



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Department of Agriculture	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: July 30, 1999	<input type="checkbox"/> Emergency Rule
	<input type="checkbox"/> Expedited Adoption
	<input type="checkbox"/> Expedited Repeal

(2) Purpose: Chapter 16-160 WAC contains the rules and regulations for the registration of materials (pesticides, fertilizers, post harvest materials, processing aids, etc.) for use in organic food production. The amendments to chapter 16-160 WAC clarify the application process for the registration of brand name materials, explain the Brand Name Materials List, outline the criteria for approval of brand name materials, reduce fees, and allow for the use of an organic logo.

(3) Citation of existing rules affected by this order: Chapter 16-160 WAC  
 Repealed:  
 Amended: WAC 16-160-010, 020, 030, 040, 050, 060, 070, 090, 100  
 Suspended:

(4) Statutory authority for adoption: Chapter 15.86 RCW  
 Other Authority:

**PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)**  
 Adopted under notice filed as WSR 99-13-195 on June, 23, 1999 (date).  
 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**  
 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)  
 Jim Jesernig

Signature

Title  
 Director

Date  
 7/30/99

CODE REVISER USE ONLY

NOT RECORDED  
 STATE OF WASHINGTON  
 FILED

JUL 30 1999

TIME 4:19 PM

WSR 99-16-054

**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:**

<b>Federal statute:</b>	New	-----	Amended	-----	Repealed	-----
<b>Federal rules or standards:</b>	New	-----	Amended	-----	Repealed	-----
<b>Recently enacted state statutes:</b>	New	-----	Amended	-----	Repealed	-----

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

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	Amended	-----	Repealed	-----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

	New	<u>2</u>	Amended	<u>9</u>	Repealed	-----
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	<u>2</u>	Amended	<u>9</u>	Repealed	-----
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	-----	Amended	-----	Repealed	-----
<b>Pilot rule making:</b>	New	-----	Amended	-----	Repealed	-----
<b>Other alternative rule making:</b>	New	<u>3</u>	Amended	<u>9</u>	Repealed	-----

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-010 ((Purpose-)) What is the purpose of this rule?**

This chapter specifies the review process and criteria for registering brand name materials used in organic food production, processing and handling. This chapter is promulgated pursuant to RCW 15.86.060(~~(1) wherein~~) in which the director is authorized to adopt rules (~~and regulations~~) for the proper administration of chapter 15.86 RCW and establish a list of approved substances that may be used in the production, processing and handling of organic food and RCW 15.86.070 (~~wherein~~) in which the director is authorized to adopt rules governing the certification of producers of organic food.

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-020 Definitions.** As used in this chapter:

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Animal manure" means a material composed of excreta, with or without bedding materials and/or animal drugs and collected from poultry, ruminants or other animals except humans.

(3) "Applicant" means the person who submits an application to register a material pursuant to the provisions of this chapter.

~~((3))~~ (4) "Approved generic material" means any material which is approved for use in organic food production, processing or handling under chapter 15.86 RCW (~~, chapter 16-154 WAC, and WAC 16-160-060~~) (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.

~~((4))~~ (5) "Brand name material" means any material that is supplied, distributed or manufactured by a person.

(6) "Compost" means a material produced from a controlled process in which organic materials are digested aerobically or anaerobically by microbial action.

(7) "Crop production aid" means any substance, material, structure, or device, that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(8) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

~~((+5+))~~ (9) "Department" means the department of agriculture of the state of Washington.

~~((+6+))~~ (10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

~~((+7+))~~ (11) "Director" means the director of the department of agriculture or his or her duly authorized representative.

~~((+8+))~~ (12) "Distribute" means to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.

~~((+9+))~~ (13) "EPA" means the United States Environmental Protection Agency.

(14) "Fertilizer" means any substance containing one or more recognized plant nutrients.

(15) "Generic material" means any type, class or group of materials that is specified under chapter 15.86 RCW or rules adopted pursuant to chapter 15.86 RCW.

(16) "Genetic engineering" means techniques that alter the molecular or cell biology of an organism by means that are not possible under natural conditions or processes. Genetic engineering includes recombinant DNA, cell fusion, micro- and macro-encapsulation, gene deletion, and doubling, introducing a foreign gene, and changing the positions of genes. It does not include breeding, conjugation, fermentation, hybridization, in-vitro fertilization and tissue culture.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

~~((+10+))~~ (18) "Label" means the written, printed, or graphic matter on, or attached to, the material or ~~((the))~~ its immediate container ~~((thereof, and the outside container or wrapper of the retail package)).~~

~~((+11+))~~ (19) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a material, or advertisement, brochures, posters, television, and radio announcements used in promoting the distribution or sale of the material.

