

WSR 21-01-205

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 23, 2020, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-112.

Title of Rule and Other Identifying Information: Chapter 16-218 WAC, Hops—Certification analysis—Fees, as a result of a petition from the Washington hop commission, the department is proposing increasing all fees related to the certification of hops under WAC 16-218-015, 16-218-025, and 16-218-035 by approximately forty-five percent. In addition, the department is proposing updating section titles to move away from a question and answer format and modifying the language to improve readability.

Hearing Location(s): On February 9, 2021, at 10:00 a.m., Skype conference line. Join by link <https://lync.wa.gov/agr.wa.gov/meet/grobinson/77GFSGDC?sl=1>.

Join by phone: 1-360-407-3816, Conference ID: 86838. Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: February 16, 2021.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., February 9, 2021.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by February 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 16-532-035 requires that all varieties of hops produced in the state be inspected and certified by the federal/state hop inspection service prior to marketing or processing. The Washington state department of agriculture's (WSDA) hop inspection program provides this service to the hop industry by carrying out site inspections for phytosanitary certificates, chemical analysis, and certification of the state's hop crop. The program takes a representative sample of all hop lots during harvest, as well as accepting a number of samples submitted by hop producers directly. WSDA last increased hop inspection fees in 2005. The Washington hop commission determined that a fee increase is necessary to stabilize and maintain the financial health of the hop inspection program and petitioned the department to conduct rule making to do so. The Washington hop commission also determined the amount of the increase that should be implemented.

The proposed amendment would increase fees for the certification of hops by approximately forty-five percent. This includes all fees listed under WAC 16-218-015, 16-218-025, and 16-218-035. The anticipated effects from this would be increased costs to businesses in Washington that pay to certify their hops.

Reasons Supporting Proposal: RCW 22.09.790 requires the department maintain fees at a level necessary to cover the cost of providing service. Eight years ago, the hop inspection program went through a streamlining process in order to reduce costs and improve operational efficiency. Everyday operations were analyzed to see how they could be improved to speed up processing and reduce time and labor. Some sys-

tems were made electronic or automated in order to reduce the number of staff needed for processing. These changes greatly reduced the program's operational costs. However, due to external factors, a fee increase has become necessary. The amount of hops produced annually in the state has increased, creating a greater workload for staff. Additionally, the program has experienced a significant rise in operational costs, due to a mandated wage increase. During peak harvest season from late August to mid-October, inspections are performed seven days a week. Additional temporary staff are hired during this time to meet demand and staff typically work long hours, often outside of their normal schedules. This is done in order to provide the quick turn-around time that growers both request and depend on for test results and the certification of their hops. These factors have led to a dramatic increase in operational costs, which the current fees are not able to cover.

A fee increase is necessary to stabilize and maintain the financial health of the hop inspection program. Current projections indicate the program is running below a six month operating budget and will have difficulty performing necessary functions after the 2021 hop season. The program is projected to reach a zero balance within the next three years. Without a fee increase the hop inspection program would no longer be able to test hops or perform inspections in a timely manner and therefore, could not provide needed services to the hop industry. This would result in negative impacts to Washington hop producers and increased costs, as they would need to ship their samples to Oregon or Idaho for inspection. Not only could this result in a loss of sales for growers, as the turn-around time for test results would be much slower, but Oregon and Idaho likely would not have the capacity to test all of Washington's hops. Since testing is required under WAC 16-532-035, this would leave growers with the legal requirement to have their hops tested, but no place to have that testing performed.

Statutory Authority for Adoption: RCW 22.09.020 and 22.09.790.

Statute Being Implemented: Chapter 22.09 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington hop commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Firman, 21 North 1st Avenue, Suite 106, Yakima, WA 98902, 509-249-6933.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5) (a) (i).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement
Chapter 16-218 WAC
Hops—Certification Analyses—Fees
December 23, 2020

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

History and Overview: Washington state is the top producing region for hops in the United States. With an estimated 41,263 acres of commercial hop production in 2019, Washington hops account for nearly seventy percent of the total hop production in the United States¹. A majority of the state's hops are grown in the Yakima Valley where the climate, soil, and available water make it an ideal growing area.

1 Hop Growers of America. (2020). *Enthusiasts*. Retrieved from USA Hops: <https://www.usahops.org/enthusiasts/>.

WAC 16-532-035 requires that all varieties of hops produced in the state be inspected and certified by the federal/state hop inspection service prior to marketing or processing. WSDA's hop inspection program provides this service to the hop industry by carrying out site inspections for phytosanitary certificates, chemical analysis, and certification of the state's hop crop. The program takes a representative sample of all hop lots during harvest, as well as accepting a number of samples submitted by hop producers directly. The hop industry also has the option of utilizing the services of the Oregon or Idaho departments of agriculture for inspection and certification services.

