



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

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DATE: January 08, 2019

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WSR 19-03-044

Agency: Department of Agriculture

Subject of possible rule making: As a result of recently passed legislation, the Department is considering establishing in rule a voluntary program for farms exempt or partially exempt from the federal Produce Safety Rule (21 CFR Part 112) to verify that such farms comply with the federal rule.

Statutes authorizing the agency to adopt rules on this subject: RCW 15.135.050, RCW 15.135.080

Reasons why rules on this subject may be needed and what they might accomplish: The federal Food Safety Modernization Act (FSMA) was adopted in 2011. This federal law is the first comprehensive update to federal food safety laws since 1938. It sets new standards for food handling across the food chain with rules for farms and food processors. Under FSMA, the US Food and Drug Administration (FDA) adopted the Produce Safety Rule (21 CFR Part 112). The Produce Safety Rule established, for the first time, science-based minimum standards for the safe growing, harvesting, packing, and holding of produce. This regulation focuses on preventing microbial contamination and reducing food borne illnesses associated with fresh produce. It establishes six categories of requirements that must be met by farms subject to the rule, including water quality; biological soil amendments; sprouts; domesticated and wild animals; worker training, health, and hygiene; and equipment, tools, and buildings. These standards apply to fruits and vegetables normally consumed raw, such as apples, carrots, lettuce, onions, and tomatoes. There are several instances in which a farm will be exempt from complying with the federal Produce Safety Rule, including: farms selling produce that is rarely consumed raw (such as potatoes) or is grown for personal consumption; produce that is being sold to a larger commercial production/distribution facility; and when a farm sells less than a certain dollar threshold established by the FDA (about \$25,000).

During the 2018 legislative session, the Legislature passed SB 6319 (codified as chapter 15.135 RCW) -- the Produce Safety Rule Implementation Act. This state law allows the Department to establish by rule a voluntary program for farms exempt or partially exempt from the federal Produce Safety Rule to verify that such farms comply with the rule. The law specifies that farms participating in the voluntary compliance program must bear the cost of the program. Produce farms that choose to participate in the voluntary program may benefit by having additional marketing opportunities as a result of demonstrating that their produce meets federal standards.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: Food and Drug Administration's Produce Safety Network – the Department will communicate any rule amendments with the FDA.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Department of Agriculture staff will discuss rule making with affected stakeholders. Affected stakeholders will also have an opportunity to submit written comments on the proposed rules during the public comment period and will also be able to present oral testimony at the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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(If necessary)

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Other:

Additional comments:

Date: January 8, 2019

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Title: Assistant Director, Food Safety and Consumer
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Signature:

