



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Agriculture

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 15-09-124 ; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject) Chapter 16-401 WAC Nursery Inspection Fees and Chapter 16-470 WAC Quarantine – Agricultural Pests.

Hearing location(s):
Natural Resources Building
1111 Washington Ave. SE
Second Floor, Room 205
Olympia, WA 98504

Date: October 6, 2015 Time: 10:30 a.m.

Date of intended adoption: October 13, 2015
(Note: This is NOT the effective date)

Submit written comments to:
Name: Teresa Norman
Address: PO Box 42560
Olympia, WA 98504-2560
e-mail WSDARulesComments@agr.wa.gov
fax (360)902-2092 by 5:00 p.m. October 6, 2015

Assistance for persons with disabilities: Contact
Agency Receptionist by September 30, 2015
TTY (800) 833-6388 or 711

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is proposing increasing the fees for: nursery dealer licenses, requested inspections, plant sale permits, plant pest inspections, post entry quarantine site inspections, witnessing fumigations, certain laboratory diagnostic services, phytosanitary certification of exports, compliance agreements, and other certificates/documents.

Reasons supporting proposal: These rules establish the fees charged by the Plant Services Program for activities authorized in chapter 15.13, 15.14, and 17.24 RCW. The program's revenue is almost solely derived from inspection, testing, and license fees. An increase in fees would enable the program to cover the costs associated with actually performing these activities. The increase in revenue is necessary for the financial stability of the program.

Statutory authority for adoption: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131; and chapter 34.05 RCW

Statute being implemented: chapters 15.13, 15.14, and 17.24 RCW

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE
8/31/2015

NAME (type or print)
Brad White

SIGNATURE 

TITLE
Assistant Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 31, 2015
TIME: 9:01 AM

WSR 15-18-086

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..... Cindy Cooper	Olympia	(360) 902-2062
Implementation....Cindy Cooper	Olympia	(360) 902-2062
Enforcement..... Cindy Cooper	Olympia	(360)902-2062

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Cindy Cooper
Address: 1111 Washington St. SE
Olympia, WA 98504-2560

phone (360) 902-2062
fax (360)902-2092
e-mail ccooper@agr.wa.gov

No. Explain why no statement was prepared.

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 () _____
e-mail _____

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

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	
Hourly rate—business hours	\$ ((40.00)) <u>50.00</u>
Hourly rate—nonbusiness hours	\$ ((51.00)) <u>75.00</u>
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$ ((19.50)) <u>24.50</u>
Additional certificates	\$ ((6.50)) <u>8.25</u>
Fumigation lot or container fee	\$ ((16.00)) <u>25.00</u>
Certificate of plant health for noncommercial movement	\$ ((6.80)) <u>10.00</u>
Compliance agreement	\$ ((40.00)) <u>50.00</u>
Inspection tags or stickers (lots of 250)	\$ ((7.80)) <u>10.00</u> per lot

(2) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may also charge fees and/or surcharges for transmittal to federal agencies.

(7) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 09-23-005, filed 11/5/09, effective 1/1/10)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

- (1) Retail nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars. \$((~~42.00~~)) 52.50
 - (b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is. \$((~~91.00~~)) 115.00
 - (c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more. \$((~~182.00~~)) 228.00
- (2) Wholesale nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars. \$((~~91.00~~)) 115.00
 - (b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more. \$((~~182.00~~)) 228.00
- (3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.
- (4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270
 \$((~~6.70~~)) 10.00

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

Hourly rate - Business hours	\$(50.00) 62.50
Hourly rate - Nonbusiness hours	\$(65.00) 93.75

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees:

- (a) Nematode assay (plant material). \$38.00
- (b) Nematode assay (soil). \$60.00
- (c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut
. \$60.00

Note: Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval. ~~\$(101.00)~~ 125.00

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees.

(1) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a

part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established below:

Fee or Charge:	
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$(24.00) <u>30.00</u>
Additional certificates	\$(8.00) <u>10.00</u>
Fumigation lot or container fee	\$(20.00) <u>25.00</u>
Compliance agreement	\$(50.00) <u>62.50</u>



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

SMALL BUSINESS ECONOMIC IMPACT STATEMENT FOR PROPOSED RULES TO CHAPTER 16-401 WAC and 16-470 WAC

SUMMARY OF PROPOSED RULES

The Washington State Department of Agriculture (WSDA) Plant Services Program is proposing to amend the schedule of fees and charges for nursery licenses and requested services, in chapters 16-401 WAC and 16-470 WAC.

Chapters 15.13 RCW and 17.24 RCW authorize WSDA to provide mandatory nursery licensing, and special certification services upon request, to facilitate the movement and sales of plant products and to charge a fee for those services adequate to cover the cost of the services rendered. The schedule of fees for such nursery licenses and special services is established in rule in chapter 16-401 WAC and 16-470 WAC.