Each sample is analyzed for the presence of seeds, leaves, and stems, in accordance with United States Department of Agriculture (USDA) procedures. Samples are given a grade that can be used to determine the commercial value of each lot. Hops containing a high amount of leaves and stems are considered less valuable. The hop industry requests sample testing results be provided within twenty-four hours so they can fix any problems with processing if a high amount of leaves and stems are found in their crop.

Seeds are another concern for the hop industry, as they can form an oil when brewed which results in a lower value beer and makes the brewing process harder to control. This can lead to increased brewing costs. Some brewers will even request seedless (contains less than two percent seed) hops. As a result, low seed crops are more attractive to sellers and can fetch a higher market price. Washington traditionally uses low seed farming practices which has given it a reputation for growing hops containing low amounts of seed. The testing conducted by the hop inspection program helps demonstrate the high quality of hops produced in the state. After a hop sample is analyzed, the hop inspection program issues an inspection certificate, which is used for buying and selling the hops.

The program also tests for brewing values of hops, hop pellets, and hop extract; and moisture and hop storage index. Growers and dealers may also submit unofficial samples to the department for these specific tests. By performing these functions and issuing the associated documents necessary for trade, the hop inspection program ensures continued access to international and interstate markets for Washington's hop producers.

RCW 22.09.790 requires the department maintain fees at a level necessary to cover the cost of providing service. As a result of a petition from the Washington hop commission, the department is proposing amendments to WAC 16-218-015, 16-218-025, and 16-218-035 by increasing all fees related to the certification of hops by approximately forty-five percent. Additionally, the department is updating section titles to move away from a question and answer format and modifying the language to improve readability.

Why the Rule Change is Needed: The department last increased hop inspection fees in 2005. Eight years ago, the hop inspection program began going through a LEAN process in order to streamline operations

and reduce costs. Everyday operations were analyzed to see how they could be improved to speed up processing and reduce time and labor. Some systems were made electronic or automated in order to reduce the number of staff needed for processing. These changes greatly reduced the program's operational costs. However, even after all the increased efficiencies that were implemented, a fee increase has become necessary after fifteen years.

The amount of hops produced annually in the state has increased, creating a greater workload for staff. Additionally, the program has experienced a significant rise in operational costs, due to a mandated wage increase. During peak harvest season from late August to mid-October, inspections are performed seven days a week. Additional temporary staff are hired during this time to meet demand and staff typically work long hours. This is done in order to provide the quick turn-around time that growers both request and depend on for test results and the certification of their hops. These factors have led to a dramatic increase in operational costs, which the current fees are not able to cover.

A fee increase is necessary to stabilize and maintain the financial health of the hop inspection program. Current projections indicate the program is running below a six month operating budget and will have difficulty performing necessary functions after the 2021 hop season. The program is projected to reach a zero balance within the next three years. Without a fee increase the hop inspection program would no longer be able to test hops or perform inspections in a timely manner and therefore, could not provide needed services to the hop industry. This would result in negative impacts to Washington hop producers and increased costs, as they would need to ship their samples to Oregon or Idaho for inspection. Not only could this result in a loss of sales for growers, as the turn-around time for test results would be much slower, but Oregon and Idaho likely would not have the capacity to test all of Washington's hops. Since testing is required under WAC 16-532-035, this would leave growers with the legal requirement to have their hops tested, but no place to have that testing performed.

Probable Compliance Requirements: The only probable compliance requirement is businesses utilizing the services provided by the hop inspection program will pay higher fees for those services.

Professional Services Needed to Comply with Proposed Amendment: No professional services will be required for businesses to comply with the proposed rule amendment.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

**NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Impacted Businesses in Washington	±Minor Cost Threshold = 1% of Average Annual Payroll	*Minor Cost Threshold = 0.3% of Average Annual Revenue
111140	Wheat Farming	1	\$510.52	\$394.90
111191	Oilseed and Grain Combination Farming	1	\$666.26	Data not available
111219	Other Vegetable (except Potato) and Melon Farming	1	\$3,635.27	\$7,061.89
111320	Citrus (except Orange) Groves	1	Data not available	Data not available
111331	Apple Orchards	4	\$8,511.33	\$3,400.20
111334	Berry (except Strawberry) Farming	2	\$3,088.45	\$8,107.59
111336	Fruit and Tree Nut Combination Farming	1	\$5,069.29	\$768.86

**NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Impacted Businesses in Washington	±Minor Cost Threshold = 1% of Average Annual Payroll	*Minor Cost Threshold = 0.3% of Average Annual Revenue
111998	All Other Miscellaneous Crop Farming	23	\$9,118.76	\$1,179.40
112111	Beef Cattle Ranching and Farming	2	\$844.82	\$357.61
112990	All Other Animal Production	2	\$499.58	\$421.90
311942	Spice and Extract Manufacturing	1	\$12,436.35	\$13,488.59
424480	Fresh Fruit and Vegetable Merchant Wholesalers	1	\$15,475.73	\$39,111.14
424590	Other Farm Product Raw Material Merchant Wholesalers	3	\$4,316.84	\$5,883.37
493130	Farm Product Warehousing and Storage	1	\$8,450.79	\$9,117.33
541990	All Other Professional; Scientific; and Technical Services	1	\$4,801.34	\$2,535.65

±Data source: 2018 Dataset from the Washington state employment security department (ESD) and United States Bureau of Labor Statistics.

