



# PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: May 20, 2020

TIME: 8:19 AM

WSR 20-11-069

Agency: Department of Agriculture

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 20-04-087\_ ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; 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) Revisions to Chapter 16-390 WAC, Fruit and Vegetable Inspection Fees and Other Charges. The Department is proposing to increase the apple maggot survey fee specified in WAC 16-390-230. The survey fee is used to fund annual apple maggot survey efforts and is assessed on all apples grown or packed in Washington State and introduced into commerce for sale or shipment as fresh apples.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
July 7, 2020	1:00 PM	<b>Webex Conference Line</b> <b>Join by link:</b> <a href="https://watech.webex.com/watech/j.php?MTID=mab40afdc4fcffe78e91c5261a4d338c7">https://watech.webex.com/watech/j.php?MTID=mab40afdc4fcffe78e91c5261a4d338c7</a> Meeting password: 12083396 <b>Join by phone:</b> +1-415-655-0001 US Toll +1-206-207-1700 United States Toll (Seattle) Attendee access code: 120 833 96	Due to the mandated social distancing requirements in place during the current COVID-19 outbreak, the public hearings will be held solely over video and teleconference.
July 8, 2020	5:00 PM	<b>Webex Conference Line</b> <b>Join by link:</b> <a href="https://watech.webex.com/watech/j.php?MTID=ma15dfef1cd9170cbdd47fc20b056f181">https://watech.webex.com/watech/j.php?MTID=ma15dfef1cd9170cbdd47fc20b056f181</a> Meeting password: 12083396 <b>Join by phone:</b> +1-415-655-0001 US Toll +1-206-207-1700 United States Toll (Seattle) Attendee access code: 120 833 96	

**Date of intended adoption:** July 15, 2020 (Note: This is **NOT** the effective date)

### Submit written comments to:

Name: Gloriann Robinson, Rules Coordinator  
Address: PO Box 42560 Olympia, WA 98504-2560  
Email: wsdarulescomments@agr.wa.gov  
Fax: (360) 902-2092

Other:

By (date) 5:00 PM, July 8, 2020

**Assistance for persons with disabilities:**

Contact Deanna Painter

Phone: (360) 902-2061

Fax:

TTY: 800-833-6388 or 711

Email: [dpainter@agr.wa.gov](mailto:dpainter@agr.wa.gov)

Other:

By (date) June 30, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** RCW 17.24.131 requires Washington State Department of Agriculture (WSDA) to set fees at a level that, "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved." The current apple maggot survey fee is \$0.015 per CWT (hundredweight). The fee was last increased in 2006 in order to conduct expanded apple maggot surveys to comply with international standards. In recent years, the apple maggot survey fund balance has decreased to the point that the program cannot continue to provide the same level of survey. Additionally, the program has recently experienced increased operational costs. Growers and packers benefit from the survey, as it allows the department to monitor the movement of apple maggot and address any necessary changes to the quarantine or other measures that may be required to further protect the apple industry.

Under the proposed rule amendment, businesses which grow or pack apples in Washington State and introduce them into commerce for sale or shipment as fresh apples will be required to pay an increased fee of \$0.020 per CWT (a \$0.005 increase). On the first business day of February each year, the minimum operating fund balance (MOFB) for the program will be determined. If the program fund balance falls below the MOFB at the time it is established, the fee rate shall increase to \$0.025 per CWT beginning July 1<sup>st</sup> of that year. Once the fee has been set at \$0.025 per CWT, it will remain at that rate and the MOFB will no longer be determined. The MOFB is six months of the projected operating expenses for the apple maggot survey program. The expenses used to calculate this figure include projected program staff salary and benefits, costs of the program's goods and services, transportation costs, administrative support costs, and any additional costs associated with the program. In addition to expected future costs, WSDA may consider previously incurred operating expenses to estimate projected operating expenses. By February 10<sup>th</sup> of each year, WSDA will post notice on their website of the rate established for that year. The MOFB will also be posted on the WSDA website by February 10<sup>th</sup> of each year, until the \$0.025 per CWT rate is established.

**Reasons supporting proposal:** Apple maggot, specifically the larval stage, is a pest that threatens commercial and homegrown fruit, especially apples. Over time, apple maggot species have spread throughout much of North America, threatening fruit crops from coast to coast. Apple maggot hosts include apples, crabapples, native and ornamental hawthorns, cherries, prunes, plums, pears, and quinces. Apple maggot adults look similar to and disperse like small house flies. In Washington, the active adults mate and lay their eggs in July and August. Apple maggot females puncture the skin of host fruit and lay their eggs under the surface. While the initial damage is easily overlooked, it eventually leads to dimpling of the fruit surface. In three to seven days, the eggs hatch and apple maggot larvae emerge. The larvae eat and tunnel their way through the fruit, leaving brown trails behind. Once mature, the larvae exit the fruit and drop to the ground. They overwinter as pupae in the soil, emerging the next summer as adults, starting the cycle over again. Apple maggot has the potential to survive in the soil as a pupae for at least two years, if not longer. Once apple maggot has become established, treatment is costly. Apples are the top agricultural commodity in Washington. This makes the threat of apple maggot significant, as fruit from the pest free areas has greater access to international markets.

