

## WSR 23-20-066

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 28, 2023, 4:50 p.m., effective September 28, 2023]

Effective Date of Rule: September 28, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380(3) allows rules to become effective immediately upon filing when such action is required by statute. RCW 15.86.140 requires the department of agriculture (WSDA) to set and collect fees as necessary to cover costs of provision of services. Current fees do not cover the cost of providing services. In order to ensure that WSDA is collecting the fees necessary to cover the cost of continuing to provide these services, the rule must be effective **prior** to sending out renewal notices on September 29, 2023, for expiring registrations.

Purpose: This rule-making order amends chapter 16-160 WAC by restructuring the existing fee schedule to cover the increasing cost of providing services. Under the amended fee schedule, both the new application fee and the renewal fee will be comprised of two components, a company fee that is based on the gross annual income of the business in whole and a product fee that is charged based on the number of products being registered. The amended product fee will be changed from the current rate of \$400-500 per product for initial registration and \$200-300 for renewal registration to a flat \$350 fee for both initial and renewing registrations.

In-state inspection fees will be assessed at \$2,000 per inspection. Out-of-state inspections will be assessed at \$3,000, plus any travel expenses which exceed \$3,000, and the standard inspection fee of \$2,000. Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), will receive a \$1,500 discount on the inspection fee.

Late fees will be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses.

In addition to a restructure of the fee schedule, the following additional changes to this chapter include:

1. Updating WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;
2. Changing of the expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;
3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and
4. Minor updates to the application process to improve the implementation of services.

Citation of Rules Affected by this Order: New WAC 16-160-165; and amending WAC 16-160-010, 16-160-120, 16-160-130, 16-160-140, 16-160-150, 16-160-160, 16-160-180, 16-160-190, 16-160-200, 16-160-210, and 16-160-220.

Statutory Authority for Adoption: RCW 15.86.130, 15.86.140.

Adopted under notice filed as WSR 23-17-131 on August 21, 2023.

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; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 28, 2023.

Derek L. Sandison  
Director

## OTS-4882.2

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-010 Purpose of this chapter.** This chapter specifies the process for registering companies and listing materials approved for use in organic production, processing and handling on the department's brand name materials list, also known as the organic input material list. This chapter is promulgated pursuant to chapter 109, Laws of 2010 to implement the brand name materials list.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-010, filed 9/8/10, effective 10/9/10. Statutory Authority: Chapter 15.86 RCW. WSR 03-03-045, § 16-160-010, filed 1/10/03, effective 2/10/03; WSR 99-16-054, § 16-160-010, filed 7/30/99, effective 8/30/99; WSR 91-05-007, § 16-160-010, filed 2/7/91, effective 3/10/91.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-120 Applications.** (1) Registration with the department and listing of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the (~~brand name materials~~) department's organic input material list.

(2) (~~Registration~~) The listing of a material on the (~~brand name materials~~) organic input material list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material (~~registered on the brand name materials~~) listed on the organic input material list.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-120, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-130 General application requirements.** (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration (~~on the brand name material list to the department.~~

~~(2) Manufacturers may submit applications to the department at:~~

~~Washington State Department of Agriculture  
Organic Food Program  
P.O. Box 42560  
Olympia, WA 98504-2560.~~

~~These forms may also be found on the department's website at:  
<http://agr.wa.gov/foodanimal/organic>~~

~~(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.) with the department's organic program.~~

(2) Current registrants and potential applicants may submit applications for products to be listed on the organic input material list.

(3) The department approves product applications when the applicant demonstrates the material meets the requirements for products as outlined in WAC 16-160-165.

(4) All registrations and product listings expire on ((October)) December 31st of the registration year.

(5) During the term of registration, if at any time the registrant has no approved or pending product listings, the registration will be canceled.

(6) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-130, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-140 Initial application requirements.** (1) (~~Applications must be submitted on the form provided by the department, and must include:~~

~~(a-))~~ To have products listed on the organic input material list, manufacturers must register with the department. To apply for registration, applicants must submit:

(a) An application form.