*Data source: 2018 Dataset from the Washington state department of revenue (DOR).

** These codes reflect the NAICS codes that affected businesses chose when registering with DOR.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Proposed amendments to WAC 16-218-015, 16-218-025, and 16-218-035 increase all fees related to the certification of hops by approximately forty-five percent. Under the proposed amendments, fees would be assessed as follows:

WAC 16-218-015 Fees for the certification of hops:

Service	Current Fee	Proposed Fee (Approximately Forty-Five Percent Increase)
Official lot inspections and certification for baled hops	\$1.25 per bale with minimum charge of \$30 per lot for official inspection and grading with certification	\$1.81 per bale with a minimum charge of \$44 per lot for official inspection and grading with certification
Submitted sample inspections and certification	\$150 for an unofficial sample submitted for grading with certification of a quantity not to exceed 100,000 lbs. of dried hops	\$217.50 for an unofficial sample submitted for grading with certification of a quantity not to exceed 100,000 lbs. of dried hops

WAC 16-218-025 Charges for chemical analysis regarding brewing values and additional constituents in raw hops, hop extract, hop pellets, and hop powder. Fees for the chemical analyses of officially sampled raw hops:

Type of Analyses	Current Fee Per Bale	Proposed Fee (Approximately Forty-Five Percent Increase) Per Bale	Current Minimum Fee Per Sample	Proposed Minimum Fee (Approximately Forty-Five Percent Increase) Per Sample
American Society of Brewing Chemists (ASBC) spectrophotometric with moisture	\$0.35	\$0.50	\$30.00	\$50.00
ASBC spectrophotometric/conductometric or exhaled breath condensate (EBC) conductometric without moisture	\$0.30	\$0.44	\$30.00	\$44.00

Type of Analyses	Current Fee Per Bale	Proposed Fee (Approximately Forty-Five Percent Increase) Per Bale	Current Minimum Fee Per Sample	Proposed Minimum Fee (Approximately Forty-Five Percent Increase) Per Sample
Mebak, Zurich, Verzele, Ganzlin, or conductometric	\$0.60	\$0.87	\$60.00	\$87.00

Fees for chemical analyses of submitted raw hops, hop extract, hop pellets or hop powders:

Type of Analyses	Current Fees	Proposed Fees (Approximately Forty-Five Percent Increase)
ASBC spectrophotometric	\$30.00	\$44.00
ASBC conductometric	\$30.00	\$44.00
EBC conductometric	\$30.00	\$44.00
EBC conductometric (Wollmer, Zurich, Mebak, Verzele, Ganzlin, or Resins (hard or soft))	\$60.00	\$87.00
H ₂ O	\$10.00	\$14.50
Total oil	\$25.00	\$36.00
Wort test, particle size	\$10.00	\$14.50

WAC 16-218-035 Fees for issuing export certification for hops and hop products:

Service	Current Fee	Proposed Fee (Approximately Forty-Five Percent Increase)
State phytosanitary certificates	\$25.00	\$36.00
Other certificates attesting to origin, compliance with standards of other states or nations or specifications of contracts, or conditions of production or processing	\$20.00	\$29.00

WAC 16-532-035 requires that all varieties of hops produced in the state be inspected and certified. Under the proposed amendments, the only required fee is under WAC 16-218-015 and is for official lot inspections and the certification of baled hops. This fee is currently \$1.25 per bale with a minimum charge of \$30 per lot and would increase to \$1.81 per bale with a minimum charge of \$44 per lot under the proposed changes. The average value for one bale of hops is estimated around \$1,000 or more. When comparing this amount to the fee, the cost is relatively minimal. For example, a sample submitted to the hop inspection program may cost the business \$217.50 for analysis, but the value of the lot submitted may be around \$200,000. In fact, in 2019 the USDA hop report stated that the total value of Washington hops was \$475 million. The fees collected that year by the hop inspection program were a total of \$630,000.

All fees listed under ASBC and moisture testing are optional fees for service.

Increased fees under the proposed amendment will not cause businesses to lose sales or decrease their revenue, however it will likely increase overall expenses for each business. Additionally, there will be no increased cost for businesses to comply with the proposed rule in terms of extra costs for equipment, supplies, labor, professional services, or administrative costs. In contrast, if the program was not able to continue providing the current level of service or had to shut down completely due to lack of funds, the businesses it serves would

likely lose sales due to the inability to have their crops tested and certified as required.