In 2019, WSDA presented to the industry advisory committee, the Apple Maggot Working Group (AMWG), on the fiscal deficit of the program. After some discussion, it was agreed that less traps would be used in the coming survey season in an effort to conserve funds. For the 2019 season, apple maggot traps were reduced by 3,124 traps. Unfortunately, this reduction was not enough to prevent a deficit in funds available to continue the annual survey. Due to repeated annual budget deficits caused by increased operational costs, it has become necessary to increase the fee in order to maintain the current standard of survey trapping. The additional revenue will be used to manage and prevent the possible movement of apple maggot from infested areas into pest free areas, secure continued access to international and interstate markets, and protect the commercial tree fruit industry from an economically significant pest.

**Statutory authority for adoption:** RCW 17.24.101 and RCW 17.24.131

**Statute being implemented:** Chapter 17.24 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) Washington State Tree Fruit Association  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Greg Haubrich	1111 Washington Street Olympia, WA 98504	(360) 902-2071
Implementation:	Greg Haubrich	1111 Washington Street Olympia, WA 98504	(360) 902-2071
Enforcement:	Greg Haubrich	1111 Washington Street Olympia, WA 98504	(360) 902-2071

**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:
- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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 \_\_\_\_\_.  
Explanation of exemptions, if necessary:

**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:

**Small Business Economic Impact Statement**  
**Chapter 16-390 WAC**  
**Fruit and Vegetable Inspection Fees and Other Charges**  
**Apple Maggot Survey Fees**  
 5/13/2020

**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.**

Chapter 17.24 RCW mandates “a strong system” to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and infestations. The Washington State Department of Agriculture (WSDA) is charged with implementing that mandate by excluding plant and bee pests and diseases from the pest free areas of the state through regulation of movement and quarantine of infested areas. RCW 17.24.101 authorizes WSDA to conduct surveys to determine the presence, absence, or distribution of a pest if there is reason to believe it may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state.

Apple maggot, specifically the larval stage, is a pest that threatens commercial and homegrown fruit, especially apples. Over time, apple maggot species have spread throughout much of North America, threatening fruit crops from coast to coast. Apple maggot hosts include apples, crabapples, native and ornamental hawthorns, cherries, prunes, plums, pears, and quinces. Apple maggot adults look similar to and disperse like small house flies. In Washington, the active adults mate and lay their eggs in July and August. Apple maggot females puncture the skin of host fruit and lay their eggs under the surface. While the initial damage is easily overlooked, it eventually leads to dimpling of the fruit surface. In three to seven days, the eggs hatch and apple maggot larvae emerge. The larvae eat and tunnel their way through the fruit, leaving brown trails behind. Once mature, the larvae exit the fruit and drop to the ground. They overwinter as pupae in the soil, emerging the next summer as adults, starting the cycle over again. Apple maggot has the potential to survive in the soil as a pupae for at least two years, if not longer (Sansford, Mastro, & Reynolds, 2016).

Apple maggot was first detected in Washington in 1980. WSDA initiated a survey to determine how widespread the apple maggot infestation was and to secure continued access to international and interstate markets for Washington's apple industry. Now, each year WSDA conducts apple maggot detection surveys to determine which areas of Washington meet the official “pest free” designation, conducts certification monitoring in or around

apple orchards, and implements a detection response plan. While several counties in Washington (primarily in western Washington) have been quarantined, not all counties have apple maggot. Most notably, most of central Washington's prime fruit growing region remains pest free.

Apples are Washington State's top commodity, producing around 58 percent of the total apples grown in the United States, with around 30 percent of the crop being exported to international markets (WSU Extension, n.d.). It's estimated that the apple industry contributes between \$4.38 billion and \$4.58 billion in value added contributions to the Washington economy (Galinato, Gallardo, Granatstein, & Willett, 2018). Left unchecked, apple maggot could have far reaching impacts on the tree fruit industry and the general economy of Washington State. These impacts could include an increased cost of pesticide control in apple orchards, apples requiring additional time in cold storage, and losses due to the effects on export markets (Galinato, Gallardo, Granatstein, & Willett, 2018). It is estimated that if apple maggot were to spread into pest free areas of the state, it could cost the apple industry anywhere between \$510 million to \$557 million annually (Galinato, Gallardo, Granatstein, & Willett, 2018).

