

WSR 23-17-131

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed August 21, 2023, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-013.

Title of Rule and Other Identifying Information: Chapter 16-160 WAC, Registration of materials for organic food production.

Hearing Location(s): On Wednesday, September 27, 2023, at 10:00 a.m., via Microsoft Teams. Join on your computer, mobile app, or room device [https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjU1ZWZzZWUtZTNhOC00ZGVmLWFjYzAtNWMM2MjJiZDJlZTg5%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjU1ZWZzZWUtZTNhOC00ZGVmLWFjYzAtNWMM2MjJiZDJlZTg5%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 217 869 248 329, Passcode njaxY; or call in (audio only) 564-999-2000 United States, Olympia, Phone Conference ID 931 022 358#)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 217 869 248 329, Passcode njaxY; or call in (audio only) 564-999-2000 United States, Olympia, Phone Conference ID 931 022 358#.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-1802, by September 26, 2023.

Assistance for Persons with Disabilities: Contact Leah Doyle, phone 360-902-2070, fax 360-902-2087, TTY 800-833-6388, email ldoyle@agr.wa.gov, by September 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture (WSDA) is proposing to restructure the existing fee schedule to cover the increasing cost of providing services. Under the proposed fee schedule, both the new application fee and the renewal fee will be comprised of two components, a company fee that is based on the gross annual income of the business in whole and a product fee that is charged based on the number of products being registered. The proposed product fee will be changed from the current rate of \$400 - \$500 per product for initial registration and \$200 - \$300 for renewal registration to a flat \$350 fee for both initial and renewing registrations.

Changes are being proposed to the inspection fees as well. Currently, inspection fees are assessed at a cost of \$40 per hour and the sum of travel costs. This proposal changes inspection costs to \$2,000 per inspection. Out-of-state inspections are assessed at \$3,000 in addition to any travel expenses which exceed \$3,000. Inspections are not part of the standard workflow, only being conducted if compliance concerns cannot be resolved without them. In order to offset the cost, if an inspection is needed for a small business, a \$1,500 discount to the inspection fee is available for small businesses, as defined by the Regulatory Fairness Act, chapter 19.85 RCW (RFA).

Additional revisions are being proposed to the way late renewal fees are being calculated. Late fees would be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses. A business which previously submitted a late renewal application for 10 products would have been subject to a \$1,000 late fee (\$100 per product) under the current rule. Under the proposed rule, this business would only be subject to a \$100 late fee.

The intent of these proposed changes is to increase total revenue, without placing a significant additional financial burden on smaller businesses.

In addition to a restructure of the fee schedule, other minor proposed changes to this chapter include:

1. Updating the WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;
2. Changing the expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;
3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and
4. Minor updates to the application process to improve the implementation of services.

Reasons Supporting Proposal: WSDA is authorized to set and collect fees for registration, renewal of registration, inspections, and sampling for the brand name materials list. RCW 15.86.070 authorizes WSDA to increase by rule fees as necessary to cover costs of providing services.

The United States Department of Agriculture (USDA) organic regulations require organic products be produced and handled using only natural input materials, with an exception for a limited number of synthetic materials specifically included in the rule. Determining which brand name, formulated materials are allowed for use in organic production or handling can be a daunting task for farms and other organic businesses.

Started in 1998, the WSDA organic program is one of the leading organic material review organizations in the United States. As a service and resource to organic businesses, the WSDA organic program evaluates an input's composition and manufacturing process for compliance with the applicable sections of the USDA organic regulations. Registration of organic inputs is voluntary; registration is not required for a certified organic producer or handler to use a compliant input. However, input companies who choose registration benefit from having their approved inputs published online by WSDA. WSDA's published list of approved brand name inputs provides a valuable tool for farms and handling or processing businesses to easily identify inputs that will not jeopardize their compliance with organic standards. As of July 2023, the program registered almost 1,000 products from almost 300 different companies for use in organic agriculture.

WSDA is the only USDA accredited certification agency highlighted in USDA's National Organic Program's Handbook as a reputable source for determining the compliance of inputs for use in organic agriculture. Producers, handlers, and certifiers throughout the United States reference WSDA's organic input material registration list.

Registration fees fund organic input registration services; no general fund tax dollars are received to provide organic input registration services.

As required in chapter 15.86 RCW, user fees fund organic input registration services by WSDA. At present, fees are based solely on the type of product being registered without consideration of the complexity of the product or the scope of the company producing the product. As such, product fees were kept low to allow market access for smaller businesses.

Unfortunately, as the number of complex products has grown and the required oversight in the growing market has increased, the cost of providing registration services has outpaced the revenue received. The structure of the fee schedule, as well as the annual fees assessed

per registered product, does not provide sufficient revenue to support the expense of providing registration services.

For example, 80 percent of the annual expenses generated by the WSDA organic program are in staff salary and benefits. At least three full-time staff are required to provide adequate and quality organic input registration services at present. State salaries and benefit expenses have steadily risen since the last fee change in 2010. In fiscal year (FY) 2022, registration services generated \$241,000 in revenue. The estimated cost to support three input material registration staff for FY 2024 is \$459,300. The current fee schedule does not support the cost involved in providing organic input material registration.

The organic program has sought to delay any fee increases by implementing improvements and operating as efficiently as possible. To counter rising expenses, the WSDA organic program has worked to incorporate numerous efficiencies, including development of streamlined electronic renewal applications and implementation of a database designed specifically for organic certification and input material evaluations. The efforts by program management have delayed the need to make significant changes to chapter 16-160 WAC since 2010.

Statutory Authority for Adoption: RCW 15.86.130, 15.86.140.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brenda Book, 1111 Washington Street S.E., Olympia, WA, 360-902-2090.

