



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: May 18, 2004

(2) Purpose: This rule making order repeals chapter 16-400 WAC (Fruit and Vegetable Inspection Fees) and chapter 16-458 WAC (Fruit and Vegetable Inspection District Boundaries) and replaces them with a new clearly written chapter 16-390 WAC (WSDA Fruit and Vegetable Inspection Districts, Inspection Fees and Other Charges) which contains increased hourly inspection rates, increased minimum inspection fees, increased phytosanitary inspection fees and adopts the hourly rates for audit time, administration time and applicable travel time related to Good Agricultural Practices (GAP) and Good Handling Practices (GHP) audit verification certificates established by USDA/AMS/FPB/FVP in the Terminal Market Inspection Services Schedules of Fees for Fresh Fruit and Vegetable, 7 CFR Part 51 Subpart 38, which became effective on January 15, 2004.

(3) Citation of existing rules affected by this order:
Repealed: Chapters 16-458 and 16-400 WAC in their entirety
Amended:
Suspended:

(4) Statutory authority for adoption:
Other Authority: Chapter 15.17 RCW and Chapter 34.05 RCW and Chapter 25, Laws of 2003, First Special Session (ESSB 5404).

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-08-128 on April 7, 2004.

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) _____*

Emergency Rules

- 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)

Valoria Loveland

Signature

Valoria Loveland

Title
Director

Date
May 18, 2004

CODE REVISER USE ONLY

CODE REVISER USE ONLY

COOPERATIVE OFFICE
STATE OF WASHINGTON
FILED

MAY 18 2004

TIME 4:19

WSR 04-11-078

(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 | 0 | Amended | 0 | Repealed | 0 |

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

| | | | | | | |
|--|-----|---|---------|---|----------|---|
| | New | 0 | Amended | 0 | Repealed | 0 |
|--|-----|---|---------|---|----------|---|

The number of sections adopted in the agency's own initiative:

| | | | | | | |
|--|-----|----|---------|---|----------|----|
| | New | 18 | Amended | 0 | Repealed | 12 |
|--|-----|----|---------|---|----------|----|

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

| | | | | | | |
|--|-----|----|---------|---|----------|----|
| | New | 18 | Amended | 0 | Repealed | 12 |
|--|-----|----|---------|---|----------|----|

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 | 18 | Amended | 0 | Repealed | 12 |

Chapter 16-390 WAC

WSDA FRUIT AND VEGETABLE INSPECTION DISTRICTS, INSPECTION FEES AND OTHER CHARGES

NEW SECTION

WAC 16-390-005 What definitions are important to this chapter? **"Certification"** means the issuance of an official document confirming the inspection results for grade, classification, condition, and the absence or presence of plant pests or diseases and/or other defects.

"Customer assisted inspection program (CAIP)" means a quality and/or condition inspection performed by industry with verification and oversight by WSDA.

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

"Director" means the director of the department or the director's designated representative.

"Grade and condition certificate" means a document issued by the director of a certification confirming the results of an inspection.

"Inspection" means a review or examination of fruits and vegetables in order to determine quality, condition, and/or presence or absence of pests or diseases and/or other defects.

"Platform inspection" means any inspection and/or certification performed on a lot that has no defined per unit charges for the service.

NEW SECTION

WAC 16-390-010 How many WSDA fruit and vegetable inspection districts are there? The department has two fruit and vegetable inspection districts, which are:

(1) Fruit and vegetable inspection district two, which consists of Kittitas, Klickitat, Skamania, Yakima, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, Benton, Franklin, Walla Walla, Columbia, Asotin, Whitman and Garfield counties; and

(2) Fruit and vegetable inspection district four, which

consists of Grays Harbor, Jefferson, Clallam, Island, Mason, Kitsap, Pierce, Thurston, King, Snohomish, Skagit, Grant, Adams, Ferry, Pend Oreille, Stevens, Spokane, Lincoln, San Juan, Whatcom, Chelan, Douglas and Okanogan counties.

NEW SECTION

WAC 16-390-020 What are the fees for grade and condition certificates for fruit? WSDA fees for grade and condition certificates for all fruits are:

(1) A minimum charge of sixteen dollars.

