



EXPEDITED RULE MAKING

CR-105 (June 2024) (Implements RCW 34.05.353)

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FILED

DATE: May 01, 2025

TIME: 9:28 AM

WSR 25-10-045

Agency: Dept. of Agriculture

Title of rule and other identifying information: (describe subject) Chapter 16-180 WAC, Produce Safety

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department is proposing the establishment of chapter 16-180 WAC in order to adopt the 2024 version of the U.S. Food and Drug Administration's (FDA) Produce Safety Rule (21 CFR Part 112), which establishes science-based minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The Produce Safety Rule (PSR) is part of the federal Food Safety Modernization Act (FSMA), signed into law in 2011, and is intended to reduce the risk of contamination and foodborne illness from fresh produce.

In 2018, the Department received authority under chapter 15.135 RCW to conduct produce inspections. In partnership with the federal Food and Drug Administration (FDA), the Department established the Produce Safety Program. This program encouraged the safe production of fruits and vegetables, thereby reducing the public health risks for consumers of Washington produce. Through education and enforcement, the program promoted understanding of and compliance with the PSR, a component of the Food Safety Modernization Act (FSMA).

The program addresses two key goals:

- Help Washington farmers comply with the FDA Produce Safety Rule.
- Consistently and uniformly apply the FDA Produce Safety Rule in Washington State.

Chapter 15.135 RCW adopts the June 7, 2018 version of the PSR and authorizes the department to adopt more recent versions by rule. The most recent (2024) updates to the PSR reflect changes made by the FDA, including provisions related to agricultural water and associated compliance dates. Incorporating these federal updates to produce safety inspections will ensure consistency between state and federal requirements, minimize confusion for growers, and maintain Washington's equivalency with FDA regulations.

This will also support the Department's ongoing efforts to educate and regulate covered farms in accordance with FSMA standards. By aligning state rules with the latest federal requirements, the Department can continue to help farms remain in compliance, and maintain market access for Washington-grown produce.

Reasons supporting proposal: The Food Safety Modernization Act (FSMA) represents the largest update to federal food safety laws in 70 years. When FSMA was signed into law by President Obama in 2011, it authorized FDA to take a preventative approach to food safety. The FDA finalized seven rules under FSMA that regulate farms and food businesses along the supply chain, the PSR being one of them.

The PSR establishes science-based minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables for human consumption. Prior to its publication in 2015, the only food safety law that applied to produce farms was the regulation against the selling of "adulterated" food as defined under the Federal Food, Drug, and Cosmetic Act (21 U.S. Code §342). That law continues to exist today and helps to prevent against, as a general definition, the sale of impure, unsafe or unwholesome food.

The PSR requires farms to adopt safe handling practices that help to minimize the growth and spread of pathogens that cause foodborne illnesses and outbreaks. Common bacteria linked to produce include toxigenic *Escherichia coli* (*E.coli*), *Salmonella*, and *Listeria monocytogenes*. Fresh produce is susceptible to contamination - because it does not receive a "kill step" like cooked or commercially processed foods and pathogens are hard to remove or wash from the surface of produce. That is why preventive measures are so critical.

Adopting the most recent version of the PSR ensures that Washington State remains aligned with federal food safety standards under FSMA. Consistency between state and federal requirements reduces regulatory burden and confusion for produce growers and handlers, many of whom sell products in both interstate and intrastate markets.

Updating Washington's produce safety rules also allows the Department to maintain an equivalent state program recognized by the FDA. This alignment is essential to preserving federal funding for implementation, education, outreach, and inspection activities associated with produce safety carried out by the Department.

Timely adoption of federal updates strengthens the Department's ability to help farms comply with current science-based practices that reduce the risk of microbial contamination. These amendments ultimately support public health, promote confidence in Washington-grown produce, and help maintain access to both domestic and international markets.

Statutory authority for adoption: RCW 15.135.020, RCW 15.135.080

Statute being implemented: Chapter 15.135 RCW

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: 21 CFR Part 112

Name of proponent: (person or organization) Department of Agriculture

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Gloriann Robinson	1111 Washington Street SE, Olympia	(360) 902-1802
Implementation:	Karen Ullmann	1111 Washington Street SE, Olympia	(206) 714-6125
Enforcement:	Karen Ullmann	1111 Washington Street SE, Olympia	(206) 714-6125

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- ☐ Relates only to internal governmental operations that are not subject to violation by a person;
- ☒ Adopts or incorporates 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;
- ☐ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- ☐ Content is explicitly and specifically dictated by statute;
- ☐ Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- ☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- ☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- ☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- ☐ The rule is no longer necessary because of changed circumstances; or
- ☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):): By adopting the 2024 version of the Produce Safety Rule (a federal regulation), this rule making qualifies for expedited rule making

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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BEGINNING (date/time) May 1, 2025, 8:00 AM **AND RECEIVED BY** (date/time) July 8, 2025, 5:00 PM

Date: May 1, 2025

Name: Luisa Castro

Title: Assistant Director

Signature:



**Chapter 16-180 WAC
PRODUCE SAFETY**

NEW SECTION

WAC 16-180-005 Purpose of this rule. The purpose of this chapter is to implement the purpose and provisions of chapter 15.135 RCW.

NEW SECTION

WAC 16-180-010 Adoption of the federal Produce Safety Rule. The Washington state department of agriculture adopts the federal Produce Safety Rule, codified in 21 C.F.R. Part 112, effective July 5, 2024, for the growing, harvesting, packing, and holding of produce for human consumption. The Produce Safety Rule may be obtained from the department by emailing producesafety@agr.wa.gov, by phone at 360-902-1848 or online at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-112>.