.** A new section is added to chapter 70.95J
2 RCW to read as follows:

3 Rules adopted by the department under this chapter shall be adopted
4 in accordance with section 101 of this act.

5 **Sec. 227.** RCW 70.105.140 and 1980 c 144 s 3 are each amended to
6 read as follows:

7 Rules (~~((implementing RCW 70.105.130 shall be submitted to the house
8 and senate committees on ecology for review prior to being))~~) adopted by
9 the department under this chapter shall be adopted in accordance with
10 (~~(chapter 34.05 RCW))~~) section 101 of this act.

11 **Sec. 228.** RCW 70.105D.030 and 1994 c 257 s 11 and 1994 c 254 s 3
12 are each reenacted and amended to read as follows:

13 (1) The department may exercise the following powers in addition to
14 any other powers granted by law:

15 (a) Investigate, provide for investigating, or require potentially
16 liable persons to investigate any releases or threatened releases of
17 hazardous substances, including but not limited to inspecting,
18 sampling, or testing to determine the nature or extent of any release
19 or threatened release. If there is a reasonable basis to believe that
20 a release or threatened release of a hazardous substance may exist, the
21 department's authorized employees, agents, or contractors may enter
22 upon any property and conduct investigations. The department shall
23 give reasonable notice before entering property unless an emergency
24 prevents such notice. The department may by subpoena require the
25 attendance or testimony of witnesses and the production of documents or
26 other information that the department deems necessary;

27 (b) Conduct, provide for conducting, or require potentially liable
28 persons to conduct remedial actions (including investigations under (a)
29 of this subsection) to remedy releases or threatened releases of
30 hazardous substances. In carrying out such powers, the department's
31 authorized employees, agents, or contractors may enter upon property.
32 The department shall give reasonable notice before entering property
33 unless an emergency prevents such notice. In conducting, providing for,
34 or requiring remedial action, the department shall give preference to
35 permanent solutions to the maximum extent practicable and shall provide
36 for or require adequate monitoring to ensure the effectiveness of the
37 remedial action;

1 (c) Indemnify contractors retained by the department for carrying
2 out investigations and remedial actions, but not for any contractor's
3 reckless or wilful misconduct;

4 (d) Carry out all state programs authorized under the federal
5 cleanup law and the federal resource, conservation, and recovery act,
6 42 U.S.C. Sec. 6901 et seq., as amended;

7 (e) Classify substances as hazardous substances for purposes of RCW
8 70.105D.020(6) and classify substances and products as hazardous
9 substances for purposes of RCW 82.21.020(1);

10 (f) Issue orders or enter into consent decrees or agreed orders
11 that include deed restrictions where necessary to protect human health
12 and the environment from a release or threatened release of a hazardous
13 substance from a facility. Prior to establishing a deed restriction
14 under this subsection, the department shall notify and seek comment
15 from a city or county department with land use planning authority for
16 real property subject to a deed restriction;

17 (g) Enforce the application of permanent and effective
18 institutional controls that are necessary for a remedial action to be
19 protective of human health and the environment; and

20 (h) Take any other actions necessary to carry out the provisions of
21 this chapter, including the power to adopt rules (~~under chapter 34.05~~
22 ~~RCW~~). Rules adopted by the department under this chapter shall be
23 adopted in accordance with section 101 of this act.

24 (2) The department shall immediately implement all provisions of
25 this chapter to the maximum extent practicable, including investigative
26 and remedial actions where appropriate. The department shall adopt,
27 and thereafter enforce, rules (~~under chapter 34.05 RCW~~) to:

28 (a) Provide for public participation, including at least (i) the
29 establishment of regional citizen's advisory committees, (ii) public
30 notice of the development of investigative plans or remedial plans for
31 releases or threatened releases, and (iii) concurrent public notice of
32 all compliance orders, agreed orders, enforcement orders, or notices of
33 violation;

34 (b) Establish a hazard ranking system for hazardous waste sites;

35 (c) Establish reasonable deadlines not to exceed ninety days for
36 initiating an investigation of a hazardous waste site after the
37 department receives information that the site may pose a threat to
38 human health or the environment and other reasonable deadlines for
39 remedying releases or threatened releases at the site;

1 (d) Publish and periodically update minimum cleanup standards for
2 remedial actions at least as stringent as the cleanup standards under
3 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
4 least as stringent as all applicable state and federal laws, including
5 health-based standards under state and federal law; and

6 (e) Apply industrial clean-up standards at industrial properties.
7 Rules adopted under this subsection shall ensure that industrial
8 properties cleaned up to industrial standards cannot be converted to
9 nonindustrial uses without approval from the department. The
10 department may require that a property cleaned up to industrial
11 standards is cleaned up to a more stringent applicable standard as a
12 condition of conversion to a nonindustrial use. Industrial clean-up
13 standards may not be applied to industrial properties where hazardous
14 substances remaining at the property after remedial action pose a
15 threat to human health or the environment in adjacent nonindustrial
16 areas.

17 (3) Before November 1st of each even-numbered year, the department
18 shall develop, with public notice and hearing, and submit to the ways
19 and means and appropriate standing environmental committees of the
20 senate and house of representatives a ranked list of projects and
21 expenditures recommended for appropriation from both the state and
22 local toxics control accounts. The department shall also provide the
23 legislature and the public each year with an accounting of the
24 department's activities supported by appropriations from the state
25 toxics control account, including a list of known hazardous waste sites
26 and their hazard rankings, actions taken and planned at each site, how
27 the department is meeting its top two management priorities under RCW
28 70.105.150, and all funds expended under this chapter.

29 (4) The department shall establish a scientific advisory board to
30 render advice to the department with respect to the hazard ranking
31 system, cleanup standards, remedial actions, deadlines for remedial
32 actions, monitoring, the classification of substances as hazardous
33 substances for purposes of RCW 70.105D.020(6) and the classification of
34 substances or products as hazardous substances for purposes of RCW
35 82.21.020(1). The board shall consist of five independent members to
36 serve staggered three-year terms. No members may be employees of the
37 department. Members shall be reimbursed for travel expenses as
38 provided in RCW 43.03.050 and 43.03.060.

1 (5) The department shall establish a program to identify potential
2 hazardous waste sites and to encourage persons to provide information
3 about hazardous waste sites.

4 **Sec. 229.** RCW 70.107.060 and 1987 c 103 s 1 are each amended to
5 read as follows:

6 (1) Nothing in this chapter shall be construed to deny, abridge or
7 alter alternative rights of action or remedies in equity or under
8 common law or statutory law, criminal or civil.

9 (2) Nothing in this chapter shall deny, abridge or alter any
10 powers, duties and functions relating to noise abatement and control
11 now or hereafter vested in any state agency, nor shall this chapter be
12 construed as granting jurisdiction over the industrial safety and
13 health of employees in work places of the state, as now or hereafter
14 vested in the department of labor and industries.

15 (3) Standards and other control measures adopted by the department
16 under this chapter shall be exclusive except as hereinafter provided.
17 A local government may impose limits or control sources differing from
18 those adopted or controlled by the department upon a finding that such
19 requirements are necessitated by special conditions. Noise limiting
20 requirements of local government which differ from those adopted or
21 controlled by the department shall be invalid unless first approved by
22 the department. If the department of ecology fails to approve or
23 disapprove standards submitted by local governmental jurisdictions
24 within ninety days of submittal, such standards shall be deemed
25 approved. If disapproved, the local government may appeal the decision
26 to the pollution control hearings board which shall decide the appeal
27 on the basis of the provisions of this chapter, and the applicable
28 regulations, together with such briefs, testimony, and oral argument as
29 the hearings board in its discretion may require. The department
30 determination of whether to grant approval shall depend on the
31 reasonableness and practicability of compliance. Particular attention
32 shall be given to stationary sources located near jurisdictional
33 boundaries, and temporary noise producing operations which may operate
34 across one or more jurisdictional boundaries.

35 (4) In carrying out the rule-making authority provided in this
36 chapter, the department shall follow the procedures of section 101 of
37 this act and the administrative procedure act, chapter 34.05 RCW, and

1 shall take care that no rules adopted purport to exercise any powers
2 preempted by the United States under federal law.

3 **Sec. 230.** RCW 70.120.120 and 1991 c 199 s 206 are each amended to
4 read as follows:

5 The director shall adopt rules implementing and enforcing this
6 chapter in accordance with section 101 of this act and chapter 34.05
7 RCW. The department shall take into account when considering proposed
8 modifications of emission contributing boundaries, as provided for in
9 RCW 70.120.150(6), alternative transportation control and motor vehicle
10 emission reduction measures that are required by local municipal
11 corporations for the purpose of satisfying federal emission guidelines.

12 **Sec. 231.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
13 read as follows:

14 (1) Where necessary to accomplish the purposes and policies stated
15 in RCW 76.09.010, and to implement the provisions of this chapter, the
16 board shall promulgate forest practices (~~((regulations))~~) rules pursuant
17 to chapter 34.05 RCW and in accordance with the procedures enumerated
18 in this section that:

19 (a) Establish minimum standards for forest practices;

20 (b) Provide procedures for the voluntary development of resource
21 management plans which may be adopted as an alternative to the minimum
22 standards in (a) of this subsection if the plan is consistent with the
23 purposes and policies stated in RCW 76.09.010 and the plan meets or
24 exceeds the objectives of the minimum standards;

25 (c) Set forth necessary administrative provisions; and

26 (d) Establish procedures for the collection and administration of
27 forest practice fees as set forth by this chapter.

28 Forest practices (~~((regulations))~~) rules pertaining to water quality
29 protection shall be (~~((promulgated))~~) adopted individually by the board
30 and by the department of ecology after they have reached agreement with
31 respect thereto. Such rules adopted by the department of ecology shall
32 be adopted in accordance with section 101 of this act. All other
33 forest practices (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted
34 by the board.

35 Forest practices (~~((regulations))~~) rules shall be administered and
36 enforced by the department except as otherwise provided in this
37 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted

1 and administered so as to give consideration to all purposes and
2 policies set forth in RCW 76.09.010.

3 (2) The board shall prepare proposed forest practices
4 (~~regulations~~) rules. In addition to any forest practices
5 (~~regulations~~) rules relating to water quality protection proposed by
6 the board, the department of ecology shall prepare proposed forest
7 practices (~~regulations~~) rules relating to water quality protection.

8 Prior to initiating the rule-making process, the proposed
9 (~~regulations~~) rules shall be submitted for review and comments to the
10 department of fish and wildlife and to the counties of the state.
11 After receipt of the proposed forest practices (~~regulations~~) rules,
12 the department of fish and wildlife and the counties of the state shall
13 have thirty days in which to review and submit comments to the board,
14 and to the department of ecology with respect to its proposed
15 (~~regulations~~) rules relating to water quality protection. After the
16 expiration of such thirty day period the board and the department of
17 ecology shall jointly hold one or more hearings on the proposed
18 (~~regulations~~) rules pursuant to chapter 34.05 RCW. At such
19 hearing(s) any county may propose specific forest practices
20 (~~regulations~~) rules relating to problems existing within such county.
21 The board and the department of ecology may adopt such proposals if
22 they find the proposals are consistent with the purposes and policies
23 of this chapter.

24 **Sec. 232.** RCW 86.16.061 and 1989 c 64 s 5 are each amended to read
25 as follows:

26 The department of ecology after consultation with the public shall
27 adopt such rules as are necessary to implement this chapter. Rules
28 shall be adopted in accordance with section 101 of this act.

29 NEW SECTION. **Sec. 233.** A new section is added to chapter 89.16
30 RCW to read as follows:

31 Rules adopted by the department of ecology under this chapter shall
32 be adopted in accordance with section 101 of this act.

33 NEW SECTION. **Sec. 234.** A new section is added to chapter 90.03
34 RCW to read as follows:

1 Rules adopted by the department to implement or administer this
2 chapter or otherwise adopted under the authority of this chapter shall
3 be adopted in accordance with section 101 of this act.

4 **Sec. 235.** RCW 90.14.230 and 1987 c 109 s 102 are each amended to
5 read as follows:

6 The department of ecology is authorized to (~~promulgate~~) adopt, in
7 accordance with section 101 of this act, such rules (~~and regulations~~)
8 as are necessary to carry out the provisions of this chapter.