Why the Rule Change is Needed

WAC 16-390-230 specifies the currently applicable apple maggot survey fee, which is used to fund the annual apple maggot survey efforts. The fee is assessed on all apples grown or packed in Washington State and introduced into commerce for sale or shipment as fresh apples. Growers and packers benefit from the survey, as it allows the department to monitor the movement of apple maggot and address any necessary changes to the quarantine or other measures that may be required to further protect the apple industry. The apple maggot survey fee is used to fund apple maggot detection across the state. WSDA uses the funds to purchase apple maggot traps, employ staff to deploy and monitor the traps, employ lab technicians to analyze suspect specimens, inspect threatened apple orchards, collect and manage program data, as well as other costs associated with travel and equipment. WSDA also uses the funds to conduct general survey trapping, which assists county pest boards in tracking the movement of apple maggot in their area; allowing them to more effectively treat and control the spread of this pest.

RCW 17.24.131 requires WSDA to set fees at a level that, "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved." The current apple maggot survey fee is \$0.015 per CWT (hundredweight). The fee was last increased in 2006 in order to conduct expanded apple maggot surveys to comply with international standards. In recent years, the apple maggot survey fund balance has decreased to the point that the program's ability to administer the apple maggot survey program is jeopardized. Additionally, the program has recently experienced increased operational costs.

In 2019, WSDA presented to the industry advisory committee, the Apple Maggot Working Group (AMWG), on the fiscal deficit of the program. After some discussion, it was agreed that less traps would be used in the coming survey season in an effort to conserve funds. For the 2019 season, apple maggot traps were reduced by 3,124 traps. Unfortunately, this reduction was not enough to prevent a deficit in funds available to continue the annual survey. Due to repeated annual budget deficits caused by increased operational costs, it has become necessary to increase the fee in order to continue administering the survey program at a level sufficient to accurately detect apple maggot.

Table 1 shows the projected decrease in traps and personnel that will be required if the fee stays at the current amount of \$0.015 per CWT. The projected program cuts shown in Table 1 for 2020, would equal around \$211,588 in cost savings.

**Table 1 – Annual Apple Maggot Survey Program Stats and Projections at Current Fee Rate**

<b>Program Requirements</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Trappers</b>	25	22	11
<b>Field Supervisors</b>	4	4	2
<b>Laboratory Technicians</b>	1	3*	2
<b>Trap Sites</b>	10,139	7,015	5,069
<b>Trap Visits per Site</b>	4.86	6.04	4

\*Two additional laboratory technicians were added in 2019 due to changes in protocols.

These program cuts will result in a weakened survey program that could leave pest free areas of the state at risk for the spread of apple maggot. Under the 2020 projections, the number of traps deployed will be decreased by another 1,946 traps from the 2019 season. This reduction in trap deployment density could result in limited access to international and domestic markets for some businesses. Additionally, all trapping programs will likely be negatively impacted. This includes general survey trapping in the quarantine area, which helps county pest boards identify infested host material so it can be treated or removed. General survey trapping in the pest free area will also be impacted. It may become necessary for pest free counties to implement trapping every other year. All of this could impact a county pest board's effectiveness at slowing the spread of or preventing apple maggot infestations. Due to staffing cuts, general survey traps will be visited less frequently. Rather than every two weeks, traps will be checked every four weeks. This could reduce the efficiency of traps, as they become dirty and compromised from the longer period of exposure to the elements. In addition, trapping in the area of low pest prevalence (ALPP) would be at a minimum, with only four traps used per registered block. These reductions could result in some apple maggot flies going undetected, allowing them to more easily spread to pest free areas of the state.

**Probable Compliance Requirements**

Under the proposed rule amendment, businesses which grow or pack apples in Washington State and introduce them into commerce for sale or shipment as fresh apples will be required to pay an increased fee of \$0.020 per CWT (a \$0.005 increase). On the first business day of February each year, the minimum operating fund balance (MOFB) for the program will be determined. If the program fund balance falls below the MOFB at the time it is established, the fee rate shall increase to \$0.025 per CWT beginning July 1<sup>st</sup> of that year. Once the fee has been set at \$0.025 per CWT, it will remain at that rate and the MOFB will no longer be determined. The MOFB is six months of the projected operating expenses for the apple maggot survey program. The expenses used to calculate this figure include projected program staff salary and benefits, costs of the program's goods and services, transportation costs, administrative support costs, and any additional costs associated with the program. In addition to expected future costs, WSDA may consider previously incurred operating expenses to estimate projected operating expenses. By February 10<sup>th</sup> of each year, WSDA will post notice on their website of the rate established for that year. The MOFB will also be posted on the WSDA website by February 10<sup>th</sup> of each year, until the \$0.025 per CWT rate is established.

