



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency:
Department of Agriculture

- Permanent Rule
- Emergency Rule

Effective date of rule:
Permanent Rules
 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:
Emergency Rules
 Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
 Yes No If Yes, explain:

Purpose: The Department amended Chapter 16-461 WAC, *Inspection requirements for fruits and vegetables*. The change will remove WAC 16-461-010 (2)(b), which is the exemption for issuing a certificate of compliance between horticulture facilities other than those which sell at wholesale or retail. Minor changes were also made to WAC 16-461-010 to update the WAC references and increase its clarity.

Citation of existing rules affected by this order:
 Repealed:
 Amended: WAC 16-461-010
 Suspended:

Statutory authority for adoption: Chapter 15.17 RCW

Other authority : Chapter 34.05 RCW

PERMANENT RULE ONLY (Including Expedited Rule Making) *KB*
 Adopted under notice filed as WSR ~~07-15-092 on July 18, 2007.~~ *07-19-087 on September 18, 2007*
 Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- 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.
 - 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:

Date adopted:
November 20, 2007

NAME (TYPE OR PRINT)
Valoria Loveland

SIGNATURE
Valoria Loveland

TITLE
Director

CODE REVISER USE ONLY

10-22
07-23-088

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	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	: <u>1</u>	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

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	Repealed	_____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

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

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

AMENDATORY SECTION (Amending WSR 06-12-116, filed 6/7/06, effective 7/8/06)

WAC 16-461-010 Inspection certificate and/or permit required.

(1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the (~~(plant services)~~) commodity inspection division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots(~~(---)~~) in closed or open containers for fresh market.

(b) Italian prunes(~~(---)~~) in closed or open containers for fresh market.

(c) Peaches(~~(---)~~) in closed or open containers for fresh market.

(d) Cherries(~~(---)~~) in closed or open containers for fresh market(~~(.---Provided, That no)~~). No permit (~~(shall)~~) will be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples(~~(---)~~) in closed or open containers for fresh market(~~(.---Provided, That)~~).

(i) Apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

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

(f) Pears(~~(---)~~) in closed or open containers for fresh market(~~(.---Provided, That)~~). Pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus(~~(---)~~) in closed or open containers for fresh market(~~(.---Provided, That)~~). Asparagus may be shipped or transported if accompanied by a certificate(~~(s)~~) of compliance issued by the shipper or packer of the asparagus(~~(r)~~) having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing(~~(.---Provided, That)~~).

(i) Apples for processing may be shipped or transported if

accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance(~~(; Provided further, That)~~).

(ii) Apples for processing entering (~~(intrastate)~~) in-state commerce (~~(shall)~~) do not require a permit.

(i) Pears in containers or bulk, for processing(~~(; Provided, That)~~).

(i) Pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance(~~(; Provided further, That)~~).

(ii) Pears for processing entering (~~(intrastate)~~) in-state commerce (~~(shall)~~) do not require a permit.

(2) (~~(Exemptions--)~~) Fruits and vegetables listed in WAC 16-461-010 (~~(shall be)~~) are exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, (~~(labelling)~~) labeling, or processing(~~(;)~~) prior to entering commercial channels for resale(~~(;)~~).

(b) (~~(When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;~~

~~(c))~~ When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance(~~(; provided that such)~~). Exempt sales by the producer within a farmer's market shall not be restricted to the zone of production(~~(;)~~).

(~~(d)~~) (c) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries (~~(which are)~~) sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting (~~(such)~~) authority, on (~~(such)~~) terms and conditions (~~(as he may)~~) that the director deems appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so(~~(; Provided, That the)~~).

(i) Apples, pears, cherries, and asparagus about to be shipped or transported (~~(are)~~) must be in full compliance with the requirements of chapter 15.17 RCW, (~~(regulations adopted~~

~~thereunder~~) Standards of grades and packs, rules adopted under chapter 15.17 RCW, and administrative directives of the director (~~(7) Provided further, That~~).

(ii) Apricots, cherries, peaches, prunes, or pears about to be shipped or transported (~~are~~) must be in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification (~~(7)~~).

(iii) Cherries of the dark sweet varieties (~~shall~~) must be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Washington standards for cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" (~~shall~~) must meet only the requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) (~~and that~~). Cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW, Standards of grades and packs, or rules adopted (~~thereunder~~) under chapter 15.17 RCW, or for violation of the terms of the certificate of compliance agreement. The period of any suspension (~~shall~~) will be determined by the director and (~~shall~~) will be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director (~~shall~~) will be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance (~~shall~~) must be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture (~~at~~) the regular base fee equivalent to that charged by the director for a shipping permit (~~(7)~~) for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.