

Exemptions Criteria Worksheet

1. **Exemption:** RCW 42.56.380(6)

2. **Session Law:** 1996 chapter 188

3. **Category:** Agriculture

4. **Cross-ref.:** RCW 15.19.080

5. **Date Enacted:** 1996

6. **(Text of exemption)** Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer.

7. **Exemption protects:** ☐ Safety ☐ Privacy ☒ Financial ☐ Other (explain):

8. **Purpose (including purpose of accompanying legislation if applicable):**

1996 – To comply with international treaties and federal law, a system to regulate production and export of artificial ginseng is needed to protect wild ginseng. 1998 – To regulate ginseng growers and dealers who trade on the export market.

9. **Information covered:** ☐ About gov't function ☒ Collected/held by gov't

☐ Public funds ☐ Public official ☐ Vital gov't Interest ☐ Confidential/private ☐ Other

Describe: purchase and sales, information such as seller's name, buyer's name, and type and volume of ginseng purchased.

10. **Stakeholders:**

1. Dep't of Agriculture	Contacted: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
2. Northwest Ginseng Growers Assoc.	Contacted: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
3. WA State Farm Bureau	Contacted: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
4. WA State Growers League	Contacted: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no

11. **Add'l bill**

Information:

Staff Member:
Floor debate: ☐ yes ☒ no

SubCommittee:
Bill Reports: ☒ yes ☐ no

12. **Comments** (including significant court decisions; related WACs sections, or other).

Bill reports for original 1996 bill and 1998 amendment
Department of Agriculture WACs

Staff Member: Jean Wilkinson

SubCommittee:

Notes:

1. **Exemption.** RCW citation for exemption.
2. **Category.** Category of exceptions based on RCW 42.56.230 - .610.
3. **Session Law.** List session law for exemption and any amendments.
4. **Cross-reference.** List any other statute that also addresses this exemption.
5. **Date Enacted.** Enactment date and date of any amendments.
6. **Text.** Inset complete text of exemption.
7. **Exemption Protects.** These are broad categories of the types of interests the exemption is designed to protect. The mere fact that an exception falls into one of these categories is not meant to suggest it's legitimate or a proper exemption. More detail would be provided in the "purpose" section.
 - **"Safety"** would include information that, if disclosed, would put an individual or the general public at risk. Example: .240(3) witness identities in criminal investigations.
 - **"Privacy"** would include public employees' privacy and the privacy of citizens and businesses that provide information to public agencies. Example: .250(3) addresses/ phone numbers of public employees.
 - **"Financial"** would include financial information for citizens or businesses that is provided to a public agency, but the provider would not give to a competitor or the general public. Many of these exemption are contained in section .270 and .400.
 - **"Other"** would be for exemptions serving other purposes.
8. **Purpose** (including purpose of complete legislation if applicable). This provides details about specific purpose of the exemption and the interests it protects. This would come for the enacting legislation, the legislative history and testimony from the exemption's supporters. This also allows us to evaluate the harms that will be caused if the information is released. For example, the purpose of the real estate appraisal exemption is to prevent the public from having to pay more for property than they would in a standard arms-length transaction.
9. **Information covered.** This category helps us know what information is being withheld so we can know the public's interest in knowing this information. The description would provide details, such as whether the exempt material are applications or statistical information or communications or reports. There can of course be multiple types of information the is covered.
 - **"About gov't function."** Record provides insight into the function of government.
 - **"Collected/held by gov't."** Records reflect information collected by the public agency and/or are the actual materials collected by the agency from third parties or employees.
 - **"Public funds."** Records reflect expenditure of public funds.
 - **"Public official."** Record reflects actions of public official.
 - **"Vital gov't interest."** Record reflects information related to a vital government interest that if disclosed, would jeopardize that interest the public's detriment.
 - **"Confidential/private."** Records contain confidential or private information.
10. **Stakeholders.** The Act requires that we consider input from stakeholders.
11. **Add'l bill information.** Provided to assist in finding additional legislative history.
12. **Comments.** Place for miscellaneous comments including significant court decisions, related sections of the Washington Administrative Code, or other comments.

RCW 42.56.380

Agriculture and livestock.