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
111331	Apple orchards	7	\$8,511.33	\$3,400.20
111339	Other noncitrus fruit farming	3	\$2,970.82	\$752.41
111998	All other miscellaneous crop farming	2	\$9,118.76	\$1,179.40
115114	Postharvest crop activities (except cotton ginning)	23	\$43,600.39	\$13,850.91
115116	Farm management services	1	\$18,534.89	\$728.98
325612	Polish and other sanitation good manufacturing	1	\$4,493.60	\$10,291.75
424480	Fresh fruit and vegetable merchant wholesalers	13	\$15,475.73	\$39,111.14
425120	Wholesale trade agents and brokers	1	\$4,382.51	\$5,812.67

484230	Specialized freight (except used goods) trucking, long-distance	1	\$5,855.32	\$2,794.46
488991	Packing and crating	1	N/A	\$7,493.94
493120	Refrigerated warehousing and storage	6	\$17,374.75	\$23,068.16
493130	Farm product warehousing and storage	4	\$8,450.79	\$9,117.33
493190	Other warehousing and storage	1	\$7,801.82	\$11,754.96
541930	Translation and interpretation services	1	\$3,162.67	\$240.08
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

±Data source: 2018 Dataset from the Washington State Department of Revenue

\*\*These codes reflect the NAICS codes that affected businesses chose when registering with the Washington State Dept. of Revenue.

### 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 chapter 16-390 WAC increase the apple maggot survey fee from \$0.015 per CWT to \$0.020 per CWT until the first business day of February 2021, after which the fee will be established annually based on the MOFB. If the program fund balance is below the determined MOFB, then the fee rate will be \$0.025 per CWT beginning on July 1<sup>st</sup> of that year. Once the \$0.025 per CWT rate is set, the MOFB will no longer be determined and the fee will stay at the established rate. The fee increase 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.

Under the increased fee, the total cost to businesses will depend on the amount of fresh apples they ship annually. The overall financial impact to each business will depend on the proportion of apples sold in relation to other inventory. For some businesses, fresh apples may consist of only a small portion of their inventory, whereas others may only grow or pack apples. Small and large businesses will be assessed based on the amount of fresh apples shipped. Apple maggot survey fees collected from individual businesses in 2019 ranged from \$0.02 to \$55,541.11, with the total amount collected from all businesses equaling \$742,426.06. There were an estimated 16 small businesses which paid the fee, with the cost paid by each business ranging from \$0.02 to \$18,293.48. An estimated 41 large businesses also paid the fee, with the cost paid by each business ranging from \$802.45 to \$55,541.11.

After February 2021, the fee assessed will either be \$0.020 per CWT or \$0.025 per CWT depending on the established MOFB and fund balance. Table 3.1 shows the estimated low and high costs for individual small and large businesses under the proposed rule amendment. The projected totals for all apple maggot survey fees collected from businesses under the \$0.020 and \$0.025 rates would be \$989,901.41 and \$1,203,916.17, respectively.

**Table 3.1 – Estimated Cost Range for Small and Large Businesses**

Business Size	\$0.015 per CWT (current fee)	\$0.020 per CWT (\$0.005 increase)	\$0.025 per CWT (\$0.010 increase)
Small	\$0.02 - \$18,293.48	\$0.026 - \$24,391.31	\$0.033 - \$30,489.13

Large	\$802.45 - \$55,541.11	\$1,069.93 - \$74,054.81	\$1,337.42 - \$92,568.52
-------	------------------------	--------------------------	--------------------------

Calculations based on fees collected in 2019.

The increased totals would enable the apple maggot survey program to function at the current level without making further reductions in the number of traps or staff. In turn, this would more effectively prevent the possible movement of apple maggot into pest free areas of the state; securing continued access to international and interstate markets, and protecting the commercial tree fruit industry from an economically significant pest.

**SECTION 4:**

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

Businesses that paid the \$0.015 per CWT fee in 2019 were analyzed. The estimated annual revenue for small businesses which paid the fee averaged around \$14,672,635 and for large businesses averaged around \$55,834,238 (calculated using data from Buzzfile). The total projected costs for each business were calculated under the proposed increases of the fee to \$0.020 per CWT (\$0.005) and \$0.025 per CWT (\$0.010). These calculated totals were averaged by size and industry type. Tables 4.1 (large businesses) and 4.2 (small businesses) show the estimated average fee costs for each NAICS category compared to the minor cost thresholds. The tables show the average fee cost per NAICS category, as well as the cost difference between the current fee cost (\$0.015) and the proposed fee increases (\$0.020 and \$0.025). When comparing the estimated average fee costs to the minor cost thresholds listed for each category, there is indication that the proposed fee increase will impose more than minor costs on large and small businesses in some of the business classifications.

