
HOUSE BILL 2681

State of Washington

65th Legislature

2018 Regular Session

By Representatives Springer, Buys, Blake, and Chandler; by request of Department of Agriculture

Read first time 01/12/18. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to implementing the federal produce safety rule;
2 amending RCW 42.56.380; and adding a new chapter to Title 15 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** INTENT. The purpose of this chapter is to
5 assist Washington produce farmers in implementation of the produce
6 safety rule adopted by the United States food and drug administration
7 pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. Sec.
8 301 et seq., as amended by the federal food safety modernization act
9 (P.L. 111-353).

10 NEW SECTION. **Sec. 2.** FEDERAL LAW REFERENCE. A reference to a
11 federal statute in this chapter means the statute and its
12 implementing regulations existing on the effective date of this
13 section or as updated by the department by rule.

14 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
15 section apply throughout this chapter unless the context clearly
16 requires otherwise.

17 (1) "Farm" means the same as "farm" in 21 C.F.R. Sec. 112.

18 (2) "Produce" means the same as "produce" in 21 C.F.R. Sec. 112.

1 (3) "Produce safety rule" means the standards for the growing,
2 harvesting, packing, and holding of produce for human consumption
3 adopted by the United States food and drug administration as a final
4 rule on November 27, 2015 (80 Federal Register 74353 et seq.) and
5 codified in 21 C.F.R. Parts 11, 16, and 112.

6 NEW SECTION. **Sec. 4.** FEDERAL COOPERATION PROGRAM. The
7 department may take actions necessary to cooperate in implementation
8 of the produce safety rule including, but not limited to, entering
9 into cooperative agreements with the United States food and drug
10 administration, conducting the compliance verification activities
11 under section 6 of this act, enforcing regulatory compliance, and
12 accepting federal funding to carry out such activities. The
13 department may cooperate with the United States food and drug
14 administration in implementation of the produce safety rule only to
15 the extent that the department receives federal funding for such
16 activities.

17 NEW SECTION. **Sec. 5.** VOLUNTARY COMPLIANCE PROGRAM. (1) The
18 department may establish a voluntary program for farms exempt or
19 partially exempt from the produce safety rule to verify that such
20 farms comply with the rule. This includes, but is not limited to,
21 conducting the compliance verification activities under section 6 of
22 this act.

23 (2) Farms participating in the voluntary compliance program must
24 bear the cost of the program. The director must periodically adopt,
25 by rule, fees of no more than is necessary to defray costs of
26 compliance verification activities and program administration.

27 NEW SECTION. **Sec. 6.** COMPLIANCE VERIFICATION ACTIVITIES. The
28 department may take the following actions to verify produce farm
29 compliance with the produce safety rule.

30 (1) Maintain a database of produce farms that are covered by the
31 produce safety rule, exempt from the rule, or eligible for a
32 qualified exemption;

33 (2) In compliance with law and at reasonable times, enter produce
34 farms solely for the purpose of this chapter to:

35 (a) Sample and test water for microbial water quality criteria;

36 (b) Inspect and sample biological soil amendments, storage areas,
37 and fields for compliance with microbial criteria;

1 (c) Inspect application of biological soil amendments to evaluate
2 contact or potential contact with produce;

3 (d) Inspect for the presence and management of domesticated and
4 wild animals; and

5 (e) Inspect equipment, tools, and buildings for adequate
6 sanitation; and

7 (3) Require and receive records and data submitted by produce
8 farms to verify compliance with the produce safety rule.

9 NEW SECTION. **Sec. 7.** DEPARTMENT'S EXISTING AUTHORITY. This
10 chapter does not alter or impair the department's authority for
11 regulating food in intrastate commerce under chapter . . . RCW
12 (chapter 69.04 RCW as recodified by chapter . . ., Laws of 2018)
13 (House Bill No. . . . or Senate Bill No. . . .). The department may
14 use its authority for regulating food in intrastate commerce under
15 chapter . . . RCW (chapter 69.04 RCW as recodified by chapter . . .,
16 Laws of 2018) (House Bill No. . . . or Senate Bill No. . . .) to
17 carry out and enforce the provisions of this chapter. For the
18 purposes of this chapter, farms subject to the produce safety rule
19 are engaged in intrastate commerce of food.

20 NEW SECTION. **Sec. 8.** RULE MAKING. (1) The department must adopt
21 rules as necessary to implement the purpose and provisions of this
22 chapter.

23 (2) By rule, the director may adopt a subsequent version of a
24 federal statute or regulation referenced in this chapter.