*** CHANGE IN 2007 *** (SEE 1688.SL) ***

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

- (1) Business-related information under RCW 15.86.110;
- (2) Information provided under RCW 15.54.362;
- (3) 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, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;
- (4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 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 of agriculture;
- (5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;
- (6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;
- (7) Information that can be identified to a particular business and that is collected under section 3(1), chapter 235, Laws of 2002;
- (8) Financial statements provided under RCW 16.65.030(1)(d);
- (9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. 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; and
- (10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

[2006 c 330 § 26; 2006 c 75 § 3; 2005 c 274 § 418.]

Notes:

Reviser's note: This section was amended by 2006 c 75 § 3 and by 2006 c 330 § 26, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date – 2006 c 330 § 26: "Section 26 of this act takes effect July 1, 2006." [2006 c 330 § 32.]

Construction – Severability – 2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date – 2006 c 75 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 75 § 5.]

Findings – 2006 c 75: "The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system." [2006 c 75 § 1.]

RCW 15.19.080

Public disclosure of information — Exemption.

The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.56 RCW.

[2005 c 274 § 211; 1998 c 154 § 28.]

Notes:

Part headings not law — Effective date — 2005 c 274: See RCW 42.56.901 and 42.56.902.

1995-1996 SESSION LAWS OF THE STATE OF WASHINGTON

3RD SPECIAL SESSION
FIFTY-FOURTH LEGISLATURE
Convened October 12, 1995. Adjourned October 14, 1995.

REGULAR SESSION
FIFTY-FOURTH LEGISLATURE
Convened January 8, 1996. Adjourned March 7, 1996.

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Chapter 6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

(3) By rule adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.481. The adoption of rules under this chapter, or the holding of a hearing in regard to a license issued or that may be issued under this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness.

Sec. 4. RCW 15.58.040 and 1991 c 264 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices; ~~((and))~~

(k) The establishment of criteria governing the conduct of a structural pest control inspection; and

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) the disposition of any portion of the treated crop.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency.

Sec. 5. RCW 16.70.040 and 1971 c 72 s 4 are each amended to read as follows:

(1) The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules ~~((and regulations))~~ for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined ~~((herein))~~ in RCW 16.70.020 which are reasonably necessary for the protection and welfare of the people of this state.

(2) The director of the department of agriculture shall also be authorized to adopt rules to allow administration of permits for those pet animals under subsection (1) of this section by the state veterinarian.

NEW SECTION. Sec. 6. A new section is added to chapter 42.17 RCW to read as follows:

Except under section 3 of this act, information obtained regarding the purchases, sales, or production of an individual American ginseng dealer is exempt from disclosure under this chapter.

FINAL BILL REPORT

EHB 2132

C 188 L 96
Synopsis as Enacted

Brief Description: Rule making by the department of agriculture.

Sponsors: Representatives Chandler, Chappell, Grant, Mastin, Regala and Johnson; by request of Department of Agriculture.

House Committee on Agriculture & Ecology

Senate Committee on Agriculture & Agricultural Trade & Development

Background: The Legislature enacted regulatory reform during the 1995 legislative session. This measure restricts agencies from adopting rules based solely on enabling provisions and/or statements of intent when implementing future statutes, but the enabling/intent provisions may be used to interpret ambiguities in a statute's other provisions. Several major agencies were also prohibited from relying solely upon enabling/intent provisions to adopt rules when implementing current statutes. The Department of Agriculture is one of the major agencies prohibited from relying solely upon enabling/intent provisions when adopting rules to implement current statutes.

The Department of Agriculture has identified three areas in which a general grant of authority was used as the basis to adopt rules. These three areas pertain to requirements for farm storage tanks and bulk milk tankers, designating crops to be nonfood and/or nonfeed sites of pesticide application when these crops are grown to produce seed for crop reproduction purposes, and the issuance of permits allowing the import and movement of certain pet animals.

The Department of Agriculture does not have specific rule-making authority to establish different grades of ginseng or to regulate ginseng dealers.