9 **Sec. 236.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
10 read as follows:

11 Flows or levels authorized for establishment under RCW 90.22.010,
12 or subsequent modification thereof by the department shall be provided
13 for through the adoption of rules. Such rules shall be adopted in
14 accordance with section 101 of this act. Before the establishment or
15 modification of a water flow or level for any stream or lake or other
16 public water, the department shall hold a public hearing in the county
17 in which the stream, lake, or other public water is located. If it is
18 located in more than one county the department shall determine the
19 location or locations therein and the number of hearings to be
20 conducted. Notice of the hearings shall be given by publication in a
21 newspaper of general circulation in the county or counties in which the
22 stream, lake, or other public waters is located, once a week for two
23 consecutive weeks before the hearing. The notice shall include the
24 following:

25 (1) The name of each stream, lake, or other water source under
26 consideration;

27 (2) The place and time of the hearing;

28 (3) A statement that any person, including any private citizen or
29 public official, may present his or her views either orally or in
30 writing.

31 Notice of the hearing shall also be served upon the administrators
32 of the departments of social and health services, natural resources,
33 fish and wildlife, and transportation.

34 NEW SECTION. **Sec. 237.** A new section is added to chapter 90.42
35 RCW to read as follows:

1 Rules adopted by the department under this chapter shall be adopted
2 in accordance with section 101 of this act.

3 **Sec. 238.** RCW 90.48.220 and 1993 c 296 s 1 are each amended to
4 read as follows:

5 (1) For the purposes of this section "marine finfish rearing
6 facilities" means those private and public facilities located within
7 the salt water of the state where finfish are fed, nurtured, held,
8 maintained, or reared to reach the size of release or for market sale.

9 (2) Not later than October 31, 1994, the department shall adopt
10 criteria under chapter 34.05 RCW for allowable sediment impacts from
11 organic enrichment due to marine finfish rearing facilities.

12 (3) Not later than June 30, 1995, the department shall adopt
13 standards ((under)) in accordance with section 101 of this act and
14 chapter 34.05 RCW for waste discharges from marine finfish rearing
15 facilities. In establishing these standards, the department shall
16 review and incorporate, to the extent possible, studies conducted by
17 state and federal agencies on waste discharges from marine finfish
18 rearing facilities, and any reports and other materials prepared by
19 technical committees on waste discharges from marine finfish rearing
20 facilities. The department shall approve or deny discharge permit
21 applications for marine finfish rearing facilities within one hundred
22 eighty days from the date of application, unless a longer time is
23 required to satisfy public participation requirements in the permit
24 process in accordance with applicable rules, or compliance with the
25 requirements of the state environmental policy act under chapter 43.21C
26 RCW. The department shall notify applicants as soon as it determines
27 that a proposed discharge meets or fails to comply with the standards
28 adopted pursuant to this section, or if a time period longer than one
29 hundred eighty days is necessary to satisfy public participation
30 requirements of the state environmental policy act.

31 (4) The department may adopt rules to exempt marine finfish rearing
32 facilities not requiring national pollutant discharge elimination
33 system permits under the federal water pollution control act from the
34 discharge permit requirement.

35 **Sec. 239.** RCW 90.48.230 and 1989 c 175 s 181 are each amended to
36 read as follows:

1 The provisions of chapter 34.05 RCW, the administrative procedure
2 act, and section 101 of this act apply to all rule making (~~and~~
3 ~~adjudicative proceedings~~) authorized by or arising under the
4 provisions of this chapter.

5 **Sec. 240.** RCW 90.54.050 and 1988 c 47 s 7 are each amended to read
6 as follows:

7 In conjunction with the programs provided for in RCW 90.54.040(1),
8 whenever it appears necessary to the director in carrying out the
9 policy of this chapter, the department may by rule adopted pursuant to
10 section 101 of this act and chapter 34.05 RCW:

11 (1) Reserve and set aside waters for beneficial utilization in the
12 future, and

13 (2) When sufficient information and data are lacking to allow for
14 the making of sound decisions, withdraw various waters of the state
15 from additional appropriations until such data and information are
16 available.

17 Prior to the adoption of a rule under this section, the department
18 shall conduct a public hearing in each county in which waters relating
19 to the rule are located. The public hearing shall be preceded by a
20 notice placed in a newspaper of general circulation published within
21 each of said counties. Rules adopted hereunder shall be subject to
22 review in accordance with the provisions of RCW (~~34.05.538 or~~)
23 34.05.240.

24 No new rules or changes to existing rules to reserve or set aside
25 water may be adopted pursuant to this section, as provided in RCW
26 90.54.022(5).

27 NEW SECTION. **Sec. 241.** A new section is added to chapter 90.54
28 RCW to read as follows:

29 Rules adopted by the department of ecology to implement or
30 administer this chapter or otherwise adopted under the authority of
31 this chapter shall be adopted in accordance with section 101 of this
32 act.

33 **Sec. 242.** RCW 90.56.050 and 1991 c 200 s 106 are each amended to
34 read as follows:

35 The department may adopt rules including but not limited to the
36 following matters:

1 (1) Procedures and methods of reporting discharges and other
2 occurrences prohibited by this chapter;

3 (2) Procedures, methods, means, and equipment to be used by persons
4 subject to regulation by this chapter and such rules may prescribe the
5 times, places, and methods of transfer of oil;

6 (3) Coordination of procedures, methods, means, and equipment to be
7 used in the removal of oil;

8 (4) Development and implementation of criteria and plans to meet
9 oil spills of various kinds and degrees;

10 (5) When and under what circumstances, if any, chemical agents,
11 such as coagulants, dispersants, and bioremediation, may be used in
12 response to an oil spill;

13 (6) The disposal of oil recovered from a spill; and

14 (7) Such other rules (~~and regulations~~) as the exigencies of any
15 condition may require or such as may be reasonably necessary to carry
16 out the intent of this chapter.

17 Rules adopted by the department under this chapter shall be adopted
18 in accordance with section 101 of this act.

19 **Sec. 243.** RCW 90.58.200 and 1971 ex.s. c 286 s 20 are each amended
20 to read as follows:

21 The department and local governments are authorized to adopt such
22 rules as are necessary and appropriate to carry out the provisions of
23 this chapter. Rules adopted by the department shall be adopted in
24 accordance with section 101 of this act.

25 **Sec. 244.** RCW 90.62.110 and 1973 1st ex.s. c 185 s 11 are each
26 amended to read as follows:

27 (1) The department shall adopt such rules, in accordance with
28 section 101 of this act, as are appropriate to carry out the provisions
29 of this chapter. This authority includes, but is not limited to, the
30 following subjects and sections or subsections of this chapter:

31 (a) Master application procedures under RCW 90.62.040(1) and (2).

32 (b) Application procedures under RCW 90.62.040(~~(+3)~~)(4).

33 (c) Notice procedures under RCW 90.62.050.

34 (d) Public hearing and final decision procedures under RCW
35 90.62.060(1), (2), and (3).

1 (e) A program, and procedures, including time requirements relating
2 thereto, to guide local governments in the implementation of RCW
3 90.62.100(1).

4 (f) A listing of the various types of permits covered by this
5 chapter together with the state agency issuing each such permit, and
6 the statutory authority providing for such issuance.

7 (2) State agencies and local governments shall cooperate fully in
8 the preparation implementation of rules authorized under this section
9 and in otherwise carrying out the provisions of this chapter.

10 (3) Consistent with the procedural concepts for the processing of
11 applications for permits established in RCW 90.62.040 through
12 90.62.060, the department of ecology may, by rule, establish a permit
13 application processing procedure which may be used, at the request of
14 an applicant, in relation to two or more permit programs administered
15 solely by the department of ecology.

16 **Sec. 245.** RCW 90.70.080 and 1990 c 115 s 7 are each amended to
17 read as follows:

18 (1) To implement this chapter, state agencies are authorized to
19 adopt rules that are applicable to actions and activities on a less
20 than state-wide geographic basis. State agencies are encouraged to
21 adopt rules that protect Puget Sound water quality before the adoption
22 of the plan by the authority.

23 (2) A rule to implement an element of the plan that applies on a
24 less than state-wide basis shall contain a statement defining the
25 geographic area to which it applies. In determining whether to adopt
26 rules on a state-wide or less than state-wide basis, state agencies
27 shall consider at least the following factors:

28 (a) Number and location of primary affected persons;

29 (b) Geographical distribution of the actions and activities;

30 (c) Equity among regulated and nonregulated persons;

31 (d) Difficulty and practicality of implementation, including the
32 effects on existing agency programs;

33 (e) Expected environmental benefits;

34 (f) Availability of information related to the actions and
35 activities; and

36 (g) Requirements of other state or federal laws, rules, and
37 policies.

1 When a state agency proposes to adopt a rule applicable beyond the
2 Puget Sound area, and that rule was originally proposed to implement an
3 element of the plan, the state agency shall ensure that early and
4 meaningful participation by interested members of the public is
5 provided from all geographic areas to which the rule will be
6 applicable.

7 (3) To implement this chapter, counties, cities, and towns are
8 authorized to adopt ordinances, rules, and regulations that are
9 applicable on less than a county-wide, city-wide, or town-wide basis.
10 Counties, cities, and towns are encouraged to adopt ordinances, rules,
11 and regulations that protect Puget Sound water quality before the
12 adoption of the plan by the authority.

13 (4) Rules adopted by the department of ecology shall be adopted in
14 accordance with section 101 of this act.

15 NEW SECTION. Sec. 246. A new section is added to chapter 90.76
16 RCW to read as follows:

17 Rules adopted by the department under this chapter shall be adopted
18 in accordance with section 101 of this act.

19 **PART 3 - DEPARTMENT OF AGRICULTURE**
20 **CONFORMING AMENDMENTS**

21 **Sec. 301.** RCW 15.04.020 and 1981 c 296 s 1 are each amended to
22 read as follows:

23 The director may:

24 (1) Furnish to the board of county commissioners of each county
25 annually, on or before September 1st, an estimate of the expenses for
26 the ensuing year of inspecting and disinfecting the horticultural
27 plants, fruits, vegetables and nursery stock and the places in the
28 county where such articles are grown, packed, stored, shipped, held for
29 shipment or delivery, or offered for sale;

30 (2) Appoint inspectors to enforce and carry out the provisions of
31 this title, who may be of two classes: Inspectors-at-large and local
32 inspectors;

33 (3) Adopt, promulgate and enforce such rules (~~and regulations~~) as
34 are necessary to or will facilitate his carrying out of the
35 horticultural laws he is authorized and directed to administer and
36 enforce; and

1 (4) Adopt, promulgate and enforce rules (~~and regulations~~):

2 (a) governing the grading, packing, and size and dimensions of
3 commercial containers of fruits, vegetables, and nursery stock;

4 (b) fixing commercial grades of fruits, vegetables and nursery
5 stock, and providing for the inspection thereof and issuance of
6 certificates of inspection therefor;

7 (c) for the inspection, grading and certifying of growing crops of
8 agricultural and vegetable seeds and the fixing and collecting of fees
9 for such services;

10 (d) covering the collection of native plants and parts thereof, and
11 when the manner of collection is destructive of the plants, prohibiting
12 such collecting;

13 (e) establishing quarantine measures and methods for the protection
14 of agricultural and horticultural crops and products and the control or
15 eradication of pests and diseases injurious thereto. Rules adopted
16 under this section shall be adopted in accordance with section 102 of
17 this act.

18 NEW SECTION. Sec. 302. A new section is added to chapter 15.08
19 RCW to read as follows:

20 Rules adopted by the director or department of agriculture to
21 administer or enforce this chapter shall be adopted in accordance with
22 section 102 of this act.

23 **Sec. 303.** RCW 15.13.260 and 1993 c 120 s 2 are each amended to
24 read as follows:

25 The director shall enforce the provisions of this chapter and may
26 adopt any rule necessary to carry out its purpose and provisions
27 including but not limited to the following:

28 (1) The director may adopt rules establishing grades and/or
29 classifications for any horticultural plant and standards for such
30 grades and/or classifications.