In 2019, an estimated thirty-six small businesses and nine large businesses paid fees for the certification of hops. Table 3.1 shows the total fees paid by each business, as well as the estimated cost under the proposed fee increase.

Table 3.1 - Estimated cost for each business that paid fees in 2019

Business	Business Size	NAICS Code	Total Cost 2019	Total Cost w/ Approximately Forty- Five Percent Increase	Cost Difference Between 2019 and Approximately Forty- Five Percent Increase
1	Small	111140	\$9,700.60	\$14,065.87	\$4,365.27
2	Small	111191	\$7,563.75	\$10,967.44	\$3,403.69
3	Large	111219	\$7,752.50	\$11,241.13	\$3,488.63
4	Small	111320	\$17,530.00	\$25,418.50	\$7,888.50
5	Small	111331	\$6,887.50	\$9,986.88	\$3,099.38
6	Small	111331	\$5,891.25	\$8,542.31	\$2,651.06
7	Small	111331	\$7,513.75	\$10,894.94	\$3,381.19
8	Small	111331	\$165.85	\$240.48	\$74.63
9	Small	111334	\$9,487.15	\$13,756.37	\$4,269.22
10	Large	111334	\$79,979.20	\$115,969.84	\$35,990.64
11	Small	111336	\$33,834.05	\$49,059.37	\$15,225.32
12	Small	111998	\$3,047.50	\$4,418.88	\$1,371.38
13	Small	111998	\$16,176.80	\$23,456.36	\$7,279.56
14	Small	111998	\$13,010.65	\$18,865.44	\$5,854.79
15	Small	111998	\$15,440.00	\$22,388.00	\$6,948.00
16	Small	111998	\$12,851.25	\$18,634.31	\$5,783.06
17	Small	111998	\$6,465.25	\$9,374.61	\$2,909.36
18	Small	111998	\$3,903.75	\$5,660.44	\$1,756.69
19	Small	111998	\$4,171.00	\$6,047.95	\$1,876.95
20	Small	111998	\$107.50	\$155.88	\$48.38
21	Small	111998	\$5,255.00	\$7,619.75	\$2,364.75
22	Small	111998	\$4,258.75	\$6,175.19	\$1,916.44
23	Small	111998	\$18,339.95	\$26,592.93	\$8,252.98
24	Small	111998	\$1,571.25	\$2,278.31	\$707.06
25	Large	111998	\$12,986.25	\$18,830.06	\$5,843.81
26	Large	111998	\$28,830.00	\$41,803.50	\$12,973.50
27	Small	111998	\$570.00	\$826.50	\$256.50
28	Small	111998*	\$243.75	\$353.44	\$109.69
29	Small	111998*	\$536.30	\$777.64	\$241.34
30	Small	111998*	\$580.00	\$841.00	\$261.00
31	Small	111998*	\$5,595.00	\$8,112.75	\$2,517.75
32	Small	111998*	\$175.00	\$253.75	\$78.75
33	Large	111998*	\$362.50	\$525.63	\$163.13
34	Small	111998*	\$13,043.75	\$18,913.44	\$5,869.69
35	Small	112111	\$4,075.00	\$5,908.75	\$1,833.75
36	Large	112111	\$8,953.75	\$12,982.94	\$4,029.19
37	Small	112990	\$9,629.60	\$13,962.92	\$4,333.32

Business	Business Size	NAICS Code	Total Cost 2019	Total Cost w/ Approximately Forty- Five Percent Increase	Cost Difference Between 2019 and Approximately Forty- Five Percent Increase
38	Small	112990	\$283.75	\$411.44	\$127.69
39	Large	311942	\$22,093.75	\$32,035.94	\$9,942.19
40	Small	424480	\$63,031.25	\$91,395.31	\$28,364.06
41	Small	424590	\$18,537.90	\$26,879.96	\$8,342.06
42	Small	424590	\$6,118.15	\$8,871.32	\$2,753.17
43	Small	424590	\$178.75	\$259.19	\$80.44
44	Large	493130	\$46,658.90	\$67,655.41	\$20,996.51
45	Large	541990	\$29,036.25	\$42,102.56	\$13,066.31

* No NAICS code found so assigned 111998 (the classification for hop farming).
Sources: Data from fees paid in 2019, Buzzfile.com, and Manta.com.

Costs will vary greatly between businesses, with one small business seeing an increase of \$48 and another seeing an increase of \$28,364. This is also the case when analyzing the cost difference for large businesses, with one seeing an increase of \$163 and another seeing an increase of \$35,990. These varying costs are a result of the number of samples taken and tests requested by each business. This is not necessarily related to the size of the business.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

Total fees paid by each Washington business in 2019 were compared with estimated costs under the approximate forty-five percent increase. The resulting difference is shown in Table 4.1 and 4.2 under the "Estimated cost increase" column. Totals in this column were compared to the minor cost thresholds identified in Section 2. Under the proposed amendment, some businesses are expected to experience cost increases exceeding the minor cost threshold. This is shown in Table 4.1.

