Concise Explanatory Statement

Chapter 16-610 WAC, Livestock Identification

The Washington State Department of Agriculture (WSDA) held a virtual hearing on May 24, 2022 via Microsoft TEAMS to accept testimony on the proposal to amend chapter 16-610 WAC, Livestock Identification.

The department is amending chapter 16-610 WAC, Livestock Identification, in response to a petition for rulemaking received from the WSDA’s Livestock Identification Advisory Committee. The petition included the following:

- Reduce the Electronic Cattle Transaction Reporting (ECTR) per head fee; and
- Allow veterinarians and field livestock inspectors certified by the department to conduct inspections at public livestock markets, certified feedlots, slaughter facilities, or special sales when the facilities have received written notification from the department that department inspectors are not available.

The Department is also amending WAC 16-610-021 to clarify the requirement that sellers using ECTR must provide proof of ownership by describing how the seller must provide that documentation.

The electronic cattle transaction reporting (ECTR) system is a web-based platform for Washington cattle owners to electronically report change of ownership or out-of-state movement of their cattle. All cattle reported in ECTR must have electronic official individual identification, through the use of an official USDA approved 840 radio-frequency identification (RFID) tag. Users must submit proof of ownership documentation for all branded cattle that are reported in ECTR. The proposal reduces the ECTR fee from $1.30 per head to $0.80 per head. Reduction in the ECTR per head fee will incentivize more private sales of cattle to be conducted without the use of a livestock inspector. With more cattle producers utilizing ECTR, the program may see reduced expenditures as the need for department livestock inspectors conducting physical inspections may decrease.

An increased use of the ECTR system by producers will also advance animal disease traceability (ADT) in the state. ADT 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 time involved in a disease investigation, reducing the economic impact on cattle producers. ADT is based on individual identification and the ability to trace an individual, as opposed to a group of animals, allows fewer farms to face quarantine in the face of a disease event and secures continuity of business. The ECTR system requires individual identification in the form of RFID for every transaction.

In response to recent transactions and the expected increase of future transactions within the ECTR system, the need to put parameters around submitting original proof of ownership is important. Currently, the rule requires ECTR users to provide proof of ownership when the brand is not recorded in Washington to the seller, but does not specify how to do so. The department is clarifying the rule by stating that ECTR users are required to upload a copy of their proof of ownership at the time the
transaction is reported as well as mailing the original to the department within 7 days of the transaction. When ECTR users sell branded cattle that have a brand that is not recorded to the seller, it is important that the seller send the department the original proof of ownership so that the seller cannot continue to use that original proof of ownership when selling cattle in the future and more importantly so that the department can issue a duplicate certificate to the seller showing the number of animals remaining in their possession from the original certificate. This practice is also required when owners request a physical inspection of their branded cattle.

Certified veterinarians and private field inspectors are not authorized to conduct inspections at public livestock markets, certified feedlots, slaughter facilities, or special sales under the current permanent rule. During the COVID-19 pandemic, the department experienced a lack of staff availability to perform livestock inspections. This staffing shortfall resulted in the department issuing an emergency rulemaking order that allowed certified veterinarians and private field inspectors to conduct inspections at the licensed facilities when the department notified those licensed facilities in writing that WSDA inspectors were not available. This rulemaking makes the emergency rule permanent and ensures that the livestock industry is able to continue functioning even when department staff are unavailable to conduct inspections.

