

**WAC 16-461-006 Definitions.** ~~((1))~~ "Certificate of compliance" means a shipping document issued by the fruit and vegetable industry attesting that the identified fruits or vegetables are known to be in full compliance with provisions of chapter 15.17 RCW. The member of the fruit and vegetable industry issuing the certificate of compliance has the sole responsibility of fairly and accurately representing the quality and quantity of fruits and vegetables listed on the certificate of compliance.

"Civil penalty" means a monetary penalty administratively issued by the director for noncompliance with chapter 15.17 RCW and the rules adopted under that chapter. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

"Commercial lot" ~~((shall))~~ means any number ~~((of any))~~ and type of containers or any quantity in bulk of agricultural products listed in WAC 16-461-010, which are sold or bartered~~((; Provided, That quantities))~~. Any quantity of less than five hundred pounds net weight, when grown and sold by ~~((any))~~ the producer ~~((where grown by the producer and sold))~~ directly to the ultimate consumer, ~~((shall))~~ is not ~~((be))~~ considered ~~((as))~~ a commercial lot.

~~((2))~~ "Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designated representative.

"First violation" means the alleged violator has committed no same or similar violation within three years of committing the current alleged act(s).

"Fruit or vegetable stand~~((s, as used in this chapter, shall))~~" means any ~~((facilities))~~ facility from which ~~((the predominance of the edible commodity sales to the public are of))~~ seasonal fresh fruits ~~((and/or))~~ or vegetables produced within the state of Washington~~((, and shall))~~ are sold to the public. Fruit or vegetable stand includes roadside stands, farmer's markets, trucks or other conveyances ~~((from which sales of commodities are made,))~~ and temporary open air parking lot stands other than those owned or operated by retail grocery stores. Such facilities may or may not be owned, leased, or otherwise operated by the producer of the fruits ~~((and/or))~~ or vegetables.

~~((3))~~ "Notice of correction" means a document issued by the department that describes a violation under chapter 15.17 RCW or the rules adopted under that chapter. A notice of correction identifies a violation but is not a formal enforcement action. It is not subject to appeal and is a public record. A violation identified in a notice of correction can be a "first violation" even though not subject to a civil penalty if the correction requirements are met.

"Second violation" means the alleged violator committed one same or similar violation within three years of committing the current violation.

"Shipping permit" means a shipping document issued by the director attesting that the fruits or vegetables are known to be in compliance with the provisions of chapter 15.17 RCW and this chapter.

"Third violation" means the alleged violator committed two same or similar violations within three years of committing the current violation.

"Violation" means commission of an act or acts prohibited by chapter 15.17 RCW, this chapter, or rules adopted under chapter 15.17 RCW. Failure to perform any act required by chapter 15.17 RCW, this chapter, or rules adopted under chapter 15.17 RCW is a violation.

"Zone of production" ((shall be defined as one of two geographical areas\*)) means for Zone 1((+)) all counties west of the Cascade Mountain Range((+)) and for Zone 2((+)) the following counties ((of)): Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

AMENDATORY SECTION (Amending WSR 09-10-047, filed 5/1/09, effective 6/1/09)

**WAC 16-461-010 ((Inspection certificate and/or permit required.)) Certificate of compliance and shipping permit requirements.**

~~((1)) No person ((shall)) may ship, transport, accept for shipment, or accept delivery of((7)) any commercial lot of ((the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the commodity inspection division of the department of agriculture allowing such shipment, movement or delivery:~~

~~(a) Apricots in closed or open containers for fresh market.  
(b) Italian prunes in closed or open containers for fresh market.  
(c) Peaches in closed or open containers for fresh market.  
(d) Cherries in closed or open containers for fresh market. No permit will be issued on cherries infested with live cherry fruit fly larvae.~~

~~(e) Apples in closed or open containers for fresh market.  
(f) Apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.~~

~~(g) Pears in closed or open containers for fresh market. Pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.~~

~~(h) Asparagus in closed or open containers for fresh market. Asparagus may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of the asparagus having the approval of the director to issue the certificates of compliance.~~

~~(i) Apples in containers or bulk, for processing.  
(i) Apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance.~~

~~(ii) Apples for processing entering in state commerce do not require a permit.~~

~~(j) Pears in containers or bulk, for processing.  
(i) Pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance.~~

~~(ii) Pears for processing entering in state commerce do not require a permit.~~

~~(2) Fruits and vegetables listed in WAC 16-461-010 are exempted from requirements for inspection and issuance of a certificate or permit:~~

~~(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labeling, or processing prior to entering commercial channels for resale.~~

~~(b) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance. Exempt sales by the producer within a farmer's market shall not be restricted to the zone of production.~~

~~(c) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one half inch in height.~~

~~(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting authority, on terms and conditions that the director deems appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.~~

~~(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so.~~

~~(i) Apples, pears, cherries, and asparagus about to be shipped or transported must be in full compliance with the requirements of chapter 15.17 RCW, Standards of grades and packs, rules adopted under chapter 15.17 RCW, and administrative directives of the director.~~

~~(ii) Apricots, cherries, peaches, prunes, or pears about to be shipped or transported must be in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal state lot identification.~~

~~(iii) Cherries of the dark sweet varieties must be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Washington standards for cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" must meet only the requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.~~

~~(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3). Cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW, Standards of grades and packs, or rules adopted under chapter 15.17 RCW, or for violation of the terms of the certificate of compliance agreement. The period of any suspension will be determined by the director and will be commensurate with the seriousness of the violation.~~

~~(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director~~

will be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance must be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture the regular base fee equivalent to that charged by the director for a shipping permit for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.)) apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries for which a certificate of compliance or a shipping permit has not been issued, except that apples and pears for processing entering in-state commerce are not required to have a certificate of compliance or shipping permit issued.