31 (2) The director may adopt rules for labeling or tagging and for
32 the inspection and/or certification of any horticultural plant as to
33 variety, quality, size and freedom from infestation by plant pests.

34 (3) The director shall adopt rules establishing fees for inspection
35 of horticultural plants and methods of collection thereof.

1 (4) The director may adopt rules prescribing minimum informational
2 requirements for advertising for the sale of horticultural plants
3 within the state.

4 (5) The director shall when adopting rules (~~(or regulations)~~) under
5 the provisions of this chapter, hold a public hearing and satisfy all
6 the requirements of section 102 of this act and chapter 34.05 RCW
7 (administrative procedure act), concerning the adoption of rules (~~(and~~
8 ~~regulations)~~).

9 **Sec. 304.** RCW 15.13.280 and 1993 c 120 s 4 are each amended to
10 read as follows:

11 (1) No person shall act as a nursery dealer without a license for
12 each place of business where horticultural plants are sold except as
13 provided in RCW 15.13.270. Any person applying for such a license
14 shall apply through the master license system. The application shall
15 be accompanied by a fee established by the director by rule. The
16 director shall establish by rule, in accordance with section 102 of
17 this act and chapter 34.05 RCW, a schedule of fees for retail nursery
18 dealer licenses and a schedule of fees for wholesale nursery dealer
19 licenses which shall be based upon the amount of a person's retail or
20 wholesale sales of horticultural plants and turf. The schedule for
21 retail licenses shall include, but shall not be limited to, separate
22 fees for at least the following two categories: (a) A fee for a person
23 whose gross business sales of such materials do not exceed two thousand
24 five hundred dollars; and (b) a fee for a person whose gross business
25 sales of such materials exceed two thousand five hundred dollars.

26 (2) Except as provided in RCW 15.13.270, a person conducting both
27 retail and wholesale sales of horticultural plants at a place of
28 business shall secure for the place of business (a) a retail nursery
29 dealer license if retail sales of the plants and turf exceed such
30 wholesale sales, or (b) a wholesale nursery dealer license if wholesale
31 sales of the plants and turf exceed such retail sales.

32 (3) For farmers markets that are registered as nonprofit
33 associations with the office of the secretary of state and at which
34 individual producers are selling directly to consumers as provided in
35 RCW 36.71.090, the director may allow a farmers market, as an
36 alternative to licensing of individual producers, to obtain one
37 wholesale nursery dealer license, as provided in subsection (1) of this

1 section, at the appropriate level to cover all producers at each site
2 at which the market operates.

3 (4) The licensing fee that must accompany an application for a new
4 license shall be based upon the estimated gross business sales of
5 horticultural plants and turf for the ensuing licensing year. The fee
6 for renewing a license shall be based upon the licensee's gross sales
7 of such products during the preceding licensing year.

8 (5) The license shall expire on the master license expiration date
9 unless it has been revoked or suspended prior to the expiration date by
10 the director for cause. Each license shall be posted in a conspicuous
11 place open to the public in the location for which it was issued.

12 (6) The department may audit licensees during normal business hours
13 to determine that appropriate fees have been paid.

14 **Sec. 305.** RCW 15.13.460 and 1971 ex.s. c 33 s 24 are each amended
15 to read as follows:

16 The repeal of RCW 15.13.010 through 15.13.210 and 15.13.900 and
17 15.13.910 by section 30, chapter 33, Laws of 1971 ex. sess.
18 (uncodified) and the enactment of the remaining sections of this
19 chapter shall not be deemed to have repealed any rules adopted under
20 the provisions of RCW 15.13.010 through 15.13.210 and 15.13.900 and
21 15.13.910 and in effect immediately prior to such repeal and not
22 inconsistent with the provisions of this chapter. For the purpose of
23 this chapter it shall be deemed that such rules have been adopted under
24 the provisions of this chapter pursuant to the provisions of chapter
25 34.05 RCW, concerning the adoption of rules(~~(, and)~~). Any amendment or
26 repeal of such rules after July 1, 1971, shall be subject to the
27 provisions of chapter 34.05 RCW concerning the adoption of rules ((as
28 enacted or hereafter amended)) and, after the effective date of this
29 section, section 102 of this act.

30 **Sec. 306.** RCW 15.14.020 and 1961 c 83 s 2 are each amended to read
31 as follows:

32 The director is hereby designated the legal plant certifying
33 officer for the state and he may adopt the rules necessary to carry out
34 the purpose and provisions of this chapter. All such rules shall be
35 adopted pursuant to the provisions of section 102 of this act and
36 chapter 34.05 RCW ((as enacted or hereafter amended)) concerning the
37 adoption of rules.

1 **Sec. 307.** RCW 15.17.030 and 1963 c 122 s 3 are each amended to
2 read as follows:

3 (1) The director shall enforce and carry out the provisions of this
4 chapter and may adopt the necessary rules to carry out its purpose.
5 The adoption of rules shall be subject to the provisions of section 102
6 of this act and chapter 34.05 RCW, concerning the adoption of rules(~~(~~
7 ~~as enacted or hereafter amended)~~)).

8 (2) The director shall, whenever he considers the adoption of rules
9 or amendments to existing rules, consult with growers, associations of
10 growers, or other persons affected by such rules or amendments.

11 (3) The director may, on his own motion or shall, on the written
12 application of twenty-five or more interested persons, call a hearing
13 for the purpose of considering changes to any rules prescribed under
14 the provisions of this chapter.

15 **Sec. 308.** RCW 15.17.120 and 1963 c 122 s 12 are each amended to
16 read as follows:

17 The grades and/or classifications and the standards and sizes for
18 such grades and/or classifications relating to horticultural plants and
19 products specifically mentioned in RCW 15.17.100 and 15.17.110 and
20 included in or adopted under the provisions of chapter 15.16 RCW and in
21 effect immediately prior to the repeal of RCW 15.16.010 through
22 15.16.490 shall be considered to have been adopted by the director as
23 rules under the provisions of this chapter pursuant to the provisions
24 of chapter 34.05 RCW concerning the adoption of rules(~~(~~
25 ~~as enacted or hereafter amended)~~)). Any amendment or repeal of such rules after July
26 1, 1963 shall be subject to the provisions of chapter 34.05 RCW
27 concerning the adoption of rules (~~(as enacted or hereafter amended)~~)
28 and, after the effective date of this section, section 102 of this act.

29 **Sec. 309.** RCW 15.17.920 and 1963 c 122 s 29 are each amended to
30 read as follows:

31 The repeal of chapter 15.16 RCW and the enactment of this chapter
32 shall not be deemed to have repealed any rules adopted under the
33 provisions of chapter 15.16 RCW not in conflict with the provisions of
34 this chapter and in effect immediately prior to such repeal. For the
35 purpose of this chapter it shall be deemed that such rules have been
36 adopted under the provisions of this chapter pursuant to the provisions
37 of chapter 34.05 RCW(~~(~~
~~as enacted or hereafter amended,~~) concerning

1 the adoption of rules. Any amendment or repeal of such rules after
2 July 1, 1963 shall be subject to the provisions of chapter 34.05 RCW
3 (~~as enacted or hereafter amended,~~) concerning the adoption of rules
4 and, after the effective date of this section, section 102 of this act.

5 **Sec. 310.** RCW 15.36.012 and 1994 c 143 s 102 are each amended to
6 read as follows:

7 For the purpose of this chapter:

8 "Adulterated milk" means milk that is deemed adulterated under
9 appendix L of the PMO.

10 "Aseptic processing" means the process by which milk or milk
11 products have been subjected to sufficient heat processing and packaged
12 in a hermetically sealed container so as to meet the standards of the
13 PMO.

14 "Colostrum milk" means milk produced within ten days before or
15 until practically colostrum free after parturition.

16 "DMO" means supplement I, the recommended sanitation ordinance for
17 grade A condensed and dry milk products and condensed and dry whey, to
18 the PMO published by the United States public health service, food and
19 drug administration.

20 "Dairy farm" means a place or premises where one or more cows,
21 goats, or other mammals are kept, a part or all of the milk or milk
22 products from which is sold or offered for sale to a milk processing
23 plant, transfer station, or receiving station.

24 "Dairy technician" means any person who takes samples of milk or
25 cream or fluid derivatives thereof, on which sample tests are to be
26 made as a basis of payment, or who grades, weighs, or measures milk or
27 cream or the fluid derivatives thereof, the grade, weight, or measure
28 to be used as a basis of payment, or who operates equipment wherein
29 milk or products thereof are pasteurized.

30 "Department" means the state department of agriculture.

31 "Director" means the director of agriculture of the state of
32 Washington or the director's duly authorized representative.

33 "Distributor" means a person other than a producer who offers for
34 sale or sells to another, milk or milk products.

35 "Grade A milk processing plant" means any milk processing plant
36 that meets all of the standards of the PMO to process grade A
37 pasteurized milk or milk products.

1 "Grade A pasteurized milk" means grade A raw milk that has been
2 pasteurized.

3 "Grade A raw milk" means raw milk produced upon dairy farms
4 conforming with all of the items of sanitation contained in the PMO, in
5 which the bacterial plate count does not exceed twenty thousand per
6 milliliter and the coliform count does not exceed ten per milliliter as
7 determined in accordance with RCW (~~(15.36.110)~~) 15.36.201.

8 "Grade A raw milk for pasteurization" means raw milk produced upon
9 dairy farms conforming with all of the same items of sanitation
10 contained in the PMO of grade A raw milk, and the bacterial plate
11 count, as delivered from the farm, does not exceed eighty thousand per
12 milliliter as determined in accordance with RCW (~~(15.36.110)~~)
13 15.36.201.

14 "Grade C milk" is milk that violates any of the requirements for
15 grade A milk but that is not deemed to be adulterated.

16 "Homogenized" means milk or milk products which have been treated
17 to ensure breakup of the fat globules to an extent consistent with the
18 requirements outlined in the PMO.

19 "Milk" means the lacteal secretion, practically free of colostrum,
20 obtained by the complete milking of one or more healthy cows, goats, or
21 other mammals.

22 "Milk hauler" means a person who transports milk or milk products
23 in bulk to or from a milk processing plant, receiving station, or
24 transfer station.

25 "Milk processing" means the handling, preparing, packaging, or
26 processing of milk in any manner in preparation for sale as food, as
27 defined in chapter 69.04 RCW. Milk processing does not include milking
28 or producing milk on a dairy farm that is shipped to a milk processing
29 plant for further processing.

30 "Milk processing plant" means a place, premises, or establishment
31 where milk or milk products are collected, handled, processed, stored,
32 bottled, pasteurized, aseptically processed, bottled, or prepared for
33 distribution, except an establishment whose activity is limited to
34 retail sales.

35 "Milk products" means the product of a milk manufacturing process.

36 "Misbranded milk" means milk or milk products that carries a grade
37 label unless such grade label has been awarded by the director and not
38 revoked, or that fails to conform in any other respect with the
39 statements on the label.

1 "Official brucellosis adult vaccinated cattle" means those cattle,
2 officially vaccinated over the age of official calfhood vaccinated
3 cattle, that the director has determined have been commingled with, or
4 kept in close proximity to, cattle identified as brucellosis reactors,
5 and have been vaccinated against brucellosis in a manner and under the
6 conditions prescribed by the director after a hearing and under section
7 102 of this act and rules adopted under chapter 34.05 RCW, the
8 administrative procedure act.

9 "Official laboratory" means a biological, chemical, or physical
10 laboratory that is under the direct supervision of the state or a local
11 regulatory agency.

12 "Officially designated laboratory" means a commercial laboratory
13 authorized to do official work by the department, or a milk industry
14 laboratory officially designated by the department for the examination
15 of grade A raw milk for pasteurization and commingled milk tank truck
16 samples of raw milk for antibiotic residues and bacterial limits.

17 "PMO" means the grade "A" pasteurized milk ordinance published by
18 the United States public health service, food and drug administration.

19 "Pasteurized" means the process of heating every particle of milk
20 or milk product in properly designed and operated equipment to the
21 temperature and time standards specified in the PMO.

