



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: November 04, 2019

TIME: 9:34 PM

WSR 19-22-059

Agency: Agriculture

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-11-104 ; 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) Chapter 16-501 WAC, WSDA Procedural Rules – Commodity Boards or Commissions.

Hearing location(s):

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

Date:	Time:	Location: (be specific)	Comment:
December 10, 2019	11:00 AM	Washington Dept. of Agriculture Conference Room 205 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: December 13, 2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Gloriann Robinson, Agency Rules Coordinator

Address: PO Box 42560, Olympia, WA 98504

Email: wsdarulescomments@agr.wa.gov

Fax: (360) 902-2092

Other:

By (date) 5:00 PM, December 10, 2019

Assistance for persons with disabilities:

Contact Gloriann Robinson

Phone: (360) 902-1802

Fax: (360) 902-2092

TTY: (800) 833-6388 or 711

Email: grobenson@agr.wa.gov

Other:

By (date) December 3, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules establish the means by which agricultural commodity commissions fund the department's commodity commissions coordinator position. Proposed amendments clarify definitions; clarify that commodity commissions fund one-half full time equivalent employee; clarify on what a commission's contribution is based and the examples that explain how the total financial contribution is determined; amends the timeline that the department will determine the amount necessary to fund the commodity commissions coordinator position, bill the boards/commissions for their share of the total financial contribution and provide additional time for a commission to remit the billed amount to the department; and increase the rule's clarity and usability.

Reasons supporting proposal: Making clarifications to the rules remove unintentional ambiguities, promote and increase clarity and usability, and are reflective of current practices.

Statutory authority for adoption: RCW 43.23.033

Statute being implemented: RCW 43.23.033

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) Department of Agriculture

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Teresa Norman	1111 Washington St SE, Olympia	360-902-2043
Implementation:	Teresa Norman	1111 Washington St SE, Olympia	360-902-2043
Enforcement:	Henri Flournoy	1111 Washington St SE, Olympia	360-902-1809

Is a school district fiscal impact statement required under RCW 28A.305.135?

- Yes No

If yes, insert statement here:

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

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

Is a cost-benefit analysis required under RCW 34.05.328?

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

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

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

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

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

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

Citation and description:

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

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

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

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW Amendments to the definitions and the explanation of how the total financial contribution is determined are exempt under RCW 34.05.310(4)(d) because they clarify the rule language without changing its effect. Amendments to the timeline used by the department to determine the amount necessary to fund the commodity commissions coordinator position, bill the boards/commission for their share of the total financial contribution and for the boards/commissions to remit the amount billed are exempt under RCW 34.05.310 (4)(b) because they only relate to internal government operations.

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:

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

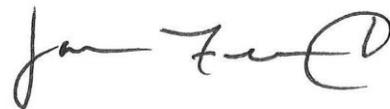
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: 11/04/2019

Name: Jason Ferrante

Title: Associate Deputy Director

Signature:



AMENDATORY SECTION (Amending WSR 17-17-158, filed 8/23/17, effective 9/23/17)

WAC 16-501-005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout the chapter:

"~~((Assessment level))~~ **Annual assessment**" means the total annual assessment amount collected in a twelve-month period by an agricultural commodity board or commission under the provisions of its marketing order or authorizing statute. For the Washington beer commission, "annual assessment ~~((level))~~" includes net proceeds collected from commission-sponsored beer festivals in addition to the total annual assessment collected by the commission.

"**Department**" means the Washington state department of agriculture ~~((WSDA))~~.

"**Total financial contribution**" means the contributions from all agricultural commodity boards and commissions to cover ~~((one-half))~~ the annual salary and benefits of the department's commodity commission coordinator for commodity boards and commissions plus the annual costs for goods and services, travel, training and equipment necessary to support the commodity commission coordinator. The total financial contribution is one-half full-time equivalent employee.

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

WAC 16-501-010 Commodity commission financial contribution. (1) Under the provisions of RCW ~~((43.23))~~ 43.23.033, the director may establish, by rule, a method to fund staff support for all commodity boards and commissions.

~~((2))~~ ~~((Before July 1 of each fiscal year))~~ On or around September 1st, the department will determine the ~~((total financial contribution required from all commodity boards or commissions and calculate, according to the provisions of WAC 16-501-015, each board or commission's share of that total contribution))~~ amount necessary to fund the commodity commission coordinator position.

(3) On or before October 1st, all commodity boards or commissions are required to report to the department the dollar value of the assessments collected during the board's or commission's previous fiscal year. The board or commission's contribution shall be based on the previous fiscal year's annual assessment ~~((level))~~. For commissions with the authority to suspend assessments, the contribution shall be based on the most recently collected annual assessment prior to suspension.

~~((3))~~ ~~On or around July 1st of each fiscal year))~~ (4) During the month of October, the department will bill each commodity board or commission for its portion of the total financial contribution. The board or commission shall remit to the department the amount billed within ~~((thirty))~~ ninety days of the billing date.

~~((4))~~ (5) The department will provide each commodity board or commission with an annual report regarding the department's activities on behalf of the boards or commissions.

