



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: June 10, 2020

TIME: 6:11 AM

WSR 20-13-035

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 16-470 WAC, Quarantine – Agricultural Pests by:

1. Adding soil and growing medium in pots and on root balls of apple maggot host plants originating from the quarantine area, to the list of regulated commodities;
2. Adding soil and growing medium in pots and on root balls of nonhost plants originating from the quarantine area that were grown within the drip line of host plants that have produced fruit, to the list of regulated commodities;
3. Specifying the criteria for how these plants may enter the pest free area if risk is mitigated;
4. Specifying the documentation that must accompany these plants when shipping to or through a pest free area and when receiving these plants from a quarantine area; and,
5. Specifying the fees associated with inspection and certification services.

Citation of rules affected by this order:

New: None

Repealed: None

Amended: WAC 16-470-101, WAC 16-470-103, WAC 16-470-111, WAC 16-470-113, and WAC 16-470-115.

Suspended: None

Statutory authority for adoption: RCW 17.24.011, 17.24.041, 17.24.051

Other authority: Chapter 34.05 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-08-130 on April 1, 2020 (date).

Describe any changes other than editing from proposed to adopted version: No changes.

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Federal statute:	New	___	Amended	___	Repealed	___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	___	Repealed	___

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

New	___	Amended	<u>5</u>	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___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

New	___	Amended	___	Repealed	___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

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>5</u>	Repealed	___

Date Adopted: June 10, 2020

Name: Derek I. Sandison

Title: Director

Signature:



WAC 16-470-101 Establishing quarantines for apple maggot and plum curculio. Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environment and agricultural crops of the state.

(2) The director, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(1).

(3) The director, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

(4) The director, pursuant to chapter 17.24 RCW, has determined that soil and growing medium in pots or on root balls of host plants or any plants (host or nonhost) that were within the drip line of host plants that have produced fruit, originating from areas infested with apple maggot are a host medium for apple maggot and are "regulated commodities" as provided in WAC 16-470-111. The exclusion of such soil or growing medium from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport of such soil or growing medium into the pest free area may be allowed if accompanied by an official inspection certificate issued by the plant protection organization of the state of origin as provided in WAC 16-470-113 and 16-470-115.

AMENDATORY SECTION (Amending WSR 05-09-005, filed 4/7/05, effective 8/15/05)

WAC 16-470-103 Definitions. The following definitions shall apply to WAC 16-470-101 through 16-470-130:

(1) "Established" means present in a country, state, county or other area, multiplying and expected to continue.

(2) "Host plant" means all species in the genera of Malus, Crataegus, Prunus, Pyrus and Cydonia (including, but not limited to, apples, crab apples, hawthorn, cherries, plums, prunes, pears, and quince).

(3) "Soil" and "growing medium" as regulated commodities means only that soil or growing medium in pots or on root balls of plants originating from a quarantined area being shipped under this quarantine.

(4) "Threatened with infestation" means that any life stage of apple maggot or plum curculio has been found within one-half mile of an orchard or other production site, including any portion of an orchard outside or beyond the one-half mile area. Orchards or production sites in a quarantined area, which are not surveyed by a plant protection organization, are considered to be threatened with infestation. An orchard or other production site will be removed from threatened with infestation status, if control measures are performed at the detection site, and survey by the department shows no further detection(s) within the one-half mile area around the orchard or other production site throughout the subsequent full growing season.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-111 Commodities regulated for apple maggot. (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot. Fresh fruit also includes fruit attached to host plants.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine area is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(4) Soil or growing medium in pots or on root balls of host plants originating from a quarantined area are regulated commodities under quarantine for apple maggot.

(5) Soil or growing medium in pots or on root balls of nonhost plants that fall within the drip line of host plants that have pro-

duced fruit originating from a quarantined area are regulated commodities under quarantine for apple maggot.

(6) Any host plants shipped bare root and without fruit attached are not regulated commodities under quarantine for apple maggot.

(7) Soil or growing medium in pots or on root balls of plants originating in the pest free area, as specified in WAC 16-470-105(1), are not regulated commodities under quarantine for apple maggot.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-113 Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot.

