

WSR 23-07-135

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 22, 2023, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-094.

Title of Rule and Other Identifying Information: Chapter 16-89 WAC, Sheep and goat diseases in Washington state.

Hearing Location(s): On May 3, 2023, at 10:00 a.m., Microsoft Teams meeting. Join on your computer, mobile app, or room device. Click here to join the meeting [contact agency for link], Meeting ID 236 010 241 665, Passcode 2VnRs9; or call in (audio only) +1 564-999-2000, Phone Conference ID 239 345 996#.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by May 3, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services operations director, phone 360-402-0397, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by April 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-89 WAC to:

- Add the word "Individual" to the definition of official identification;
- Add "USDA" to the definition of "APHIS";
- Repeal WAC 16-89-012 Quarantine;
- Combine WAC 16-89-015 Scrapie program standards and 16-89-022 Scrapie identification of sheep and goats;
- Add the word "individual" to the official identification requirements when testing for brucellosis and tuberculosis in goats whose raw milk or raw milk products being sold; and
- Remove Q-fever testing requirements for raw milk dairies.

Reasons Supporting Proposal: The current definition for identification does not specify that sheep and goats need to be tracked individually which allows groups of animals to be tracked with the same identifier. Animal and Plant Health Inspection Service (APHIS) is referred to on its own and does not include any reference to the United States Department of Agriculture (USDA).

Adding the term "individual" to the official identification definition will clarify that each animal must have a unique identifier that cannot be shared with other members in the same group. Having individual identifiers for each animal will make it easier to trace disease outbreaks and ensure that a minimal number of animals be quarantined, if that step is necessary. In the event of a disease outbreak, without each animal being identified with individual identification, the group of animals or all animal species that are associated with that group identifier would be placed under quarantine rather than the individual animal(s) exposed to the disease. Animal disease traceability is critical to ensuring a rapid response when animal disease events take place. An efficient and accurate traceability system reduces the number of animals and response times involved in a disease investigation, reducing the economic impact on livestock producers.

Having individual identifiers should reduce the number of producers/farms that will be put under quarantine if an outbreak is detected and lower the amount of time for state and federal officials to trace the disease and impacted animals.

Adding "USDA" to the definition of APHIS makes it clear to businesses that APHIS is in fact part of the USDA and not an unrelated agency.

WAC 16-89-012 outlines requirements for sheep and goat quarantines when an infectious or communicable disease outbreak occurs. It also explains what some of the consequences will be to businesses that fail to comply with a quarantine order.

The section is being repealed because the department's authority to quarantine animals and the guidelines to conduct such quarantines are already included in RCW 16.36.010. The guidelines in the statute apply to all types of animals in the state, including sheep and goats, making this section redundant and unnecessary.

The existing rule separates the federal scrapie program standards adopted in WAC 16-89-015 from the scrapie identification procedures for sheep and goats in WAC 16-89-022. This has created confusion for both department staff and sheep and goat producers since the federal scrapie program also include scrapie identification procedures for sheep and goats. Combining both of these sections under WAC 16-89-015 eliminates that confusion by relying solely on the federal scrapie program adopted into rule for the procedures and methods used to identify and control the scrapie disease in sheep and goats and any exemptions that may apply. The department is also updating the version of 9 C.F.R. Part 79.2 being adopted to the most recent version and updating the links to the C.F.R. to ensure that producers are able to access it.

WAC 16-89-170 mandates that all sheep and goat herds that produce raw milk products be tested for Q-fever. The section provides time frames for when negative test results need to be received for new and existing animals and requires yearly tests for all animals. Products from animals with a positive test are prohibited from entering the market. Q-fever testing detects antibodies to *Coxiella burnetii* and antibody tests only determine past exposure to the agent rather than active shedding of the disease organism status. The testing does not actually determine if the animal is actively infected or if the animal is shedding the organism in the milk. Currently, there are no commercially available testing procedures for Q-fever that give accurate and reliable definitive results.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Ben Smith, 1111 Washington Street [S.E.], Olympia, WA 98504, 509-350-0081; Implementation: Jodi Jones, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-402-0397; and Enforcement: Joel Williams, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-688-4294.

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. WSDA 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 are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Updating references to the C.F.R. in WAC 16-89-015 is adopting federal regulations and is exempt from the small business economic impact statement (SBEIS) requirements under RCW 19.85.025(3)/34.05.310 (4) (c).

Adding "USDA" to APHIS in the definitions is a clarifying change that does not change the effect of the rule and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Combining WAC 16-89-015 and 16-89-022 under WAC 16-89-015, since WAC 16-89-022 covers identification of scrapies and exemptions which are already covered by the federal rule adopted in WAC 16-89-015, clarifies the rule without changing its effect and is exempt from 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: Updating references to the C.F.R. in WAC 16-89-015 is adopting federal regulations and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (c).