WAC 16-501-015 Calculation of a commodity board or commission's contribution. The ~~((total))~~ financial contribution for each commodity board or commission shall be calculated using the following steps:

(1) ~~(a)~~ Step 1 - Using the dollar value that a board or ~~((commission's))~~ commission receives from its annual assessment ~~((level))~~, the ~~((assessment))~~ contribution portion of a commodity board or commission's share of the total financial contribution is established as follows:

Contribution Categories

Assessment Level	Base ((Assessment)) Contribution
((>)) ≤ \$100,000	\$250.00
100,001 - 250,000	500.00
250,001 - 500,000	750.00
500,001 - 1,000,000	1,000.00
1,000,001 - 5,000,000	2,000.00
5,000,001 - 10,000,000	3,000.00
10,000,001 and above	4,000.00

~~(b)~~ A percentage is calculated for each board or commission by dividing the board or commission's ~~((assessment))~~ contribution by the total ~~((assessment))~~ contribution for all boards and commissions.

~~((For example, assuming commission A's base assessment is \$4,000 divided by an assumed total base assessment of \$80,000 results in 5% (.05))~~

(2) ~~(a)~~ Step 2 - The difference between the total financial contribution and the total ~~((assessment))~~ contribution is apportioned to each board or commission using the percentage calculated in ~~((subsection (1)))~~ step 1.

~~(b)~~ The amount calculated in step 2 is subject to a \$7,500 cap on any one board or commission~~((=~~

~~For example, assuming a total financial contribution of \$105,000 minus the assumed total base assessment of \$80,000 results in a difference of \$25,000. \$25,000 multiplied by commission A's .05 equals \$1,250. This is commission A's portion of the difference))~~.

(3) Step 3 - If any board or commission reaches the \$7,500 cap in step 2, the difference between the amount calculated for that board or commission in subsection (2)(a) of this section and \$7,500 would be ~~((recalculated))~~ apportioned among the remaining boards or commissions ~~((or boards))~~ using a percentage of each board's or commission's base ~~((assessment))~~ contribution to the total ~~((assessment))~~ contribution less the ~~((assessment))~~ contribution of the board or commission that reached the cap.

~~((For example, assume that commission A's percentage remains 5% but that the difference between the total financial contribution and the total base assessment is \$180,000.~~

~~\$180,000 multiplied by .05 equals \$9,000. \$9,000 exceeds the \$7,500 cap for commission A by \$1,500. This \$1,500 would be apportioned between the other boards and commissions excluding commission A.~~

~~For example, assume that commission B's base assessment is \$3,000. The total base assessment excluding commission A is now \$76,000 (\$80,000 less commission A's \$4,000). Commission B's base assessment of \$3,000 divided by \$76,000 results in .04 rounded (4%). \$1,500 (the excess over the cap for commission A) multiplied by .04 equals \$60, which is commission B's share of the excess.)~~

~~(4) Step 4 - A commodity ((commission or board's)) board or commission's contribution is the sum of ((the)) its base ((assessment)) contribution from ((subsection (1))) step 1 and the calculations in ((subsections (2) or (3)) whichever is applicable.~~

~~For example, using the calculations in subsection (2), commission A's contribution is \$5,250 (\$4,000 base assessment plus \$1,250 apportioned share).~~

~~Using the calculations in subsection (3), commission A's contribution is \$11,500 (\$4,000 base assessment plus the \$7,500 cap.) steps 2 and 3.~~

~~(5) The following example is a hypothetical scenario used to illustrate how the formula is applied:~~

~~(a) Commission A reports an annual assessment of \$200,000, therefore its base contribution is \$500.~~

~~(b) Assuming the total base contribution for all boards and commissions is \$23,750, a percentage is calculated for commission A by dividing its base contribution of \$500 by the total base contribution of \$23,750, which is 2.11 percent.~~

~~(c) Assuming a total financial contribution of \$100,000, the difference between the total financial contribution (\$100,000) and the total base contribution (\$23,750) is \$76,250. This amount (\$76,250) is apportioned to each commission using the percentage calculated in step 1. For commission A, \$76,250 multiplied by 2.11 percent is rounded to \$1,605, which is commission A's initial portion of the total financial contribution.~~

~~(d) Next, commission A's base assessment (\$500) is added to its portion calculated in step 2 (\$1,605), which equals \$2,105.~~

~~(e) If any board or commission hits the \$7,500 cap provided for in step 2, the difference between the amount calculated and \$7,500 is apportioned among the other boards and commissions not reaching the cap.~~

~~(f) For example, commission B has a base contribution of \$3,000 and exceeds the \$7,500 cap by \$2,132. That \$2,132 would be apportioned on a percentage basis among the other boards and commissions, excluding commission B.~~

~~(g) To find the number in (f) of this subsection for commission A, take the number calculated for commission A in step 2 (\$1,605) and divide it by the total step 2 calculations for all boards and commissions, excluding commission B. Assuming the total for all boards and commissions, excluding commission B, is \$66,621, the number for commission A is 2.41. Multiply that by the total amount in step 2, including commission B, which equals \$51 for commission A.~~

(h) The total amount owed by commission A is the base assessment in step 1 (\$500), plus the amount in step 2 (\$1,605), plus the amount in step 3 (\$51) for a total contribution of \$2,156.

(i) The total amount owed by commission B is the base assessment in step 1 (\$3,000), plus the amount in step 2 (\$7,500) for a total of \$10,500.