(1) Shipment of fresh fruit, as specified in WAC 16-470-111(1), from an area under quarantine, as specified in WAC 16-470-105(3), into the pest free area for apple maggot, as specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

~~((1))~~ (a) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin ~~((evidencing))~~ stating at least one of the following:

~~((a))~~ (i) The shipment is composed of apples, which has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths degrees Fahrenheit or less.

~~((b))~~ (ii) The shipment is composed of fresh fruit specified in WAC 16-470-111(1) other than apples, which has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two degrees Fahrenheit or less.

~~((c))~~ (iii) The shipment is composed of fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, meeting the requirements under WAC 16-470-122.

~~((d))~~ (iv) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identified and maintained separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

~~((i))~~ (A) The state in which the fruit was grown;

~~((ii))~~ (B) The point of repacking and reshipment;

~~((iii))~~ (C) The amount and kind of commodities comprising the lot or shipment; and

~~((iv))~~ (D) The names and addresses of the shipper and consignee.

~~((2))~~ (b) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks ~~((evidencing))~~ stating origin outside the area under quarantine.

~~((3))~~ (c) The fruit is frozen solid.

(2) The shipment of soil or growing medium in pots or on root balls of host plants from the area under quarantine, as specified in WAC 16-470-105(3), into the pest free area for apple maggot, as specified in WAC 16-470-105(1), is prohibited unless accompanied by a cer-

tificate issued by the plant protection organization of the state of origin stating the following:

(a) The soil or growing medium supports host plants that have not produced fruit, and did not fall within the drip line of host plants that have produced fruit; or

(b) The host plants originated in an area where apple maggot is not considered established, based on official survey and were grown in a commercial nursery; or

(c) The soil or growing medium of the plants has been treated with a pesticide treatment approved by the director just prior to shipment and was safeguarded from reinfestation.

(3) The shipment of soil or growing medium in pots and on root balls of nonhost plants that were grown within the drip line of host plants that have produced fruit, may only be shipped from the area under quarantine, as specified in WAC 16-470-105(3), to the pest free area for apple maggot, as specified in WAC 16-470-105(1), if accompanied by a certificate issued by the plant protection organization of the state of origin stating the following:

(a) The nonhost plants originated in an area where apple maggot is not considered established, based on official survey, and were grown in a commercial nursery; or

(b) The soil or growing medium of the plants has been treated with a pesticide treatment approved by the director just prior to shipment and was safeguarded from reinfestation.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-115 Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area within Washington state. Shipment of regulated commodities, as specified in WAC 16-470-111, from an area under quarantine, as specified in WAC 16-470-105(2), into the pest free area for apple maggot, as specified in WAC 16-470-105(1), is prohibited, unless one of the following applicable conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fresh fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fresh fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is in compliance with the applicable conditions under WAC 16-470-118 (2) and (3).

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill

or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

(5) The shipment of soil or growing medium in pots or on root balls of host plants is accompanied by either an official phytosanitary certificate or inspection tag associated with a compliance agreement issued by the department stating the following:

(a) The soil or growing medium supports host plants that have not produced fruit and did not fall within the drip line of host plants that have produced fruit; or

(b) The soil or growing medium supports host plants that were grown in a commercial nursery and the production site is not considered threatened with infestation as defined in WAC 16-470-103(4); or

(c) The soil or growing medium of the host plants has been treated with a pesticide treatment approved by the director just prior to shipment and safeguarded from reinfestation.

(6) The shipment of soil or growing medium in pots or on root balls of nonhost plants that were grown within the drip line of host plants that have produced fruit is accompanied by either an official phytosanitary certificate or inspection tag associated with a compliance agreement issued by the department stating the following:

(a) The soil or growing medium supports nonhost plants that were grown in a commercial nursery and the production site is not considered threatened with infestation as defined in WAC 16-470-103(4); or

(b) The soil or growing medium of the nonhost plants has been treated with a pesticide treatment approved by the director just prior to shipment and safeguarded from reinfestation.

(7) Phytosanitary certificates and inspection tags associated with a compliance agreement described in subsections (5) and (6) of this section shall be issued by the department in accordance with chapters 16-401 WAC and 15.13 RCW.

(8) Fees for inspection services related to the issuance of phytosanitary certificates, inspection tags associated with a compliance agreement, and requests to remove threatened with infestation status, shall be charged in accordance with WAC 16-401-027.