(20) "Livestock production aid" means any substance, material, structure, or device, that is used to aid a producer in the production of livestock (e.g., parasiticides, medicines, feed additives).

(21) "Material" means any ~~((pesticide, plant regulator, defoliant, desiccant, spray adjuvant, fertilizer, soil amendment, growth regulator, or other))~~ substance or mixture of substances ~~((which))~~ that is intended to be used in agricultural production ~~((or post-harvest use)), processing or handling.~~

~~((+12+))~~ (22) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids as defined in chapter 70.95 RCW.

(23) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.



~~((13))~~ (24) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by regulation.

~~((14))~~ (25) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculant, or soil amendments.

~~((15))~~ (26) "Post harvest material" means any substance, material, structure, or device, that is used in the post harvest handling of agricultural products.

(27) "Processing aid" means any material used in processing that does not become an ingredient in the food product (e.g., enzymes, boiler water additives, pressing aids, and filtering aids).

(28) "Prohibited material" means any material which is prohibited for use in organic food production, handling, or processing under chapter 15.86 RCW (~~, chapter 16-154 WAC, and WAC 16-160-060~~) (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.

~~((16))~~ (29) "Registered material" means any material that has applied for registration under this chapter, has met the criteria for approval and has been issued written approval by the department.

(30) "Registrant" means the person registering any material pursuant to the provisions of this chapter.

~~((17))~~ (31) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(32) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to ~~((the))~~ its application or to ~~((the))~~ its effect ~~((thereof))~~, and which is in a package or container separate from that of the pesticide with which it is to be used.

(33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

NEW SECTION

**WAC 16-160-025 What materials are approved for use in organic food production, processing and handling?** Materials approved for use in organic food production, processing and handling include generic materials specified in rule and brand name products registered under this chapter. Approved generic materials are specified in the following rules.

(1) The Organic crop production standards, chapter 16-154 WAC, specifies the pesticides, fertilizers, soil amendments and other materials that can be used in organic crop production.

(2) The Standards for the certification of processors of organic food, chapter 16-158 WAC, specifies the processing aids and minor ingredients that can be used in the processing of organic food.

(3) The Animal production standards for organic meat and dairy products, chapter 16-162 WAC, specifies the materials that can be used in the production of organic animal products.

(4) The Standards for the certification of handlers of organic food, chapter 16-164 WAC, specifies the post harvest materials that can be used in the handling of organic food products.

In order for specific brand name materials to be approved for use in organic food production, processing or handling they must be registered through this chapter.

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-030 (~~(Registration of materials.)~~) Do I need to register my brand name material with the organic food program?** Every material which is manufactured within this state and/or distributed within this state for use in organic food production, processing or handling may be registered (~~((for use in organic food production if it meets the terms and conditions as set forth in this chapter. Such application shall be made prior to January 1 of each year))~~) with the department. Registration is not required, but is necessary for a product to appear on the brand name materials list or to label or advertise itself as approved for use in organic food production, processing or handling.

NEW SECTION

**WAC 16-160-035 Brand name materials list.** The department maintains a list of registered materials and brand name materials that have been denied registration. The list is provided to all producers, processors and handlers of organic food who apply for certification with the department. A registered material that appears on the brand name materials list has been reviewed to verify that all of its ingredients comply with organic standards.

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-040 (~~(Application for material registration.)~~) How do I apply for registration?** Applications for brand name material registration (~~(shall)~~) must be made on a form designated by the department. Applications, must be accompanied by the appropriate fee, and must be postmarked by October 31 of each year. Applications made after the set deadline may be processed as the department can review the application. Applications received after October 31 may appear on the annual brand name materials list if received in time to complete the registration prior to the publication of the list. The application form shall include:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;
- (2) The name of the material;
- (3) A (~~(complete)~~) copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;
- (4) The complete formula of the material(~~(s)~~) including the active and inert ingredients;
- (5) A description of the manufacturing process including all materials used for the extraction and synthesis of the material, if appropriate;
- (6) The intended uses of the product;
- (7) (~~(For pesticides, a full description of the tests made and the results of acute toxicity, chronic toxicity, reproductive effects, teratogenicity tests, mutagenicity tests, carcinogenicity tests, ecological effects, environmental fate and persistence. Similar information on nonpesticide materials must be provided when the data are available)~~) The source or supplier of all ingredients; and
- (8) Any additional information deemed necessary.