(2) The fees for **federal-state grade and condition certificates** of all fresh market apples, pears, and soft fruits in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

| Type of Fruit | Fees per CWT or Fraction Thereof |
|--|----------------------------------|
| Apples | \$0.155 |
| Apricots, cherries, nectarines and peaches | \$0.21 |
| Pears | \$0.12 |
| Plums, prunes, other soft fruits, grapes and berries | \$0.16 |

(3) The fees for **state grade and condition certification** of all fresh market apples, and pears that are in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

| Type of Fruit | Fees per CWT or Fraction Thereof |
|---------------|----------------------------------|
| Apples | \$0.145 |
| Pears | \$0.11 |

(4) The department charges a fee of two dollars and fifty cents per ton net weight (or fraction thereof) for all apples, pears, stone fruits, berries, and grapes in bulk or in containers that are inspected for processing.

(5) The department charges a fee of thirty-two dollars per hour, with a minimum certificate charge of sixteen dollars, when an inspection is requested only to verify the product, conveyance, markings, or other factors not related to quality.

NEW SECTION

WAC 16-390-030 What are the fees for grade and condition certificates for vegetables? WSDA fees for grade and condition certificates for all vegetables are:

(1) A minimum charge of sixteen dollars.

(2) The fees for **federal-state grade and condition certificates** for all fresh market vegetables in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

| Type of Vegetables | Fees per CWT or Fraction Thereof |
|---|---|
| Asparagus | \$0.21 |
| Cantaloupes and corn | \$0.125 |
| Onions | \$0.08 |
| Potatoes | \$0.06 |
| In-state processing potatoes Complete inspection | \$0.06 Rate shall be reduced for the level of service required |
| Tomatoes | \$0.19 |

(3) The fee for **state grade and condition certification** of all fresh market asparagus in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags is listed in the following table:

| Type of Vegetable | Fee per CWT or Fraction Thereof |
|-------------------|---------------------------------|
| Asparagus | \$0.19 |

(4) For the inspection of vegetables not listed, the department charges a fee of thirty-two dollars per hour.

(5) The department charges a fee of two dollars fifty cents per ton net weight (or fraction thereof) for the inspection of vegetables to be processed, whether in bulk or in containers.

(6) When an inspection is requested only to verify the product, conveyance, markings, or other factors not related to quality, the department charges the rate of thirty-two dollars per hour, with a minimum certificate charge of sixteen dollars.

NEW SECTION

WAC 16-390-040 What are the fees for grade and condition certificates for fruits and vegetables inspected under the customer assisted inspection program (CAIP)? WSDA fees for grade and condition certificates for all fruits and vegetables issued under the customer assisted inspection program (CAIP) are:

(1) A minimum charge of sixteen dollars.

(2) The fees for **federal-state grade and condition certificates** for all fresh market fruits and vegetables in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are:

| Type of Fruit or Vegetable | Fees per CWT or Fraction Thereof |
|--|---|
| Fresh potatoes | Three and one-half cents per cwt., with a minimum charge of thirty-two dollars per hour for each staff hour worked. |
| All other fresh market fruits and vegetables | Three-fourths of the cwt. rates specified in WAC 16-390-020(2) and 16-390-030(2) but not less than the equivalent rate of thirty-two dollars per staff hour worked. If the cwt. rate results in an inspection fee that is less than the equivalent of thirty-two dollars per staff hour worked, the department will assess additional certification charges. For example, if an inspection takes three staff hours (\$96.00) to complete and the cwt. rate results in a fee of \$85.00, the department will assess additional certification charges of \$11.00. |

NEW SECTION

WAC 16-390-060 What are the fees for inspecting beans, peas, lentils, hay and straw? Inspection fees for beans, peas, lentils, hay, and straw are found in the following rule sections:

| WAC Section | Title |
|--------------------|---|
| WAC 16-239-071 | Straight time rate. |
| WAC 16-239-0902 | Fees for official sampling and inspecting without weighing and fees for official sampling only. |
| WAC 16-239-0904 | Fees for other official weighing services. |
| WAC 16-239-0905 | Fees for inspection of submitted samples. |
| WAC 16-239-0906 | Fees for factor analysis. |
| WAC 16-239-0909 | Fees for other stowage examination services. |
| WAC 16-401-023 | Schedule of fees and charges--Establishing hourly rates. |

