



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: May 20, 2020

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WSR 20-11-073

Agency: Department of Agriculture

Title of rule and other identifying information: (describe subject) Chapter 16-06 WAC, Public records. The department is proposing to delete language that duplicates public disclosure exemptions already specified in the Public Records Act (chapter 42.56 RCW). Instead, the department will provide a general reference to the Public Records Act and only list specific exemptions that are specified in other statutes and exemptions the agency is required by statute to detail in rule. In addition, the department proposes to add information on submitting public records requests through an online web portal, add language regarding inspecting records, repeal the exemption for industrial hemp research, and add language referencing the department's website to obtain a list of common record exemptions.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Chapter 16-06 WAC establishes procedures the department follows to provide full access to public records and to implement provisions of the Public Records Act, chapter 42.56 RCW. The rule provides information to persons requesting access to the department's records and establishes procedures for both requestors and department staff. The department is proposing to amend chapter 16-06 WAC by:

1. Repealing public record exemptions already specified in the 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.

Reasons supporting proposal: Currently, chapter 16-06 WAC lists many of the public disclosure exemptions the department might claim when responding to public disclosure requests. The department updates the rule regularly to reflect changes passed by the Legislature. The proposed amendments restructure the rule language to provide a general reference to the exemptions already listed in the Public Records Act, rather than duplicating the same language in rule. Exemptions listed in statutes other than the Public Records Act that the department may commonly claim will continue to be listed in the rule. The department is proposing to maintain a list of common exemptions on the public website that can easily be updated as exemptions are adopted, repealed, or amended by the Legislature. Restructuring the rule language in this manner will reduce the need for frequent updates since the Public Records Act is amended regularly. Including reference to submitting requests on the agency's online public disclosure web portal provides additional options to the public for submitting public disclosure requests. The industrial hemp research program exemption is proposed for repeal because the statute the exemption was adopted under was repealed during the 2019 legislative session. This exemption is now obsolete. Currently, the rule language states that public records requests can be initiated during customary business hours. The department is proposing to amend the language to state that records can be inspected or copied during customary business hours in compliance with RCW 42.56.090.

Statutory authority for adoption: RCW 42.56.040

Statute being implemented: Chapter 42.56 RCW

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Washington State Dept. of Agriculture	<input type="checkbox"/> Private
	<input type="checkbox"/> Public
	<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Pam Potwin	1111 Washington St. SE, Olympia, WA 98504	360-902-1935
Implementation:	Pam Potwin	1111 Washington St. SE, Olympia, WA 98504	360-902-1935
Enforcement:	Pam Potwin	1111 Washington St. SE, Olympia, WA 98504	360-902-1935

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): These rule amendments meet the criteria for expedited rulemaking under RCW 34.05.353(1)(a), (c), and (d) and RCW 34.05.353(2)(a), (c).

Deleting public disclosure exemptions that are already specified in the Public Records Act (chapter 42.56 RCW) falls under the exemption specified under RCW 34.05.353(2)(c) because there is no need to replicate the same exemptions in rule since the agency will be posting commonly used public disclosure exemptions online.

The repeal of the industrial hemp research program public disclosure exemption falls under the exemption specified under RCW 34.05.353(2)(a) because the statute the public disclosure exemption was based on was repealed during the 2019 legislative session (chapter 158, Laws of 2019).

Providing details on how the public can submit record requests utilizing the online public disclosure web portal falls under the exemption specified under RCW 34.05.353(1)(d) because RCW 42.56.040(1)(a) explicitly and specifically dictates that state agencies shall publish in the Washington Administrative Code the methods whereby the public may obtain information, make submittals or requests.

Adding language specifying that inspection or copying of records may only be done during customary business hours falls under the exemption specified under RCW 34.05.353(1)(d) because RCW 42.56.090 explicitly and specifically dictates that state agencies shall allow the public to inspect and copy records during customary business hours.

Adding language stating that the agency will maintain a list of commonly used public disclosure exemptions online falls under the exemption specified under RCW 34.05.353(1)(a) because it relates only to internal governmental operations that are not subject to violation by a person.

All other amendments fall under the exemption specified under RCW 34.05.353(1)(c) because they are simply clarifying the language without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Agency: Washington State Dept. of Agriculture

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AND RECEIVED BY (date) July 20, 2020

Date: May 20, 2020	Signature: 
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Title: Associate Deputy Director	

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.