The proposed amendments to chapter 16-401 WAC include:

- Increasing the Retail nursery dealer license fee on gross business sales of horticultural plants and turf of less than two thousand five hundred dollars, from \$42.00 to \$52.50.
- Increasing the Retail nursery dealer license fee on gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, from \$91.00 to \$115.00.
- Increasing the Retail nursery dealer license fee on gross business sales of horticultural plants and turf of fifteen thousand dollars or more, from \$182.00 to \$228.00.
- Increasing the Wholesale nursery dealer license fee on gross business sales of horticultural plants and turf of less than fifteen thousand dollars, from \$91.00 to \$115.00.
- Increasing the Wholesale nursery dealer license fee on gross business sales of horticultural plants and turf of fifteen thousand dollars or more, from \$182.00 to \$228.00.
- Increasing the Permit fee for those types of sales and organizations exempted from licensing requirements by RCW [15.13.270](#), from \$6.70 to \$10.00.
- Increasing the hourly rate for requested services conducted during business hours at a licensed nursery, from \$40.00 to \$50.00.
- Increase the hourly rate for requested services conducted during non-business hours at a licensed nursery, from \$51.00 to \$75.00.
- Increase the fee for certificates issued more than 24 hours after the inspection at a licensed nursery, from \$19.50 to \$24.50 (there is no charge for a single certificate issued at the time of inspection).

- Increase the fee for additional certificates issued to a licensed nursery, from \$6.50 to \$8.25.
- Increase the fumigation lot or container fee from \$16.00 to \$25.00.
- Increase the fee for a Certificate of plant health for noncommercial movement from \$6.80 to \$10.00.
- Increase the fee for compliance agreements issued to licensed nurseries, from \$40.00 to \$50.00.
- Increase the fee for Inspection tags or stickers (lots of 250) from \$7.80 to \$10.00.

The proposed amendments to chapter 16-470 WAC include:

- Increase the hourly rate for requested services conducted during business hours from \$50.00 to \$62.50.
- Increase the hourly rate for requested services conducted during non-business hours from \$65.00 to \$93.75.
- Increase the fee for compliance agreements from \$50.00 to \$62.50.
- Increase the fee for certificates issued more than 24 hours after the inspection from \$24.00 to \$30.00 (there is no charge for a single certificate issued at the time of inspection).
- Increase the fee for additional certificates from \$8.00 to \$10.00.
- Increase the fumigation lot fee from \$20.00 to \$25.00.
- Increase the site inspection fee for the United States Department of Agriculture Postentry Quarantine Program from \$101.00 to \$125.00.
- Under 16-470-921, certain lab fees are charged at the hourly rate for requested services. These lab fees would increase from \$50.00 to \$62.50 per hour of lab time spent.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of a Small Business Economic Impact Statement is required when proposed rules will impose more than minor costs on businesses.

“Minor cost” means a cost that is less than 1% of annual payroll, or the greater of either .3% of annual revenue or \$100.

“Small business” means any business entity that is owned and operated independently from all other businesses and has 50 or fewer employees.

INDUSTRY ANALYSIS

The Plant Services Program is funded virtually entirely by fees of various types. Major sources of revenue are nursery license fees collected under authority of RCW 15.13 and fees for requested services collected under authority of RCW 17.24. Both types of fees are deposited into an account in the ag local fund. Expenses for this account have exceeded revenue for the past two years, resulting in a declining fund balance. The current fund balance is \$64,996 at the end of the 2015 biennium, with expenses exceeding revenue by \$150,582 for the biennium. Providing

requested services at a loss is not sustainable for a fee-for-service program. One immediate response to the rapidly decreasing fund balance has been to reduce our permanent inspection staff by one position. This was done on July 1, 2015. Any additional reduction in staff would result in substantially longer wait times for services or discontinuing certification services altogether.

Nurseries are regulated under RCW 15.13 and receive regulatory inspection to verify compliance with state plant pest quarantines. Fees received from nursery license fees make up nearly half the revenue received by the Plant Services Program. Licensed nurseries also request export certification services to facilitate domestic or international plant export. These requests are usually provided in conjunction with regulatory inspection, reducing program costs to carry them out. Consequently, nursery licensees receive two or four hours of requested inspection at no additional fee annually, depending on the level of gross sales of plants for which they are licensed. The economy and efficiency of performing joint inspection for these services is reflected in the fee schedule in chapter 16-401-027.

The proposed changes to chapter 16-401 WAC, would raise licensing fees for all 5,735 currently licensed nursery businesses in the state of Washington. This increase would range from \$12.50 to \$46.00 per nursery location, annually. Licensed nursery businesses fall into NAICS code 1114, 'Greenhouse, Nursery & Floriculture Production'.

Washington nurseries may request inspections from the WSDA Plant Services Program or the USDA Animal and Plant Health Inspection Services (APHIS) for international plant export certification, but regulatory inspection for intrastate plant sales and movement is only available from the WSDA Plant Services Program. In FY15, the WSDA Plant Services Program provided 610 regulatory inspections at licensed nurseries, and conducted other requested services at 115 licensed nurseries, with annual fees for businesses of any size ranging from \$0 to \$5,491. The department has analyzed the proposed rule amendments and has determined that some costs are more than minor and could have an economic impact on small nursery businesses that are licensed in our state.

