



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Agriculture

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

(1) Date of adoption: October 13, 2000

(2) Purpose: This rule provides for standard requirements that Commodity Storage Warehouses and Grain Dealers must meet to maintain their licenses. As required by the Governor's Executive Order on Regulatory Improvement and agency policy, the proposed rule is updated and rewritten in a clear and usable format. Three existing chapters of rules will be repealed and the significant language in those chapters is revised into one new proposed chapter of rules for the Warehouse Audit Program.

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

Repealed: WAC 16-212, WAC 16-224, and WAC 16-234.

Amended:

Suspended:

(4) Statutory authority for adoption:

Other Authority: RCW 22.09.020(13)

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 00-17-147 on August 22, 2000.

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

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

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

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules
or Expedited Repeal

Emergency Rules

- 31 days after filing
- Other (specify)*
- Immediately
- Later (specify)

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

Name (Type or Print)

Signature

Title

Date

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

OCT 13 2000

TIME

9:18

AM

WSR

0021-043

PM

JIM JESFANIG
Director
10/11/00

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	<u>None</u>	Amended	<u>None</u>	Repealed	<u>None</u>
Federal rules or standards:	New	<u>None</u>	Amended	<u>None</u>	Repealed	<u>None</u>
Recently enacted state statutes:	New	<u>None</u>	Amended	<u>None</u>	Repealed	<u>None</u>

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

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

	New	<u>1</u>	Amended	<u>21</u>	Repealed	<u>35</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>21</u>	Repealed	<u>35</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	<u>21</u>	Repealed	<u>35</u>

Chapter 16-237 WAC

COMMODITY STORAGE WAREHOUSES AND GRAIN DEALERS

NEW SECTION

WAC 16-237-010 Definitions. (1) "Permanent enclosed storage space" means that it has a foundation and both rigid walls and roof.

(2) "Warehouse operator" means the same as "warehouseman" which is defined in chapter 22.09 RCW.

NEW SECTION

WAC 16-237-015 Covered commodities. Commodities covered under chapter 22.09 RCW in respect to storage and/or merchandising shall include wheat, barley, oats, field corn, popcorn, rye, triticale, grain sorghum, soybeans, sunflowers, flax, buckwheat, rapeseed, safflower, millet, mustard, dry peas, dry beans, lentils, malt, and the by-products resulting from conditioning the above commodities.

NEW SECTION

WAC 16-237-020 Grades and standards. The grades and standards established by the United States Department of Agriculture as of August 1, 1984, for all grains and commodities included within the provisions of this chapter are hereby adopted. In addition, the procedures to sample, grade, test and weigh grains and commodities, established by the regulations and instructions under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, are hereby adopted for this state.

NEW SECTION

WAC 16-237-025 Bond requirements. (1) A bond of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars shall be required for each warehouse operator and dealer licensed pursuant to chapter 22.09 RCW, the Washington Warehouse Act. The bond amount shall be computed at the rate of eighteen cents per bushel of licensed storage capacity or six percent of cost of covered commodities purchased from producers, whichever is higher.

(2) For purposes of this section, the cost of covered commodities purchased from producers will include only those commodities purchased during the preceding fiscal year of that dealer.

(3) Grain dealers who purchase less than one hundred thousand dollars annually from producers may petition the director for exemption from the bond requirements. A grain dealer who is granted exemption must:

(a) Pay for the commodity at time of taking possession by:

- (i) Coin or currency; or
- (ii) Cashier's check; or
- (iii) Certified check; or
- (iv) Bank draft.

(b) Dealers must maintain a copy of the contract, scale ticket and payment record. All documents must be complete and show the actual date of the transaction. If paid for in coin or currency, a receipt must be issued and signed and dated by the producer.

NEW SECTION

WAC 16-237-030 Certificates of deposit, letters of credit, life insurance. A certificate of deposit, irrevocable letter of credit or assignment on a life insurance policy issued to the department in lieu of a bond shall not be released, canceled or discharged until three years after cancellation of the license unless the department determines that no outstanding claims exist for the subject period.