Small business classifications with costs expected to exceed minor cost thresholds at the \$0.020 fee level include: 425120 - wholesale trade agents and brokers. When the fee increases to the \$0.025 level, the cost for the following business classifications is expected to exceed the minor cost threshold identified: 425120 - wholesale trade agents and brokers; and 484230 - specialized freight (except used goods) trucking, long-distance.

Large business classifications with costs expected to exceed minor cost thresholds at the \$0.020 fee level include: 111331 - apple orchards and 111339 - other noncitrus fruit farming. When the fee increases to the \$0.025 level, the cost for the following business classifications is expected to exceed the minor cost threshold identified: 111331 - apple orchards; 111339 - other noncitrus fruit farming; 493190 - other warehousing and storage; and 541930 – translation and interpretation services.

The costs will not exceed the minor cost threshold identified for other business classifications affected by the proposed rule amendments.

Minor cost thresholds listed in tables 4.1 and 4.2 are based off average annual payroll, except for those used for NAICS code 488991 which is based off revenue due to lack of data available regarding payroll.

**Table 4.1: Average 2019 and Predicted Fee Costs\* per NAICS Category for Large Businesses Compared with the Minor Cost Thresholds**

NAICS Code and Category for Businesses Identified as Large (greater than 50 employees)	Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020 per CWT	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025 per CWT	Difference of \$0.015 (current fee) & \$0.025
111331 - Apple Orchards	\$8,511.33	\$28,551.56	\$38,068.74	\$9,517.19	\$47,585.93	\$19,034.37
111339 - Other Noncitrus Fruit Farming	\$2,970.82	\$23,669.96	\$31,559.94	\$7,889.99	\$39,449.93	\$15,779.97
111998 - All Other Miscellaneous Crop Farming	\$9,118.76	\$9,488.51	\$12,651.35	\$3,162.84	\$15,814.18	\$6,325.67
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$43,600.39	\$13,277.34	\$17,703.12	\$4,425.78	\$22,128.91	\$8,851.56
115116 - Farm Management Services	\$18,534.89	\$4,758.01	\$6,344.01	\$1,586.00	\$7,930.02	\$3,172.01
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$15,475.73	\$18,340.54	\$24,454.05	\$6,113.51	\$30,567.57	\$12,277.03
493120 - Refrigerated Warehousing and Storage	\$17,374.75	\$14,805.98	\$19,741.31	\$4,935.33	\$24,676.64	\$9,870.66
493130 - Farm Product Warehousing and Storage	\$8,450.79	\$6,653.24	\$8,870.99	\$2,217.75	\$11,088.74	\$4,435.50
493190 - Other Warehousing and Storage	\$7,801.82	\$20,340.72	\$27,120.96	\$6,780.24	\$33,901.20	\$13,560.48
541930 – Translation and Interpretation Services	\$3,162.67	\$5,981.08	\$7,974.77	\$1,993.69	\$9,968.47	\$3,987.39

Sources: DOR and ESD

Red text indicates costs will exceed the minor cost threshold.

\*All averages based on fees collected for 2019 and self-reported NAICS category by business. Businesses in which NAICS category could not be identified were not included in this average.

**Table 4.2: Average 2019 and Predicted Fee Costs\* per NAICS Category for Small Businesses Compared with the Minor Cost Thresholds**

NAICS Code and Category for Businesses Identified as Small (less than 50 employees)	±Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025	Difference of \$0.015 (current fee) & \$0.025
111331 - Apple Orchards	\$8,511.33	\$3,250.39	\$4,333.86	\$1,083.46	\$5,417.33	\$2,166.93
111339 - Other Noncitrus Fruit Farming	\$2,970.82	\$2,884.25	\$3,845.67	\$961.42	\$4,807.08	\$1,922.83
111998 - All Other Miscellaneous Crop Farming	\$9,118.76	\$376.65	\$502.20	\$125.55	\$627.75	\$251.10
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$43,600.39	\$3,927.78	\$5,237.04	\$1,309.26	\$6,546.30	\$2,618.52
325612 - Polish and Other Sanitation Good Manufacturing	\$4,493.6	\$0.02	\$0.026	\$0.006	\$0.033	\$0.013
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$15,475.73	\$1,861.42	\$2,481.90	\$620.47	\$3,102.37	\$1,240.95
425120 - Wholesale Trade Agents and Brokers	\$4,382.51	\$18,293.48	\$24,391.31	<b>\$6,097.83</b>	\$30,489.13	<b>\$12,195.65</b>
484230 - Specialized Freight (except Used Goods) Trucking, Long-Distance	\$5,855.32	\$12,825.81	\$17,101.08	\$4,275.27	\$21,376.35	<b>\$8,550.54</b>
488991 - Packing and Crating	\$7,493.94**	\$376.65	\$502.20	\$125.55	\$627.75	\$251.10
493120 - Refrigerated Warehousing and Storage	\$17,374.75	\$9,572.37	\$12,763.16	\$3,190.79	\$15,953.94	\$6,381.58
541990 – All Other Professional, Scientific, and Technical Services	\$4,801.34	\$1,895.92	\$2,527.89	\$631.97	\$3,159.87	\$1,263.95