Differences between the text of the proposed rule and the text of the rule as adopted
None

Summarizing all comments received regarding the proposed rule and responses:

Oral and Written Comments “For” The Proposal:

1. Scott Nielsen - representing the Stevens County Cattlemen’s Association submitted written comment regarding the proposal. Mr. Nielsen stated, “We both support and oppose proposed changes to the WAC. In regards to the proposed changes to WAC 16-610-060, we support these changes that would allow veterinarians and field livestock inspectors to conduct inspections at public livestock markets, certified feedlots, slaughter facilities and special sales. This change would increase the number of inspectors available to help cattlemen meet the brand inspection requirements during a change of ownership.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

2. Josslin Schoesler – representing the Cattle Producers of Washington submitted written comment regarding the proposal. Ms. Schoesler stated, “We support the proposed changes to allow veterinarians and field livestock inspectors to conduct inspections when department inspectors are not available.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

3. Mark Streuli – representing the Washington Cattlemen’s Association submitted both written and oral comment regarding the proposal. Mr. Field stated, “The Washington Cattlemen’s
Association (WCA) supports the WSDA’s proposed rule action. We really appreciate the agency and the director’s commitment to fee reduction and streamlining efficiencies and effectiveness and we think this fee reductions goes a long way to support that. We also appreciate the part of the proposal that will all field livestock inspectors in the markets. This rule proposal has been thoroughly discussed and vetted by the WSDA Livestock Advisory Board and is the result of an industry request. The WCA believes reducing the ECTR fee will benefit producers by incentivizing participation in ECTR and reducing the economic cost for the service. ECTR is a key of both Livestock Identification and Animal Disease Traceability. The WCA appreciates the WSDA’s recognition of the importance of reducing fees to producers. The WCFA requests that the WSDA adopt the proposed rule change.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

4. Jack Field – representing the Washington Cattle Feeders Association submitted both written and oral comment regarding the proposal. Mr. Field stated, “The Washington Cattle Feeders Association (WCFA) supports the WSDA’s proposed rule action. This rule proposal has been thoroughly discussed and vetted by the WSDA Livestock Advisory Board and is the result of an industry request. The WCFA believes reducing the ECTR fee will benefit producers by incentivizing participation in ECTR and reducing the economic cost for the service. The WCFA appreciates the WSDA’s recognition of the importance of reducing fees to producers. The WCFA requests that the WSDA adopt the proposed rule change.

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

5. Mr. Field also submitted oral comment representing himself. Mr. Field stated, “I am a brand holder myself. I have participated in the ECTR program and know that ECTR is a valuable tool to a number of our purebred breeders. It has helped facilitate business transactions for those individuals. I do appreciate the efficiencies it creates. It appears to be a fairly simple and straightforward program. I like seeing the fee reduction. I think that is going to be a help and right now when you look at the mounting input fees, anytime we can see a rule come forward the creates efficiency and a reduction in costs, I would hope that would be welcomed by all in the industry. Again, thank you to the department, the director and the LID staff for putting this proposal together and would urge adoption.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

6. Fred Muller – submitted written comment regarding the proposal. Mr. Muller stated, “I am writing to support the proposed rule changes to WAC 16-610-021, regarding ECTR and ADT. I am a livestock veterinarian and cattle producer (TJ Ranch) who has used ECTR exclusively for animal transfers or sales over the past 2-3 years. I believe reducing the ECTR per head fee to $0.80 per
head is a move in the right direction to aide in and encourage the use of ECTR by more of the livestock industry. The cost to the department is much lower using electronic reporting as opposed to sending inspectors out in the field. The Brand Program has repeatedly experienced short falls in it’s budget and has been in the Red due to the high cost of employing inspectors, the cost of time and travel involved with doing in person inspections, and the failed accounting for these cost and/or the inability to adequately pass those costs on to producers using the service. The use of Electronic records of sales by producers and industry professionals utilizing 840 EID tags is a far more cost effective approach to achieving records of animal transfers as well as for incorporation in Animal Disease Traceability. I additionally support allowing veterinarians or certified field livestock inspectors to conduct inspections at markets, feedlots, or slaughter facilities, or sales. However, if these are certified individuals, I do not believe their use should be restricted to when WSDA inspectors are unavailable. These individuals are often already on site and can conduct inspections at a much lower cost to the department and producers than sending inspectors into the field. But even if written notice is required, private inspectors should be an option. The encouragement of the industry to use ECTR dramatically improves ADT efficacy. This is due to the use of individual animal ID via the 840 EIDs rather than a farm or ranch, but not animal, specific system such as a brand. Additionally, the speed of capturing and transmitting data on animal sales and movements is greatly increased via the use of ECTR, as opposed to paper records. The WSDA needs to continue to work towards solvency of Brand if the program is going to exist and reducing labor, equipment, fuel, and time is going to be key to running in the black. Additionally, if the department is not successful in maintaining the Brand program, then having ECTR in use and widely accepted will be a key tool for continued use as part of the ADT program. The WSDA needs to work in the technologically advanced world we live in and reap the benefits of such technology to support the cattle industry and maintain its market access thru issues such as a disease outbreak. Encouraging the use of ECTR is key to achieving these goals.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