25 NEW SECTION. **Sec. 9.** DISPOSITION OF FUNDS. A produce safety
26 account is hereby established in the agricultural local fund
27 established in RCW 43.23.230. All moneys received under this chapter
28 must be paid into the produce safety account and used solely to carry
29 out the produce safety programs.

30 NEW SECTION. **Sec. 10.** CERTAIN RECORDS NOT SUBJECT TO PUBLIC
31 DISCLOSURE. (1) Any information or record obtained directly from the
32 federal government or from others under a contract with the federal
33 government is exempt from public inspection and copying under chapter
34 42.56 RCW if the information or record is exempt from disclosure
35 under federal law including, but not limited to, the federal freedom
36 of information act.

1 (2) Any portion of a record obtained by the department pursuant
2 to this chapter is exempt from public inspection and copying under
3 chapter 42.56 RCW if it is personal financial information,
4 proprietary data, or trade secrets and the person submitting the
5 record to the department has designated the information as personal
6 financial information, proprietary data, or trade secrets.

7 **Sec. 11.** RCW 42.56.380 and 2012 c 168 s 1 are each amended to
8 read as follows:

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

11 (1) Business-related information under RCW 15.86.110;

12 (2) Information provided under RCW 15.54.362;

13 (3) Production or sales records required to determine assessment
14 levels and actual assessment payments to commodity boards and
15 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
16 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required
17 by the department of agriculture to administer these chapters or the
18 department's programs;

19 (4) Consignment information contained on phytosanitary
20 certificates issued by the department of agriculture under chapters
21 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates
22 issued under 7 C.F.R. 353 through cooperative agreements with the
23 animal and plant health inspection service, United States department
24 of agriculture, or on applications for phytosanitary certification
25 required by the department of agriculture;

26 (5) Financial and commercial information and records supplied by
27 persons (a) to the department of agriculture for the purpose of
28 conducting a referendum for the potential establishment of a
29 commodity board or commission; or (b) to the department of
30 agriculture or commodity boards or commissions formed under chapter
31 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100,
32 15.89, or 16.67 RCW with respect to domestic or export marketing
33 activities or individual producer's production information;

34 (6) Information obtained regarding the purchases, sales, or
35 production of an individual American ginseng grower or dealer, except
36 for providing reports to the United States fish and wildlife service
37 under RCW 15.19.080;

1 (7) Information collected regarding packers and shippers of
2 fruits and vegetables for the issuance of certificates of compliance
3 under RCW 15.17.140(2) and 15.17.143;

4 (8) Financial statements obtained under RCW 16.65.030(1)(d) for
5 the purposes of determining whether or not the applicant meets the
6 minimum net worth requirements to construct or operate a public
7 livestock market;

8 (9) Information submitted by an individual or business to the
9 department of agriculture under the requirements of chapters 16.36,
10 16.57, and 43.23 RCW for the purpose of herd inventory management for
11 animal disease traceability. This information includes animal
12 ownership, numbers of animals, locations, contact information,
13 movements of livestock, financial information, the purchase and sale
14 of livestock, account numbers or unique identifiers issued by
15 government to private entities, and information related to livestock
16 disease or injury that would identify an animal, a person, or
17 location. Disclosure to local, state, and federal officials is not
18 public disclosure. This exemption does not affect the disclosure of
19 information used in reportable animal health investigations under
20 chapter 16.36 RCW once they are complete;

21 (10) Results of testing for animal diseases from samples
22 submitted by or at the direction of the animal owner or his or her
23 designee that can be identified to a particular business or
24 individual;

25 (11) Records of international livestock importation that can be
26 identified to a particular animal, business, or individual received
27 from the United States department of homeland security or the United
28 States department of agriculture that are not disclosable by the
29 federal agency under federal law including 5 U.S.C. Sec. 552; (~~and~~)

30 (12) Records related to the entry of prohibited agricultural
31 products imported into Washington state or that had Washington state
32 as a final destination received from the United States department of
33 homeland security or the United States department of agriculture that
34 are not disclosable by the federal agency under federal law including
35 5 U.S.C. Sec. 552; and

36 (13) Information obtained from the federal government or others
37 under contract with the federal government or records obtained by the
38 department of agriculture, in accordance with section 10 of this act.

1 NEW SECTION. **Sec. 12.** This chapter may be known and cited as
2 the produce safety rule implementation act.

3 NEW SECTION. **Sec. 13.** Sections 1 through 10 and 12 of this act
4 constitute a new chapter in Title 15 RCW.

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