Sources: DOR and ESD

Red text indicates costs will exceed the minor cost threshold.

\*All averages calculated using collected fee totals for 2019 and self-reported NAICS category by business. Businesses in which NAICS category could not be identified were not included in this average.

\*\*Average annual revenue used for minor cost threshold due to no payroll data available.

**SECTION 5:**

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the largest ten percent of businesses affected by 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. The department used the cost per employee method to determine if the proposed fee increase will have a disproportionate impact on small businesses. Since the proposed rule amendment affects multiple industry classifications, the costs are analyzed separately for each NAICS code.

As demonstrated in Table 5.1 the cost per employee is lower for small businesses in NAICS code 111339 – other noncitrus fruit farming. This means that costs are not expected to disproportionately impact small businesses in this industry classification.

Small businesses in the following classifications are expected to be disproportionately impacted by the proposed fee increase: 111331 - apple orchards; 111998 – all other miscellaneous crop farming; 115114 - postharvest crop activities (except cotton ginning); 424480 - fresh fruit and vegetable merchant wholesalers; and 493120 - refrigerated warehousing and storage.

There are no large businesses impacted by this rule in the following classifications: 325612 - polish and other sanitation good manufacturing; 425120 - wholesale trade agents and brokers; 484230 - specialized freight (except used goods) trucking, long-distance; 488991 - packing and crating; and 541990 – all other professional, scientific, and technical services. Since there are no large businesses in these classifications, the proposed fee increase is expected to disproportionately impact small businesses in these classifications.

There are no small businesses impacted by this rule in the following classifications: 493130 - farm product warehousing and storage; 493190 - other warehousing and storage; and 541930 - translation and interpretation services. Since there are no small businesses in these classifications, the proposed fee increase is not expected to disproportionately impact small businesses in these classifications.

**Table 5.1: Average Cost per Employee**

NAICS Code & Description	Average Cost Per Employee at \$.020 Rate		Average Cost Per Employee at \$.025 Rate	
	Small	Large	Small	Large
111331 - Apple Orchards	\$115.44	\$63.66	\$230.89	\$127.31
111339 - Other Noncitrus Fruit Farming	\$20.46	\$62.62	\$40.91	\$125.24
111998 - All Other Miscellaneous Crop Farming	\$41.85	\$5.50	\$83.70	\$11.00
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$69.76	\$25.30	\$139.52	\$50.60
115116 – Farm Management Services	*	\$19.83	*	\$39.65
325612 - Polish and Other Sanitation Good Manufacturing	\$0.00	*	\$0.00	*
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$103.33	\$20.16	\$206.67	\$40.31
425120 - Wholesale Trade Agents and Brokers	\$203.26	*	\$406.52	*
484230 - Specialized Freight (except Used Goods) Trucking, Long-Distance	\$142.51	*	\$285.02	*
488991 - Packing and Crating	\$41.85	*	\$83.70	*
493120 - Refrigerated Warehousing and Storage	\$295.09	\$28.92	\$590.18	\$57.84
493130 - Farm Product Warehousing and Storage	*	\$11.30	*	\$22.60
493190 - Other Warehousing and Storage	*	\$67.80	*	\$135.60
541930 - Translation and Interpretation Services	*	\$33.23	*	\$66.46
541990 – All Other Professional, Scientific, and Technical Services	\$25.28	*	\$50.56	*

\*No businesses in size category for the specified NAICS code.

Data pertaining to the number of employees for all impacted businesses was obtained from Buzzfile and Infogroup.

The apple maggot survey fee is assessed on all apples which are grown or packed in Washington State and introduced into commerce for sale or shipment as fresh apples. Under the increased fee, the total cost to businesses will depend on the amount of fresh apples they ship annually. The overall financial impact to each business will depend on the proportion of apples sold in relation to other inventory. For some businesses, apples may consist of only a small portion of their inventory, whereas others may only grow or pack apples. The amount a business will pay is based on the amount of fresh apples shipped.