(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.

~~((b-))~~ (c) The name and address of the registrant.

~~((e-))~~ (d) A product application for each product to be listed on the organic input material list.

(2) Each product application must include:

(a) The brand name the material is sold under.

(b) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the ~~((registered))~~ brand name material.

~~((d-))~~ The brand name that the material is sold under.

~~(e-))~~ (c) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

~~((f-))~~ (d) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

~~((g-))~~ (e) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with ~~((the standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205):

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

~~((h-))~~ (f) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

~~((i-))~~ (g) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

~~((j-))~~ (h) The intended use of the material.

~~((k-))~~ (i) The required fee for registration.

~~((l-))~~ Signature by authorized representative.

~~(m-))~~ (j) Applicants seeking to list fertilizers and pesticides must submit verification of a valid registration from the department's pesticide management division. This requirement may be waived if the applicant verifies the product will not be sold or distributed in Washington state.

(k) The department may request additional information related to the items above as necessary to demonstrate that the material meets ~~((the standards of the National Organic Program.~~

~~(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.~~

~~(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department)) USDA organic regulations (7 C.F.R. Part 205).~~

(3) Registrants packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-140, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-150 Renewal application requirements.** (1) ~~((Renewal applications must be submitted on the form provided by the department, and must include the following:~~

~~(a-)) To renew a registration, registrants must submit:~~

~~(a) An application form;~~

~~(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;~~

~~((b-)) (c) The name(s) of the material(s) seeking renewal;~~

~~((c) Name and address of the manufacturing facility(ies) for each registered material;)~~

~~(d) Notification of any unreported changes to the ((original application)) company or product information; and~~

~~(e) (Signature of authorized representative; and~~

~~(f-)) The required fee for renewal. Renewal applications post-marked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.~~

~~(2) Registrants ~~((who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.)) packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180 every five years.~~~~

~~(3) Full disclosure of the complete formula of the material, including active and inert ingredients, and any other information necessary to demonstrate compliance is required every five years.~~

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-150, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-160 Updating an application.** If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration, either in part or in full.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-160, filed 9/8/10, effective 10/9/10.]

NEW SECTION

**WAC 16-160-165 Product requirements.** Products listed on the organic input material list must meet all requirements in this section. If at any time a listed product or product application is found to be in violation of one or more of these requirements, the company's registration may be denied, suspended, or revoked as provided under WAC 16-160-220. Products must:

(1) Meet the requirements of the USDA organic regulations (7 C.F.R. Part 205) and be approved for use in organic production, processing, or handling in accordance with the USDA organic regulations (7 C.F.R. Part 205). Materials may not be prohibited for use in the production or handling of organics per section 205.105 of the USDA organic regulations, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(2) Be clearly distinguishable from other products.

[]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-180 Inspections.** (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;

(b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and

(c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

~~(4) ((Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.~~

~~(5)) Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, or fails to provide samples as provided in this section ((, or fails to provide the department with the consent described in subsection (4) of this section)).~~

~~((6)) (5) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the ((standards of the National Organic Program)) USDA organic regulations (7 C.F.R. Part 205).~~

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-180, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-190 Recordkeeping requirements.** (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, processing, or handling and comply with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205). These records may include:

(a) Records pertaining to incoming raw materials:

- (i) Invoices/bills of lading;
- (ii) Transportation documentation;
- (iii) Material safety data sheets;
- (iv) Storage documentation.

(b) Production records:

- (i) Material formulations;
- (ii) Dates of production;
- (iii) Amount of ingredients used in each batch;
- (iv) Amount of final materials;
- (v) Sampling and/or laboratory analyses;
- (vi) Lot identification and tracking;
- (vii) Other records maintained during manufacturing.