Adding "USDA" to APHIS in the definitions is a clarifying change that does not change the effect of the rule and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

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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. The sheep and goat raw milk industry already utilizes individual identification and the proposed rule changes to the identification practices are more of a formality that clarifies this standard business practice. Businesses will not need to change any operating procedures and will not be expected to take on any additional costs.

Removing the testing requirements for Q-fever does not impose any additional costs for small businesses, as they are not being asked to carry out any new functions. Businesses will no longer need to carry out yearly Q-fever tests or tests on new animals being added to exist-

ing herds. Removing this section will also eliminate the restrictions on the sale of raw milk products for animals that have tested positive.

March 22, 2023
Jodi Jones
Operations Director

OTS-4257.4

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

WAC 16-89-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"APHIS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture or the director's authorized representative.

"Flock" means a number of animals of sheep or goat species that are kept, fed and herded together, and have single or multiple ownership. The term "flock" is interchangeable with the term "herd" and applies to purebred and commercial sheep and goats.

"High risk animal" means any female genetically susceptible exposed animal. The female offspring of a scrapie-positive female animal or any female genetically less susceptible exposed animal that the designated scrapie epidemiologist (with the concurrence of the USDA area veterinarian in charge, state veterinarian, regional scrapie epidemiologist, and National Scrapie Program coordinator) determines to be a potential risk based on the epidemiology of the flock, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, or other characteristics.

"Official individual identification" means an identification mark or device approved by USDA-APHIS for use in the scrapie eradication program. Examples include, but are not limited to, electronic devices, official ear tags, and legible official registry tattoos.

"Scrapie" means a transmissible spongiform encephalopathy that is a fatal, nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats.

"Scrapie exposed animal" means any animal that has been in the same flock at the same time within the previous (~~sixty~~) 60 months as a scrapie positive animal, excluding limited contacts, as identified in the *Scrapie Eradication Uniform Methods and Rules*, effective June 1, 2005.

"Scrapie Flock Certification Program" means a national voluntary program for classification of flocks relative to scrapie.

"USDA" means the United States Department of Agriculture.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-010, filed 6/18/08, effective 7/19/08. Statutory Authority: RCW 16.36.040. WSR 02-24-042, § 16-89-010, filed 12/3/02,

effective 1/3/03; WSR 99-09-026, § 16-89-010, filed 4/15/99, effective 5/16/99.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

WAC 16-89-015 Scrapie program standards and identification of sheep and goats. (1) In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of (~~the Scrapie Eradication Uniform Methods and Rules, effective June 1, 2005, and Control of Scrapie, Title 9, Code of Federal Regulations, Part 54 and Scrapie in Sheep and Goats, Part 79 as revised January 1, 2006.~~) Title 9, Code of Federal Regulations (C.F.R.), Part 54 Control of Scrapie as revised January 1, 2006, and Part 79.2 Scrapie in Sheep and Goats, Identification and Records Requirements for Sheep and Goats in Interstate Commerce, revised June 18, 2019. Copies of these documents are on file at the Washington Department of Agriculture, Animal Services Division, 1111 Washington Street, Olympia, Washington 98504 and are available for public inspection.

Except as exempted under the federal rules adopted in this section all sheep and goats that are placed into commerce must have official scrapie program identification.

(2) (~~The Scrapie Eradication Uniform Methods and Rules may be found on the internet at: http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/umr_scrapie.pdf.~~

~~(3))~~ Title 9 C.F.R., Parts 54 and 79 may be found on the internet at (~~: http://www.access.gpo.gov/nara/cfr/waisidx_06/9efrv1_06.html~~) <https://www.ecfr.gov/current/title-9/chapter-I>.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-015, filed 6/18/08, effective 7/19/08. Statutory Authority: RCW 16.36.040. WSR 02-24-042, § 16-89-015, filed 12/3/02, effective 1/3/03; WSR 99-09-026, § 16-89-015, filed 4/15/99, effective 5/16/99.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

WAC 16-89-150 Brucellosis testing for sheep and goat dairies.

(1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a flock or herd that is negative to a serological test for brucellosis within the previous (~~twelve~~) 12 months. Any additions to the flock or herd must be tested negative for brucellosis within (~~thirty~~) 30 days before introduction into the flock or herd.

(2) All raw milk and raw milk products from animals that test positive for brucellosis are prohibited from sale and must be destroyed.

(3) All sheep and goats whose raw milk or raw milk products are offered for sale must have official individual identification.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-150, filed 6/18/08, effective 7/19/08.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

WAC 16-89-180 Tuberculosis testing for goat dairies. (1) All goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous (~~twelve~~) 12 months. Any additions to the herd must be tested negative for tuberculosis within (~~sixty~~) 60 days before introduction into the herd.

(2) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

(3) All goats whose raw milk or raw milk products are offered for sale must have official individual identification.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-180, filed 6/18/08, effective 7/19/08.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-89-012	Quarantine.
WAC 16-89-022	Scrapie identification of sheep and goats.
WAC 16-89-170	Q fever testing requirements for sheep and goat dairies.