## **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 –*

Any reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of the entry of apple maggot into the pest free area, according to the findings of the Pest Risk Analysis. This could potentially close international and domestic markets to some businesses in Washington State, leading to reductions in revenue. Additionally, any reduction or modification to the proposed rule may result in lower standards of survey, which will increase the risk of entry of apple maggot into pest free areas of the state.

*(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 –*

There are no inspection requirements associated with the proposed rule amendment.

*(d) Delaying compliance timetables –*

Delaying compliance timetables is not a viable mitigation measure. RCW 17.24.131 requires WSDA to set fees at a level that, "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved."

Budgetary concerns were discussed with the Apple Maggot Working Group (AMGW) meeting in early 2019. The AMWG is comprised of member associations that represent both small and large businesses in the affected industry. At that time, the group asked WSDA to delay any fee increase. Concerns were again discussed with the AMWG in early 2020. At this meeting, WSDA shared budgetary records showing that the cost of conducting the survey program at an acceptable trapping and staffing level to meet regulatory standards exceeds program revenue. Current projections show that the apple maggot survey fund balance will be in the red during the 2021 survey season. Any delay in adopting a higher fee to sustain the program will result in a longer time to recover a healthy fund balance. If the program is not able to fund the level of trap deployment necessary to demonstrate pest free status, the shipment of fresh apples to foreign markets may be jeopardized.

*(e) Reducing or modifying fine schedules for noncompliance –*

Chapter 17.24 RCW specifies the penalty for violations of the chapter and rules adopted thereunder. Reducing or modifying fine schedules would involve a legislative change and is not part of this rule making.

*(f) Any other mitigation techniques including those suggested by small businesses or small business advocates –*

The AMWG suggested an initial fee increase and then a secondary increase dependent on the program's fund balance. In response to their suggestion, the proposed rule amendment reflects a two tiered fee approach that is based on the program's fund balance. If the program's fund balance exceeds the MOFB on the first business day in February, then the lower fee rate will be in effect the following July. If the program's fund balance is less than the established MOFB, then the higher fee rate will be in effect. Once the higher fee rate is triggered, the fee will continue at the higher level. The program is currently mitigating costs at the recommendation of the AMWG by decreasing the number of traps used, reducing the frequency in which traps are checked, and reducing the number of staff employed. Any further decrease in trap deployment may undermine the program's ability to demonstrate pest free status to trading partners which may limit access to international and domestic markets.

---

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

The Apple Maggot Working Group (AMWG), which consists of members that represent both large and small businesses within the affected industry, was consulted throughout the development of the proposed rule.

At the February 2019 AMWG meeting, WSDA notified the working group of the low fund balance for the apple maggot survey program and the possibility of a rule amendment to increase the fee. After some discussion, the AMWG recommended cutting costs and streamlining the program rather than raising the fee. WSDA followed this recommendation and made adjustments to the program.

In January 2020, WSDA spoke with key stakeholder representatives in the tree fruit industry to discuss the continued budget deficit for the program, despite the recommended adjustments made the previous year, and the possibility of increasing the fee.

Also in February 2020, WSDA sent out a mass email to the AMWG, notifying them of the need for a fee increase in order to continue operating the survey program at the standard necessary to prevent the spread of apple maggot.

At the February 2020 AMWG meeting, WSDA informed the working group of the program's impending negative fund balance and the necessity to increase the fee, despite the recommended adjustments that were made the previous year. A discussion was held and the AMWG supported the fee increase.

On April 16, 2020 the Washington State Tree Fruit Association sent a letter to WSDA stating that a fee increase was necessary. The letter outlined recommendations for the new fee rate and a timeline for a possible secondary increase.

---

**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. However, job losses may occur if apple maggot were to spread to pest free areas of the state. According to a 2016 study conducted by Community Attributes Inc., an estimated 2,900 jobs would be at risk if apple maggot were to spread. Of these, 970 jobs would be at risk due to shortfalls in domestic sales, with a further 1,940 at risk due to shortfalls in export sales (Community Attributes Inc., 2016). This could result in a potential loss of \$125 million in lost wages.

---

**References**

Buzzfile. (2020). *Buzzfile Information Database*. Retrieved from Buzzfile: <https://www.buzzfile.com/Home/Basic>

Community Attributes Inc. (2016). *Economic Impact of Invasive Species: Direct Costs Estimates and Economic Impact for Washington State*. Seattle: Community Attributes Inc.