7. Danny DeFranco — submitted oral comment regarding the proposal. Mr. DeFranco stated, “I am testifying in favor of the rule changes.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

8. Don Blakemore — submitted oral comment regarding the proposal. Mr. Blakemore stated, “I am calling on behalf of myself as a producer, and I am calling in support of the reduction. I think you guys have done an excellent job on this and I view this as a key component in both livestock identification and animal traceability and I hope that this will increase the uptake in the ECTR program.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.
Oral and Written Comments “Against” The Proposal:

1. Scott Nielsen – representing the Stevens County Cattlemen’s Association submitted written comment regarding the proposal. Mr. Nielsen stated, “We both support and oppose proposed changes to the WAC. In regards to the proposed changes to WAC 16-610-021 that would reduce the ECTR per head fee, we oppose this change. We oppose this change because we do not feel it is in the best interest of Washington cattle producers to have an electronic tagging or reporting system incentivized through fee reductions. SCCA opposes any form of electronic identification, as it is neither economically feasible for ranchers nor is it trustworthy. The likelihood of fraud using an electronic, self-reporting system is very high. In addition, reducing fees during a time when the WSDA brand department is in a financial deficit makes very little sense if a balanced budget is to be achieved.

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

ECTR is a stand-alone program, the revenue generated in ECTR must cover the costs to run and maintain the ECTR program. RCW 16.57.450(8)(b) All fees established under this section must, as closely as practicable, cover the cost of the development, maintenance, fee collection, and audit and administrative oversight of the electronic cattle transaction reporting system. An analysis was completed using projections based on users and transactions of past years. This included a potential growth in revenue and expenditures based on more users reporting transactions. The analysis showed that revenue will cover expenditures with a two month operating reserve with the reduction in the fee. Should revenue not cover expenditures, the ECTR per head fee will be adjusted accordingly in rule.

Official electronic identification is not mandatory for change of ownership or movement out of state inspections in Washington State. Many producers in our state and nationwide utilize official electronic identification in their cattle. This allows producers another option to report transactions for change of ownership and out of state movement of cattle that is outside of traditional brand inspections.

Currently, budget projections show the livestock identification program as a whole will remain in the black into 2028, this includes the fee change for ECTR in rule.

2. Josslinn Schoesler – representing the Cattle Producers of Washington submitted written comment regarding the proposal. Ms. Schoesler stated, “We oppose the proposed changes that will reduce the ECTR per head fee. We feel it is counterproductive for a program that is having budget issues.”

Response: WSDA appreciates your participation in the rulemaking process. Thank you for your comments.

ECTR is a stand-alone program, the revenue generated in ECTR must cover the costs to run and maintain the ECTR program. RCW 16.57.450(8)(b) All fees established under this section must, as closely as practicable, cover the cost of the development, maintenance, fee collection, and
audit and administrative oversight of the electronic cattle transaction reporting system. An analysis was completed using projections based on users and transactions of past years. This included a potential growth in revenue and expenditures based on more users reporting transactions. The analysis showed that revenue will cover expenditures with a two month operating reserve with the reduction in the fee. Should revenue not cover expenditures, the ECTR per head fee will be adjusted accordingly in rule.

