

## WSR 23-07-136

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

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

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-095.

Title of Rule and Other Identifying Information: Chapter 16-80 WAC, Swine diseases regulated 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 16-80 WAC to:

- Change the title of the chapter to "Domestic and Feral Swine in Washington State";
- Remove definitions for "Department," "Director," "Exposed," and "Pseudorabies infected herd";
- Update the definition of "Official USDA-approved identification" to reference the January 9, 2013, version of 9 C.F.R Chapter 1, Section 71.19;
- Update hyperlinks to standards adopted in WAC 16-80-006 and 16-80-008;
- Repeal WAC 16-80-009 and 16-80-010;
- Clarify official United States Department of Agriculture (USDA) approved identification requirements for swine in WAC 16-80-045; and
- Require observations of feral swine to be reported to the Washington invasive species council (WISC).

Reasons Supporting Proposal: RCW 16.36.010(1) states, "The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state."

Swine are high risk for many reportable foreign animal diseases such as foot and mouth disease, African swine fever, classical swine fever, and pseudorabies. Diseases of public health significance include tuberculosis, brucellosis, and trichinosis. Swine influenza viruses also have zoonotic potential and transmission at fairs and exhibitions has been well documented. Being able to track swine movement both intra- and interstate is critical to our mission to detect, contain and eradicate diseases to protect the economic viability of swine production in Washington and across the United States. Identification of swine entering and commingling in Washington state is necessary for

animal disease traceability and limiting the number of farms being placed under quarantine in the event of a disease outbreak.

Washington is considered a small swine state with an estimated 5,000 breeding sows, however, the state sees an influx of pigs for shows and exhibitions. In 2021, the department's animal health program conducted a fair and agriculture event swine identification survey and received feedback from five key stakeholder groups (i.e.: Fairs, veterinarians, exhibitors, WSU extension, producers). The survey showed that 57 percent of fairs already require identification for exhibition, but the majority use fair tags rather than official identification. Official identification is a unique number that allows individual animals, rather than groups of animals, to be traced. Fair tags can be duplicated each year, impeding animal disease traceability efforts. Swine at fairs tend to be market animals destined for slaughter (70 percent); only about 13 percent are out-of-state animals that are required to be officially identified by current regulations. In addition, less than five percent of breeding swine, that are the highest risk for disease transmission since they return to a farm, were required to have identification. Almost 70 percent of those surveyed indicated they would support a rule change to require official individual swine identification for exhibition that would support rapid response and containment of disease outbreaks.

The current title of the rule being swine diseases regulated in Washington state does not accurately reflect the entirety of regulations included in this chapter. Changing the title to domestic and feral swine in Washington state more accurately reflects those regulations. Changing the title to accurately reflect the content in the rule will make the rule clearer for those required to comply with it and make it easier to find when stakeholders are searching for rules applicable to them.

Removing the definitions for "Department," "Director," "Exposed," and "Pseudorabies infected herd" simplifies the rule and removes information that is not needed or pertinent, making the rule more clear and easier to understand. These definitions are unnecessary as they are either already defined in statute or references to them have been removed from the rule language.

Individuals and/or businesses are required to comply with the most updated version of federal regulations regarding swine identification. By updating the rule to match the most recent version of 9 C.F.R. 71.19, the department is ensuring that there is no confusion about which federal regulation must be complied with.

The proposed amendments replace the outdated hyperlinks to the PDF of standards adopted in WAC 16-80-006 and 16-80-008 to ensure that stakeholders have access to those standards.

WAC 16-80-009 Surveillance program, requires that all blood samples from Washington swine be submitted to the department's laboratory or to a USDA-approved laboratory for pseudorabies or brucellosis testing using the official USDA-approved tests. Since the department does not have a laboratory that conducts these tests, this section is outdated. The department has already adopted the USDA's pseudorabies and swine brucellosis program standards in WAC 16-80-006 and 16-80-008, which includes the requirement for samples to be sent to a USDA-approved laboratory and tested using official USDA-approved tests.

WAC 16-80-010 Quarantine, is being repealed from the rule language because authority to quarantine and test for swine diseases is provided in chapter 16.36 RCW. Repealing this section prevents any confusion between the requirements in the statute and the rule.

The current rule only states that feral swine are illegal in the state of Washington and states that if they are found that they will be eradicated and disposed of in a humane manner. The rule is being amended to require reporting of any feral swine observed (by anyone) to the WISC and provides the contact information to report to, as well as the USDA Wildlife Services contact as an optional agency to report the observation. Feral swine are capable of spreading both foreign animal diseases and endemic diseases to domestic or commercial swine. Awareness of their presence to responsible agencies for reporting purposes is critical. In 2020, WISC convened a working group of more than 40 federal, state, and Canadian feral swine experts to discuss challenges and opportunities to prevent feral swine along interstate and international borders. The report includes 22 recommendations that address five strategic areas of feral swine management, one being standardizing communications and reporting efforts. Amending the rule to include the requirement for observations of feral swine to be reported should increase the awareness of feral swine presence to responsible agencies so that they are able to locate and eradicate them, thus protecting state resources and individuals, businesses, and property owners from the destruction caused by feral swine.

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.

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 the version of 9 C.F.R. Section 71.19 already adopted in the rule is exempt from the small business economic impact statement (SBEIS) requirement under RCW 19.85.025(3)/34.05.310 (4) (c) since it is adopting updates to the federal regulation without material change.