Summary: The Department of Agriculture is granted specific authority to adopt rules pertaining to (1) farm storage tanks and bulk milk containers, (2) the designation of crops to be nonfood and/or nonfeed sites of pesticide application when these crops are grown to produce seed for crop reproduction purposes, and (3) the issuance of permits allowing the import and movement of certain pet animals.

The Department of Agriculture is required to adopt either grades or classifications for American ginseng. The director may require ginseng dealers who purchase ginseng for export to register. Information provided by American ginseng dealers to the Department of Agriculture regarding the purchases, sales, or production of an individual dealer is exempt from public disclosure.

Votes on Final Passage:

House	96	0	
Senate	47	0	(Senate amended)
House	94	0	(House concurred)

Effective: June 6, 1996

HOUSE BILL REPORT

EHB 2132

As Passed Legislature

Title: An act relating to the department of agriculture grants of rule-making authority.

Brief Description: Rule making by the department of agriculture.

Sponsors: Representatives Chandler, Chappell, Grant, Mastin, Regala and Johnson; by request of Department of Agriculture.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/17/96, 1/18/96 [DP].

Floor Activity:

Passed House: 1/31/96, 96-0.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 16 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Mastin; Ogden; Regala; Robertson; Rust and Schoesler.

Staff: Bill Lynch (786-7092).

Background: The Legislature enacted the Regulatory Reform Act of 1995 during the last legislative session. This measure restricts agencies from adopting rules based solely on enabling provisions and/or statements of intent when implementing future statutes, but the enabling/intent provisions may be used to interpret ambiguities in a statute's other provisions. Several major agencies were also prohibited from relying solely upon enabling/intent provisions to adopt rules when implementing current statutes. The Department of Agriculture is one of the major agencies prohibited from relying solely upon enabling/intent provisions when adopting rules to implement current statutes.

The Department of Agriculture has identified three areas in which a general grant of authority was used as the basis to adopt rules. These three areas pertain to

requirements for farm storage tanks and bulk milk tankers, designating crops to be nonfood and/or nonfeed sites of pesticide application when these crops are grown to produce seed for crop reproduction purposes, and the issuance of permits allowing the import and movement of certain pet animals.

The Department of Agriculture does not have specific rule-making authority to establish different grades of ginseng or to regulate ginseng dealers.

Summary of Bill: The Department of Agriculture is granted specific authority to adopt rules pertaining to (1) farm storage tanks and bulk milk containers, (2) the designation of crops to be nonfood and/or nonfeed sites of pesticide application when these crops are grown to produce seed for crop reproduction purposes, and (3) the issuance of permits allowing the import and movement of certain pet animals.

The Department of Agriculture is required to adopt either grades or classifications for American ginseng. The Director may require ginseng dealers who purchase ginseng for export to register. Information provided by American ginseng dealers to the Department of Agriculture regarding the purchases, sales, or production of an individual dealer is exempt from public disclosure.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is important for the Department of Agriculture to continue to regulate these areas. The ability to regulate milk containers is important for the public health. The rules pertaining to minor pesticides is very important to the alfalfa seed and vegetable seed industries because it allows them to go through a quick approval process for applications that will not be used for food or feed. The minor pesticide provisions are becoming more important for the grass seed industry as well. The Department of Agriculture is the agency that is relied upon by local health entities to issue permits pertaining to the movement of pet animals such as coyotes and raccoons.

Testimony Against: None.

Testified: Jim Jesernig and Mary Beth Lang, Department of Agriculture (in favor); Enid Layes, Washington Friends of Farms and Forests (in favor); Walt De John, I.M.P.D.A. (in favor); and Bill Stauffacher, Washington State Dairy Federation (in favor).

SENATE BILL REPORT

EHB 2132

As Reported By Senate Committee On:
Agriculture & Agricultural Trade & Development, February 15, 1996

Title: An act relating to the department of agriculture grants of rule-making authority.

Brief Description: Rule making by the department of agriculture.

Sponsors: Representatives Chandler, Chappell, Grant, Mastin, Regala and Johnson; by request of Department of Agriculture.

Brief History:

Committee Activity: Agriculture & Agricultural Trade & Development: 2/15/96 [DPA].

SENATE COMMITTEE ON AGRICULTURE & AGRICULTURAL TRADE & DEVELOPMENT

Majority Report: Do pass as amended.

