



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 11, 2019

TIME: 11:18 AM

WSR 19-21-058

Agency: Dept. of Agriculture

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR _____ ; or

Expedited Rule Making--Proposed notice was filed as WSR 19-08-081; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 16-125 WAC, Farm Milk Storage Tanks and Bulk Milk Tanker – Requirements. The department is proposing to repeal WAC 16-125-035, Farm tank pickup and washing requirements. By repealing this section, the department is deferring to the standards for picking up milk from farm tanks and for washing and sanitizing the tanks specified in the 2017 Pasteurized Milk Ordinance (PMO) that is adopted under chapter 16-101 WAC (Washington State Milk and Milk Products Standards).

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

| | | | |
|-------------------|---------|---|--|
| November 26, 2019 | 9:00 AM | Natural Resources Building Room #172 1111 Washington Street SE Olympia, WA 98501 | |
|-------------------|---------|---|--|

Date of intended adoption: December 3, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Gloriann Robinson, Agency Rules Coordinator

Address: PO Box 42560, Olympia, WA 98504-2560

Email: wsdarulescomments@agr.wa.gov

Fax: (360) 902-2092

Other:

By (date) November 26, 2019.

Assistance for persons with disabilities:

Contact Angela Starr

Phone: (360) 902-1967

Fax: (360) 902-2087

TTY: (800) 833-6388

Email: astarr@agr.wa.gov

Other:

By (date) November 19, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: WAC 16-125-035 requires that (1) All milk must be picked up at least every forty-eight hours from farm tanks, and (2) All farm tanks must be emptied, washed, and sanitized at least once every forty-eight hours. Northwest Dairy Association and Darigold petitioned the department, requesting that these time requirements be changed to align with the 2017 PMO, which was adopted under chapter 16-101 WAC on April 5, 2019.

Reasons supporting proposal: RCW 15.36.021 authorizes the department to, by rule, establish, amend, or both, definitions and standards for milk and milk products and states that those definitions and standards shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by the federal Food and Drug Administration (FDA) which are published in the PMO. The FDA designs the PMO to protect consumers from milk borne diseases in both grade "A" pasteurized and raw milk and encourages all states to adopt the most recent version in order to promote uniformity with other states. The 2017 PMO specifies a 72-hour requirement for farm tank pickup and washing under Item 10r – Utensils and Equipment - Cleaning. The 2017 version of the PMO, including the 72-hour requirement for farm milk pickup and tank washing, was adopted by the department in April of 2019 under chapter 16-101 WAC thus making the 48-hour requirement in WAC 16-125-035 conflict with the requirements adopted in chapter 16-101 WAC and confusing for stakeholders to follow. By repealing WAC 16-125-035, which requires milk pickup and tank washing every 48 hours, this rule will not conflict with the requirements specified in the PMO as adopted under chapter 16-101 WAC. Its repeal improves consistency with national standards and facilitates the interstate shipment of grade "A" and manufactured food dairy products.

The PMO has established that 72 hours between tank washings is effective for managing bacterial growth when proper sanitation practices at the farm and plant are maintained. The 48-hour requirement is not necessary to protect public health.

Statutory authority for adoption: RCW 15.36.021

Statute being implemented: Chapter 15.36 RCW

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

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

Name of proponent: (person or organization) Northwest Dairy Association and Darigold Private
 Public
 Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|-------------|--|----------------|
| Drafting: | David Smith | 1111 Washington Street SE, Olympia, WA 98501 | (360) 902-1952 |
| Implementation: | David Smith | 1111 Washington Street SE, Olympia, WA 98501 | (360) 902-1952 |
| Enforcement: | David Smith | 1111 Washington Street SE, Olympia, WA 98501 | (360) 902-1952 |

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
Address:

Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: The Washington State Dept. of Agriculture is not a listed agency under RCW 34.05.328(5)(a)(i).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.310(4)(c).

Explanation of exemptions, if necessary: The PMO, published by FDA, outlines minimum standards and requirements for grade "A" milk and milk products pertaining to production, processing, packaging, and sale. FDA developed the PMO with the assistance of milk regulatory and rating agencies at every level of federal and state government, including both health and agriculture departments; all segments of the dairy industry, including producers, milk plant operators, equipment manufacturers, and associations; and educational and research institutions.

RCW 15.36.021 authorizes the department to, by rule, establish, amend, or both, definitions and standards for milk and milk products and states that those definitions and standards shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by FDA which are published in the PMO. Under chapter 16-101 WAC (Washington State Milk and Milk Products Standards) the department adopts most provisions of the PMO. The rule specifies which provisions of the PMO that the department does not adopt.

The PMO specifies a 72-hour requirement for picking up milk from farm tanks and for washing and sanitizing the tanks. When conducting rule making under chapter 16-101 WAC earlier this year, the department did not adopt an exception to the PMO related to the schedule for picking up milk from farm tanks and for washing and sanitizing the tanks. This means that under chapter 16-101 WAC, milk producers must follow the PMO's requirements. However, WAC 16-125-035 specifies a 48-hour milk pick up from farm tanks and a 48-hour washing and sanitizing schedule.

In order to respond to a petition for rule making and also correct the conflict between rules, the department is proposing to repeal WAC 16-125-035 thereby making it clear that milk producers in Washington State must follow the standards specified in FDA's PMO for picking up milk from farm tanks and washing and sanitizing the tanks.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

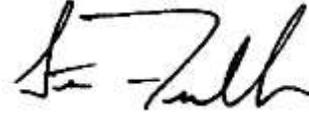
Name: Gloriann Robinson, Agency Rules Coordinator
Address: PO Box 42560, Olympia, WA 98504-2560
Phone: (360) 902-1802
Fax: (360) 902-2092
TTY: (800) 833-6388
Email: wsdarulescomments@agr.wa.gov
Other:

Date: October 11, 2019

Name: Steve Fuller

Title: Assistant Director

Signature:



REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-125-035 Farm tank pickup and washing requirements.