22 "Person" means an individual, partnership, firm, corporation,
23 company, trustee, or association.

24 "Producer" means a person or organization who operates a dairy farm
25 and provides, sells, or offers milk for sale to a milk processing
26 plant, receiving station, or transfer station.

27 "Receiving station" means a place, premises, or establishment where
28 raw milk is received, collected, handled, stored, or cooled and
29 prepared for further transporting.

30 "Sale" means selling, offering for sale, holding for sale,
31 preparing for sale, trading, bartering, offering a gift as an
32 inducement for sale of, and advertising for sale in any media.

33 "Transfer station" means any place, premises, or establishment
34 where milk or milk products are transferred directly from one milk tank
35 truck to another.

36 "Ultrapasteurized" means the process by which milk or milk products
37 have been thermally processed in accordance with the time and
38 temperature standards of the PMO, so as to produce a product which has
39 an extended shelf life under refrigerated conditions.

1 "Ungraded processing plant" means a milk processing plant that
2 meets all of the standards of the PMO to produce milk products other
3 than grade A milk or milk products.

4 "Wash station" means a place, facility, or establishment where milk
5 tanker trucks are cleaned in accordance with the standards of the PMO.

6 All dairy products mentioned in this chapter mean those fit or used
7 for human consumption.

8 **Sec. 311.** RCW 15.36.021 and 1994 c 143 s 103 are each amended to
9 read as follows:

10 The director of agriculture may:

11 (1) Adopt rules necessary to carry out the purposes of chapters
12 15.36 and 15.38 RCW, however the rules may not restrict the display or
13 promotion of products covered under this section.

14 (2) By rule, establish, amend, or both, definitions and standards
15 for milk and milk products. Such definitions and standards established
16 by the director shall conform, insofar as practicable, with the
17 definitions and standards for milk and milk products adopted by the
18 federal food and drug administration. The director of agriculture, by
19 rule, may likewise establish, amend, or both, definitions and standards
20 for products whether fluid, powdered or frozen, compounded or
21 manufactured to resemble or in semblance or imitation of genuine dairy
22 products as defined under the provisions of this chapter. Such
23 products made to resemble or in semblance or imitation of genuine dairy
24 products shall conform with all the provisions of chapter 15.38 RCW and
25 be made wholly of nondairy products.

26 All such products compounded or manufactured to resemble or in
27 semblance or imitation of a genuine dairy product shall set forth on
28 the container or labels the specific generic name of each ingredient
29 used.

30 In the event any product compounded or manufactured to resemble or
31 in semblance or imitation of a genuine dairy product contains vegetable
32 fat or oil, the generic name of such fat or oil shall be set forth on
33 the label. If a blend or variety of oils is used, the ingredient
34 statement shall contain the term "vegetable oil" in the appropriate
35 place in the ingredient statement, with the qualifying phrase following
36 the ingredient statement, such as "vegetable oils are soybean,
37 cottonseed and coconut oils" or "vegetable oil, may be cottonseed,
38 coconut or soybean oil."

1 The labels or containers of such products compounded or
2 manufactured to resemble or in semblance or imitation of genuine dairy
3 products shall not use dairy terms or words or designs commonly
4 associated with dairying or genuine dairy products, except as to the
5 extent that such words or terms are necessary to meet legal
6 requirements for labeling. The term "nondairy" may be used as an
7 informative statement.

8 (3) By rule adopt the PMO, DMO, and supplemental documents by
9 reference to establish requirements for grade A pasteurized and grade
10 A raw milk.

11 (4) Adopt rules establishing standards for grade A pasteurized and
12 grade A raw milk that are more stringent than the PMO based upon
13 current industry or public health information for the enforcement of
14 this chapter whenever he or she determines that any such rules are
15 necessary to carry out the purposes of this section and RCW 15.36.481.
16 The ~~((adoption of rules under this chapter, or the))~~ holding of a
17 hearing in regard to a license issued or that may be issued under this
18 chapter ~~((are))~~ is subject to the applicable provisions of chapter
19 34.05 RCW, the administrative procedure act.

20 (5) By rule, certify an officially designated laboratory to analyze
21 milk for standard of quality, adulteration, contamination, and
22 unwholesomeness.

23 (6) Rules adopted under this chapter shall be adopted in accordance
24 with section 102 of this act.

25 **Sec. 312.** RCW 15.49.005 and 1989 c 354 s 70 are each amended to
26 read as follows:

27 The purpose of this chapter is to provide uniformity and
28 consistency in the packaging of agricultural, vegetable, and flower
29 seeds so as to facilitate the interstate movement of seed, to protect
30 consumers, and to provide a dispute-resolution process. The department
31 of agriculture is hereby authorized to adopt rules in accordance with
32 section 102 of this act and chapter 34.05 RCW to implement this
33 chapter. To the extent possible, the department shall seek to
34 incorporate into the rules provisions from the recommended uniform
35 state seed law in order to attain consistency with other states.

36 **Sec. 313.** RCW 15.49.081 and 1989 c 354 s 78 are each amended to
37 read as follows:

1 The director shall adopt rules, in conformance with section 102 of
2 this act and chapter 34.05 RCW, providing for mandatory arbitration
3 under this chapter and governing the proceedings of the arbitration
4 committee. The decisions and proceedings of the arbitration committee
5 shall not be subject to chapter 34.05 RCW. The department shall
6 establish by rule a filing fee to cover the administrative costs of
7 processing a complaint and submitting it to the arbitration committee.

8 **Sec. 314.** RCW 15.49.310 and 1981 c 297 s 9 are each amended to
9 read as follows:

10 The department shall administer, enforce, and carry out the
11 provisions of this chapter and may adopt ~~((regulations))~~ rules
12 necessary to carry out its purpose. The adoption of ~~((regulations))~~
13 rules shall be subject to a public hearing and all other applicable
14 provisions of section 102 of this act and chapter 34.05 RCW
15 (administrative procedure act)~~((, as enacted and hereafter amended))~~.

16 The department when adopting ~~((regulations))~~ rules in respect to
17 the seed industry shall consult with affected parties, such as growers,
18 conditioners, and distributors of seed. Any final ~~((regulation))~~ rule
19 adopted shall be based upon the requirements and conditions of the
20 industry and shall be for the purpose of promoting the well-being of
21 the purchasers and users of seed as well as the members of the seed
22 industry.

23 When seed labeling, terms, methods of sampling and analysis, and
24 tolerances are not specifically stated in this chapter or otherwise
25 designated by the department, the department shall, in order to promote
26 uniformity, be guided by officially recognized associations, or
27 regulations under the federal seed act.

28 **Sec. 315.** RCW 15.49.930 and 1969 c 63 s 52 are each amended to
29 read as follows:

30 The repeal of sections 15.48.010 through 15.48.260 and 15.48.900,
31 chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and
32 15.48.900 and the enactment of this 1969 act shall not be deemed to
33 have repealed any ~~((regulations))~~ rules adopted under the provisions of
34 sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of
35 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect
36 immediately prior to such repeal and not inconsistent with the
37 provisions of this 1969 act. For the purpose of this 1969 act, it

1 shall be deemed that such rules have been adopted under the provisions
2 of this 1969 act pursuant to chapter 34.05 RCW(~~(, as enacted or~~
3 ~~hereafter amended)~~) concerning the adoption of rules. Any amendment or
4 repeal of such rules after (~~(the effective date of this 1969 act)~~) July
5 1, 1969, shall be subject to the provisions of chapter 34.05 RCW
6 (administrative procedure act) (~~(as enacted or hereafter amended,~~)
7 concerning the adoption of rules and, after the effective date of this
8 section, section 102 of this act.

9 **Sec. 316.** RCW 15.53.9012 and 1965 ex.s. c 31 s 3 are each amended
10 to read as follows:

11 The department shall administer, enforce and carry out the
12 provisions of this chapter and may adopt rules necessary to carry out
13 its purpose. The adoption of rules shall be subject to a public
14 hearing and all other applicable provisions of chapter 34.05 RCW
15 (administrative procedure act)(~~(, as enacted or hereafter amended)~~) and
16 section 102 of this act.

17 The director when adopting rules in respect to the feed industry
18 shall consult with affected parties, such as manufacturers and
19 distributors of commercial feed and any final rule adopted shall be
20 designed to promote orderly marketing and shall be reasonable and
21 necessary and based upon the requirements and condition of the industry
22 and shall be for the purpose of promoting the well-being of the members
23 of the feed industry as well as the well-being of the purchasers and
24 users of feed and for the general welfare of the people of the state.

25 **Sec. 317.** RCW 15.54.800 and 1993 c 183 s 14 are each amended to
26 read as follows:

27 (1) The director shall administer and enforce the provisions of
28 this chapter and any rules adopted under this chapter. (~~(All authority~~
29 ~~and requirements provided for in chapter 34.05 RCW)~~) The provisions of
30 section 102 of this act apply to this chapter in the adoption of rules.

31 (2) The director may adopt appropriate rules for carrying out the
32 purpose and provisions of this chapter, including but not limited to
33 rules providing for:

34 (a) Definitions of terms;

35 (b) Determining standards for labeling and registration of
36 fertilizers and agricultural minerals and limes;

1 (c) The collection and examination of fertilizers and agricultural
2 mineral and limes;

3 (d) Recordkeeping by registrants and licensees;

4 (e) Regulation of the use and disposal of fertilizers for the
5 protection of ground water and surface water; and

6 (f) The safe handling, transportation, storage, display, and
7 distribution of fertilizers.

8 **Sec. 318.** RCW 15.58.040 and 1991 c 264 s 2 are each amended to
9 read as follows:

10 (1) The director shall administer and enforce the provisions of
11 this chapter and rules adopted under this chapter. All the authority
12 and requirements provided for in chapter 34.05 RCW (administrative
13 procedure act) and (~~chapter 42.30 RCW shall~~) section 102 of this act
14 apply to this chapter in the adoption of rules including those
15 requiring due notice and a hearing for the adoption of permanent rules.

16 (2) The director is authorized to adopt appropriate rules for
17 carrying out the purpose and provisions of this chapter, including but
18 not limited to rules providing for:

19 (a) Declaring as a pest any form of plant or animal life or virus
20 which is injurious to plants, people, animals (domestic or otherwise),
21 land, articles, or substances;

22 (b) Determining that certain pesticides are highly toxic to people.
23 For the purpose of this chapter, highly toxic pesticide means any
24 pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for
25 toxicity category I due to oral inhalation or dermal toxicity. The
26 director shall publish a list of all pesticides, determined to be
27 highly toxic, by their common or generic name and their trade or brand
28 name if practical. Such list shall be kept current and shall, upon
29 request, be made available to any interested party;

30 (c) Determining standards for denaturing pesticides by color,
31 taste, odor, or form;

32 (d) The collection and examination of samples of pesticides or
33 devices;

34 (e) The safe handling, transportation, storage, display,
35 distribution, and disposal of pesticides and their containers;

36 (f) Restricting or prohibiting the use of certain types of
37 containers or packages for specific pesticides. These restrictions may
38 apply to type of construction, strength, and/or size to alleviate

1 danger of spillage, breakage, misuse, or any other hazard to the
2 public. The director shall be guided by federal regulations concerning
3 pesticide containers;

4 (g) Procedures in making of pesticide recommendations;

5 (h) Adopting a list of restricted use pesticides for the state or
6 for designated areas within the state if the director determines that
7 such pesticides may require rules restricting or prohibiting their
8 distribution or use. The director may include in the rule the time and
9 conditions of distribution or use of such restricted use pesticides and
10 may, if it is found necessary to carry out the purpose and provisions
11 of this chapter, require that any or all restricted use pesticides
12 shall be purchased, possessed, or used only under permit of the
13 director and under the director's direct supervision in certain areas
14 and/or under certain conditions or in certain quantities or
15 concentrations. The director may require all persons issued such
16 permits to maintain records as to the use of all the restricted use
17 pesticides;

18 (i) Label requirements of all pesticides required to be registered
19 under provisions of this chapter;

20 (j) Regulating the labeling of devices; and

21 (k) The establishment of criteria governing the conduct of a
22 structural pest control inspection.