NEW SECTION

WAC 16-390-100 What are the fees for fruit and vegetable certificates? As shown in the following table, WSDA certificate fees vary with the type of certificate requested:

| Type of Certificate Requested | Fee |
|---|---|
| Consolidation certificates | Fees are specified in WAC 16-390-020 and 16-390-030 with an added charge of three dollars for each additional lot. |
| Condition certificates for previously inspected lots | Fee is two-thirds of the fee charged for grade and condition certificates, with a minimum charge of sixteen dollars. |
| Condition certificates for lots not previously inspected for quality or grade with a request that the certificate carry out-bound car, truck, or state lot number | Fees are based upon the applicable grade and condition certificate schedules. |
| Out-of-state products reported on state certificates | Fees are based either upon the applicable grade and condition certificate schedule or a charge of thirty-two dollars per hour whichever is greater. |

| Type of Certificate Requested | Fee |
|---|--|
| A state condition certificate or quality control inspection for previously certified controlled atmosphere storage apple lots | A state condition certificate or quality control inspection may be issued without additional charge. |
| Sanitary and quarantine certificates for fruits and vegetables | Sixteen dollars for issuing a certificate, plus the hourly rates specified in WAC 16-390-200(1) when the shipment is not covered by federal-state or state certificates. |
| Container weight, or check loading certificates | Fee is charged at the rates specified in WAC 16-390-200(1). |

NEW SECTION

WAC 16-390-150 What requirements apply to shipping permits and certificates of compliance for fruits and vegetables? (1) Each shipment of apples, apricots, Italian prunes, peaches, pears, dark sweet cherries, Rainier cherries and asparagus must be covered by a shipping permit. All other sweet cherries, whether certified or not, must have a shipping permit indicating freedom from cherry fruit fly larvae.

(2) Shipments of apricots, cherries, peaches, prunes, and asparagus to processors do not require a shipping permit.

(3) A permit or certificate of compliance may be issued without additional charge if the lot is certified.

(4) If the lot has not been certified, a permit or certificate of compliance may be issued based upon the following charges:

(a) The minimum charge for a permit or certificate of compliance is two dollars fifty cents.

(b) Two-thirds of the rate for federal-state or state grade and condition certificates applies.

(c) A permit to ship apples and/or pears to a by-product plant outside the state is three dollars.

NEW SECTION

WAC 16-390-200 What are the fees for platform inspection services? (1) Fees for platform inspections, taking samples, extra time, phytosanitary and/or quarantine inspection, and all other platform services are charged at the rate of thirty-two dollars per hour.

(2) When a platform inspector is working full time at one house and is also doing certification inspections, the inspector must allow credit, according to the limits outlined in the schedule for such inspections, for the time spent on the inspection at the rate of thirty-two dollars per hour.

(a) Platform fees will not be assessed if the certificate cwt. fee divided by the respective hourly rates is equal to or exceeds the number of hours worked.

(b) Platform fees will be assessed if the certificate cwt. fee divided by the respective hourly rates is less than the number of hours worked. The amount assessed will be sufficient to make the total fee equal to the number of hours worked multiplied by the thirty-two dollars per hour rate.

NEW SECTION

WAC 16-390-210 What is the fee for supervising fumigations? (1) The minimum fee for supervising fumigation shall be equivalent to one and one-half hours specified in WAC 16-390-200(1) for the master fumigation certificate. Additional certificates issued from this master certificate will cost sixteen dollars each.

(2) The department will charge for any additional stand-by time at the rate specified in WAC 16-390-200(1).

(3) In facilities that are either temporary or without adequate devices for maintaining acceptable treatment temperatures, fumigations must not start after:

(a) 3:00 p.m. from October 1 to May 31; or

(b) 10:00 p.m. from June 1 to September 30.

NEW SECTION

WAC 16-390-220 What is the fee for a field or orchard inspection? The fee for field or orchard inspections made at the applicant's request to determine the presence or absence of disease or insect infestation, or for some other reason is:

(1) Two dollars and fifty cents per acre or fraction thereof;
or

(2) At the platform inspection rate specified in WAC 16-390-200(1).

NEW SECTION

WAC 16-390-230 What is the fee for an apple pest certification? The fee for apple pest certification, using the survey method, on all fresh apples produced in Washington state or marketed under Washington state grades and standards, is \$.0075 per cwt. or fraction thereof.

NEW SECTION

WAC 16-390-240 What is the fresh produce audit verification program? A Federal-state inspection service program that reviews and verifies a participating company's facility and agronomic practices, along with its documented procedures, to help determine if "good agricultural practices" and "good handling practices" are maintained.

NEW SECTION

WAC 16-390-242 What charges does the department assess for fruit and vegetable audit verification certificates issued under the fresh produce audit verification program? Charges assessed by the department for good agricultural practices (GAP) and good handling practices (GHP) audit verification certificates issued under the fresh produce audit verification program are as follows:

(1) Audit time, administration time and applicable travel time is charged at the hourly rate established by USDA/AMS/FPB/FVP the Schedule of Fees for Fresh Fruit and Vegetable Terminal Market Inspection Services, 7 CFR Part 51 Subpart 38, which became effective on January 15, 2004.

