RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Department of Agriculture

Emergency Rule Only

Effective date of rule:
Emergency Rules
☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: This rulemaking order amends chapter 16-470 WAC by:
(1) Adding municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to the list of commodities regulated under the apple maggot quarantine;
(2) Establishing a special permit to allow transportation and disposition of municipal solid waste from the area under quarantine for disposal at a solid waste landfill or disposal facility in the apple maggot and plum curculio pest-free area; and
(3) Establishing a special permit to allow transportation and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes from the area under quarantine for disposal at a solid waste landfill or treatment at a composting facility in the apple maggot and plum curculio pest-free area.

Citation of existing rules affected by this order:
Repealed:
Amended: WAC 16-470-101, 108, 111, 113, 115, 118, 122, 127, and 130
Suspended:

Statutory authority for adoption: RCW 17.24.011, 17.24.041

Other authority: Chapter 34.05 RCW

EMERGENCY RULE
Under RCW 34.05.350 the agency for good cause finds:
☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
☐ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: The agency had been working with the solid waste industry and other stakeholders regarding re-issuance of a special permit under WAC 16-470-130 when it determined that section applied only to special permits for transport of fresh fruit. Without the emergency adoption of a rule allowing issuance of special permits for transport of municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to solid waste disposal facilities or composting facilities in the pest-free area, the affected industry stakeholder(s) would lack alternatives to properly dispose of existing waste, creating storage and disposal back-ups with potential health risks and financial risks to the municipal corporations dependent on their contractors to properly and timely dispose of the waste.

DATE ADOPTED
September 9, 2015

NAME (TYPE OR PRINT)
Derek I. Sandison

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 09, 2015
TIME: 8:35 AM

WSR 15-19-029

(COMPLETE REVERSE SIDE)

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	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	0	Amended	0	Repealed	0

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

New 0 Amended 0 Repealed 0

The number of sections adopted in the agency's own initiative:

New 1 Amended 9 Repealed 0

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

New 0 Amended 0 Repealed 0

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	1	Amended	9	Repealed	0

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

WAC 16-470-101 Establishing quarantine 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 of agriculture, 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 environmental quality and agricultural crops of the state.

(2) The director of agriculture, 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 environmental quality 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 of agriculture, 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 environmental quality 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).

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-108 Distribution of infested or damaged fruit is prohibited. Regulated commodities ((~~described~~)) specified in WAC 16-470-111(1) and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

WAC 16-470-111 ((~~What~~)) Commodities ((~~are~~)) 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.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine areas 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.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-113 ((~~What do you need~~)) Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot((~~?~~)). Shipment of ((~~regulated commodities~~)) fruit, as ((~~described~~)) specified in WAC 16-470-111(1), from an area under quarantine, as ((~~described~~)) specified in WAC 16-470-105(3), into the pest free area for apple maggot, as ((~~described~~)) specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

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

(a) The shipment is composed of apples, which ((~~have~~)) 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 (37.9) degrees Fahrenheit or less.

(b) The shipment is composed of ((~~regulated commodities~~)) fresh fruit specified in WAC 16-470-111(1) other than apples, which ((~~have~~)) 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 (32) degrees Fahrenheit or less.

(c) The shipment is composed of ((~~regulated commodities~~)) fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, certified by the state of origin in compliance with WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been ((~~identity~~)) identified and maintained ((~~while~~)) 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) State in which the fruit was grown;

(ii) Point of repacking and reshipment;

(iii) Amount and kind of commodities comprising the lot or shipment; and

(iv) Names and addresses of the shipper and consignee.

(2) 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 origin outside the area under quarantine.

(3) The fruit is frozen solid.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

WAC 16-470-115 ((~~Within Washington state, what is required to ship fruit~~)) Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area ((~~for apple maggot from quarantined areas?~~)) within Washington state. Shipment of regulated commodities, as ((~~described~~)) specified in WAC 16-470-111, from an area under quarantine, as ((~~described~~)) specified in WAC 16-470-105(2), into the pest free area for apple maggot, as ((~~described~~)) specified in WAC 16-470-105(1), is prohibited, unless one of the following 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 fruit came from orchards and production sites that are not threatened with infestation; or

(b) The 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 accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

(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).

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

WAC 16-470-118 Requirement within Washington state((~~, what is required~~)) to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation((~~?~~)). All ((~~regulated commodities~~)) fresh fruit, as ((~~described~~)) specified in WAC 16-470-111(1), from an orchard or production site that is infested or threatened with infestation by apple maggot must be inspected ((~~(except graded culls - See subsection (4) of this section)~~)) by the department following accepted agency standards.

(1) If ((~~regulated commodities are~~)) the fruit is inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If ((~~regulated commodities are~~)) the fruit is found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of ((~~regulated commodities~~)) fresh fruit found to be infested with apple maggot into the pest free area for apple maggot.

(3) If ((~~regulated commodities are~~)) the fruit is found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the ((~~commodity~~)) fruit is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) ((~~Regulated commodities~~)) Fruit other than apples cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) ((~~and~~)) or (b), dependent on the category of fruit.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-122 ((~~What are the~~)) Requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot((~~?~~)). Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the subsections of this section are complied with:

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not

established, was grown in a commercial orchard, and has not been placed under quarantine.

NEW SECTION

WAC 16-470-124 Special permits for solid waste transport and disposition. (1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

(2) The director may issue special permits admitting or allowing transportation and distribution of yard debris, organic feedstocks, organic materials, or agricultural wastes for treatment at a composting facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "yard debris," "organic feedstocks," "organic materials," and "agricultural wastes" or "composting facility" refer to waste and composting facilities regulated under chapters 70.95 RCW and 173-350 WAC by the Washington state department of ecology.

(3) When the owner of the waste identified in subsections (1) and (2) of this section transfers ownership of the waste to a different person receiving the waste for disposal or treatment in the pest free area, both owners must apply for and receive special permits under this section. A special permit to transport will not be issued to the transporting owner unless a special permit is concurrently issued to the receiving facility owner under conditions specified by the director.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-127 ((~~What do you need~~)) Requirements to ship commodities regulated for plum curculio into Washington((~~?~~)). Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

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

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be main-

tained at thirty-seven and nine-tenths ((~~(37.9)~~)) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have 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 ((~~(32)~~)) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

(i) State in which the fruit was grown;

(ii) Point of repacking and reshipment;

(iii) Amount and kind of commodities comprising the lot or shipment; and

(iv) Names and addresses of the shipper and consignee.

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

(3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.

(4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:

(a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detections in counties where plum curculio has not previously been detected; and

(b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-130 Special permits for fresh fruit transport and distribution. The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111(1) and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.