Signed by Senators Rasmussen, Chair; Loveland, Vice Chair; Bauer, Morton, Newhouse and Snyder.

Staff: Bob Lee (786-7404)

Background: The Regulatory Reform Act of 1995 provides that the Department of Agriculture must have a specific grant of authority to adopt administrative rules rather than relying on a statute's statement of purpose and intent or the statute that created the agency. Existing rules that were in effect continue to remain in effect.

As part of the department's activities to implement the Regulatory Reform Act, a review was conducted by the department and the Attorney General's Office to determine whether any existing rules were based on other than a specific grant of authority. The review concluded in three areas that general authority was used rather than a specific grant of authority.

A specific grant authority is sought so that the department may revise three current rules as necessary in the future.

There are two types of American ginseng. Wild American ginseng that has been declared to be an endangered species by the U.S. Fish and Wildlife Service. American ginseng is also artificially cultured and is exported to Asian countries. To comply with international treaties and federal law, a system to regulate the production and export of artificial ginseng is needed to prevent the harvest of wild ginseng.

The Department of Agriculture does not have specific rule-making authority to establish different grades of ginseng or to regulate ginseng dealers.

Summary of Amended Bill: Specific authority for the department to adopt rules is provided for the following areas:

1. regulation of farm milk storage tanks and bulk milk tankers;
2. designation of nonfood and nonfeed crops and disposal of residues from such crops for purposes of pesticide application; and
3. issuance of a permit required by the Department of Health for the importation of certain species of animals that pose a threat to public health.

Also, the Department of Agriculture is granted new authority to adopt grades or classifications for American ginseng. The director may require dealers who purchase ginseng for export to register with the department.

Amended Bill Compared to Original Bill: The striking amendment clarifies the type of records that the Department of Agriculture can require. Records submitted by individual ginseng dealers are not public records. The Department of Agriculture may provide reports as needed to the U.S. Fish and Wildlife Service.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is the House companion to SB 6087 plus the addition of authority to regulate American ginseng. There are two types of American ginseng. Wild American ginseng that has been declared to be an endangered species by the U.S. Fish and Wildlife Service. American ginseng is also artificially cultured and is exported to Asian countries. To comply with international treaties and federal law, a system to regulate the production and export of artificial ginseng is needed to prevent the harvest of wild ginseng.

Testimony Against: None.

Testified: PRO: Don Hoogesteger, Pacific Rim Ginseng; Jim Halstrom, WA Friends Farms & Forest; Mary Beth Land, Dept. of Ag.

1997-1998

SESSION LAWS

OF THE

STATE OF WASHINGTON

1ST SPECIAL SESSION

FIFTY-FIFTH LEGISLATURE

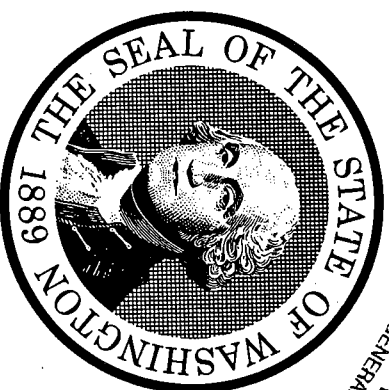
Convened September 17, 1997. Adjourned September 17, 1997.

REGULAR SESSION

FIFTY-FIFTH LEGISLATURE

Convened January 12, 1998. Adjourned March 12, 1998.

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existed on June 6, 1996, or a subsequent date as may be provided by rule, consistent with the purposes of this section.

NEW SECTION. Sec. 24. (1) The director shall adopt rules establishing fees to recover the costs of providing ginseng certification activities authorized under this chapter. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out the purposes of this chapter and rules adopted under this chapter.

(2) In addition to other penalties, the director may refuse to perform any inspection or certification service authorized under this chapter for any person in arrears unless the person makes payment in full prior to performing the service.

NEW SECTION. Sec. 25. The director may enter at reasonable times as determined by the director and inspect any facility and any records required under this chapter. The director may take for inspection those representative samples of ginseng necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility or records, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility or records. The court may upon such application issue a search warrant for the purpose requested.

