

WSR 23-13-084

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 15, 2023, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-115.

Title of Rule and Other Identifying Information: Chapters 16-325 WAC, Seed potato isolation district and 16-482 WAC, Seed potato quarantine. In response to a petition received from the Washington seed potato commission, the department is proposing changes to the seed potato rules in order to strengthen protections for the seed potato isolation district (isolation district) located in a portion of Whatcom County.

In consideration of the petition, the department is proposing amending the two identified chapters to:

- Expand the definition of "seed potatoes";
- Clarify that the requirement to be enrolled in the certification program includes all plantings for commercial use and adds the option for certified seed to be used for each growing season in commercial potato plantings of one acre or less instead of enrollment in the certification program;
- Add a requirement that all lots of potatoes entering the isolation district for planting or further sale, except for those intended for immediate human consumption (example: Potatoes sold in grocery stores), must be tested and found negative for bacterial ring rot (BRR) by an approved laboratory at origin;
- Add a requirement that shipments entering or transiting the isolation district must be covered in a manner that safeguards pathogen dispersal;
- Establish a prior notification requirement for seed potatoes entering the isolation district;
- Require shipments of potatoes be held for 24 hours after delivery to allow the department time to contact the receiver for inspection;
- Add a violation section regarding the disposition of potatoes in the isolation district found to be in violation of this chapter;
- Clarify in the seed potato quarantine rule (WAC 16-482-010) that all lots of potatoes entering the seed potato isolation district, except for those intended for immediate human consumption, are also subject to the requirements under chapter 16-325 WAC.

Hearing Location(s): On August 1, 2023, at 10:30 a.m., Microsoft Teams conference call. Join on your computer, mobile app, or room device [Certified on 7/3/2023](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_YmU1YjI0YmYtN2U1Ny00YzAyLWFmYTUtMmY2NDEzZjIyZDBi%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522838c55c7-c187-44ae-8de0-2be684ce5d4a%2522%257d&data=05%7C01%7CAClow%40agr.wa.gov%7C16a456aba8704705b30708db68637189%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638218548538968426%7CUnknown%7CTWFpbGZsb3d8eyJWlIjoIjoiMC4wLjA%7CwMDAiLCJQIjoIiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sd%20ata=CzdTEONbzAgvxdhjVh82kzf0CYbgGqMij9Sj2E8mkD8%3D&reserved=0, Meeting ID 283 776 906 374, Passcode rapv8N; or call in (audio only) +1 564-999-2000,,134043400# United States, Olympia, Phone Conference ID</p>
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134 043 400#. Attendees may join the public hearing through the Microsoft Teams conference link provided.

Date of Intended Adoption: August 8, 2023.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., August 1, 2023.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388, email deanna.painter@agr.wa.gov, by July 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The production of high-quality seed potatoes within Washington requires conditions that are as free as possible from insect pests and plant diseases. When the production of other potatoes (plants or plant parts of *Solanum tuberosum*) is intermixed with or in close proximity to a seed potato production area, there is an increased risk of introducing pests and diseases. To mitigate this risk, the seed potato isolation district was established in Whatcom County in 1998 and requires commercial potato production and all potato plantings in excess of one acre (including for personal use) within its boundaries to be enrolled in the seed potato certification program.

For many years, the Washington state seed potato industry has worked to manage the spread of viruses. They have done this by: (1) The creation of an isolation district that prohibits the production of commercial potatoes and protects the area's ideal geographic isolation; (2) using only limited generation clean seed verified with post-harvest testing; (3) working with researchers to develop a best management plan to control the primary vectors of viruses; (4) sponsoring a Washington State University extension specialist to monitor for the presence of aphids; (5) partnering with the Washington state potato commission to sponsor research to reduce disease; and (6) working closely with the department to develop regulations that ensure high quality seed and an inspection program that provides verification of the above.

These rule amendments are being proposed to bolster protections for the seed potato isolation district by adding testing requirements for BRR by an approved laboratory and prior notification to the department of all potatoes entering the isolation district, clarifying that chapter 16-325 WAC applies to all commercial potato production within the isolation district even if it is on less than one acre, providing an opportunity for verification and enforcement, as well as proper disposition of material shipped into the isolation district in violation of this chapter.