Under chapter 16-470 WAC, the Plant Services Program provides special certification services upon request, to facilitate the domestic and international export of non-nursery plant products (mostly logs, lumber, hay, grains). Businesses requesting these services are not regulated by the Plant Services Program, but they voluntarily request certification services in order to fulfill the phytosanitary standards of importing countries and states. Businesses may request inspections from USDA Animal and Plant Health Inspection Services (APHIS) or from the WSDA Plant Services Program to verify compliance with those standards. The WSDA Plant Services Program provided requested services to 390 non-nursery customers in FY 2015, with annual fees for businesses of any size ranging from \$6.80 to \$81,299. The fee charged is based on the time it takes to verify compliance with the standards of importing countries or states. There are several types of businesses requesting services, with NAICS codes including 1112, 1113, 1131, 1132, 3211, 3212, 3219, 3399, 4233, 4238, 4244, and 4245. Many customers are located in other states or Canada but ship through Washington ports. The department has analyzed the proposed rule amendments and has determined that some costs are considered more than minor and could have an economic impact on small businesses that use these services.

INVOLVEMENT OF SMALL BUSINESSES

Because of the diversity of the businesses using these services, there is no formal organization representing affected industries. The proposal was developed solely to enable the Plant Services Program to recover the costs of providing these services. RCW 17.24.131 states that to facilitate

the movement of plant products, WSDA may provide these services upon request and prescribe a fee to recover its costs. As a program without access to state general funds, the Plant Services Program must maintain an adequate fund balance if it is to continue providing these services.

Small businesses have been involved in writing the proposed rules and in providing the department with the expected costs associated with the changes. In July 2015, a survey describing the proposed fee increases was sent to 510 current clients of our program, using on-line survey methods. The sample receiving the survey represents small and large nurseries who license under 16-401 WAC, participants in WSDA's voluntary planting stock certification programs for fruit trees and grapevines, and small and large exporters of hay, lumber and logs who request services under 16-470 WAC. Of the 23 respondents, 19 identified themselves as small businesses. Additional industry participation occurred when the proposed changes were presented at the June 26 meeting of the Nursery Advisory Committee and the June and August meetings of the Seed Potato Commission. An article about the proposed fee increases will be published in the September issue of the trade magazine of the WA State Nursery & Landscape Association (WSNLA).

COST OF COMPLIANCE

RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule, including cost of equipment, supplies, labor, professional services, and increased administrative costs. Agencies must also consider whether compliance with the rule will result in loss of sales or revenue.

This proposal does not impose regulations on Washington businesses but increases licensing fees for nurseries and user fees for requested services. The amount of license fees is based on the amount of annual sales of plants by a nursery and includes a low base fee for the smallest businesses. Fees for requested services are charged hourly, with the most significant factor in determining these costs being the import requirements of receiving countries and states.

Survey results indicate that no sales revenue would be lost in complying with the proposed increase in license fees.

JOBS CREATED OR LOST

Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules. In collecting information from representative small businesses through survey and advisory group feedback, the program estimates that 10 jobs could be lost as a result of small businesses paying increased license and user fees.

DISPROPORTIONATE IMPACT TO SMALL BUSINESSES

RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to

comply with the proposed rules. Agencies are to use one or more of the following as a basis for comparing costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

This proposal does not impose regulations on Washington businesses but increases user fees for requested services. The cost of this proposal on affected businesses is determined by many factors including the following:

- The number of certification services requested – the program charges for services on an hourly basis.
- The certification requirements – some countries may require multiple inspections or laboratory testing.
- The receiving country or states – some countries or states have overall more stringent import requirements than others.
- The product exported – some products have an inherently higher phytosanitary risk.
- The location of the business – businesses in remote areas will pay more for WSDA inspector's travel time.

An analysis of these factors shows that the costs small businesses will incur to comply with the proposed rules are not disproportionate between small and large businesses, as they are directly proportional to the services requested. Because costs are not disproportionate, mitigation of fees for services is not required.

CONCLUSION

The Plant Services Program has determined that they must increase fees for nursery licensing and requested services, in order to maintain the sustainability of the program, and to recover the costs of providing those services. The alternative to this proposal is to reduce the number of the program's inspectors and eliminate requested services when the cost of providing those services cannot be fully recovered. Unfortunately, this would have a much larger economic impact on businesses using these services. Exporters would have to rely on USDA, APHIS for certification at a significantly higher cost, and with a much smaller USDA APHIS staff, exporters would face significant delays. Some businesses also have the option of exporting out of Oregon ports, but the Oregon Department of Agriculture fees for these services are also higher. Even with a 25% increase in fees for licensing and requested services, WSDA will still provide phytosanitary certification services at a lower cost than is available to exporters in neighboring states.

To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the Plant Services Program has analyzed the economic impact of the proposed rules on small businesses and found that it will have a significant cost on some small businesses requesting services. Based on the results of the customer survey, 83% of businesses licensing as a nursery or requesting services from WSDA are small businesses, and the cost of the proposal would be more than minor for some of those. However costs for small businesses are proportional to larger businesses so no mitigation of fees is required.

Please contact Cindy Cooper if you have questions, at (360)902-2062 or ccooper@agr.wa.gov.