NEW SECTION. Sec. 26. The director may bring an action to enjoin any violation of this chapter or rule adopted under this chapter in the superior court of Thurston county or of any county in which a violation occurs, notwithstanding the existence of other remedies at law.

NEW SECTION. Sec. 27. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this chapter.

NEW SECTION. Sec. 28. The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.17 RCW.

NEW SECTION. Sec. 29. It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter.

NEW SECTION. Sec. 30. Any person who violates the provisions of this chapter or rules adopted under this chapter may be subject to:

- (1) A civil penalty in an amount of not more than one thousand dollars for each violation; and/or
- (2) Denial, revocation, or suspension of any registration or application for registration issued under this chapter. Upon notice by the director to deny,

revoke, or suspend a registration or application for registration, a person may request a hearing under chapter 34.05 RCW.

NEW SECTION. Sec. 31. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy.

NEW SECTION. Sec. 32. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Sec. 33. RCW 42.17.31909 and 1996 c 188 s 6 are each amended to read as follows:

Except under ((section 3 of this act)) section 28 of this act, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer is exempt from disclosure under this chapter.

NEW SECTION. Sec. 34. The repeal of RCW 15.17.115 and the enactment of chapter 15.—RCW (sections 21 through 32 of this act) does not repeal any rules adopted under the provisions of chapter 15.17 RCW not in conflict with the provisions of chapter 15.—RCW (sections 21 through 32 of this act) and in effect immediately prior to the repeal of any section under section 36 of this act. For the purpose of chapter 15.—RCW (sections 21 through 32 of this act) it shall be deemed that such rules have been adopted under the provisions of chapter 15.—RCW (sections 21 through 32 of this act) pursuant to the provisions of chapter 15.—34.05 RCW.

NEW SECTION. Sec. 35. Sections 21 through 32 of this act constitute a new chapter in Title 15 RCW.

NEW SECTION. Sec. 36. The following acts or parts of acts are each repealed:

- (1) RCW 15.17.040 and 1963 c 122 s 4;
- (2) RCW 15.17.070 and 1963 c 122 s 7;
- (3) RCW 15.17.100 and 1994 c 67 s 1, 1990 c 19 s 1, & 1963 c 122 s 10;
- (4) RCW 15.17.110 and 1963 c 122 s 11;
- (5) RCW 15.17.115 and 1996 c 188 s 2;
- (6) RCW 15.17.120 and 1963 c 122 s 12;
- (7) RCW 15.17.160 and 1963 c 122 s 16;
- (8) RCW 15.17.180 and 1963 c 122 s 18;
- (9) RCW 15.17.220 and 1963 c 122 s 22;
- (10) RCW 15.17.250 and 1977 ex.s. c 26 s 1, 1969 ex.s. c 76 s 3, & 1963 c 122 s 25;
- (11) RCW 15.17.280 and 1963 c 122 s 32;
- (12) RCW 15.17.910 and 1963 c 122 s 28;
- (13) RCW 15.17.920 and 1963 c 122 s 29;
- (14) RCW 15.17.930 and 1963 c 122 s 34;
- (15) RCW 15.17.950 and 1963 c 122 s 35;

FINAL BILL REPORT

SB 6122

C 154 L 98

Synopsis as Enacted

Brief Description: Inspecting horticultural products.

Sponsors: Senators Morton and Rasmussen; by request of Department of Agriculture.

Senate Committee on Agriculture & Environment

House Committee on Agriculture & Ecology

Background: The fruit and vegetable inspection program of the Department of Agriculture provides for orderly marketing of fresh fruits and vegetables by establishing uniform grades and standards. State government requirements and the needs and businesses practices of the program's customers have changed over the last 35 years. The last revision was in 1963. The program currently provides inspection services to more than 350 growers and/or shippers, processors and handlers throughout the state of Washington. The department provides onsite inspections which include sampling of commodities such as apples, pears, cherries, potatoes, onions and asparagus to determine compliance with grade, quality, size, labeling and sanitary requirements. The program ensures that all growers and shippers selling fresh fruits and vegetables meet either state or federal standards.