Table 4.1 - Businesses with estimated cost increases expected to exceed the minor cost threshold

Business	Business Size	NAICS Code	Estimated Cost Increase**	Minor Cost Threshold±
1	Small	111140	\$4,365.27	\$510.52
2	Small	111191	\$3,403.69	\$666.26
4	Small	111320	\$7,888.50	***\$894.97
10	Large	111334	\$35,990.64	\$8,107.59
11	Small	111336	\$15,225.32	\$5,069.29
26	Large	111998	\$12,973.50	\$9,118.76
34	Small	111998*	\$5,869.69	\$9,118.76
35	Small	112111	\$1,833.75	\$844.82
36	Large	112111	\$4,029.19	\$844.82
37	Small	112990	\$4,333.32	\$499.58
41	Small	424590	\$8,342.06	\$5,883.37
44	Large	493130	\$20,996.51	\$8,450.79
45	Large	541990	\$13,066.31	\$4,801.34

* No NAICS code found so assigned 111998 (the classification for hop farming).

** Calculated using fees paid by each business in 2019.

± Determined based on highest amount between one percent of average annual payroll and 0.3% of average annual revenue for each NAICS code. Data from ESD and DOR.

*** Data not available so minor cost threshold calculated using estimated annual revenue.

Table 4.1 indicates that of the forty-five businesses which paid fees in 2019, thirteen are expected to have costs exceeding the minor cost threshold. Eight of these businesses are considered to be small and five large.

However, not all businesses that paid fees in 2019 are expected to have costs exceeding the minor cost threshold. Table 4.2 shows that thirty-two businesses are expected to have cost increases less than the minor cost threshold. Twenty-eight of these businesses are considered small and four large.

Table 4.2 - Businesses with estimated cost increases expected to be less than the minor cost threshold

Business	Business Size	NAICS Code	Estimated Cost Increase**	Minor Cost Threshold***
3	Large	111219	\$3,488.63	\$7,061.89
5	Small	111331	\$3,099.38	\$8,511.33
6	Small	111331	\$2,651.06	\$8,511.33
7	Small	111331	\$3,381.19	\$8,511.33
8	Small	111331	\$74.63	\$8,511.33
9	Small	111334	\$4,269.22	\$8,107.59
12	Small	111998	\$1,371.38	\$9,118.76
13	Small	111998	\$7,279.56	\$9,118.76
14	Small	111998	\$5,854.79	\$9,118.76
15	Small	111998	\$6,948.00	\$9,118.76
16	Small	111998	\$5,783.06	\$9,118.76
17	Small	111998	\$2,909.36	\$9,118.76
18	Small	111998	\$1,756.69	\$9,118.76
19	Small	111998	\$1,876.95	\$9,118.76
20	Small	111998	\$48.38	\$9,118.76
21	Small	111998	\$2,364.75	\$9,118.76
22	Small	111998	\$1,916.44	\$9,118.76
23	Small	111998	\$8,252.98	\$9,118.76
24	Small	111998	\$707.06	\$9,118.76
25	Large	111998	\$5,843.81	\$9,118.76
27	Small	111998	\$256.50	\$9,118.76
28	Small	*111998	\$109.69	\$9,118.76
29	Small	*111998	\$241.34	\$9,118.76
30	Small	*111998	\$261.00	\$9,118.76
31	Small	*111998	\$2,517.75	\$9,118.76
32	Small	*111998	\$78.75	\$9,118.76
33	Large	*111998	\$163.13	\$9,118.76
38	Small	112990	\$127.69	\$499.58
39	Large	311942	\$9,942.19	\$13,488.59
40	Small	424480	\$28,364.06	\$39,111.14
42	Small	424590	\$2,753.17	\$5,883.37
43	Small	424590	\$80.44	\$5,883.37

* No NAICS code found so assigned 111998 (the classification for hop farming).

** Calculated using fees paid by each business in 2019.

*** Determined based on highest amount between 1% of average annual payroll and 0.3% of average annual revenue for each NAICS code. Data from ESD and DOR.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires the department compare the cost of compliance for small businesses with the cost of compliance for the largest ten percent of businesses required to comply with the proposed rule amendment. One or more of the following methods can be used as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales.

Costs per employee were analyzed for the top ten percent of large businesses impacted by the proposed changes. This was compared with the cost per employee for all impacted small businesses. Table 5.1 shows the results of the analysis, which indicates that small businesses will be disproportionately impacted by the proposed rule amendments.