The director may require a full description of the tests made and the results thereof upon which the claims are based. Trade secrets are confidential and exempt from public disclosure under the Uniform Trade Secrets Act, chapter 19.108 RCW. RCW

AMENDATORY SECTION (Amending WSR 91-20-013, filed 9/20/91, effective 10/21/91)

**WAC 16-160-060 ((Criterion for registering.)) What criteria are used to determine if a brand name material is approved? ((+1)**

~~The director shall review the information provided under WAC 16-160-040 and shall register the material as an "approved material" if he or she determines that:~~

~~(a) Its composition is such as to warrant the proposed claims for it;~~

~~(b) Its labeling and other material required to be submitted comply with state and federal laws;~~

~~(c) It is composed entirely of "approved" materials as stated in chapter 16-154 WAC or meets the provisions of subsection (2) of this section.~~

~~(2) Synthetic materials may be considered for registration by the director if he or she determines that:~~

~~(a) The material is judged to be essential to the production of the crop;~~

~~(b) The material is less toxic or environmentally hazardous than a naturally derived alternative; and~~

~~(c) The use of the material is consistent with the principles of organic farming as set forth in chapter 16-154 WAC.)~~ The director reviews the information provided under WAC 16-160-040. A brand name material that meets the following criteria will be registered.

(1) **General requirements.**

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with state and federal laws;

(c) It does not contain ingredients that are genetically engineered;

(d) It does not contain ingredients that appear on the EPA's List 1 or 2 of Inert Pesticide Ingredients.

(2) **Pesticide and spray adjuvants.**

(a) The material does not contain ingredients that are prohibited under chapter 16-154 WAC; and

(b) The ingredients are approved under chapter 16-154 WAC; or The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or

The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or

The ingredients meet the following conditions:

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

(ii) Are necessary to the production or handling of organic



products; and

(iii) Are consistent with organic principles.

(3) **Fertilizers, organic waste derived materials, compost, animal manures, soil amendments, and crop production aids.**

(a) All fertilizers, organic waste derived materials, compost, animal manures and soil amendments must meet standards for allowable levels of nonnutritive substances under chapter 15.54 RCW. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.

(b) All organic waste derived materials, compost and animal manures must consist of acceptable feedstocks. Acceptable feedstocks include materials approved under WAC 16-154-070. Prohibited feedstocks include mixed municipal solid waste, sewage sludge, biosolids, glossy paper, recycled gypsum, dangerous waste, special waste, waste or by-product from processes that create organochlorines, cement kilns, secondary steel mills, waste categorically excluded from the dangerous waste regulations and other materials prohibited under this chapter. Applications for registering organic waste derived materials, composts and animal manures must include an inspection of the facility. Inspections of facilities entail an examination of the feedstocks and may entail an examination of any other information deemed necessary to the requirements of chapter 15.86 RCW and this chapter.

(c) The material does not contain ingredients that are prohibited under chapter 16-154 WAC.

(d) The ingredients are approved under chapter 16-154 WAC; or the ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or the ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or the ingredients meet the following conditions:

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

(ii) Are necessary to the production of organic products; and

(iii) Are consistent with organic principles.

(4) **Post harvest materials.**

(a) The material does not contain ingredients that are prohibited under chapter 16-164 WAC or WAC 16-154-120; and

(b) The ingredients are approved under WAC 16-154-120 or chapter 16-164 WAC; or

The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or

The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or

The ingredients meet the following conditions:

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

(ii) Are necessary to the handling of the organic products;

and

(iii) Are consistent with organic principles.

(5) **Processing aids.**

(a) The material does not contain ingredients that are prohibited under chapter 16-158 WAC; and

(b) The ingredients are approved under chapter 16-158 WAC; or

The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-158 WAC; or  
The ingredients appear on the United States Food and Drug Administration list of food additives generally regarded as safe;  
or

The ingredients meet the following conditions:

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

(ii) Are necessary to the processing of organic products; and

(iii) Are consistent with organic principles.

(6) **Livestock production aids (parasiticides and medicines, vitamins, minerals, livestock feed additives).**

(a) The material does not contain ingredients that are prohibited under chapter 16-162 WAC; and

(b) The ingredients are approved under chapter 16-162 WAC; or

The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-162 WAC; or

The ingredients appear on the United States Food and Drug Administration list of food additives generally regarded as safe;  
or

The ingredients meet the following conditions:

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

(ii) Are necessary to the production or handling of the organic livestock products; and

(iii) Are consistent with organic principles.