Galinato, S., Gallardo, K., Granatstein, D., & Willett, M. (2018). *Economic Impact of a Potential Expansion of Pest Infestation: Apple Maggot in Washington State*. HortTechnology.

Infogroup. (2010). *Find Washington State Employers web page*. Retrieved from Employment Security Department Washington State - Search data provided by Infogroup: <https://esd.wa.gov/find-an-employer/>

Sansford, C., Mastro, V., & Reynolds, J. (2016). *Pest Risk Analysis (PRA) for apple maggot (Rhagoletis pomonella) moving on municipal green waste into the Pest-Free Area (PFA) of the state of Washington, USA*. Olympia: Washington State Department of Agriculture.

WSU Extension. (n.d.). *Apples in Washington State*. Retrieved from Washington State University Extension: [https://extension.wsu.edu/chelan-douglas/agriculture/treefruit/horticulture/apples\\_in\\_washington\\_state/](https://extension.wsu.edu/chelan-douglas/agriculture/treefruit/horticulture/apples_in_washington_state/)

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](mailto:wsdarulescomments@agr.wa.gov)  
Other:

<b>Date:</b> 5/13/20	<b>Signature:</b> 
<b>Name:</b> Brad White	
<b>Title:</b> Assistant Director	

**WAC 16-390-005 Definitions.** "**Certificate**" means an official document issued by the director which reports certification results.

"**Certificate of compliance**" means a shipping document issued by the fruit and vegetable industry attesting that the identified fruits or vegetables are known to be in full compliance with provisions of chapter 15.17 RCW. The member of the fruit and vegetable industry issuing the certificate of compliance has the sole responsibility of fairly and accurately representing the quality and quantity of fruits and vegetables listed on the certificate of compliance.

"**Certification**" means the complete service performed by the director, from inspection through the issuance of any applicable documentation of the results of the inspection.

"**Customer assisted inspection program (CAIP)**" means a quality or condition inspection performed by industry using the United States Department of Agriculture (USDA) standards with verification and oversight by the director.

"**CWT**" means a hundredweight, a unit of measure equaling one hundred pounds.

"**Director**" means the director of the department of agriculture or the director's designated representative. As used in this chapter, WSDA refers to the director unless the context states otherwise.

"**Grade and condition certificate**" means an official note sheet issued by the director confirming the results of an inspection.

"**Hourly fee**" means the fee charged for services based on the hours documented by each WSDA inspector providing the service. Hourly fees are charged based on increments of fifteen minutes, with time rounded up or down to the next fifteen minute interval as follows: Eight minutes into a quarter hour is rounded up to the full quarter hour. Less than eight minutes into a quarter hour is rounded down and not billed.

"**Inspection**" means the inspection by the director of any fruits or vegetables for the purpose of certification at any time prior to, during, or subsequent to harvest.

"**Inspection service notification**" means customer notification to the director of any request for inspection services.

"**Lot**" means, unless otherwise stated in this chapter, a distinct unit of fruits or vegetables.

"**Minimum operating fund balance**" or "**MOFB**" means six months of projected apple maggot survey program operating expenses. The factors that the department considers when setting the MOFB under WAC 16-390-230 include the projected program staff salary and benefits; costs of the program's goods and services, including transportation; costs associated with the department's administrative support of the program; and any additional costs associated with the program. In addition to expected future costs, the department may consider previously incurred operating expenses to estimate projected operating expenses.

"**Regular business hours**" means the hours between 8:00 a.m. and 5:00 p.m. Pacific time Monday through Friday except state holidays.

"**Shipping permit**" means a shipping document issued by the director attesting that the fruits or vegetables are known to be in compliance with the provisions of chapter 15.17 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 14-24-086, filed 12/1/14, effective 1/1/15)

**WAC 16-390-230 Apple maggot survey fees.** The fee for the apple maggot survey program on all apples grown or packed in Washington state and introduced into commerce for sale or shipment as fresh apples is ( ~~(\$.015 per CWT)~~) \$.020 per CWT, unless and until the program fund balance falls below the minimum operating fund balance. This fee is assessed by the director on all certificates of compliance and all shipping permits.

(1) The department shall establish the minimum operating fund balance amount on the first business day of February each year unless the fee has been previously set at \$.025 per CWT.

(2) At the time the minimum operating fund balance amount is established, if the program fund balance is below the new minimum operating fund balance, the fee rate shall be set at \$.025 per CWT beginning July 1st of that year.

(3) The department shall post notice of the minimum operating fund balance on the department's website by February 10th of each year unless the fee has been previously set at \$.025 per CWT.

(4) The department shall post notice of the apple maggot survey fee by February 10th of each year.