Sanitary certificates issued by the department's program are required by most foreign countries for the importation of fresh fruits and vegetables from Washington State. The program is headquartered in Olympia and has district offices in Yakima, Wenatchee and Moses Lake, with 13 field offices located throughout the state. The program is self-supported and has a fee for service program with an annual expenditure of approximately \$9 million.

Summary: The state's fruit and vegetable inspection program statutes are updated to provide modern language. The program's operating authority is altered to reflect current practices. Redundant language is removed and similar provisions are consolidated.

The department is given authority to adopt rules for mandatory inspection of apricots, apples, Italian prunes, peaches, sweet cherries, pears, potatoes and asparagus. The department is given specific authority to enter into certificate of compliance agreements as provided in department rules.

Outdated provisions requiring financial reports to counties are removed. The director's authority is clarified to adopt standards of any other state, as well as federal standards. The late fee for penalties is increased to 1« percent of the base amount per month. Criminal penalties are removed, and civil penalties are provided for up to \$1,000 for each violation of compliance agreements. A new chapter in Title 15 for ginseng certification is recodified.

Votes on Final Passage:

Senate	48	0	
House	97	0	(House amended)
Senate	48	0	(Senate concurred)

Effective: June 11, 1998

HOUSE BILL REPORT

SB 6122

As Passed House - Amended:
February 27, 1998

Title: An act relating to the inspection and certification of horticultural products.

Brief Description: Inspecting horticultural products.

Sponsors: Senators Morton and Rasmussen; by request of Department of Agriculture.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/18/98 [DPA].

Floor Activity:

Passed House - Amended: 2/27/98, 97-0.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Regala and Sump.

Minority Report: Without recommendation. Signed by 1 member: Representative Koster.

Staff: Carole Richmond (786-7114).

Background: The Fruit and Vegetable Inspection Program of the Department of Agriculture provides for the orderly marketing of fresh fruits and vegetables by establishing uniform grades and standards. State government requirements and the needs and business practices of the program's customers have changed over the last 35 years, but the statutes governing horticultural standards and inspecting were last revised in 1963.

The program currently provides inspection services to more than 350 growers and/or shippers, processors and handlers throughout the state of Washington. The department provides onsite inspections which include sampling of commodities such as apples, pears, cherries, potatoes, onions and asparagus to determine compliance with grade, quality, size, labeling and sanitary requirements. The program ensures that all growers and shippers selling fresh fruits and vegetables meet either state or

federal standards. Sanitary certificates issued by the department's program are required by most foreign countries for the importation of fresh fruits and vegetables from Washington.

Summary of Bill: Statutes pertaining to uniform grades and standards for fruits and vegetables are updated to better reflect the Department of Agriculture's existing inspection program and to provide modern language. The intent of the original statutes is maintained.

New definitions are provided for the following terms: "compliance agreement," "district manager," "handler," "sell," and "standards."

The director of the Department of Agriculture is required to adopt rules that:

- provide standards for grading sweet cherries and asparagus, in addition to certain other fruits and vegetables; and
- provide for the mandatory inspection of these same fruits and vegetables, except when sold by the grower directly to the consumer in amounts of 500 pounds or less.

Late fees of 1.5 percent per month on the unpaid balance of any amount due for services may be charged. The director may refuse to perform inspection or certification services for any person who has failed to pay assessments required by law to any agricultural commission.

A new chapter is created to organize and consolidate requirements pertaining to the collection, cultivation, and sale of American ginseng. The director may adopt rules establishing certification requirements and the registration of ginseng growers and dealers who purchase and/or sell American ginseng in the export market. The director is required to adopt rules to establish fees to pay for the implementation of this chapter. The director is authorized to inspect any facility and records pertaining to ginseng processing and sales, and is provided other enforcement powers. Certain information pertaining to transactions by individual ginseng growers and dealers is exempt from public disclosure requirements. Rules adopted to implement provisions pertaining to fruits and vegetables also apply to ginseng.

Sections of chapter 15.04 [General Provisions] pertaining to inspection and certification of horticultural products are repealed, and most of chapter 15.17 is repealed. Except for obsolete provisions, the substance of the repealed language has been retained and updated.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is needed to reflect the way things operate today. The bill also reflects recent audit findings and a separate court ruling. It will have very little impact on customers. Washington's export market in fruits and vegetables requires consistent practices, such as mandatory inspection.