NEW SECTION

WAC 16-237-035 Net worth requirements. A warehouse operator must maintain an allowable net worth of twenty cents per bushel of licensed space, with a minimum of twenty-five thousand dollars. A dealer must maintain an allowable net worth of four percent of

sales of commodities purchased from producers, with a minimum of twenty-five thousand dollars. A warehouse operator who is also a dealer must maintain the higher of these two requirements. For a warehouse operator, any deficiency above the twenty-five thousand dollar minimum must be compensated for by increasing the amount of the warehouse operator's bond by the amount of the deficiency, up to the seven hundred fifty thousand dollar maximum. For a dealer, any deficiency above the twenty-five thousand dollar minimum must be compensated for by increasing the amount of the dealer's bond by the amount of the deficiency regardless of the seven hundred fifty thousand dollar maximum. Warehouse operators and grain dealers must maintain a current asset to current liability ratio of at least point nine to one. Deficiencies must be made up by providing additional bonding in the amount of the deficiency.

NEW SECTION

WAC 16-237-040 Financial statement requirements. Each warehouse operator and dealer shall submit to the department an annual financial statement which shall have been audited or reviewed by a certified or licensed public accountant. The statement must be submitted to the department within four months after the conclusion of the warehouse operator's or dealer's fiscal year. The statement shall include:

- (1) A balance sheet.
- (2) An income statement which includes annual gross sales of commodities from producers covered under the act.
- (3) A statement of changes in financial position.
- (4) Footnotes or schedule disclosure of:
 - (a) The total bushels received annually by commodity.
 - (b) The amount of each commodity in storage at end of year.
 - (c) The amount of each commodity held for depositors.

For purposes of this section, commodity refers to those commodities covered under the Washington Warehouse Act, chapter 22.09 RCW.

NEW SECTION

WAC 16-237-140 Warehouse operator recordkeeping requirements. Each warehouse operator shall maintain the following records at a location required by RCW 22.09.340:

- (1) A printed daily position record showing by commodity:
 - (a) The amount received.
 - (b) The amount shipped.

- (c) Adjustments.
- (d) The amount forwarded to other locations.
- (e) The amount in storage.
- (f) The amount belonging to depositors.
- (g) The amount belonging to the warehouse operator.
- (2) A depositor ledger for each depositor showing:
 - (a) The amount deposited each day by scale ticket number.
 - (b) The amount transferred to warehouse receipts with the corresponding warehouse receipt number.
 - (c) The amount transferred to other locations.
 - (d) The amount purchased and purchase report number.
 - (e) The amount contracted to purchase and contract number.
 - (f) The amount delivered back to depositors.
 - (g) The lot numbers and grade.
 - (h) Any crop divisions.
- (3) Scale tickets. In addition to the requirements in RCW 22.09.010(16), scale tickets must:
 - (a) Show location where the commodity is deposited.
 - (b) Show that the commodity is insured for current market value.
 - (c) Plainly indicate that it is nonnegotiable.
 - (d) Be filed numerically in the main office.
- (4) Shipments out of warehouses must be filed by:
 - (a) Warehouse location; and
 - (b) Intra-company transfers must be on a prenumbered form and filed numerically by warehouse location.

NEW SECTION

WAC 16-237-145 Grain dealer recordkeeping requirements. Each dealer shall maintain the following records at a location as required by RCW 22.09.340:

- (1) Contracts. Contracts issued to producers must:
 - (a) Be serially numbered.
 - (b) Clearly indicate the date title passes.
 - (c) Show the net price due the producer or charges to be deducted from the selling price.
 - (d) Show the date payment is due.
 - (e) Indicate the method of adjustment for over and under deliveries.
 - (f) Show date paid.
 - (g) Be maintained in numerical sequence by month payment is due for outstanding contracts and completed contracts must be filed numerically.
- (2) Delayed price contracts. Delayed price contracts must contain the following information:
 - (a) Indicate in large type the date title will pass.
 - (b) Show the method for setting price.

(c) Charges to be assessed.

(d) Commodity and quantity contracted.

(3) Purchase reports. Each dealer who purchases commodity from a producer must issue a purchase report to the producer at the time of payment which shall:

(a) Be prenumbered.

(b) Show commodity and quantity purchased.

(c) Show price and basis.

(d) Show discounts.

(e) Show itemized charges assessed the producer.

(f) Show the check number and date paid with one copy filed numerically.

(4) Producer ledger. Each dealer must maintain a producer ledger showing:

(a) The name of each producer from whom the dealer has purchased an agricultural commodity.

(b) The amount contracted with corresponding contract number.

(c) Scale ticket numbers, lot numbers and/or bills of lading to apply against the contract.

(d) The purchase voucher number.

(5) Daily position. All grain dealers shall maintain a daily position by commodity in regard to producer purchases showing:

(a) The net buy/sell position.

(b) The amount in pounds, bushels, tons, or hundred weight of delayed price contracts which the producer has not priced.