Reasons Supporting Proposal: The department received a petition to amend the seed potato rules from the Washington seed potato commission, to strengthen protections for the isolation district. Proposed changes will incorporate practices of the industry not previously covered in rule, reduce the likelihood that neighboring fields in the isolation district are a source of inoculum, reduce the risk of BRR transmission, reduce the risk of contaminated lots entering the isolation district, enable the department to remove or dispose of potatoes that are in violation, and prevent the comingling of potatoes that could harbor diseases. All these changes would protect Washington state's seed potato industry from pests and disease, safeguarding over 100 varieties of specialty potatoes that are sold across the nation.

Statutory Authority for Adoption: RCW 15.14.015, 15.15.010, 17.24.011, and 17.24.041.

Statute Being Implemented: Chapters 15.14, 15.15, and 17.24 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington seed potato commission and Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Brooks, 1111 Washington Street S.E., Olympia, WA 98504, 360-485-1235.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: All potatoes entering the seed potato isolation district are subject to the requirements of chapter 16-325 WAC. Adding language to chapter 16-482 WAC stating this clarifies what is expected of the industry and does not create any additional requirements or impose any additional costs on businesses and is exempt from small business economic impact statement (SBEIS) requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: All potatoes entering the seed potato isolation district are subject to the requirements of chapter 16-325 WAC. Adding language to chapter 16-482 WAC stating this clarifies what is expected of the industry and does not create any additional requirements or impose any additional costs on businesses and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Of the 74 businesses that the department surveyed from multiple industries, 21 responded. None of the businesses analyzed are likely to experience costs exceeding the minor cost threshold.

The primary businesses that will be impacted by the proposed rule are those community-supported agriculture (CSA) and small farming operations that grow one acre or less of potatoes. If we assume that these small operations grow a total of five varieties of potatoes in a one-acre lot, the maximum estimated costs for these businesses to comply with the requirement to plant with certified seed potatoes are \$1,000 for certified seed potato purchases, and \$109 per year for certified seed potato program enrollment and inspection fees and \$20 for each additional variety grown.

The maximum estimated costs for businesses to comply with the proposed requirement that all potatoes entering the isolation district be tested for BRR is \$10 for BRR tests for each variety grown (\$50 total for five varieties).

The maximum estimated costs for businesses to comply with the proposed requirement to provide the department with prior notification before seed potatoes are shipped into the isolation district are \$180 per year in administrative expenses.

Other administrative and labor costs associated are estimated to be \$158 per year.

The total maximum estimated cost for a CSA grower to plant one acre of potatoes and comply with all the proposed rule changes is \$1,497 in year one. For the next five subsequent years, the only costs for compliance would be \$497 for certification program participation, testing, and recordkeeping.

The total estimated costs for dairies and nurseries are not expected to exceed \$180 per year to comply with the reporting and notification requirements associated with shipping potatoes into the isolation district.

According to the minor cost threshold table below for industries that will be impacted by the proposed rule, these costs will not exceed the minor cost threshold for any industry.

| NAICS Code | 1% average annual payroll* | 0.3% average annual gross income** | Minor Cost Threshold*** |
|---|----------------------------|------------------------------------|-------------------------|
| 111211 Potato Farming | \$8,909.99 | \$3,719.74 | \$8,909.99 |
| 111219 Other Vegetable (except potato) and Melon Farming | \$3,503.04 | \$11,395.89 | \$11,395.89 |
| 111419 Other Food Crops Grown Under Cover | \$3,263.61 | \$3,047.66 | \$3,263.61 |
| 111998 All Other Miscellaneous Crop Farming | \$11,782.08 | \$3,518.45 | \$11,782.08 |
| 112120 Dairy Cattle and Milk Production | \$6,187.97 | \$21,237.13 | \$21,237.13 |
| 424430 Dairy Product (except Dried or Canned) Merchant Wholesalers | \$5,595.06 | \$51,876.55 | \$51,876.55 |
| 424480 Fresh Fruit and Vegetable Merchant Wholesalers | \$15,570.97 | \$47,928.58 | \$47,928.58 |
| 424910 Farm Supplies Merchant Wholesalers | \$10,501.05 | \$35,044.58 | \$35,044.58 |
| 424930 Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers | \$4,165.54 | \$6,155.64 | \$6,155.64 |
| 444220 Nursery, Garden Center, and Farm Supply Stores | \$4,675.20 | \$3,798.35 | \$4,675.20 |
| 445230 Fruit and Vegetable Markets | \$2,435.71 | \$2,220.48 | \$2,435.71 |

* Data source: 2020 Employment security department or United States Bureau of Labor Statistics.

