



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: January 5, 2004

(2) **Purpose:** The 2003 Legislature transferred the Livestock Nutrient Management Program from the Department of Ecology to the Washington State Department of Agriculture (WSDA). By enacting ESSB 5889, the Legislature gave WSDA the authority to take immediate corrective action and formal regulatory enforcement action for violations of chapter 90.64 RCW (Dairy Nutrient Management) and chapter 90.48 RCW (Water Pollution Control). However, ESSB 5889 left the appeal of any WSDA Livestock Nutrient Management Program action under the jurisdiction of the Pollution Control Hearings Board.

This rule-making order adopts amendments to chapter 16-08 WAC (Practice and Procedure) to make clear that any appeal of Livestock Nutrient Management Program orders and penalties must be appealed to the Pollution Control Hearings Board under chapter 43.21B RCW (Environmental hearings office -- Pollution control hearings board) and chapter 371-08 WAC (Environmental Hearings Office (Pollution Control Hearings Board)). An appellant cannot use the procedural rules in chapter 16-08 WAC. The adopted amendments also clarify that any appeal of Livestock Nutrient Management Program orders and penalties must be served on and handled by WSDA rather than the Department of Ecology.

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

Repealed: None
 Amended: None
 Suspended: None

(4) **Statutory authority for adoption:** Chapter 90.64 RCW and Chapter 34.05 RCW
 Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 03-23-136 on November 19, 2003.
 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:

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

- Yes
- No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify) _____*

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

Emergency Rules

- Immediately
- Later (specify) _____

CODE REVISER USE ONLY

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TIME _____

WSR _____

Name (Type or Print)
 Valoria H. Loveland

Signature
Valoria H. Loveland

Title: Director
 Date: January 5, 2004

(COMPLETE REVERSE SIDE)

**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	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	2	Amended	0	Repealed	0

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

New	0	Amended	0	Repealed	0
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The number of sections adopted in the agency's own initiative:

New	0	Amended	0	Repealed	0
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	0	Amended	0	Repealed	0
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The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	2	Amended	0	Repealed	0

NEW SECTION

WAC 16-08-003 Declaration of purpose and applicability. This chapter sets forth the rules of procedure that are applicable to adjudicative proceedings before the department. Because civil penalties and orders issued by the department pursuant to chapters 90.64 and 90.48 RCW in the livestock nutrient management program are appealable only to the pollution control hearings board (PCHB) under chapter 43.21B RCW and chapter 371-08 WAC, this chapter is not applicable to those proceedings.

NEW SECTION

WAC 16-08-004 Livestock nutrient management program (LNMP) appeals. (1) All appeals of civil penalties and orders issued by the department in the livestock nutrient management program shall be filed with the PCHB at the environmental hearings office and shall be served on the department of agriculture pursuant to RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) Pursuant to WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of agriculture in the livestock nutrient management program, all references to "department" in both chapters 43.21B RCW and 371-08 WAC shall mean department of agriculture; all references to "director" shall mean director of agriculture.