(c) The amount in pounds, bushels, tons, or hundred weight which the producer has priced but has not received payment.

NEW SECTION

WAC 16-237-150 Recordkeeping requirements for warehouse operators storing seed. Warehouse operators storing treated seed for depositors must maintain, at a minimum, a separate daily position record by class for treated seed that shows the amount in pounds, bushels, or hundred weights owed to depositors.

NEW SECTION

WAC 16-237-155 Rates and charges. Warehouse operators and dealers who receive commodities for storage, handling, or conditioning shall post conspicuously a schedule of all charges, moisture adjustment factors, and disposition and/or ownership of all by-products. A copy of all charges assessed and billed to each depositor shall be itemized and retained in a numerical file.

NEW SECTION

WAC 16-237-160 Scales. All scales used by warehouse operators and dealers must be certified for accuracy annually. Scale testing for certification may be performed by the department or by an approved scale company. When scales are tested by the department a seal shall be placed on the scales. The seal shall be dated and shall indicate approval or rejection. When scales are tested by an approved scale company, a copy of a scale test report shall be forwarded to the department and a copy shall be maintained in the warehouse operator's file.

NEW SECTION

WAC 16-237-165 Historical depositor. Prior to allocating storage space, each warehouse operator shall file a policy statement with the department of agriculture setting forth the criteria that identifies a person as a historical depositor as defined in RCW 22.09.010. Any subsequent changes in this policy shall be filed with the department.

NEW SECTION

WAC 16-237-170 Emergency storage situation. If the director determines that an emergency storage situation exists, a warehouse operator may forward warehouse receipted grain to other licensed warehouses for storage without canceling the depositor's warehouse receipt under the following conditions:

(1) The warehouse operator must notify the department prior to shipment.

(2) The warehouse operator must obtain a warehouse receipt in his/her name from the receiving warehouse.

(3) The warehouse operator be back in compliance with the requirements described in RCW 22.09.250 within thirty days.

NEW SECTION

WAC 16-237-175 Outside storage. (1) Grain may be stored outside the warehouse operator's permanent enclosed storage space only under the following conditions:

(a) The warehouse operator has insufficient permanent enclosed storage space to handle commodities for the current license year.

(b) Outside storage shall be on ground properly crowned and groomed to provide adequate drainage. Prior to its use, the storage space shall be approved by the department.

(c) Outside storage not filled through the warehouse operator's permanent enclosed storage facility shall have a separate letter designation and license fee.

(d) Outside storage must be free of contact with any building or elevator after October 15th of each year.

(e) The warehouse operator shall maintain a net worth of twenty-five cents per bushel in addition to the net worth requirements of WAC 16-237-035.

(2) Uncovered and/or nonaerated outside storage must be moved to a covered licensed storage facility by October 31st. A warehouse operator may submit a written request to the department for a thirty-day extension. The request for extension shall indicate the amount and condition of the commodity for which the extension is requested along with other information that may be necessary to assist the department in the evaluation of the request. This request must be received by October 15th. The request will be granted upon satisfying the following conditions:

(a) That the amount of outside storage does not exceed fifty-percent of the warehouse operator's license permanent enclosed storage space.

(b) The warehouse operator maintains a total net worth of seventy-five cents per bushel for uncovered outside storage in addition to the net worth requirements of WAC 16-237-035.

(c) There is no unreasonable risk to depositors.

(3) Licensed outside piles that have been covered and aerated prior to November 1 may be relicensed for the next license period provided that the warehouse operator samples each pile and submits the samples for grading.

(a) A sufficient number of samples that is representative of the entire pile shall be drawn, at a minimum, one sample for every ten thousand bushels in each outside pile and submitted for grading by June 1st. Samples are required to be graded using the grades and standards established by the United States Department of Agriculture.

(b) The results of the grading must be made available to the department within ten days of receipt of the grades.

(c) The department may deem that the requirements of this subsection have been met if outside storage samples are drawn and graded under the requirements of a United States Department of Agriculture Uniform Grain and Rice Storage Agreement and those certificates are provided to the department.

(d) If the average of the grades of the samples falls two

grades below the average of the grades when the commodity was placed in the outside pile, the pile will not be approved for relicensing. Unless otherwise documented, "average grade" is considered to be U.S. No. 1.

NEW SECTION

WAC 16-237-180 Warehouse license expiration and late renewal penalty. (1) Warehouse licenses issued under RCW 22.09.070 shall expire on June 30th after the date of issuance.