** Data source: 2020 Department of Revenue.

*** The minor cost threshold is the larger amount of the two previous columns.

There are no costs for compliance associated with creating a violation section.

June 9, 2023
 Greg Haubrich
 Acting Assistant Director

OTS-4630.1

AMENDATORY SECTION (Amending WSR 07-11-013, filed 5/3/07, effective 6/3/07)

WAC 16-482-010 Regulations—Certified seed requirement. (1) Except as provided in WAC 16-482-015, all seed potatoes planted within the state for commercial or for seed production shall be certified seed, produced as a part of a certified seed potato program in the state or country of origin that meets the requirements of Article 4 of the State National Harmonization Program for seed potatoes. All potatoes entering the seed potato isolation district must comply with the requirements of chapter 16-325 WAC including, but not limited to, the requirement that all potatoes entering the district, except those intended for immediate human consumption, must be tested and found negative for bacterial ring rot by an approved laboratory at origin.

(2) The department may sample and test any lot of seed potatoes or conduct field inspections for the purpose of testing and verification of compliance with this chapter.

[Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 07-11-013, § 16-482-010, filed 5/3/07, effective 6/3/07. Statutory Authority: Chapter 17.24 RCW. WSR 91-07-016 (Order 2075), § 16-482-010, filed 3/13/91, effective 4/13/91; Order 1126, § 16-482-010, filed 10/9/69, effective 11/10/69.]

OTS-4629.2

AMENDATORY SECTION (Amending WSR 98-09-071, filed 4/20/98, effective 5/21/98)

WAC 16-325-010 Definitions. The definitions in this section shall apply throughout this chapter.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or a duly appointed representative.

(3) "Potato" means plants or plant parts of *Solanum tuberosum*.

(4) "Seed potatoes" means vegetatively propagated tubers of *Solanum tuberosum* used for propagation, research, breeding, or production.

(5) "Seed potato certification program" means the program in which certified seed potatoes are produced, as set forth in chapter 16-324 WAC.

[Statutory Authority: Chapter 15.15 RCW. WSR 98-09-071, § 16-325-010, filed 4/20/98, effective 5/21/98.]

AMENDATORY SECTION (Amending WSR 98-09-071, filed 4/20/98, effective 5/21/98)

WAC 16-325-020 Regulations for potato production within the seed potato isolation district. All potato plantings in excess of one acre

must be enrolled in the seed potato certification program described in chapter 16-324 WAC. All commercial potato plantings of one acre or less must either be enrolled in the seed potato certification program or planted exclusively with certified seed potatoes. Affected growers shall be responsible for all associated fees as required in chapter 16-324 WAC. All potatoes entering the isolation district for planting, processing or further sale, except for those intended for immediate human consumption, must be derived from tested mother lots and found negative for bacterial ring rot by an approved laboratory at origin. This requirement does not apply to shipments merely transiting through the district where the potatoes will not be planted, processed, or sold within the district. Shipments entering or transiting through the isolation district must be covered in a manner that safeguards pathogen dispersal.

The receiver must give prior notification to the department of all lots of seed potatoes entering the isolation district and hold all shipments for 24 hours after delivery, to allow the department to contact the receiver for inspection. Notification may be by email or facsimile to:

- Email: PlantServices@agr.wa.gov; or
- Facsimile: 360-902-2094.

Documentation must include bacterial ring rot test results from a laboratory approved by the director and a bill of lading showing address of shipper and receiver.

[Statutory Authority: Chapter 15.15 RCW. WSR 98-09-071, § 16-325-020, filed 4/20/98, effective 5/21/98.]

NEW SECTION

WAC 16-325-030 Violations. (1) At the option and expense of the owner or owners or their responsible agents, potatoes shipped into or planted in the isolation district in violation of this chapter may be returned to the point of origin or destroyed. Destruction will be done in a manner that safeguards pathogen dispersal as approved by the department and shall be monitored by the department.

(2) Anyone violating the terms of this chapter or chapter 16-482 WAC may be subject to civil and/or criminal penalties as provided in law.

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