



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (August 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: July 23, 2020

TIME: 6:35 AM

WSR 20-16-011

Agency: Dept. of Agriculture

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)

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

Yes No If Yes, explain:

Purpose: This rule making order amends chapter 16-06 WAC, Public Records, by:

1. Repealing public record exemptions already specified in the chapter 42.56 RCW, Public Records Act;
2. Repealing the industrial hemp research program exemption;
3. Providing details on how the public can submit record requests utilizing the online public disclosure web portal;
4. Adding language specifying that inspection or copying of records may only be done during customary business hours;
5. Adding language requiring the agency to maintain a list of commonly used exemptions on the public website;
6. Modifying the language to increase clarity and readability; and
7. Removing obsolete language.

Citation of rules affected by this order:

New: None
 Repealed: None
 Amended: WAC 16-06-160, 16-06-190, and 16-06-210
 Suspended: None

Statutory authority for adoption: RCW 42.56.040

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-11-073 on May 20, 2020 (date).

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:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___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	<u>1</u>	Repealed	___

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

New	___	Amended	___	Repealed	___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

New	___	Amended	<u>3</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>3</u>	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>3</u>	Repealed	___

Date adopted: July 22, 2020

Name: Derek I. Sandison

Title: Director

Signature:



AMENDATORY SECTION (Amending WSR 14-19-056, filed 9/12/14, effective 10/13/14)

WAC 16-06-160 Description of department, address and telephone number of Olympia administrative offices. Headquartered in Olympia and located in the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 42560, Olympia, Washington 98504-2560, the department employs personnel in every county in Washington. The department serves the people of Washington state by supporting the agricultural community and promoting consumer and environmental protection since 1913. The information telephone number is 360-902-1800. The department is organized into seven functional areas:

- (1) Director's office;
- (2) Administrative services;
- (3) Animal services division;
- (4) Commodity inspection division;
- (5) Food safety and consumer services division;
- (6) Pesticide management division; and
- (7) Plant protection division.

The department maintains service locations or major field offices around the state. The administrative offices located in Olympia can assist persons in locating office locations around the state. The department's organization chart is available upon request from the Public Records Officer, Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, phone 360-902-1935, fax 360-902-2092 ((and also on the agency website. The public is encouraged to view the organization chart on the website)).

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-190 Public records requests. (1) ((A person wishing to inspect or copy the department's public records may make the request in writing on the department's public records request form or in writing by first class mail, email, or fax. Requests for public records may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays.)) Persons seeking public records are encouraged to use the online public records center portal on the department's website at <https://agr.wa.gov/contact-us/public-disclosure>.

(2) Alternatively, a request may be submitted to the public records officer in writing using the department's public records request form or other written format using the following methods:

(a) By mail at: Washington State Department of Agriculture, Attn: Public Records Officer, P.O. Box 42560, Olympia, Washington 98504-2560;

(b) By email at publicdisclosure@agr.wa.gov; or

(c) By fax to 360-902-2092.

(3) Requests must include the following information:

(a) The name, address and telephone number or other contact information of the person requesting the records;

(b) The date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

~~((2)(a) The request should be submitted to the public records officer at: Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.~~

~~(b) The request may also be submitted by fax to 360-902-2092 or by email at: publicdisclosure@agr.wa.gov.~~

~~(3)) (4) If a requestor cannot submit a request for public records in writing and desires to make an oral request either in person or by telephone, the public records officer or designee receiving the request will summarize the request in writing and then verify in writing with the requestor that the summary correctly memorializes the request.~~

(5) A person wishing to inspect or copy the department's public records may do so during customary business hours, Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 17-20-102, filed 10/4/17, effective 11/4/17)

WAC 16-06-210 Exemptions. (1) The Public Records Act ((provides that a number of types of information or records are exempt from public inspection and copying. In addition, records)) exempts a number of types of records from public disclosure (see chapter 42.56 RCW).