Table 5.1 - Comparison of estimated costs per employee for top ten percent of large businesses and all small businesses impacted by the proposed amendments

Business	Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase	Cost per Employee
10	Large	111334	1,000	\$35,990.64	\$35.99
33	Large	***111998	*350.5	\$163.13	\$0.47
45	Large	541990	*174.5	\$13,066.31	\$74.88
39	Large	311942	*125.5	\$9,942.19	\$79.22
44	Large	493130	100	\$20,996.51	\$209.97
3	Large	111219	*74.5	\$3,488.63	\$46.83
43	Small	424590	46	\$80.44	\$1.75
11	Small	111336	45	\$15,225.32	\$338.34
40	Small	424480	38	\$28,364.06	\$746.42
9	Small	111334	35	\$4,269.22	\$121.98
7	Small	111331	33	\$3,381.19	\$102.46
25	Small	111998	*30.5	\$707.06	\$23.18
15	Small	111998	30	\$6,948.00	\$231.60
4	Small	111320	25	\$7,888.50	\$315.54
6	Small	111331	25	\$2,651.06	\$106.04
14	Small	111998	25	\$5,854.79	\$234.19
5	Small	111331	20	\$3,099.38	\$154.97
23	Small	111998	20	\$1,916.44	\$95.82
34	Small	***111998	20	\$5,869.69	\$293.48
37	Small	112990	20	\$4,333.32	\$216.67
16	Small	111998	12	\$5,783.06	\$481.92
42	Small	424590	12	\$2,753.17	\$229.43
2	Small	111191	10	\$3,403.69	\$340.37
41	Small	424590	10	\$8,342.06	\$834.21
8	Small	111331	5	\$74.63	\$14.93
19	Small	111998	5	\$1,756.69	\$351.34
20	Small	111998	5	\$1,876.95	\$375.39
24	Small	111998	5	\$8,252.98	\$1,650.60
32	Small	***111998	5	\$78.75	\$15.75

Business	Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase	Cost per Employee
35	Small	112111	4	\$1,833.75	\$458.44
13	Small	111998	2	\$7,279.56	\$3,639.78
18	Small	111998	2	\$2,909.36	\$1,454.68
21	Small	111998	2	\$48.38	\$24.19
22	Small	111998	2	\$2,364.75	\$1,182.38
29	Small	***111998	2	\$241.34	\$120.67
30	Small	***111998	2	\$261.00	\$130.50
31	Small	***111998	2	\$2,517.75	\$1,258.88
1	Small	111140	1	\$4,365.27	\$4,365.27
12	Small	111998	1	\$1,371.38	\$1,371.38
38	Small	112990	1	\$127.69	\$127.69
28	Small	111998	Unknown	\$256.50	**\$256.50
17	Small	***111998	Unknown	\$109.69	**\$109.69

* Range given for number of employees, therefore median number used for calculation.

** Data on number of employees was unavailable, so calculated as one staff employed.

*** No NAICS code found so assigned 111998 (the classification for hop farming).

The average cost per employee for the top ten percent of large businesses impacted by the proposed amendments is \$74.56. In comparison, the average cost per employee for all small businesses impacted by the proposed amendments is \$604.90. Despite costs per employee varying widely for both large and small businesses, it is evident that small businesses will be disproportionately impacted by the proposed amendment.

Table 5.2 shows a comparison by NAICS code of the average estimated cost per employee for all large and small businesses impacted by the proposed amendment. Under this table, cells with "None" listed indicate that no businesses of that size and NAICS code were found to be impacted. NAICS codes with only one size of business impacted by the proposed amendment are considered to be disproportionately impacted.

Table 5.2 - Comparison of average estimated costs per employee for all large and small businesses by NAICS code

NAICS Code	Average Estimated Cost Per Employee	
	Large Businesses	Small Businesses
111140 - Wheat Farming	None	\$4,365.27
111191 - Oilseed and Grain Combination Farming	None	\$340.37
112129 - Other Vegetable (except Potato) and Melon Farming	\$46.83	None
111320 - Citrus (except Orange) Groves	None	\$315.54
111331 - Apple Orchards	None	\$94.60
111334 - Berry (except Strawberry) Farming	\$35.99	\$121.98
111336 - Fruit and Tree Nut Combination Farming	None	\$338.34
*111998 - All Other Miscellaneous Crop Farming	\$90.28	\$694.33
112111 - Beef Cattle Ranching and Farming	\$67.15	\$458.44
112990 - All Other Animal Production	None	\$172.18
311942 - Spice and Extract Manufacturing	\$79.22	None
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	None	\$746.42
424590 - Other Farm Product Raw Material Merchant Wholesalers	None	\$355.13
493130 - Farm Product Warehousing and Storage	\$209.97	None
541990 - All Other Professional; Scientific; and Technical Services	\$74.88	None

* Some businesses in this category had no NAICS code available so were assigned 111998.
Bold indicates disproportionate impact.