Testimony Against: None.

Testified: Mary Beth Lang, Jim Quigley, and Mary Toohey, Department of Agriculture.

SENATE BILL REPORT

SB 6122

As Passed Senate, February 11, 1998

Title: An act relating to the inspection and certification of horticultural products.

Brief Description: Inspecting horticultural products.

Sponsors: Senators Morton and Rasmussen; by request of Department of Agriculture.

Brief History:

Committee Activity: Agriculture & Environment: 1/14/98, 1/20/98 [DP].
Passed Senate, 2/11/98, 48-0.

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: Do pass.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Fraser, McAuliffe, Newhouse, Oke and Rasmussen.

Staff: Vic Moon (786-7469)

Background: The Fruit and Vegetable Inspection Program of the Department of Agriculture provides for orderly marketing of fresh fruits and vegetables by establishing uniform grades and standards. The state government requirements and the needs and businesses practices of the program's customers have changed over the last 35 years. The last revision was in 1963. The program currently provides inspection services to more than 350 growers and/or shippers, processors and handlers throughout the state of Washington. The department provides onsite inspections which include sampling of commodities such as apples, pears, cherries, potatoes, onions and asparagus to determine compliance with grade, quality, size, labeling and sanitary requirements. The program ensures that all growers and shippers selling fresh fruits and vegetables meet either state or federal standards.

Sanitary certificates issued by the department's program are required by most foreign countries for the importation of fresh fruits and vegetables from Washington State. The program is headquartered in Olympia and has district offices in Yakima, Wenatchee and Moses Lake, with 13 field offices located throughout the state. The program is self supported and has a fee for service program with an annual expenditure of approximately \$9 million.

Summary of Bill: The state's Fruit and Vegetable Inspection Program statutes are updated to provide modern language. The program's operating authority is altered to reflect current practices. Redundant language is removed and similar provisions are consolidated.

The statutes are updated to give the department authority to adopt rules for mandatory inspection of apricots, apples, Italian prunes, peaches, sweet cherries, pears, potatoes and

asparagus. The department is given specific authority to enter into certificate of compliance agreements as provided in department rules.

Outdated provisions requiring financial reports to counties are removed. The director's authority is clarified to adopt standards of any other state, as well as federal standards. The late fee for penalties is increased to 1 and « percent of the base amount per month. Criminal penalties are removed and civil penalties are provided for up to \$1,000 for each violation of compliance agreements. A new chapter in Title 15 for ginseng certification is recodified.

Appropriation: None.

Fiscal Note: None requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The present fruit and vegetable program is working well but the law supporting it needs to be updated and adjusted to fit with current practice. The whole industry strongly supports this redrafting of the Department of Agriculture's authority.

Testimony Against: None.

Testified: Mary Beth Lang, Jim Quigley, Department of Agriculture; Kirk Mayer, Washington Growers Clearinghouse; Brad Barnes, Washington Horticulture Association.

House Amendment(s): A technical amendment decodifies a section rather than repealing it.

WAC 16-695-005

Purpose.

These rules are promulgated under chapter 34.05 RCW to establish standards and administer a ginseng management program. This program will promote the production and export of cultivated ginseng and prohibit acts detrimental to the survival of the indigenous wild ginseng population of the United States. These rules shall regulate the sale and export of ginseng, establish a registration program for dealers and growers, and provide for the certification of cultivated American ginseng.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-005, filed 11/18/97, effective 12/19/97.]

WAC 16-695-010

Definitions.