(2) Records are also exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions ((to public disclosure specific to department records)) outside of the Public Records Act, which restrict the availability of some records held by the department. This list is not exhaustive and other exemptions may apply:

~~((1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230(3)).~~

~~(2) Investigative records (reference RCW 42.56.240).~~

~~(3) Test questions, scoring keys, and other examination data used to administer a license (reference RCW 42.56.250(1)).~~

~~(4) Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts (reference RCW 42.56.290).~~

~~(5) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).~~

~~(6) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States Department of Homeland Security or the United States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(12)).~~

~~(7) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).~~

~~(8) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant (reference RCW 42.56.250(2)).~~

~~(9) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, driver's license numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency (reference RCW 42.56.250(3)).~~

~~(10) Information provided for the semi-annual report for fertilizers, minerals and limes that would reveal the business operation of the person making the report (reference RCW 15.54.362(5) and 42.56.380(2)).~~

~~(11)) (a) The semiannual report required in the Commercial Feed Act ((is not a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from disclosure, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure)) (reference RCW 15.53.9018).~~

~~((12)) (b) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).~~

~~((13) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for certification under RCW 15.86.110, and records whose disclosure is prohibited by the federal Organic Certification Act, 7 U.S.C. Sec. 6515(g) and the rules adopted under that act (reference RCW 42.56.380(1)).~~

~~(14) Consignment information contained on phytosanitary certificates issued by the department under chapters 15.13, 15.17, and 15.49 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture, or on applications for phytosanitary certification required by the department (reference RCW 42.56.380(4)).~~

~~(15) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by the former chapter 15.110 RCW or chapter 43.325 RCW (the energy freedom loan program) (reference RCW 42.56.270(4)).~~

~~(16) Information obtained under RCW 15.19.080 regarding the purchases, sales, or production of an individual American ginseng grower or dealer (reference RCW 42.56.380(6)).~~

~~(17)) (c) Financial statement information required ((to determine whether or not an applicant for a license to operate a warehouse under chapter 22.09 RCW, agriculture commodities, meets minimum net worth requirements (reference RCW 22.09.040(9)).~~

~~(18) All financial statement information to determine whether or not an applicant for a license to be a grain dealer under chapter~~

~~22.09 RCW meets the minimum net worth requirements (reference RCW 22.09.045(7)).~~

~~(19) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of herd inventory management for animal disease traceability, is exempt from disclosure. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete (reference RCW 42.56.380(9)).~~

~~(20) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or the owner's designee and that can be identified to a particular business or individual is exempt from disclosure (reference RCW 42.56.380(10)).~~

~~(21) Information that can be identified to a particular business and that is collected under chapter 15.17 RCW, standards of grades and packs, and specifically RCW 15.17.140(2) and 15.17.143 for certificates of compliance (reference RCW 42.56.380(7)).~~

~~(22) Financial statement information provided under RCW 16.65.030 (1)(d), public livestock markets, is confidential information and not subject to public disclosure (reference RCW 16.65.030 (1)(d) and 42.56.380(8)).~~

~~(23)) under RCW 22.09.040(9) or 22.09.045(7).~~

~~(d) Privileged or confidential information or data that contains trade secrets, commercial, or financial information ((and is required and)) submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).~~

~~((24) Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects (reference RCW 43.23.270 and 42.56.270(3)).~~

~~(25)) (e) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).~~

~~((26) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, and 16.67 RCW, or required by the department to administer these chapters or the department's programs (reference RCW 42.56.380(3)).~~

~~(27) Financial and commercial information and records supplied by persons:~~

~~(a) To the department for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or~~

~~(b) To the department or commodity boards or commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, or 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).~~

~~(28) Farm plans developed by conservation districts, unless the farm plan is used for the application or issuance of a permit (reference RCW 42.56.270(17)).~~

~~(29)) (f) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:~~

~~((a)) (i) Number of animals: Beef cattle~~

~~1 to 19
20 to 159
160 to 299
300 to 999
1,000 to 5,999
6,000 to 10,999
11,000 to 15,999
16,000 to 20,999
21,000 to 25,999
26,000 to 31,199
31,200 to 37,439
37,440 to 44,999
45,000 and above~~

~~((b)) (ii) Number of animals: Mature dairy cattle~~

~~1 to 37
38 to 199
200 to 699
700 to 1,699
1,700 to 2,699
2,700 to 3,699
3,700 to 4,699
4,700 to 5,699
5,700 to 6,839
6,840 and above~~