(2) If the application for renewal of a warehouse license(s) is not received by the department prior to June 30th of any year a penalty shall be assessed as provided by RCW 22.09.050.

(3) Subsequent to the expiration of a license, nothing herein shall be construed to limit the department's ability to enforce applicable laws as provided by chapter 22.09 RCW.

NEW SECTION

WAC 16-237-185 Grain dealer license expiration and late renewal penalty. (1) Grain dealer license issued under RCW 22.09.075 shall expire on June 30th after the date of issuance.

(2) If the application for renewal of a grain dealer license is not received by the department prior to June 30th of any year, a penalty shall be assessed as provided by RCW 22.09.055.

(3) Subsequent to the expiration of a license, nothing herein shall be construed to limit the department's ability to enforce applicable laws as provided by chapter 22.09 RCW.

NEW SECTION

WAC 16-237-190 Inventory requirements. A warehouse not licensed prior to July 1, 1983, must meet the following requirements:

(1) Tanks and stices over two hundred bushels per foot must have inventory holes situated in such a manner as to allow the measurement of the high and low points of the commodity.

(2) Conventional flat storage must have an overhead catwalk with a minimum of five feet of headroom.

NEW SECTION

WAC 16-237-195 Fees for warehouse audit and related services.

These fees shall be applied to the following services:

- (1) Measurement of new or additional storage including outside grain storage that requires a second and/or additional inspection or measurement, per hour \$ 23.00
- (2) Special year end audits that require remeasurement at the request of the warehouse operator, per hour \$ 23.00
- (3) Commodity Credit Corporation samples may be drawn by department personnel at the rate established by the grain inspection program.
- (4) Appropriate overtime charges, mileage, and travel charges incurred by department personnel shall be assessed.

NEW SECTION

WAC 16-237-200 Printing by private printer--When.

The department of agriculture will allow warehouse operators to have their negotiable warehouse receipts printed by a private printer only when the state printer cannot supply said receipts within a reasonable time in the form requested and at a competitive price as determined by the director.

NEW SECTION

WAC 16-237-205 Bond requirements for the use of outside printers. Warehouse operators who require receipts as set forth in WAC 16-234-010 shall apply to the director and furnish the following:

- (1) A bond for one thousand dollars as provided for in RCW 22.09.300.
- (2) Complete the department's "requisition for negotiable warehouse receipts" form, and forward to the department for both approval and forwarding to said private printer.

WAC 16-237-210 Completion of printing. Upon receipt of a completed "requisition for negotiable warehouse receipts" form, the private printer shall print the authorized negotiable warehouse receipts, and upon completion of printing notify the department, by use of the "affidavit of printer" form, the number of negotiable warehouse receipts printed and the inclusive numbers as specified.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-212-010	Definitions.
WAC 16-212-020	Grain and commodity inspection points.
WAC 16-212-030	General provisions for hourly charges.
WAC 16-212-060	Official inspection and/or weighing fees under the United States Grain Standards Act.
WAC 16-212-070	Official services under the Agricultural Marketing Act of 1946.
WAC 16-212-080	Miscellaneous fees.
WAC 16-212-082	Fees for services performed under state regulation.
WAC 16-212-086	Fees for warehouse audit and related services.
WAC 16-212-087	Covered commodities.
WAC 16-212-110	Bonds.
WAC 16-212-120	Grades and standards.
WAC 16-212-125	Licenses; warehouse, terminal warehouse, country warehouse--Late renewal penalty.
WAC 16-212-126	Grain dealer license--Late renewal penalty.
WAC 16-212-127	Warehouse license expiration.
WAC 16-212-128	Grain dealer license expiration.
WAC 16-212-130	Net worth requirements.
WAC 16-212-160	Financial statements.
WAC 16-212-170	Dealer records.
WAC 16-212-180	Warehouseman records.
WAC 16-212-190	Shipments.
WAC 16-212-195	Inventory requirements.
WAC 16-212-215	Scales.
WAC 16-212-220	Signs.
WAC 16-212-225	Charges.
WAC 16-212-230	Certificates of deposit, letters of credit, life insurance.
WAC 16-212-235	Seed warehouseman records.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-224-010	Combining certain warehouses into stations.
WAC 16-224-020	Definition.
WAC 16-224-025	Emergency storage.
WAC 16-224-030	Contemporary grain storage.
WAC 16-224-040	Historical depositor.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-234-001
WAC 16-234-010
WAC 16-234-020
WAC 16-234-030

Promulgation.
Printing by private printer--When.
Bond requirements.
Completion of printing.