Currently, budget projections show the livestock identification program as a whole will remain in the black into 2028, this includes the fee change for ECTR in rule.

3. David Winzer – submitted written comment regarding the proposal. Mr. Winzer stated, “I am a veterinarian with 40 years experience working with Washington beef cattle producers. I am also actively engaged in a cow/calf operation of my own. I was also a certified field brand inspector for a brief period of time. I DO NOT support the proposed amendments. Firstly, I suggest we eliminate the brand department entirely and I suggest using South Dakota as a model. South Dakota has a substantially greater number of beef cows than Washington without using a livestock identification system (brand department) and I believe it functions well. Over my career as a veterinarian and writing health certificates for interstate transport, I have been present on many ranches while calves were "brand inspected" and loaded onto trucks. As I stated earlier, I was also an inspector myself for a few months. Motives may be well intended but, diligent inspection of brands is quite challenging and often impossible. For example, 80-400 head of calves to inspect, while the trucks and truckers are anxiously waiting to get loaded and on the road, ranchers are in a hurry to get them loaded before there is a "wreck", the buyer is anxious to get them to their destination, etc., no one has much patience for the brand inspector to deliberately examine each animal for a brand!! He or she will see many of the brands, but will not identify all. Calves are moving fast, crowding and mingling and one can not look at every animal. If you "inspect" as the calves are actually loading I challenge anyone to say, "stop, I don't see a brand on that one", and shut everything down. Brand inspection on sale and delivery day is largely futile. By the way, I quit being a veterinary field inspector because my conscience wouldn't allow me to see my clients charged for two call out fees, once by the state without a state inspector present and then again for my own call out fee. There is a comment made in support of the proposal that these changes would provide "more opportunities to generate additional revenue" by private businesses, which proved to be completely wrong in my case. I could easily spend an entire miserable morning on a ranch waiting for uncooperative cattle to be gathered, waiting for the buyer and trucks to arrive, waiting for the cattle to be sorted and weighed, and finally waiting for the final tally of steers and heifers, etc, before I could write the certificate and be on my way to return to my busy practice of veterinary medicine. It was not cost effective to me, but rather a revenue producing loss for my practice. In addition to the challenge of actively looking at each animal you are also challenged with winter hair coats as most calves are sold and delivered in the late fall and early winter. It is often impossible to see or read a brand with winter hair coats and hides caked with mud and feces. I’d ask myself, "what did I just accomplish"? I also wonder exactly how many cases of cattle theft have been discovered, and reported by brand inspectors in Washington in the last few years. Even in that case, once the suspected theft is noted the complaint is handed off to the county sheriff. I
suspect most cases of cattle theft are initially reported to the sheriff by the owner without the involvement of a brand inspector. I believe branding cattle is very important and I strongly encourage the practice, but my conclusion is that brand inspection of cattle by a state employee is of very little value or usefulness. My second comment regards the use of 840 tags. Their use provides no tangible value for the producer nor practical use to the Livestock Identification Department. Any tag that can be applied can just as easily be removed! RFID tags are NOT permanent. The use of 840 tags is of value only for ADT and is being pushed on producers by the USDA and other entities for their benefit. Please don't allow outside forces to manipulate and use the Washington Brand Department. Lastly, regarding the cost comparison of ECTR fees vs. livestock inspection fees, where in the consideration and comparison is the cost of 840 tags? Ok, I may get initial tags free as "bait" but after that the expense comes out of my pocket. Currently 840 tags cost about $2.50 each. So, with that factored in, the new system does not cost less, but more. The producer has to add an additional $2.50 for each animal sold to cover the 840 tag cost. The cost comparison chart is quite deceptive. The use of RFID tags will not replace the use of individual ID dangle tags. Producers will still need to be able to visually identify animals at a distance while on the ranch. In conclusion, I believe the most appropriate course would be to eliminate entirely the requirement for brand inspection of cattle. Brand inspection provides little practical benefit and its elimination would save a LOT of state money as well as saving a few dollars for the cattle producer.”