(2) Mileage related to GAP and GHP audit services is charged at the rate established by the office of financial management (OFM) at the time the service was performed.

NEW SECTION

WAC 16-390-245 What requirements apply to certifications using USDA positive lot identification? (1) Certification fees using USDA positive lot identification are based upon the rates specified in WAC 16-390-020, 16-390-030, 16-390-040, 16-390-100, 16-390-200, 16-390-210, 16-390-250 and 16-390-260.

(2) The department may add an additional charge of ten percent if an inspector is required to be on-site when no other inspections are requested.

(3) The department responds to requests for positive lot identification services in the following order:

(a) First priority is given to those situations where positive lot identification is a mandatory condition of a sales transaction.

(b) All other requests will be honored based upon adequate notice to the inspection service and the availability of inspectors.

NEW SECTION

WAC 16-390-250 What miscellaneous inspection and certification fees does WSDA charge? (1) Department services provided to other agencies, commissions, and organizations are charged at the rate of thirty-two dollars per hour.

(2) The charge for mileage related to inspection and certification services is at the rate established by the office of financial management (OFM) at the time the service was performed.

(3) The department may charge for telegrams, facsimile, or electronic transmission of inspection documents at the rate of four dollars per transmission in addition to any Western Union charges made directly to the applicant.

(4) The cost of extra copies of original documents is four dollars per set.

(5) The department may charge twenty-five cents per copy for Xerox copies of inspectors' notes, certificates or related documents.

(6) When, through no fault of the inspection service, it is necessary to retype or reissue a document, the cost of retyping or reissuing the document is four dollars per set.

NEW SECTION

WAC 16-390-260 Does the department assess extra charges for the inspection and certification services it provides? The department does assess extra charges on services provided according to the following:

(1) The minimum inspection charge for each commodity and requested document is sixteen dollars.

(2) If, through no fault of the inspection service, excess time is required over the maximum time allowed (as supported by unit rates for each commodity and requested document) the excess time is charged at the rate of thirty-two dollars per hour.

(3)(a) For all inspection services performed beyond a regularly scheduled eight-hour week day shift or on Saturdays, or Sundays, or state legal holidays, a rate equivalent to forty-two dollars will be charged for actual hours spent in performance of duties. Such charges include unit charges, plus, if necessary, overtime charges to equal the respective overtime hourly rates.

(b) The following are state legal holidays:

| Holiday | Date |
|--------------------------------|-----------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr. Day | Third Monday in January |
| Presidents' Day | Third Monday in February |
| Memorial Day | Last Monday of May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Day following Thanksgiving Day | Fourth Friday in November |
| Christmas Day | December 25 |

(4) Additional hourly or overtime charges will not be assessed when the per unit inspection charge in any one day equals or exceeds the basic hourly and/or overtime charge.

NEW SECTION

WAC 16-390-270 Can the department waive fruit and vegetable inspection fees? The department may waive inspection fees for fruits and vegetables donated to bona fide nonprofit organizations if the shipping containers are conspicuously labeled or marked "not for resale."

NEW SECTION

WAC 16-390-280 What requirements apply to the payment and collection of fruit and vegetable fees and charges? (1) All fees and charges for services rendered are due within thirty days after the date of the billing statement you receive from the department.

(2) If your payment is not received within thirty days, service may be withheld until your delinquent account is paid.

(3) If your account is delinquent, the department may require that you pay cash for subsequent services.

(4) The department assesses a penalty of eighteen percent per annum on all delinquent account balances.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

| | |
|----------------|---|
| WAC 16-400-007 | Definition. |
| WAC 16-400-008 | Reduction of inspection fees levied under this chapter. |
| WAC 16-400-010 | Grade and condition certificates--Fruits. |
| WAC 16-400-040 | Grade and condition certificates--Vegetables. |
| WAC 16-400-045 | Grade and condition certificates--Customer assisted inspection program (CAIP) certification charges--Fruits and vegetables. |
| WAC 16-400-060 | Certificate charges--Other agricultural commodities. |
| WAC 16-400-100 | Certificates. |
| WAC 16-400-150 | Shipping permits and certificates of compliance--Fruits and vegetables. |
| WAC 16-400-210 | Other charges. |
| WAC 16-400-270 | Copies. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-458-075
WAC 16-458-085

Fruit and vegetable district two.
Fruit and vegetable district four.