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-070 ((~~Inspection.~~) Application fees.** Whenever the department receives an application for registration of materials under this chapter, the department ((~~shall~~)) may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.

((~~The applicant or registrant shall pay a yearly inspection fee of three hundred dollars at the time the application for material registration is filed with the director.~~)) The application fee for initial registration of a pesticide, spray adjuvant, processing aid or post harvest material is two hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid is one hundred dollars per material.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid or post harvest material is one hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic

waste derived material, compost, animal manure, crop production aid, or livestock production aid is fifty dollars per material.

Renewal registrations postmarked after October 31 pay a late fee of twenty dollars per pesticide, spray adjuvant, processing aid or post harvest material; and ten dollars per fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid.

Additional inspections, if required, will be billed at twenty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

Additional samples (in addition to one sample provided for), if required shall cost an additional lab fee of one hundred ten dollars. If an additional visit must be arranged, it shall be at twenty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-090 Refusing or canceling registration(~~--~~ Procedure)).** Initial registration.

(1) (~~((With regard to the initial registration of a material,))~~) If it does not appear to the director that the brand name material is such as to warrant the proposed claims for it or if the brand name material and its labeling (~~((and other material required to be submitted))~~) do not comply with the provisions of this chapter, (~~((he or she))~~) the director shall notify the registrant of the manner in which the brand name material(~~((r))~~) and its labeling(~~((, or other material required to be submitted))~~) fails to comply with the provisions of this chapter (~~((or state or federal law))~~) so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make corrections, the director shall (~~((refuse to register))~~) deny registration of the material in accordance with chapter 34.05 RCW.

Renewal registration.

(2) (~~((When evaluating a materials registration renewal application, the director may,))~~) When (~~((he or she))~~) the director determines that a material or its labeling does not comply with the provisions of this chapter (~~((or state or federal law))~~), or (~~((if he or she determines))~~) that false or inaccurate information was provided by the registrant (~~((concerning the material))~~), the director shall cancel the registration of a material (~~((after a hearing))~~) in accordance with (~~((the provisions of))~~) chapter 34.05 RCW (~~((provided that the applicant has otherwise made timely and sufficient application for registration renewal))~~).

Revoking registration.

(3) (~~((During the current registration period of a material,~~

~~the director may,)) When ((he or she)) the director determines that a material or its labeling does not comply with the provisions of this chapter ((or state or federal law)), or if false or inaccurate information was provided by the registrant ((concerning the registered material)), the director shall cancel the registration of such material ((after a hearing)) in accordance with ((the provisions of)) chapter 34.05 RCW.~~

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-100 Labeling of registered brand name materials and use of organic logo.** A person ~~((s who apply under this program and))~~ whose material is registered ~~((as an "approved material" will be allowed to))~~ under this chapter may use the words ~~((7))~~ "approved material under Washington state department of agriculture organic food program" ~~((in their labeling))~~ and may use the logo specified in WAC 16-160-110 in the labeling of the material. Approved generic materials that are not registered under this chapter must not use the statement nor the logo in the labeling of the material. Registration ~~((as an "approved material"))~~ by no means implies the Washington department of agriculture endorses the use of ~~((such))~~ the product.

NEW SECTION

**WAC 16-160-110 Organic material registration logo.**



**ORGANIC**



**Approved under  
Washington State  
Department of Agriculture  
Organic Food Program**



*mya*

AMENDATORY SECTION (Amending WSR 91-05-007, filed 2/7/91, effective 3/10/91)

**WAC 16-160-050** (~~(Annual application and initial inspection fee—Expiration—Continuation if renewal application made.)~~) When do registrations expire? (~~((1) Any person desiring to register a material for organic food production shall file with the director an application and a yearly inspection fee as set forth in WAC 16-160-070 for each material.)~~) All registrations expire on (~~(December)~~) October 31st of each year.

(~~((2))~~) If a renewal application has been (~~(filed)~~) submitted and the (~~(yearly inspection)~~) application fee paid, then the registration of any material which has been approved by the director and is in effect on the 31st day of (~~(December)~~) October continues in full force and effect until the director notifies the applicant that the registration has been renewed, or until it is otherwise denied in accordance with (~~(WAC 16-160-090)~~) chapter 34.05 RCW.