23 (3) For the purpose of uniformity and to avoid confusion
24 endangering the public health and welfare the director may adopt rules
25 in conformity with the primary pesticide standards, particularly as to
26 labeling, established by the United States environmental protection
27 agency or any other federal agency.

28 **Sec. 319.** RCW 15.60.025 and 1993 c 89 s 6 are each amended to read
29 as follows:

30 In addition to the powers conferred on the director under other
31 provisions of this chapter, the director shall have the power to adopt
32 rules with the advice of the apiary advisory committee and pursuant to
33 section 102 of this act and to the administrative procedure act,
34 chapter 34.05 RCW:

35 (1) Specifying marking and identification requirements for all
36 hives of bees in the state of Washington including resident colonies,
37 migratory colonies registered in Washington, and colonies brought into
38 the state for pollination services;

1 (2) Establishing requirements for netting and other handling of
2 bees in transit;

3 (3) Prescribing bee breeding procedures and standards to prevent
4 Africanization and permitting importation pursuant to the conditions
5 set forth in RCW 15.60.140;

6 (4) Establishing standards for certification of bees, bee hives,
7 and beekeeping equipment including but not limited to:

8 (a) Standards of colony strength for hives of bees for pollination
9 services;

10 (b) Standards for queen bee production and marketing;

11 (5) A beekeeper certification program that may provide for
12 decreased levels of inspection for those beekeepers whose apiaries
13 consistently have levels of disease within established tolerances;

14 (6) Establishing fees for inspection or certification services;

15 (7) Conducting such activities as may be otherwise necessary for
16 carrying out the purposes of this chapter.

17 NEW SECTION. **Sec. 320.** A new section is added to chapter 15.60
18 RCW to read as follows:

19 Rules adopted by the director or department to administer or
20 enforce this chapter shall be adopted in accordance with section 102 of
21 this act.

22 **Sec. 321.** RCW 15.76.180 and 1961 c 61 s 9 are each amended to read
23 as follows:

24 The director shall have the power to adopt, in accordance with
25 section 102 of this act, such rules (~~and regulations~~) as may be
26 necessary or appropriate to carry out the purposes of this chapter.

27 **Sec. 322.** RCW 15.80.410 and 1969 ex.s. c 100 s 12 are each amended
28 to read as follows:

29 The director shall enforce and carry out the provisions of this
30 chapter and may adopt the necessary rules to carry out its purpose.
31 The adoption of rules shall be subject to the provisions of section 102
32 of this act and chapter 34.05 RCW (administrative procedure act)(~~(, as~~
33 ~~enacted or hereafter amended, concerning the adoption of rules)~~).

34 **Sec. 323.** RCW 15.83.100 and 1989 c 355 s 11 are each amended to
35 read as follows:

1 The director may (~~promulgate~~) adopt such rules in accordance with
2 section 102 of this act and chapter 34.05 RCW, and orders, as may be
3 necessary to carry out this chapter.

4 **Sec. 324.** RCW 15.85.040 and 1985 c 457 s 7 are each amended to
5 read as follows:

6 The department shall adopt, in accordance with section 102 of this
7 act, rules (~~(under chapter 34.05 RCW)~~) to implement this chapter.

8 **Sec. 325.** RCW 15.86.060 and 1992 c 71 s 7 are each amended to read
9 as follows:

10 (1) The director shall adopt such rules (~~(and regulations)~~), in
11 conformity with (~~(chapter 34.05 RCW)~~) section 102 of this act, as the
12 director believes are appropriate for the proper administration of this
13 chapter.

14 (2) The director shall establish a list of approved substances that
15 may be used in the production, processing, and handling of organic
16 food. This list shall:

17 (a) Approve the use of natural substances except for specific
18 natural substances that may not be used in the production and handling
19 of agricultural products labeled as organic because these substances
20 would be harmful to human health or the environment and are
21 inconsistent with organic farming principles;

22 (b) Prohibit the use of synthetic substances except for specific
23 synthetic substances that may be used in the production and handling of
24 agricultural products labeled as organic because these substances:

25 (i) Would not be harmful to human health or the environment;

26 (ii) Are necessary to the production or handling of the
27 agricultural products;

28 (iii) Are consistent with organic farming principles; and

29 (iv) Are used in the production of agricultural products and
30 contain active synthetic ingredients in the following categories:
31 Copper and sulfur compounds; toxins derived from bacteria; pheromones;
32 soaps; horticultural oils; vitamins and minerals; livestock
33 parasiticides and medicines; and production aids including netting,
34 tree wraps and seals, insect traps, sticky barriers, row covers, and
35 equipment cleansers; or

36 (v) Are used in production and contain synthetic inert ingredients.

1 (3) The director shall issue orders to producers, processors, or
2 vendors whom he or she finds are violating any provision of this
3 chapter, or rules ((or regulations)) adopted under this chapter, to
4 cease their violations and desist from future violations. Whenever the
5 director finds that a producer, processor, or vendor has committed a
6 violation, the director shall impose on and collect from the violator
7 a civil fine not exceeding the total of the following amounts: (a) The
8 state's estimated costs of investigating and taking appropriate
9 administrative and enforcement actions in respect to the violation; and
10 (b) one thousand dollars.

11 (4) The director may deny, suspend, or revoke a certification
12 provided for in this chapter if he or she determines that an applicant
13 or certified person has violated this chapter or rules adopted under
14 it.

15 NEW SECTION. **Sec. 326.** A new section is added to chapter 16.36
16 RCW to read as follows:

17 Rules adopted by the director or department of agriculture under
18 this chapter shall be adopted in accordance with section 102 of this
19 act.

20 **Sec. 327.** RCW 16.49.680 and 1987 c 77 s 5 are each amended to read
21 as follows:

22 To ensure the sanitary slaughtering of meat food animals and
23 handling of meat and meat food products by licensees under this
24 chapter, the director may adopt such rules as the director finds
25 necessary to protect public health and safety. To ensure the
26 identification of meat food animals slaughtered by licensees and the
27 meat and meat food products handled by licensees, both as to ownership
28 and as to whether the product is uninspected meat or inspected meat,
29 the director may adopt such rules as the director finds necessary. The
30 director may also adopt such other rules as the director finds
31 necessary to carry out this chapter. Rules shall be adopted in
32 accordance with section 102 of this act.

33 **Sec. 328.** RCW 16.49A.640 and 1969 ex.s. c 145 s 53 are each
34 amended to read as follows:

35 The ((adoption of any rules and regulations under the provisions of
36 this chapter, or the)) holding of a hearing in regard to a license

1 issued or which may be issued under the provisions of this chapter
2 shall be subject to the applicable provisions of chapter 34.05 RCW, the
3 administrative procedure act(~~(, as enacted or hereafter amended)~~).
4 Rules adopted under this chapter shall be adopted in accordance with
5 section 102 of this act.

6 **Sec. 329.** RCW 16.49A.650 and 1969 ex.s. c 145 s 56 are each
7 amended to read as follows:

8 The repeal of chapter 16.49 RCW (meat inspection act) and the
9 enactment of this chapter shall not be deemed to have repealed any
10 rules adopted under chapter 16.49 RCW not in conflict with the
11 provisions of this chapter and relating to custom farm slaughterers,
12 and custom slaughtering establishments. For the purpose of this
13 chapter, it shall be deemed that such rules have been adopted under the
14 provisions of this chapter pursuant to chapter 34.05 RCW, as enacted or
15 hereafter amended concerning the adoption of rules. Any amendment or
16 repeal of such rules after the effective date of this chapter shall be
17 subject to the provisions of (~~chapter 34.05 RCW as enacted or~~
18 ~~hereafter amended,~~) section 102 of this act concerning the adoption of
19 rules.

20 **Sec. 330.** RCW 16.57.080 and 1994 c 46 s 16 are each amended to
21 read as follows:

22 The director shall establish by rule a schedule for the renewal of
23 registered brands. The fee for renewal of the brands shall be no less
24 than twenty-five dollars for each two-year period of brand ownership,
25 except that the director may, in adopting a renewal schedule, provide
26 for the collection of renewal fees on a prorated basis and may by rule
27 increase the registration and renewal fee for brands by no more than
28 fifty percent subsequent to a hearing under chapter 34.05 RCW and in
29 conformance with section 102 of this act and RCW 16.57.015. At least
30 sixty days before the expiration of a registered brand, the director
31 shall notify by letter the owner of record of the brand that on the
32 payment of the requisite application fee and application of renewal the
33 director shall issue the proof of payment allowing the brand owner
34 exclusive ownership and use of the brand for the subsequent
35 registration period. The failure of the registered owner to pay the
36 renewal fee by the date required by rule shall cause such owner's brand
37 to revert to the department. The director may for a period of one year

1 following such reversion, reissue such brand only to the prior
2 registered owner upon payment of the registration fee and a late filing
3 fee to be prescribed by the director by rule subsequent to a hearing
4 under chapter 34.05 RCW and in conformance with section 102 of this act
5 and RCW 16.57.015, for renewal subsequent to the regular renewal
6 period. The director may at the director's discretion, if such brand
7 is not reissued within one year to the prior registered owner, issue
8 such brand to any other applicant.

9 **Sec. 331.** RCW 16.57.090 and 1994 c 46 s 17 are each amended to
10 read as follows:

11 A brand is the personal property of the owner of record. Any
12 instrument affecting the title of such brand shall be acknowledged in
13 the presence of the recorded owner and a notary public. The director
14 shall record such instrument upon presentation and payment of a
15 recording fee not to exceed fifteen dollars to be prescribed by the
16 director by rule subsequent to a hearing under chapter 34.05 RCW and in
17 conformance with section 102 of this act and RCW 16.57.015. Such
18 recording shall be constructive notice to all the world of the
19 existence and conditions affecting the title to such brand. A copy of
20 all records concerning the brand, certified by the director, shall be
21 received in evidence to all intent and purposes as the original
22 instrument. The director shall not be personally liable for failure of
23 the director's agents to properly record such instrument.

24 **Sec. 332.** RCW 16.57.140 and 1994 c 46 s 18 are each amended to
25 read as follows:

26 The owner of a brand of record may procure from the director a
27 certified copy of the record of the owner's brand upon payment of a fee
28 not to exceed seven dollars and fifty cents to be prescribed by the
29 director by rule subsequent to a hearing under chapter 34.05 RCW and in
30 conformance with section 102 of this act and RCW 16.57.015.

31 **Sec. 333.** RCW 16.57.220 and 1994 c 46 s 19 are each amended to
32 read as follows:

33 The director shall cause a charge to be made for all brand
34 inspection of cattle and horses required under this chapter and rules
35 adopted hereunder. Such charges shall be paid to the department by the
36 owner or person in possession unless requested by the purchaser and

1 then such brand inspection shall be paid by the purchaser requesting
2 such brand inspection. Such inspection charges shall be due and
3 payable at the time brand inspection is performed and shall be paid
4 upon billing by the department and if not shall constitute a prior lien
5 on the cattle or cattle hides or horses or horse hides brand inspected
6 until such charge is paid. The director in order to best utilize the
7 services of the department in performing brand inspection may establish
8 schedules by days and hours when a brand inspector will be on duty to
9 perform brand inspection at established inspection points. The fees
10 for brand inspection shall be not less than fifty cents nor more than
11 seventy-five cents per head for cattle and not less than two dollars
12 nor more than three dollars per head for horses as prescribed by the
13 director by rule subsequent to a hearing under chapter 34.05 RCW and in
14 conformance with section 102 of this act and RCW 16.57.015. Fees for
15 brand inspection of cattle and horses performed by the director at
16 points other than those designated by the director or not in accord
17 with the schedules established by the director shall be based on a fee
18 schedule not to exceed actual net cost to the department of performing
19 the brand inspection service. For the purpose of this section, actual
20 costs shall mean fifteen dollars per hour and the current mileage rate
21 set by the office of financial management.