Updating the title of the rule and updating the definitions in the rule to more accurately reflect the information provided in the chapter clarify the rule without changing its effect and are therefore

exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Updating the links in WAC 16-80-006 and 16-80-008 is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d) because it clarifies the rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Updating the version of 9 C.F.R. Section 71.19 already adopted in the rule is exempt from the SBEIS requirement under RCW 19.85.025(3)/34.05.310 (4) (c) since it is adopting updates to the federal regulation without material change.

Updating the title of the rule and updating the definitions in the rule to more accurately reflect the information provided in the chapter clarify the rule without changing its effect and is therefore exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Updating the links in WAC 16-80-006 and 16-80-008 is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d) because it clarifies the rule without changing its effect.

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. Repealing WAC 16-80-009 and 16-80-010 simplify the rule and remove information that is not needed or relevant. Repealing these sections prevents confusion between either of the USDA program standards adopted in WAC 16-80-006 and 16-80-008 or the statute. Removing information that is already stated in statute or adopted standards or is no longer relevant does not impose any additional costs on businesses.

Adding the requirement that swine that are commingled and swine at exhibition must have official USDA-approved identification aligns department rules with USDA. The metal official individual identification device (tag) and tagger can be obtained by WSDA animal disease traceability program for free, so there is no cost required as a result of this amendment.

Amending the rule to include the requirement for observations of feral swine to be reported should increase the awareness of feral swine presence to responsible agencies so that they are able to locate and eradicate them, thus protecting state resources and individuals, businesses, and property owners from the destruction caused by feral swine. Reporting the observation of feral swine to the WISC is as simple as calling the number provided in rule or sending an email. There is no specific form to use when reporting and there is no penalty associated with not reporting. The reporting requirement is not directed to businesses, necessarily, but to individuals. There is no cost to report the observation of feral swine, no additional resources are needed for businesses or individuals to report.

March 22, 2023  
Jodi Jones  
Operations Director

OTS-4256.2

**Chapter 16-80 WAC**  
**DOMESTIC AND FERAL SWINE ((DISEASES REGULATED)) IN WASHINGTON STATE**

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-005 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

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

~~"Director" means the director of agriculture of the state of Washington or his or her authorized representative.~~

~~"Exposed" means to have had contact with an animal infected with an infectious or communicable disease.)~~

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;
- Swine from domesticated stocks that have escaped or been released or born into the wild state;
- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or
- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Official USDA-approved identification" means methods of identification, as approved in 9 C.F.R. ((Chapter 1, Section 71.19, January 1, 2009)) Sec. 71.19, revised January 9, 2013.

~~("Pseudorabies infected herd" means a herd of swine in which pseudorabies has been diagnosed in one or more animals by the National Veterinary Service Laboratory (NVSL) or a state laboratory approved by USDA to conduct official pseudorabies tests.)~~

"USDA" means the United States Department of Agriculture.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-005, filed 6/10/10, effective 7/11/10. Statutory Authority: RCW 16.36.040. WSR 00-06-066, § 16-80-005, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.040 and 16.36.096. WSR 91-08-027, § 16-80-005, filed 3/29/91, effective 4/29/91.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-006 Adoption of USDA pseudorabies eradication program standards.** In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA pseudorabies eradication state-federal-industry program standards, effective November 1, 2003. The department main-

tains a copy of this document for public inspection. You may ((also)) find the information on the internet at ((~~http://www.aphis.usda.gov/animal\_health/animal\_diseases/pseudorabies/downloads/program\_stds.pdf~~)) <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/swine-disease-information/swine-pseudorabies>.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-006, filed 6/10/10, effective 7/11/10.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-008 Adoption of USDA swine brucellosis control and eradication program standards.** In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA swine brucellosis control and eradication state-federal-industry program standards, effective April, 1998. The department maintains a copy of this document for public inspection. You may ((also)) find the information on the internet at ((~~http://www.aphis.usda.gov/animal\_health/animal\_dis\_spec/swine/downloads/sbruumr.pdf~~)) <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/swine-disease-information/swine-brucellosis>.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-008, filed 6/10/10, effective 7/11/10.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-045 Official identification of swine.** All swine ((~~moving through~~)) that leave the farm of origin or move through a public livestock market((s)) or collection ((~~facilities in intrastate or interstate commerce~~)) facility and all exhibition swine, must have official USDA-approved identification ((~~in compliance with 9 C.F.R. Chapter 1, Section 71.19, January 1, 2009~~)) unless going direct to slaughter.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-045, filed 6/10/10, effective 7/11/10. Statutory Authority: RCW 16.36.040. WSR 00-06-066, § 16-80-045, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.040 and 16.36.096. WSR 91-08-027, § 16-80-045, filed 3/29/91, effective 4/29/91.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-060 Feral swine.** Feral swine are ((~~illegal~~)) prohibited in the state of Washington. ((~~If found, feral swine will be eradicated and disposed of in a humane manner.~~)) If observed, feral swine

must be reported to the Washington invasive species council by telephone at 1-888-268-9219 or at their website at [www.invasivespecies.wa.gov/report](http://www.invasivespecies.wa.gov/report). Additionally, USDA Wildlife Services may be contacted by phone at 1-866-487-3297. An interagency response will be coordinated upon receipt of information.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-060, filed 6/10/10, effective 7/11/10.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-80-009            Surveillance program.
- WAC 16-80-010            Quarantine.