It was found that small businesses in the following NAICS categories will be disproportionately impacted by the proposed amendments: 111140 - Wheat Farming, 111191 - Oilseed and Grain Combination Farming, 111320 - Citrus (except Orange) Groves, 111331 - Apple Orchards, 111334 - Berry (except Strawberry) Farming, 111336 - Fruit and Tree Nut Combination Farming, 111998 - All Other Miscellaneous Crop Farming, 112111 - Beef Cattle Ranching and Farming, 112990 - All Other Animal Production, 424480 - Fresh Fruit and Vegetable Merchant Wholesalers, and 424590 - Other Farm Product Raw Material Merchant Wholesalers.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* RCW 22.09.790 requires the department maintain fees at a level necessary to cover the cost of providing service. Due to the mandated wage increase, the fees currently set in rule are no longer able to cover the costs of providing these services. The Washington hop commission requested the fee increase, including the recommended approximate forty-five percent increase amount. They determined the increase is necessary in order to maintain the current level of service provided by the program. Modifying the amount in which the fee is increased would lower the level of service the program is currently providing, potentially to a point that the program would not be operational at all and would be in conflict with the statutory mandate.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) *Reducing the frequency of inspections:* Inspections are a fundamental part of the hop inspection program and are required in order to complete the necessary services offered by the program. Therefore, any reduction in the number of inspections would have a negative impact on stakeholders and the industry as a whole.

(d) *Delaying compliance timetables:* Delaying compliance timetables is not a viable mitigation measure. The proposed rule amendment is necessary to maintain the financial health of the program and ensure its continued operation. Delaying compliance timetables could result in a financial deficit making the program unable to perform required duties. This could negatively impact businesses in the industry. However, the new fees would not go into effect until August 2021.

(e) *Reducing or modifying fine schedules for noncompliance:* There are no fines associated with this rule.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* In the past, projects have been initiated to cut costs in an attempt to financially streamline the program. WSDA also proposed conducting private sampling and using unofficial certificates to save on costs. However, this was not widely utilized and it was determined that the industry preferred official services. It was eventually determined by the industry that a proposed fee increase was necessary to maintain the financial health of the program. The industry submitted a request to the department which outlined the increase amount for each fee. No other mitigation

techniques were suggested by small businesses or small business advocates.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

Budgetary concerns related to the hop inspection program were discussed at meetings with the Washington hop commission. The commission is an organization consisting of representatives from both large and small businesses within the hop industry. Commission meetings are open to the public and well attended by stakeholders, including both dealers and growers. During one of these meetings, the board determined a fee increase was necessary to maintain the financial health of the hop inspection program and requested that the department move forward with the proposed rule amendment to increase fees related to the certification of hops. A committee was convened by the commission to discuss the details of the amendment and determine the amount the fees would be increased. The fee changes within the proposed amendment reflect the recommendations of the committee.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

No jobs are expected to be created or lost as a result of compliance with the proposed rule amendment.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

December 23, 2020
 Brad White
 Assistant Director

OTS-2804.1

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-015 ((What fees does the department charge)) Fees for the certification of hops ((?)). (1) Based upon standards established by the Federal Grain Inspection Service of the United States Department of Agriculture, the Washington state department of agriculture's (department) fees for the certification of hops are:

Type of Inspection and Other Service	Fee Charged for Inspection and Other Service
(a) Official lot inspections and certification for baled hops.	((One dollar and twenty-five cents)) <u>\$1.81</u> per bale with a minimum charge of ((thirty dollars)) <u>\$44.00</u> per lot for official inspection and grading with certification.

Type of Inspection and Other Service	Fee Charged for Inspection and Other Service
(b) Official lot inspection and/or certification for alternative methods of packaging hops, or other services for which no fee has been established.	A contract fee may be negotiated, based on the agency's costs to furnish the services.
(c) Submitted sample inspections and certification.	((One hundred fifty dollars)) \$217.50 for an unofficial sample submitted for grading with certification of a quantity not to exceed 100,000 lbs. of dried hops.
(d) Appeal inspections.	The Federal Grain Inspection Service in Portland, Oregon establishes the charges for appeal inspections, and payments for such inspections must be made to them. Department time for sampling, handling and administration regarding appeal inspections will be assessed at the sampler hourly rate.

(2) (a) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

(i) Each bale can be properly stenciled; and

(ii) Samples can be drawn from the bales selected by the inspector.

(b) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for grading analysis.

(3) The department may perform official lot inspection and/or certification of hops packaged by alternative methods (e.g., hops not baled prior to processing) subject to conditions specified in a written agreement between the department and the person(s) requesting the service.

(4) (a) Submitted samples provided by a grower or dealer for grading analysis must be representative of the lot(s) and the hop material.

(b) Submitted samples ~~((are))~~ must be delivered to the laboratory.