22 **Sec. 334.** RCW 16.57.220 and 1994 c 46 s 25 and 1994 c 46 s 19 are
23 each reenacted and amended to read as follows:

24 The director shall cause a charge to be made for all brand
25 inspection of cattle and horses required under this chapter and rules
26 adopted hereunder. Such charges shall be paid to the department by the
27 owner or person in possession unless requested by the purchaser and
28 then such brand inspection shall be paid by the purchaser requesting
29 such brand inspection. Such inspection charges shall be due and
30 payable at the time brand inspection is performed and shall be paid
31 upon billing by the department and if not shall constitute a prior lien
32 on the cattle or cattle hides or horses or horse hides brand inspected
33 until such charge is paid. The director in order to best utilize the
34 services of the department in performing brand inspection may establish
35 schedules by days and hours when a brand inspector will be on duty to
36 perform brand inspection at established inspection points. The fees
37 for brand inspection performed at inspection points according to
38 schedules established by the director shall be sixty cents per head for

1 cattle and not more than two dollars and forty cents per head for
2 horses as prescribed by the director subsequent to a hearing under
3 chapter 34.05 RCW and in conformance with section 102 of this act and
4 RCW 16.57.015. Fees for brand inspection of cattle and horses
5 performed by the director at points other than those designated by the
6 director or not in accord with the schedules established by the
7 director shall be based on a fee schedule not to exceed actual net cost
8 to the department of performing the brand inspection service. For the
9 purpose of this section, actual costs shall mean fifteen dollars per
10 hour and the current mileage rate set by the office of financial
11 management.

12 **Sec. 335.** RCW 16.57.400 and 1994 c 46 s 20 are each amended to
13 read as follows:

14 The director may provide by rules (~~and regulations~~) adopted
15 pursuant to section 102 of this act and chapter 34.05 RCW for the
16 issuance of individual horse and cattle identification certificates or
17 other means of horse and cattle identification deemed appropriate.
18 Such certificates or other means of identification shall be valid only
19 for the use of the horse and cattle owner in whose name it is issued.

20 Horses and cattle identified pursuant to the provisions of this
21 section and the rules (~~and regulations~~) adopted hereunder shall not
22 be subject to brand inspection except when sold at points provided for
23 in RCW 16.57.380. The director shall charge a fee for the certificates
24 or other means of identification authorized pursuant to this section
25 and no identification shall be issued until the director has received
26 the fee. The schedule of fees shall be established in accordance with
27 the provisions of section 102 of this act and chapter 34.05 RCW.

28 **Sec. 336.** RCW 16.57.410 and 1993 c 354 s 11 are each amended to
29 read as follows:

30 (1) No person may act as a registering agency without a permit
31 issued by the department. The director may issue a permit to any
32 person or organization to act as a registering agency for the purpose
33 of issuing permanent identification symbols for horses in a manner
34 prescribed by the director. Application for such permit, or the
35 renewal thereof by January 1 of each year, shall be on a form
36 prescribed by the director, and accompanied by the proof of

1 registration to be issued, any other documents required by the
2 director, and a fee of one hundred dollars.

3 (2) Each registering agency shall maintain a permanent record for
4 each individual identification symbol. The record shall include, but
5 need not be limited to, the name, address, and phone number of the
6 horse owner and a general description of the horse. A copy of each
7 permanent record shall be forwarded to the director, if requested by
8 the director.

9 (3) Individual identification symbols shall be inspected as
10 required for brands under RCW 16.57.220 and 16.57.380. Any horse
11 presented for inspection and bearing such a symbol, but not accompanied
12 by proof of registration and certificate of permit, shall be sold as
13 provided under RCW 16.57.290 through 16.57.330.

14 (4) The director shall adopt such rules as are necessary for the
15 effective administration of this section pursuant to section 102 of
16 this act and chapter 34.05 RCW.

17 **Sec. 337.** RCW 16.58.030 and 1971 ex.s. c 181 s 3 are each amended
18 to read as follows:

19 The director may adopt such rules ~~((and regulations))~~ as are
20 necessary to carry out the purpose of this chapter. The ~~((adoption of~~
21 ~~such))~~ rules shall be ~~((subject to the provisions of this chapter and~~
22 ~~rules and regulations adopted hereunder))~~ adopted in accordance with
23 section 102 of this act. No person shall interfere with the director
24 when he or she is performing or carrying out any duties imposed upon
25 him or her by this chapter or rules ~~((and regulations))~~ adopted
26 ~~((hereunder))~~ under it.

27 **Sec. 338.** RCW 16.58.050 and 1994 c 46 s 14 are each amended to
28 read as follows:

29 The application for an annual license to engage in the business of
30 operating one or more certified feed lots shall be accompanied by a
31 license fee of no less than five hundred dollars or no more than seven
32 hundred fifty dollars. The actual license fee for a certified feed lot
33 license shall be prescribed by the director by rule subsequent to a
34 hearing under chapter 34.05 RCW and in conformance with section 102 of
35 this act and RCW 16.57.015. Upon approval of the application by the
36 director and compliance with the provisions of this chapter and rules

1 adopted ((hereunder)) under it, the applicant shall be issued a license
2 or a renewal thereof.

3 **Sec. 339.** RCW 16.58.130 and 1994 c 46 s 15 are each amended to
4 read as follows:

5 Each licensee shall pay to the director a fee of no less than ten
6 cents but no more than fifteen cents for each head of cattle handled
7 through the licensee's feed lot. The fee shall be set by the director
8 by rule after a hearing under chapter 34.05 RCW and in conformance with
9 section 102 of this act and RCW 16.57.015. Payment of such fee shall
10 be made by the licensee on a monthly basis. Failure to pay as required
11 shall be grounds for suspension or revocation of a certified feed lot
12 license. Further, the director shall not renew a certified feed lot
13 license if a licensee has failed to make prompt and timely payments.

14 **Sec. 340.** RCW 16.65.020 and 1983 c 298 s 5 are each amended to
15 read as follows:

16 Public livestock markets and special open consignment horse sales
17 shall be under the direction and supervision of the director, and the
18 director, but not his or her duly authorized representative, may adopt,
19 in accordance with section 102 of this act, such rules ((and
20 regulations)) as are necessary to carry out the purpose of this
21 chapter. It shall be the duty of the director to enforce and carry out
22 the provisions of this chapter and rules ((and regulations)) adopted
23 ((hereunder)) under it. No person shall interfere with the director
24 when he or she is performing or carrying out any duties imposed upon
25 him or her by this chapter or rules ((and regulations)) adopted
26 ((hereunder)) under it.

27 **Sec. 341.** RCW 16.65.030 and 1994 c 46 s 12 are each amended to
28 read as follows:

29 (1) On and after June 10, 1959, no person shall operate a public
30 livestock market without first having obtained a license from the
31 director. Application for such license or renewal thereof shall be in
32 writing on forms prescribed by the director, and shall include the
33 following:

34 (a) A legal description of the property upon which the public
35 livestock market shall be located.

1 (b) A complete description and blueprints or plans of the public
2 livestock market physical plant, yards, pens, and all facilities the
3 applicant proposes to use in the operation of such public livestock
4 market.

5 (c) A detailed statement showing all the assets and liabilities of
6 the applicant which must reflect a sufficient net worth to construct or
7 operate a public livestock market.

8 (d) The schedule of rates and charges the applicant proposes to
9 impose on the owners of livestock for services rendered in the
10 operation of such livestock market.

11 (e) The weekly or monthly sales day or days on which the applicant
12 proposes to operate his or her public livestock market sales.

13 (f) Projected source and quantity of livestock, by county,
14 anticipated to be handled.

15 (g) Projected income and expense statements for the first year's
16 operation.

17 (h) Facts upon which are based the conclusion that the trade area
18 and the livestock industry will benefit because of the proposed market.

19 (i) Such other information as the director may reasonably require.

20 (2) The director shall, after public hearing as provided by chapter
21 34.05 RCW, grant or deny an application for original license for a
22 public livestock market after considering evidence and testimony
23 relating to all of the requirements of this section and giving
24 reasonable consideration at the same hearing to:

25 (a) Benefits to the livestock industry to be derived from the
26 establishment and operation of the public livestock market proposed in
27 the application; and

28 (b) The present market services elsewhere available to the trade
29 area proposed to be served.

30 (3) Such application shall be accompanied by a license fee based on
31 the average gross sales volume per official sales day of that market:

32 (a) Markets with an average gross sales volume up to and including
33 ten thousand dollars, a fee of no less than one hundred dollars or more
34 than one hundred fifty dollars;

35 (b) Markets with an average gross sales volume over ten thousand
36 dollars and up to and including fifty thousand dollars, a fee of no
37 less than two hundred dollars or more than three hundred fifty dollars;
38 and

1 (c) Markets with an average gross sales volume over fifty thousand
2 dollars, a fee of no less than three hundred dollars or more than four
3 hundred fifty dollars.

4 The fees for public livestock market licensees shall be set by the
5 director by rule subsequent to a hearing under chapter 34.05 RCW and in
6 conformance with section 102 of this act and RCW 16.57.015.

7 (4) Any applicant operating more than one public livestock market
8 shall make a separate application for a license to operate each such
9 public livestock market, and each such application shall be accompanied
10 by the appropriate license fee.

11 (5) Upon the approval of the application by the director and
12 compliance with the provisions of this chapter, the applicant shall be
13 issued a license or renewal thereof. Any license issued under the
14 provisions of this chapter shall only be valid at location and for the
15 sales day or days for which the license was issued.

16 **Sec. 342.** RCW 16.65.090 and 1994 c 46 s 13 are each amended to
17 read as follows:

18 The director shall provide for brand inspection. When such brand
19 inspection is required the licensee shall collect from the consignor
20 and pay to the department, as provided by law, a fee for brand
21 inspection for each animal consigned to the public livestock market or
22 special open consignment horse sale. The director shall set by rule,
23 adopted after a hearing under chapter 34.05 RCW and in conformance with
24 section 102 of this act and RCW 16.57.015, a minimum daily inspection
25 fee that shall be paid to the department by the licensee. Such a fee
26 shall be not less than sixty dollars and not more than ninety dollars.

27 **Sec. 343.** RCW 16.68.170 and 1949 c 100 s 17 are each amended to
28 read as follows:

29 The director is authorized and shall make and enforce such
30 ~~((regulations))~~ rules as may be necessary to effectuate the provisions
31 of this chapter. Such ~~((regulations))~~ rules shall be ~~((consistent with
32 the provisions of this chapter))~~ adopted in accordance with section 102
33 of this act.

34 **Sec. 344.** RCW 16.74.590 and 1969 ex.s. c 146 s 56 are each amended
35 to read as follows:

1 The (~~adoption of any rules and regulations under the provisions of~~
2 ~~this chapter, or the~~) holding of a hearing in regard to a license
3 issued or which may be issued under the provisions of this chapter
4 shall be subject to the applicable provisions of chapter 34.05 RCW, the
5 administrative procedure act(~~(, as now or hereafter amended)~~). Rules
6 adopted under this chapter shall be adopted in accordance with section
7 102 of this act.