The following definitions shall apply:

- (1) "Cultivated ginseng" means any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng.
- (2) "Dealer" means anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States.
- (3) "Dealer registration" means an annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export.
- (4) "Department" means the Washington state department of agriculture.
- (5) "Director" means the director of the department or his duly appointed representative.
- (6) "Dry weight" means the weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable.
- (7) "Export" means export outside the boundaries of the United States.
- (8) "Out-of-state ginseng" means ginseng that is grown or originated outside the state of Washington.
- (9) "Ginseng" means any and all parts of the plant known as American ginseng (*Panax quinquefolius* L.) including but not limited to: Plants, whole roots, essentially intact roots, root chunks, slices, seeds, and tissue.
- (10) "Green ginseng" means a ginseng root from which the moisture has not been removed by drying.
- (11) "Green weight" means the weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable.
- (12) "Grower" means a person who grows "cultivated," "wild simulated" and or "woodsgrown" ginseng, and sells it to a dealer.
- (13) "Grower registration" means an annual registration issued by the department which enables a grower to sell cultivated ginseng that the grower has produced.
- (14) "Person" means any individual, firm, partnership, corporation, company, society, association or other business entity, and every officer, agent or employee thereof, agency or organized group of persons whether or not incorporated.
- (15) "Wild ginseng" means ginseng growing naturally within its native range.
- (16) "Wild simulated ginseng" means cultivated ginseng grown in a wooded site where wild ginseng is not established.
- (17) "Woodsgrown ginseng" means ginseng grown in managed beds under natural shade.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-010, filed 11/18/97, effective 12/19/97.]

16-695-020 << 16-695-025 >> 16-695-030

WAC 16-695-025

Grower records.

A grower selling cultivated ginseng shall do all of the following when selling to a dealer:

(a) Provide a record of sale containing all of the following information to the dealer:

(i) Grower's name and address;

(ii) Grower's registration number;

(iii) Ginseng certificate number;

(iv) Ginseng dry weight;

(v) Year harvested;

(vi) County of harvest;

(vii) Date of transaction;

(b) Certify that the ginseng was grown in Washington state. The certificate of origin shall be in the form prescribed by the director;

(c) Maintain records of all ginseng production and sales. Records must be maintained for a period of three years.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-025, filed 11/18/97, effective 12/19/97.]

16-695-025 << 16-695-030 >> 16-695-035

WAC 16-695-030
Dealer records.

Dealers shall keep true and accurate records of transactions, including both sales and purchase records, in a format prescribed by the director. Records must be maintained for a period of three years.

(1) Purchase records shall include:

- (a) Dealer's name;
- (b) Dealer's registration number;
- (c) Dealer's address;
- (d) Grower/seller name;
- (e) Grower/seller registration number;
- (f) Ginseng weight in pounds and ounces;
- (g) Designation of green or dry ginseng;
- (h) Designation of wild or cultivated ginseng;
- (i) Harvest year of ginseng;
- (j) County in which the ginseng was harvested;
- (k) Date of transaction;

(2) Sales records shall include the following information:

- (a) Dealer's name;
- (b) Dealer's registration number;
- (c) Dealer's address;
- (d) Buyer's name;
- (e) Buyer's registration number;
- (f) Ginseng weight in pounds and ounces;
- (g) Designation of green or dry ginseng;
- (h) Designation of wild or cultivated ginseng;
- (i) Harvest year;
- (j) County in which the ginseng was harvested;
- (k) Date of transaction.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-030, filed 11/18/97, effective 12/19/97.]

WAC 16-695-055: Inspection or submission of records.

16-695-050 << 16-695-055 >> 16-695-060

WAC 16-695-055

Inspection or submission of records.

(1) All records required to be kept under this chapter must be made available to the Washington state department of agriculture upon request for audit, inspection, and/or copying.

(2) Pursuant to the authority provided in chapter 15.17 RCW, the department shall not disclose information obtained regarding purchases, sales, or production of an individual American ginseng dealer, except for providing reports to the United States Fish and Wildlife Service. This information is exempt from public disclosure required by chapter 42.17 RCW.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-055, filed 11/18/97, effective 12/19/97.]

WAC 16-695-080: Enforcement actions.

16-695-075 << 16-695-080 >> End of Chapter

WAC 16-695-080

Enforcement actions.

(1) The director may take any enforcement action authorized by chapter 15.17 RCW.

(2) Upon determination that an applicant or registered ginseng dealer or grower has violated this chapter, and after following the notice and hearing requirements and provisions of chapter 34.05 RCW concerning adjudicative proceedings, the director of the department may deny, suspend, or revoke any registration or application for registration.

[Statutory Authority: Chapter 15.17 RCW. 97-23-059, § 16-695-080, filed 11/18/97, effective 12/19/97.]