[Statutory Authority: Chapters 22.09 and 34.05 RCW, 2003 1st sp.s. c 25 § 309(2). WSR 05-07-150, § 16-218-015, filed 3/23/05, effective 4/23/05.]

AMENDATORY SECTION (Amending WSR 08-17-024, filed 8/12/08, effective 9/12/08)

WAC 16-218-025 (~~What does the department charge~~) Fees for chemical analysis regarding brewing values and additional constituents in raw hops, hop extract, hop pellets and hop powder(?).

(1) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

(a) Each bale can be properly stenciled (not done for brewing value only sampling); and

(b) Samples can be drawn from the bales selected by the inspector.

(2) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for chemical analysis, simultaneous with grading analysis.

(3) Brewing value samples are obtained from a representative composite of the official samples drawn for grade analysis.

(4) Brewing value samples not sampled simultaneously for grade analysis will be charged at the same fee per bale.

(5) When department personnel officially sample hops, a brewing value certificate will be issued when the chemical analysis is done.

(6) (a) Submitted brewing value samples provided by a grower or dealer for chemical analysis must be representative of the lot(s).

(b) Submitted samples (~~are~~) must be delivered to the laboratory.

(7) Submitted brewing value certificates will be issued for submitted samples when the chemical analysis is done.

(8) Department fees for the chemical analyses of officially sampled raw hops are:

Type of Analyses	Fee	Minimum Fee
(a) ASBC spectrophotometric with moisture	(\$0.35) <u>\$0.50</u> per bale	(\$30.00) <u>\$50.00</u> per sample
(b) ASBC spectrophotometric/ conductometric or EBC conductometric without moisture	(\$0.30) <u>\$0.44</u> per bale	(\$30.00) <u>\$44.00</u> per sample
(c) Mebak, Zurich, Verzele, Ganzlin, or conductometric	(\$0.60) <u>\$0.87</u> per bale	(\$60.00) <u>\$87.00</u> per sample

(9) Department fees for chemical analyses of submitted raw hops, hop extract, hop pellets or hop powders are:

Type of Analyses	Fee
(a) ASBC spectrophotometric	(\$30.00) <u>\$44.00</u>
(b) ASBC conductometric	(\$30.00) <u>\$44.00</u>
(c) EBC conductometric	(\$30.00) <u>\$44.00</u>
(d) EBC conductometric (Wollmer, Zurich, Mebak, Verzele, Ganzlin, or Resins (hard or soft))	(\$60.00) <u>\$87.00</u>

	Type of Analyses	Fee
(e)	H ₂ O	(\$10.00) \$14.50
(f)	Total oil	(\$25.00) \$36.00
(g)	Wort test, particle size	(\$10.00) \$14.50

(10) (a) The department will assess hourly charges for analytical chemistry work if no other fee has been established.

(b) Hourly charges are set by written agreement and shall be based on the costs incurred to conduct the analysis, such as:

- Labor
- Laboratory equipment
- Chemicals and materials
- Administration and overhead.

[Statutory Authority: Chapters 22.09 and 34.05 RCW. WSR 08-17-024, § 16-218-025, filed 8/12/08, effective 9/12/08. Statutory Authority: Chapters 22.09 and 34.05 RCW, 2003 1st sp.s. c 25 § 309(2). WSR 05-07-150, § 16-218-025, filed 3/23/05, effective 4/23/05.]

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-035 (~~What does the department charge~~) Fees for issuing export certificates for hops and hop products(?). The department charges the following fees for issuing certificates related to hops and hop products:

	Type of Certificate	Fee for Each Certificate
(1)	State phytosanitary certificates	(\$25.00) \$36.00
(2)	Other certificates attesting to origin, compliance with standards of other states or nations or specifications of contracts, or conditions of production or processing	(\$20.00) \$29.00

[Statutory Authority: Chapters 22.09 and 34.05 RCW, 2003 1st sp.s. c 25 § 309(2). WSR 05-07-150, § 16-218-035, filed 3/23/05, effective 4/23/05.]

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-040 (~~When are the~~) Payment of fees and charges (~~required by this chapter due to the department?~~). (1) The department will bill (~~you~~) for (~~the~~) services (~~it renders~~) rendered. (2) The fees and charges billed (~~to you~~) are due to the department within thirty days of the statement date.

(3) If the department does not receive (~~your~~) payment within thirty days of the statement date, the department may:

(a) Withhold (~~its~~) services (~~from you~~) until (~~your~~) the delinquent account is paid; and

(b) Accept only cash payments (~~from you~~) for future services rendered.

(4) The department assesses a penalty of twelve percent per annum on all delinquent account balances.

[Statutory Authority: Chapters 22.09 and 34.05 RCW, 2003 1st sp.s. c 25 § 309(2). WSR 05-07-150, § 16-218-040, filed 3/23/05, effective 4/23/05.]