8 **Sec. 345.** RCW 17.10.074 and 1987 c 438 s 7 are each amended to
9 read as follows:

10 (1) In addition to the powers conferred on the director under other
11 provisions of this chapter, the director shall, with the advice of the
12 state noxious weed control board, have power to:

13 (a) Require the county legislative authority or the noxious weed
14 control board of any county or any weed district to report to it
15 concerning the presence, absence, or estimated amount of noxious weeds
16 and measures, if any, taken or planned for the control thereof;

17 (b) Employ such staff as may be necessary in the administration of
18 this chapter;

19 (c) Adopt, amend, change, or repeal such rules, pursuant to the
20 administrative procedure act(~~(7)~~) (chapter 34.05 RCW)(~~(7)~~) and section
21 102 of this act as may be necessary to carry out this chapter;

22 (d) Do such things as may be necessary and incidental to the
23 administration of its functions pursuant to this chapter including but
24 not limited to surveying for and detecting noxious weed infestations;

25 (e) Upon receipt of a complaint signed by a majority of the members
26 of an adjacent county noxious weed control board or weed district,
27 require the county legislative authority or noxious weed control board
28 of the county or weed district that is the subject of the complaint to
29 respond to the complaint within forty-five days with a plan for the
30 control of the noxious weeds cited in the complaint;

31 (f) If the complaint in subsection (e) of this section involves a
32 class A or class B noxious weed, order the county legislative
33 authority, noxious weed control board, or weed district to take
34 immediate action to eradicate or control the noxious weed infestation.
35 If the county or the weed district does not take action to control the
36 noxious weed infestation in accordance with the order, the director may
37 control it or cause it to be controlled. The county or weed district
38 shall be liable for payment of the expense of the control work

1 including necessary costs and expenses for attorneys' fees incurred by
2 the director in securing payment from the county or weed district;

3 (g) In counties which have not activated their noxious weed control
4 board, enter upon any property as provided for in RCW 17.10.160, issue
5 or cause to be issued notices and citations and take the necessary
6 action to control noxious weeds as provided in RCW 17.10.170, hold
7 hearings on any charge or cost of control action taken as provided for
8 in RCW 17.10.180, issue a notice of civil infraction as provided for in
9 RCW 17.10.230, and 17.10.310 through 17.10.350, and place a lien on any
10 property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the
11 same authorities and responsibilities imposed by these sections on
12 county noxious weed control boards;

13 (h) Adopt a list of noxious weed seeds and toxic weeds which shall
14 be controlled in designated articles, products, or feed stuffs as
15 provided for in RCW 17.10.235.

16 (2) The moneys appropriated for noxious weed control to the
17 department shall be used for administration of the state noxious weed
18 control board for determining the economic impact of noxious weeds in
19 the state of Washington, the purchase of materials for controlling,
20 containing, or eradicating noxious weeds, the purchase or collection of
21 biological control agents for controlling noxious weeds, and the
22 contracting for services to carry out the purposes of this chapter. In
23 a county with an activated noxious weed control board, the director
24 shall make every effort to contract with that board for the needed
25 services.

26 (3) If the director determines the need to reallocate funds
27 previously designated for county use, the director shall convene a
28 meeting of the state noxious weed control board to seek its advice
29 concerning any reallocation.

30 **Sec. 346.** RCW 17.10.260 and 1987 c 438 s 33 are each amended to
31 read as follows:

32 The administrative powers granted under this chapter to the
33 (~~director of the department of agriculture and to the~~) state noxious
34 weed control board shall be exercised in conformity with the provisions
35 of the administrative procedure act, chapter 34.05 RCW(~~, as now or~~
36 ~~hereafter amended~~). The powers granted to the director shall be
37 exercised in accordance with section 102 of this act. The use of any
38 substance to control noxious weeds shall be subject to the provisions

1 of the water pollution control act, chapter 90.48 RCW, as now or
2 hereafter amended, the Washington pesticide control act, chapter 15.58
3 RCW, and the Washington pesticide application act, chapter 17.21 RCW.

4 **Sec. 347.** RCW 17.21.040 and 1989 c 380 s 35 are each amended to
5 read as follows:

6 All rules adopted under the provisions of this chapter shall be
7 subject to the provisions of (~~chapter 34.05 RCW as enacted or~~
8 ~~hereafter amended,~~) section 102 of this act concerning the adoption of
9 rules.

10 **Sec. 348.** RCW 17.24.021 and 1991 c 257 s 6 are each amended to
11 read as follows:

12 (1) The director may intercept and hold or order held for
13 inspection, or cause to be inspected while in transit or after arrival
14 at their destination, all plants, plant products, bees, or other
15 articles likely to carry plant pests, bee pests, or noxious weeds being
16 moved into this state from another state, territory, or a foreign
17 country or within or through this state for plant and bee pests and
18 disease.

19 (2) The director may enter upon public and private premises at
20 reasonable times for the purpose of carrying out this chapter. If the
21 director be denied access, the director may apply to any court of
22 competent jurisdiction for a search warrant authorizing access to such
23 premises. The court may upon such application issue the search warrant
24 for the purposes requested.

25 (3) The director (~~may~~) shall adopt rules in accordance with
26 section 102 of this act and chapter 34.05 RCW as may be necessary to
27 carry out the purposes and provisions of this chapter.

28 NEW SECTION. **Sec. 349.** A new section is added to chapter 19.94
29 RCW to read as follows:

30 Rules adopted by the director or department under this chapter
31 shall be adopted in accordance with section 102 of this act.

32 NEW SECTION. **Sec. 350.** A new section is added to chapter 19.112
33 RCW to read as follows:

1 Rules adopted by the director or department of agriculture under
2 this chapter shall be adopted in accordance with section 102 of this
3 act.

4 **Sec. 351.** RCW 20.01.020 and 1959 c 139 s 2 are each amended to
5 read as follows:

6 The director, but not his or her duly authorized representative,
7 may adopt, in accordance with section 102 of this act, such rules (~~and~~
8 ~~regulations~~) as are necessary to carry out the purpose of this
9 chapter. It shall be the duty of the director to enforce and carry out
10 the provisions of this chapter(~~(7)~~) and rules (~~and regulations~~)
11 adopted (~~hereunder~~) under it. No person shall interfere with the
12 director when he or she is performing or carrying out duties imposed on
13 him or her by this chapter(~~(7)~~) or rules (~~and regulations~~) adopted
14 (~~hereunder~~) under it.

15 **Sec. 352.** RCW 22.09.011 and 1994 c 46 s 3 are each amended to read
16 as follows:

17 The definitions set forth in this section apply throughout this
18 chapter unless the context clearly requires otherwise.

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

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

23 (3) "Person" means a natural person, individual, firm, partnership,
24 corporation, company, society, association, cooperative, two or more
25 persons having a joint or common interest, or any unit or agency of
26 local, state, or federal government.

27 (4) "Agricultural commodities," or "commodities," means: (a)
28 Grains for which inspection standards have been established under the
29 United States grain standards act; (b) pulses and similar commodities
30 for which inspection standards have been established under the
31 agricultural marketing act of 1946; and (c) other similar agricultural
32 products for which inspection standards have been established or which
33 have been otherwise designated by the department by rule for inspection
34 services or the warehousing requirements of this chapter.

35 (5) "Warehouse," also referred to as a public warehouse, means any
36 elevator, mill, subterminal grain warehouse, terminal warehouse,
37 country warehouse, or other structure or enclosure located in this

1 state that is used or useable for the storage of agricultural products,
2 and in which commodities are received from the public for storage,
3 handling, conditioning, or shipment for compensation. The term does
4 not include any warehouse storing or handling fresh fruits and/or
5 vegetables, any warehouse used exclusively for cold storage, or any
6 warehouse that conditions yearly less than three hundred tons of an
7 agricultural commodity for compensation.

8 (6) "Terminal warehouse" means any warehouse designated as a
9 terminal by the department, and located at an inspection point where
10 inspection facilities are maintained by the department and where
11 commodities are ordinarily received and shipped by common carrier.

12 (7) "Subterminal warehouse" means any warehouse that performs an
13 intermediate function in which agricultural commodities are customarily
14 received from dealers rather than producers and where the commodities
15 are accumulated before shipment to a terminal warehouse.

16 (8) "Station" means two or more warehouses between which
17 commodities are commonly transferred in the ordinary course of business
18 and that are (a) immediately adjacent to each other, or (b) located
19 within the corporate limits of any city or town and subject to the same
20 transportation tariff zone, or (c) at any railroad siding or switching
21 area and subject to the same transportation tariff zone, or (d) at one
22 location in the open country off rail, or (e) in any area that can be
23 reasonably audited by the department as a station under this chapter
24 and that has been established as such by the director by rule (~~adopted~~
25 ~~under chapter 34.05 RCW~~), or (f) within twenty miles of each other but
26 separated by the border between Washington and Idaho or Oregon when the
27 books and records for the station are maintained at the warehouse
28 located in Washington.

29 (9) "Inspection point" means a city, town, or other place wherein
30 the department maintains inspection and weighing facilities.

31 (10) "Warehouseman" means any person owning, operating, or
32 controlling a warehouse in the state of Washington.

33 (11) "Depositor" means (a) any person who deposits a commodity with
34 a Washington state licensed warehouseman for storage, handling,
35 conditioning, or shipment, or (b) any person who is the owner or legal
36 holder of a warehouse receipt, outstanding scale weight ticket, or
37 other evidence of the deposit of a commodity with a Washington state
38 licensed warehouseman or (c) any producer whose agricultural commodity
39 has been sold to a grain dealer through the dealer's place of business

1 located in the state of Washington, or any Washington producer whose
2 agricultural commodity has been sold to or is under the control of a
3 grain dealer, whose place of business is located outside the state of
4 Washington.

5 (12) "Historical depositor" means any person who in the normal
6 course of business operations has consistently made deposits in the
7 same warehouse of commodities produced on the same land. In addition
8 the purchaser, lessee, and/or inheritor of such land from the original
9 historical depositor with reference to the land shall be considered a
10 historical depositor with regard to the commodities produced on the
11 land.

12 (13) "Grain dealer" means any person who, through his place of
13 business located in the state of Washington, solicits, contracts for,
14 or obtains from a producer, title, possession, or control of any
15 agricultural commodity for purposes of resale, or any person who
16 solicits, contracts for, or obtains from a Washington producer, title,
17 possession, or control of any agricultural commodity for purposes of
18 resale.

19 (14) "Producer" means any person who is the owner, tenant, or
20 operator of land who has an interest in and is entitled to receive all
21 or any part of the proceeds from the sale of a commodity produced on
22 that land.

23 (15) "Warehouse receipt" means a negotiable or nonnegotiable
24 warehouse receipt as provided for in Article 7 of Title 62A RCW.

25 (16) "Scale weight ticket" means a load slip or other evidence of
26 deposit, serially numbered, not including warehouse receipts as defined
27 in subsection (15) of this section, given a depositor on request upon
28 initial delivery of the commodity to the warehouse and showing the
29 warehouse's name and state number, type of commodity, weight thereof,
30 name of depositor, and the date delivered.

31 (17) "Put through" means agricultural commodities that are
32 deposited in a warehouse for receiving, handling, conditioning, or
33 shipping, and on which the depositor has concluded satisfactory
34 arrangements with the warehouseman for the immediate or impending
35 shipment of the commodity.

36 (18) "Conditioning" means, but is not limited to, the drying or
37 cleaning of agricultural commodities.

38 (19) "Deferred price contract" means a contract for the sale of
39 commodities that conveys the title and all rights of ownership to the

1 commodities represented by the contract to the buyer, but allows the
2 seller to set the price of the commodities at a later date based on an
3 agreed upon relationship to a future month's price or some other
4 mutually agreeable method of price determination. Deferred price
5 contracts include but are not limited to those contracts commonly
6 referred to as delayed price, price later contracts, or open price
7 contracts.

8 (20) "Shortage" means that a warehouseman does not have in his
9 possession sufficient commodities at each of his stations to cover the
10 outstanding warehouse receipts, scale weight tickets, or other evidence
11 of storage liability issued or assumed by him for the station.

12 (21) "Failure" means:

13 (a) An inability to financially satisfy claimants in accordance
14 with this chapter and the time limits provided for in it;

15 (b) A public declaration of insolvency;

16 (c) A revocation of license and the leaving of an outstanding
17 indebtedness to a depositor;

18 (d) A failure to redeliver any commodity to a depositor or to pay
19 depositors for commodities purchased by a licensee in the ordinary
20 course of business and where a bona fide dispute does not exist between
21 the licensee and the depositor;

22 (e) A failure to make application for license renewal within sixty
23 days after the annual license renewal date; or

24 (f) A denial of the application for a license renewal.

25 (22) "Original inspection" means an initial, official inspection of
26 a grain or commodity.

27 (23) "Reinspection" means an official review of the results of an
28 original inspection service by an inspection office that performed that
29 original inspection service. A reinspection may be performed either on
30 the basis of the official file sample or a new sample obtained by the
31 same means as the original if the lot remains intact.

32 (24) "Appeal inspection" means, for commodities covered by federal
33 standards, a review of original inspection or reinspection results by
34 an authorized United States department of agriculture inspector. For
35 commodities covered under state standards, an appeal inspection means
36 a review of original or reinspection results by a supervising
37 inspector. An appeal inspection may be performed either on the basis
38 of the official file sample or a new sample obtained by the same means
39 as the original if the lot remains intact.