#### NEW SECTION

**WAC 16-461-020 Exempt fruit and vegetables.** Fruit and vegetables listed in WAC 16-461-010 are exempt from the requirements of this chapter when:

(1) The product is being transported from the premises where grown or produced to a facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labeling, or processing prior to entering commercial channels for resale.

(2) The product is sold or transported on a single conveyance to a fruit or vegetable stand within the zone of production, not exceeding daily quantities of two thousand pounds net weight of a single commodity or six thousand pounds net weight of any combination of commodities other than cherries. Sales by the producer from a fruit or vegetable stand are not restricted to the zone of production.

(3) Daily quantities do not exceed one hundred pounds net weight of sweet cherry varieties sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

#### NEW SECTION

**WAC 16-461-030 Cherries infested with Western cherry fruit fly.** Cherries in any type of containers for fresh market may not be shipped if infested with live Western cherry fruit fly (*Rhagoletis indifferens*) larvae as prohibited under WAC 16-463-010. The exemptions in WAC 16-461-020 do not apply to this section.

NEW SECTION

**WAC 16-461-040 Compliance with federal marketing order or state requirements.** Prior to shipment, fruits and vegetables must meet the applicable federal marketing order requirements or Washington state requirements specific to each commodity. Containers must be marked at time of certification with a Washington state lot identification, a federal-state lot identification, or an identification method approved by the director.

NEW SECTION

**WAC 16-461-050 Certificate of compliance agreements and issuance of certificates of compliance.** (1) A shipper or packer of apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries may petition the director for authority to issue certificates of compliance for each season. Under RCW 15.17.143, the director may issue certificate of compliance agreements under terms and conditions provided in this section. The authority granted to the applicant is limited to the identified commodities handled under the applicant's direct control or handled at the shipper's or packer's facilities. A compliance agreement will include technical provisions appropriate for the certificate of compliance activities, provisions for the applicant's requests for service from the department, and the following conditions:

(a) The applicant must grant the director the right of entry to its facilities as provided under RCW 15.17.190;

(b) The applicant must grant the director the right to audit an applicant's certificate of compliance records for the purpose of determining compliance with chapter 15.17 RCW, chapter 16-390 WAC, and this chapter;

(c) The applicant must grant the director the right to request and obtain a yearly total hundredweight (CWT) report to verify the volume of commodities shipped for all certificates of compliance issued by the applicant;

(d) Shipper or packer reports may be verified by WSDA for accurate reporting on certificates of compliance. WSDA may determine that a report may be inaccurate if there is a five percent variance in the reported hundredweight, as verified against historical certificate of compliance data and current crop size data or estimates; and

(e) The applicant must indemnify and hold harmless the director and WSDA for claims related to the applicant's activities related to issuance of certificates of compliance.

(2) Certificates of compliance must be on forms approved and issued by the director.

(3) Any shipper or packer authorized to issue certificates of compliance must deposit with the director the fee required under chapter 16-390 WAC for each certificate.

(4) Apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries about to be shipped or transported must be in full compliance with the applicable requirements of chapter 15.17 RCW, chapter 16-390 WAC, and this chapter as a condition for issuance of a certificate of compliance.

(5) A certificate of compliance will be issued at the time of shipment.

NEW SECTION

**WAC 16-461-060 Civil penalty for violations and suspension of compliance agreements for violations.** (1) A person who violates the provisions of chapter 15.17 RCW, or the rules adopted under chapter 15.17 RCW including chapter 16-390 WAC and this chapter, may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. A penalty amount will be determined by the director based upon the seriousness of any violation and in consideration of any aggravating or mitigating factors.

(2) A person granted a compliance agreement may be subject to suspension of the agreement for a period not to exceed twelve consecutive months for violation of the provisions of chapter 15.17 RCW, or the rules adopted under chapter 15.17 RCW including chapter 16-390 WAC and this chapter. A period of suspension will be determined by the director based on the seriousness of any violation and in consideration of any aggravating or mitigating factors.

(3) Penalty matrix:

<b>Violation</b>	<b>Penalty/Suspension*</b>
First	Up to \$250 civil penalty and up to 90 day suspension of compliance agreement
Second	Up to \$500 civil penalty and up to 180 day suspension of compliance agreement
Third	Up to \$1,000 civil penalty and up to one year suspension of compliance agreement

\* Penalties and suspensions under this subsection are subject to aggravating or mitigating circumstances as noted in subsections (1) and (2) of this section.

(4) Nothing herein shall prevent the director from:

(a) Choosing not to pursue a civil penalty or suspension of a compliance agreement.

(b) Issuing a notice of correction in lieu of pursuing a civil penalty or suspension of a compliance agreement.

(c) Negotiating settlements of cases on such terms and for such reasons as deemed appropriate. Prior violations covered by a prior settlement agreement may be used by the director for the purpose of determining the appropriate penalty for the current alleged violation(s) if not prohibited by the agreement.

(d) Referring violations or alleged violations to any federal, state or county authority with jurisdiction over the activities in question including, but not limited to, the United States Department of Agriculture (USDA) and federal, state or local law enforcement agencies.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-461-015            Effective date.