~~((c)) (iii) Number of animals: Dairy heifers~~

~~1 to 49
50 to 149
150 to 299
300 to 999
1,000 to 1,999
2,000 to 2,999
3,000 to 3,999
4,000 and above~~

~~((d)) (iv) Number of animals: Swine (fifty-five pounds or greater)~~

~~1 to 19
20 to 159
160 to 399
400 to 749
750 to 2,499
2,500 to 4,249
4,250 to 5,999
6,000 to 7,749
7,750 and above~~

((e)) (v) Number of animals: Swine (less than fifty-five pounds)
 1 to 99
 100 to 499
 500 to 1,099
 1,100 to 1,999
 2,000 to 2,999
 3,000 to 9,999
 10,000 to 16,999
 17,000 to 23,999
 24,000 to 30,999
 31,000 and above
 ((f)) (vi) Number of animals: Layers (all ages)
 1 to 199
 200 to 999
 1,000 to 10,999
 11,000 to 24,999
 25,000 to 81,999
 82,000 to 138,999
 139,000 to 195,999
 196,000 to 252,999
 253,000 to 309,999
 310,000 to 371,999
 372,000 to 446,399
 446,400 to 535,679
 535,680 to 642,815
 642,816 to 771,379
 771,380 to 925,655
 925,656 to 1,110,787
 1,110,788 to 1,332,945
 1,332,946 and above
 ((g)) (vii) Number of animals: Broilers (all ages)
 1 to 199
 200 to 999
 1,000 to 17,999
 18,000 to 37,499
 37,500 to 124,999
 125,000 to 212,499
 212,500 to 299,999
 300,000 and above
 ((h)) (viii) Number of animals: Horses
 1 to 19
 20 to 79
 80 to 149
 150 to 499
 500 to 849
 850 to 1,199
 1,200 to 1,549
 1,550 and above
 ((i)) (ix) Livestock nutrients generated or exported by volume (ft³/day)
 1 to 74
 75 to 134
 135 to 299
 300 to 449
 450 to 749

750 to 1,499

1,500 to 2,499

2,500 to 4,999

5,000 to 8,499

8,500 to 11,999

12,000 to 15,999

16,000 and above

~~((j))~~ (x) Livestock nutrients generated or exported by weight
(tons/year)

1 to 5,256

5,257 to 10,512

10,513 to 21,024

21,025 to 42,048

42,049 to 84,096

84,097 to 164,184

164,185 to 262,734

262,735 to 394,200

394,201 to 558,384

558,385 to 722,634

722,635 to 919,734

919,735 to 1,051,134

1,051,135 and above

~~((k))~~ (xi) Number of acres covered by the plan or used for land
application of livestock nutrients

0 to 25

26 to 65

66 to 120

121 to 300

301 to 550

551 to 900

901 to 1,300

1,301 to 1,800

1,801 to 2,500

2,501 to 3,200

3,201 to 4,000

4,001 to 6,000

6,001 to 9,000

9,001 to 11,500

11,501 to 14,000

14,001 and above

~~((l))~~ (xii) Crop yields - tons/acre

0 to 1

1.1 to 2

2.1 to 3.5

3.6 to 5

5.1 to 7

7.1 to 9

9.1 to 12

12.1 to 14.5

14.6 to 17

17.1 to 19.5

19.6 to 22

22.1 to 26

26.1 and above

~~((30) Records of international livestock importation that can be
identified to a particular animal, business, or individual received
from the United States Department of Homeland Security or the United~~

~~States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(11)).~~

~~(31))~~ (g) A person aggrieved by a violation of chapter 17.21 RCW or the rules adopted under that chapter is entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available to persons outside the department except as provided in RCW 17.21.340 (1) (a) (ii).

~~((32) All records, data, and information filed in support of an industrial hemp research program license application (reference RCW 15.120.050(7)).~~

~~(33) Effective April 1, 2018,))~~ (h) Information about marijuana processors otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 69.07.200(4)).

~~((34))~~ (i) Information about marijuana producers, marijuana processors, and marijuana retailers otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 15.125.050).

(3) A list of common record exemptions can be found on the department's website.