1 (25) "Exempt grain dealer" means a grain dealer who purchases less
2 than one hundred thousand dollars of covered commodities annually from
3 producers, and operates under the provisions of RCW 22.09.060.

4 **Sec. 353.** RCW 22.09.020 and 1989 c 354 s 45 are each amended to
5 read as follows:

6 The department shall administer and carry out the provisions of
7 this chapter and rules adopted hereunder, and it has the power and
8 authority to:

9 (1) Supervise the receiving, handling, conditioning, weighing,
10 storage, and shipping of all commodities;

11 (2) Supervise the inspection and grading of commodities;

12 (3) Approve or disapprove the facilities, including scales, of all
13 warehouses;

14 (4) Approve or disapprove all rates and charges for the handling,
15 storage, and shipment of all commodities;

16 (5) Investigate all complaints of fraud in the operation of any
17 warehouse;

18 (6) Examine, inspect, and audit, during ordinary business hours,
19 any warehouse licensed under this chapter, including all commodities
20 therein and examine, inspect, audit, or record all books, documents,
21 and records;

22 (7) Examine, inspect, and audit during ordinary business hours, all
23 books, documents, and records, and examine, inspect, audit, or record
24 records of any grain dealer licensed hereunder at the grain dealer's
25 principal office or headquarters;

26 (8) Inspect at reasonable times any warehouse or storage facility
27 where commodities are received, handled, conditioned, stored, or
28 shipped, including all commodities stored therein and all books,
29 documents, and records in order to determine whether or not such
30 facility should be licensed pursuant to this chapter;

31 (9) Inspect at reasonable times any grain dealer's books,
32 documents, and records in order to determine whether or not the grain
33 dealer should be licensed under this chapter;

34 (10) Administer oaths and issue subpoenas to compel the attendance
35 of witnesses, and/or the production of books, documents, and records
36 anywhere in the state pursuant to a hearing relative to the purpose and
37 provisions of this chapter. Witnesses shall be entitled to fees for
38 attendance and travel, as provided in chapter 2.40 RCW;

1 (11) Adopt rules establishing inspection standards and procedures
2 for grains and commodities;

3 (12) Adopt rules regarding the identification of commodities by the
4 use of confetti or other similar means so that such commodities may be
5 readily identified if stolen or removed in violation of the provisions
6 of this chapter from a warehouse or if otherwise unlawfully
7 transported;

8 (13) Adopt all the necessary rules for carrying out the purpose and
9 provisions of this chapter. The adoption of rules under the provisions
10 of this chapter shall be subject to the provisions of section 102 of
11 this act and chapter 34.05 RCW, the administrative procedure act. When
12 adopting rules in respect to the provisions of this chapter, the
13 director shall hold a public hearing and shall to the best of his
14 ability consult with persons and organizations or interests who will be
15 affected thereby, and any final rule adopted as a result of the hearing
16 shall be designed to promote the provisions of this chapter and shall
17 be reasonable and necessary and based upon needs and conditions of the
18 industry, and shall be for the purpose of promoting the well-being of
19 the industry to be regulated and the general welfare of the people of
20 the state.

21 **Sec. 354.** RCW 22.09.040 and 1987 c 393 s 17 are each amended to
22 read as follows:

23 Application for a license to operate a warehouse under the
24 provisions of this chapter shall be on a form prescribed by the
25 department and shall include:

26 (1) The full name of the person applying for the license and
27 whether the applicant is an individual, partnership, association,
28 corporation, or other entity;

29 (2) The full name of each member of the firm or partnership, or the
30 names of the officers of the company, society, cooperative association,
31 or corporation;

32 (3) The principal business address of the applicant in the state
33 and elsewhere;

34 (4) The name or names of the person or persons authorized to
35 receive and accept service of summons and legal notices of all kinds
36 for the applicant;

37 (5) Whether the applicant has also applied for or has been issued
38 a grain dealer license under the provisions of this chapter;

1 (6) The location of each warehouse the applicant intends to operate
2 and the location of the headquarters or main office of the applicant;

3 (7) The bushel storage capacity of each such warehouse to be
4 licensed;

5 (8) The schedule of fees to be charged at each warehouse for the
6 handling, conditioning, storage, and shipment of all commodities during
7 the licensing period;

8 (9) A financial statement to determine the net worth of the
9 applicant to determine whether or not the applicant meets the minimum
10 net worth requirements established by the director (~~pursuant to~~
11 ~~chapter 34.05 RCW~~) by rule. All financial statement information
12 required by this subsection shall be confidential information not
13 subject to public disclosure;

14 (10) Whether the application is for a terminal, subterminal, or
15 country warehouse license;

16 (11) Whether the applicant has previously been denied a grain
17 dealer or warehouseman license or whether the applicant has had either
18 license suspended or revoked by the department;

19 (12) Any other reasonable information the department finds
20 necessary to carry out the purpose and provisions of this chapter.

21 **Sec. 355.** RCW 22.09.045 and 1987 c 393 s 18 are each amended to
22 read as follows:

23 Application for a license to operate as a grain dealer under the
24 provisions of this chapter shall be on a form prescribed by the
25 department and shall include:

26 (1) The full name of the person applying for the license and
27 whether the applicant is an individual, partnership, association,
28 corporation, or other entity;

29 (2) The full name of each member of the firm or partnership, or the
30 names of the officers of the company, society, cooperative association,
31 or corporation;

32 (3) The principal business address of the applicant in the state
33 and elsewhere;

34 (4) The name or names of the person or persons in this state
35 authorized to receive and accept service of summons and legal notices
36 of all kinds for the applicant;

37 (5) Whether the applicant has also applied for or has been issued
38 a warehouse license under this chapter;

1 (6) The location of each business location from which the applicant
2 intends to operate as a grain dealer in the state of Washington whether
3 or not the business location is physically within the state of
4 Washington, and the location of the headquarters or main office of the
5 application;

6 (7) A financial statement to determine the net worth of the
7 applicant to determine whether or not the applicant meets the minimum
8 net worth requirements established by the director under chapter 34.05
9 RCW. However, if the applicant is a subsidiary of a larger company,
10 corporation, society, or cooperative association, both the parent
11 company and the subsidiary company must submit a financial statement to
12 determine whether or not the applicant meets the minimum net worth
13 requirements established by the director (~~(under chapter 34.05 RCW)~~) by
14 rule. All financial statement information required by this subsection
15 shall be confidential information not subject to public disclosure;

16 (8) Whether the applicant has previously been denied a grain dealer
17 or warehouseman license or whether the applicant has had either license
18 suspended or revoked by the department;

19 (9) Any other reasonable information the department finds necessary
20 to carry out the purpose and provisions of this chapter.

21 **Sec. 356.** RCW 69.04.398 and 1991 c 162 s 5 are each amended to
22 read as follows:

23 (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and
24 69.04.396 is to promote uniformity of state legislation and rules with
25 the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and
26 regulations adopted thereunder. In accord with such declared purpose
27 any regulation adopted under said federal food, drug and cosmetic act
28 concerning food in effect on July 1, 1975, and not adopted under any
29 other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and
30 69.04.396 are hereby deemed to have been adopted under the provision
31 hereof. Further, to promote such uniformity any regulation adopted
32 hereafter under the provisions of the federal food, drug and cosmetic
33 act concerning food and published in the federal register shall be
34 deemed to have been adopted under the provisions of RCW 69.04.110,
35 69.04.392, 69.04.394, and 69.04.396 in accord with (~~chapter 34.05 RCW~~
36 ~~as enacted or hereafter amended~~) section 102 of this act. The
37 director may, however, within thirty days of the publication of the
38 adoption of any such regulation under the federal food, drug and

1 cosmetic act give public notice that a hearing will be held to
2 determine if such regulation shall not be applicable under the
3 provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such
4 hearing shall be in accord with the requirements of chapter 34.05 RCW
5 as enacted or hereafter amended.

6 (2) The provisions of subsection (1) of this section do not apply
7 to rules adopted by the director as necessary to permit the production
8 of kosher food products as defined in RCW 69.90.010.

9 (3) Notwithstanding the provisions of subsections (1) and (2) of
10 this section the director may adopt rules necessary to carry out the
11 provisions of this chapter.

12 **Sec. 357.** RCW 69.04.761 and 1963 c 198 s 13 are each amended to
13 read as follows:

14 The director shall hold a public hearing upon a proposal to
15 ~~((promulgate))~~ adopt any new or amended ~~((regulation))~~ rule under this
16 chapter. ~~((The procedure to be followed concerning such hearings shall
17 comply in all respects with chapter 34.05 RCW (Administrative Procedure
18 Act) as now enacted or hereafter amended.))~~ Rules adopted under this
19 chapter shall be adopted in accordance with section 102 of this act.

20 **Sec. 358.** RCW 69.07.070 and 1967 ex.s. c 121 s 7 are each amended
21 to read as follows:

22 The ~~((adoption of any rules and regulations under the provisions of
23 this chapter, or the))~~ holding of a hearing in regard to a license
24 issued or which may be issued under the provisions of this chapter
25 shall be subject to the applicable provisions of chapter 34.05 RCW, the
26 administrative procedure act ~~((, as enacted or hereafter amended))~~.
27 Rules adopted under this chapter shall be adopted in accordance with
28 section 102 of this act.

29 **Sec. 359.** RCW 69.25.030 and 1975 1st ex.s. c 201 s 4 are each
30 amended to read as follows:

31 The purpose of this chapter is to promote uniformity of state
32 legislation and ~~((regulations))~~ rules with the federal egg products
33 inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted
34 thereunder. In accord with such declared purpose, any regulations
35 adopted under the federal egg products inspection act relating to eggs
36 and egg products, as defined in RCW 69.25.020 (11) and (12), in effect

1 on July 1, 1975, are hereby deemed to have been adopted under the
2 provisions hereof. Further, to promote such uniformity, any
3 regulations adopted hereafter under the provisions of the federal egg
4 products inspection act relating to eggs and egg products, as defined
5 in RCW 69.25.020 (11) and (12), and published in the federal register,
6 shall be deemed to have been adopted under the provisions of this
7 chapter in accord with (~~chapter 34.05 RCW, as now or hereafter~~
8 ~~amended~~) section 102 of this act. The director may, however, within
9 thirty days of the publication of the adoption of any such regulation
10 under the federal egg products inspection act, give public notice that
11 a hearing will be held to determine if such regulations shall not be
12 applicable under the provisions of this chapter. Such hearing shall be
13 in accord with the requirements of chapter 34.05 RCW(~~, as now or~~
14 ~~hereafter amended~~)).

15 The director, in addition to the foregoing, may adopt ((~~any~~)) rules
16 ((~~and regulation~~)) necessary to carry out the purpose and provisions of
17 this chapter in accordance with section 102 of this act.

18 **Sec. 360.** RCW 69.25.040 and 1975 1st ex.s. c 201 s 5 are each
19 amended to read as follows:

20 The (~~adoption, amendment, modification, or revocation of any rules~~
21 ~~or regulations under the provisions of this chapter, or the~~) holding
22 of a hearing in regard to a license issued or which may be issued or
23 denied under the provisions of this chapter, shall be subject to the
24 applicable provisions of chapter 34.05 RCW, the administrative
25 procedure act(~~, as now or hereafter amended~~). Rules shall be adopted
26 in accordance with section 102 of this act.

27 **PART 4 - MISCELLANEOUS**

28 NEW SECTION. **Sec. 401.** A new section is added to chapter 34.05
29 RCW under the subchapter heading Part III to read as follows:

30 The provisions of sections 101 and 102 of this act establishing new
31 procedural requirements for adopting rules apply only to rules adopted
32 after the effective date of this section.

33 NEW SECTION. **Sec. 402.** Part headings used in this act do not
34 constitute any part of the law.

1 NEW SECTION. **Sec. 403.** Section 334 of this act shall take effect
2 July 1, 1997.

3 NEW SECTION. **Sec. 404.** Sections 333, 338, 339, 341, and 342 of
4 this act expire July 1, 1997.

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