- (c) Finished material records:
  - (i) Packaging documentation;
  - (ii) Sales documentation;
    - Purchase orders;
    - Receipts;
    - Shipping documents;
  - (iii) Storage documentation.
- (2) Records shall be maintained for six years.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-190, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-200 Fees.** ((The following fees apply to applicants and registrants to the brand name materials list.

~~(1) Initial material registration:~~

~~(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is five hundred dollars per material.~~

~~(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.~~

~~(2) Renewal registration: The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.~~

~~(3) Late fees: Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.~~

If your application is postmarked after October 31st but before:	Then the late fee is:
December 1	\$100
January 1	\$200
February 1	\$300

~~(4) Inspections: Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.~~

~~(5) Samples: Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.~~

~~(6) Expedited evaluation fees: Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars~~



per hour.) To receive or maintain registration, businesses must submit an application packet and fees to the department each year.

(1) **New application fee:** A new application fee is due with each annual application for registration.

(a) A new application fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>New company fee due</u>
\$0 - \$249,999	\$125.00
\$250,000 - \$999,999	\$250.00
\$1,000,000 - \$4,999,999	\$500.00
\$5,000,000 - \$19,999,999	\$1,000.00
\$20,000,000 - \$49,999,999	\$1,750.00
\$50,000,000 - and up	\$2,400.00

(b) Businesses who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A new application fee includes a product fee which is assessed based on the total number of products included in the application. The product fee is \$350 per product application.

(d) While a registrant's account is active, with either listed products or products pending evaluation, companies may submit applications for new products without incurring a company fee. The product fee is \$350 per product included in subsequent applications.

(2) **Renewal fee:** A renewal fee must be submitted annually by October 31st with each renewal application.

(a) A renewal fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>Renewing company fee due</u>
\$0 - \$249,999	\$125.00
\$250,000 - \$999,999	\$250.00
\$1,000,000 - \$4,999,999	\$500.00
\$5,000,000 - \$19,999,999	\$1,000.00
\$20,000,000 - \$49,999,999	\$1,750.00
\$50,000,000 - and up	\$2,400.00

(b) Companies who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A renewal fee includes a product fee which is assessed based on the total number of products being renewed. The product fee is \$350 per renewing product.

(d) Renewal applications and fees submitted after October 31st must include a late fee in addition to the appropriate company and product fees. Renewal applications submitted after February 2nd will not be accepted, and applicants must reapply as new applicants.

<u>If a renewal application is submitted after:</u>	<u>Late fee due</u>
<u>October 31st</u>	<u>\$100.00</u>
<u>November 30th</u>	<u>\$200.00</u>
<u>December 31st</u>	<u>\$300.00</u>

(3) **Inspection fee:** An inspection fee must be submitted after each inspection conducted by the department. The inspection fee is \$2,000.

(a) Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), qualify for a \$1,500 discount to their inspection fee.

(b) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged to the operation at a rate of \$3,000 and include any travel expenses in excess of \$3,000. Out-of-state inspection fees do not replace, and are in addition to, the standard inspection fee as outlined under this section.

(4) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department or at the cost for analyses performed by another laboratory.

(5) **Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient capacity is available to expedite the work. Fees for expedited services do not replace, and are in addition to, any other required fees as outlined in this section.

(a) Expedited services not requiring an inspection are charged a rate of \$500 to receive an evaluation and certification decision within five business days from the acceptance of the request.

(b) Expedited services requiring an inspection prior to a certification decision are charged a rate of \$750. Expedited services under this subsection take production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-200, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-210 Labels and logos.** (1) A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material.

The logos found in this section may be printed in black and white as displayed in this chapter. Alternatively, a color version with blue leaves, circle and background may be used. Electronic copies of the logos are available by request from the department.

(2) Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term.

(3) Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material.

(4) In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.



[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-210, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations.** (1) Registrations (~~((on the brand name materials list))~~) with the department's organic program, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration (~~((on the brand name materials list))~~) with the department, in part or in full, if the director determines that a registrant has failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) (~~(Application or registrations)~~) Product applications or listings will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-220, filed 9/8/10, effective 10/9/10.]