

# Outline of NNII Policy Concerning Propagation and Sale of 'WA 38'

## Policy for NNII Nurseries

### *Tree Production*

1. Must be a nursery in a State (Washington, Oregon, California) program recognized by the Washington State Department of Agriculture's Fruit Tree Planting Stock Certification Program (WAC Chapter 16-350).
2. Sub-licensed by NNII to propagate, grow, and sell 'WA 38' trees to growers for planting in Washington State.
3. If a NNII member contracts with other nurseries to grow their trees, the non-NNII member nurseries must be State certified and must enter into a NNII-approved contractual relationship for 'WA 38' with the NNII member. Locations of such tree production must be reported to NNII.
4. NNII members are to sign and obtain fruit grower's signature to the 'WA 38' Grower Agreement before trees are distributed. Completed Grower Agreements are to be delivered to NNII in a reasonable timeframe.
5. The 'WA 38' tree royalty fee is to be collected by the nursery for each tree delivered and a report and collected royalties are to be submitted to NNII by August 1 of each year (for all royalties collected by June 30).

### *Propagation Material Distribution*

6. Nurseries with propagation material in excess of their demands will make 'WA 38' propagation material harvested from registered trees or certified trees located at their nurseries available in the following priority:
  - First - for other NNII nurseries for fall, spring, or bench graft propagations to produce certified trees for subsequent sale by the recipient nursery.
  - Second - for topworking by NNII-contracted 'WA 38' fruit growers using propagation material harvested at the nursery from registered trees (G2, and G3) or certified trees (G4).
  - Third - for fruit grower tree production (budding of rootstock liners or bench grafts) using propagation material harvested at the nursery from registered trees (G2 or G3), if NNII member nurseries are unable to otherwise meet demand for WA 38 trees.
7. Fruit Grower requests for propagation material should be made to a NNII nursery. However, any requests submitted directly to PVM or to NNII will be communicated to all NNII members.
8. The decision as to who purchases extra propagation material (after NNII member needs are met) is in the hands of the nursery with the extra propagation material.
9. Propagation material production, collection, and distribution costs are at the discretion of the nursery.

## Policy for propagation by Washington State Fruit Growers

1. Fruit grower topworking and fruit grower tree production (budding of rootstock liners or bench grafts) is permitted under certain circumstances.
2. Two signed agreements are required for either method of propagation (topworking or tree production):
  - The 'WA 38' Grower Agreement (signed by the grower and the NNII nursery)
  - A one-time propagation agreement between the fruit grower and NNII
3. Orchard topworking was not allowed until 2018. After 2017, topworking is permitted when NNII member nurseries have excess wood on November 1 of the previous year.
4. After 2017, fruit grower tree production is possible when NNII members are above capacity. Notice of realizing capacity will be provided by the NNII Board by June 15. Trees for such propagations can be produced by the grower or a third party but are only for the contracted fruit grower's own orchards.
5. Before 'WA 38' propagation material is distributed for a grower, nurseries will collect the per tree royalty and a \$0.25 per tree "Industry Support" fee for all uses outside of NNII nurseries. As stated above, the costs for production, collection, and distribution of the propagation material is at the discretion of the nursery.
6. Fruit growers are only allowed to grow or to have trees grown for their licensed allocation at a site that is identified in their agreement with NNII.
7. If fruit growers have a non-NNII member third party produce their trees, that third party must be a nursery in good standing in a State certification program and have a one-time propagation agreement with NNII.

**Infringement** - Detection of infringing activities shall render the sub-license null and void and exclude future opportunity for the nursery or grower to propagate NNII managed varieties. This does not preclude possible claims for other damages and actions.