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

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

Small Business Economic Impact Statement

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.

WSDA is proposing changes to chapter 16-160 WAC. Proposed changes include restructuring the registration fee schedule, changes to the optional registered material logo, and other minor updates to definitions, terminology and the application process.

The USDA organic regulations require organic products be produced and handled using only natural input materials, with an exception for a limited number of synthetic materials specifically included in the rule. Determining which brand name, formulated materials are allowed for use in organic production or handling can be a daunting task for farms and other organic businesses.

Started in 1998, the WSDA's organic program is one of the leading organic material review organizations in the United States. As a service and resource to organic businesses, WSDA's organic program evalu-

ates an input's composition and manufacturing process for compliance with the applicable sections of the USDA organic regulations. Registration of organic input materials is voluntary; registration is not required for a certified organic producer or handler to use a compliant input. However, manufacturers of input materials who choose registration benefit from having their registered input materials published online by WSDA. WSDA's published list of approved brand name input materials provide a valuable tool for farms and handling or processing businesses to easily identify input materials that will not jeopardize their compliance with organic standards.

The organic industry has grown significantly in the last decade. In 2012, the farm gate value of organic crops from Washington state was \$355 million. By 2017, that number nearly doubled to \$667 million and to \$776 million by 2019. The demand for input materials that have been preapproved for use in organic production has grown with the expanding organic sector.

As required in chapter 15.86 RCW, user fees fund organic input registration services by WSDA; no general fund tax dollars are received to offset any of the costs associated with providing registration services. At present, fees are based solely on the type of product being registered without consideration of the complexity of the product or the scope of the company producing the product. As such, product fees were kept low to allow market access for smaller businesses.

Unfortunately, as the number of complex products has grown and the required oversight in the growing market has increased, the cost of providing registration services has outpaced the revenue received. The structure of the fee schedule, as well as the annual fees assessed per registered product, does not provide sufficient revenue to support the expense of providing registration services.

For example, 80 percent of the annual expenses generated by the WSDA's organic program are in staff salary and benefits. At least three full-time staff are required to provide adequate and quality organic input registration services at present. State salaries and benefit expenses have steadily risen since the last fee change in 2010. In fiscal year 2022, registration services generated \$241,000 in revenue. In July 2023, the estimated cost to support three input material registration staff for FY 24 is \$459,300. The current fee schedule does not support the cost involved in providing organic input material registration.

WSDA is proposing a restructuring of the existing fee structure to ensure quality services continue. WSDA is proposing to keep product fees low, but also incorporate a company fee, which will scale with reported income. The intent is to increase total revenue, without placing significant additional financial burden on smaller businesses. Additionally, WSDA's organic program, is proposing to revise late fees to be on a per company basis rather than a per product basis.

As part of this project, WSDA's organic program developed four goals to address specific issues with the current fee structure:

1. Simple and Transparent: The current fee structure has separate fees for different types of products. Since product type does not have a strong correlation with the amount of work required to evaluate compliance, it will be simpler to separate this decision from fees.

2. Balanced: The cost of providing registration services must be recovered by WSDA, while ensuring registration remains accessible and affordable for small or new businesses. The current fee structure is based entirely on the number of products being registered, which can

hinder the development of new products. The proposed fee structure would balance this by adding a company fee based on company size (total gross annual income) and reducing the emphasis on the number of products registered.

3. Consistent: Revenue from registration fees needs to be predictable so that resources can be secured proactively and services provided quickly. Replacing the current inspection fee, which is based on an hourly rate, with a flat fee will allow operations to consistently and accurately predict their inspection costs.

4. Effective: WSDA's organic program is a fee for service program. The cost of providing services must be recovered in full by the fees charged for the services provided. The current fee structure does not generate revenue sufficient to support the services provided.

In addition to a restructure of the fee schedule, other minor proposed changes to this chapter include:

1. Updating the WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;

2. Changing of expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;

3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and

4. Minor updates to the application process to improve the implementation of services.

No professional services are needed by businesses in order to comply with these proposed changes.

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	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
111331	Apple Orchards	690*	\$9,820.23 +	\$2,234.36 ⁺⁺
111998	All Other Miscellaneous Crop Farming	222*	\$11,702.08*	\$3,518.45 ⁺⁺
112111	Beef Cattle Ranching and Farming	224*	\$898.22*	\$379.34 ⁺⁺
112120	Dairy Cattle and Milk Production	269*	\$6,187.97*	\$21,237.13 ⁺⁺
112990	All Other Animal Production	208 ⁺⁺	\$718.62*	\$462.95 ⁺⁺
115112	Soil Preparation; Planting; and Cultivating	123 ⁺⁺	\$1,825.96 +	\$1,852.47 ⁺⁺
212312	Crushed and Broken Limestone Mining and Quarrying	7*	\$19,760.09 ⁺	\$14,990.01 ⁺
212393	Other Chemical and Fertilizer Mineral Mining	Redacted	Redacted*	Redacted ⁺
238110	Poured Concrete Foundation and Structure Contractors	1453 ⁺⁺	\$5,027.07 ⁺⁺⁺	\$3,442.48 ⁺⁺
238210	Electrical Contractors and Other Wiring Installation Contractors	3218 ⁺⁺	\$9,599.33 ⁺⁺⁺	\$5,941.60 ⁺⁺
311119	Other Animal Food Manufacturing	40*	\$9,446.07 +	\$24,330.37 ⁺⁺
311613	Rendering and Meat Byproduct Processing	3 ⁺⁺	\$21,030.96 +	\$32,261.69 ⁺
311999	All Other Miscellaneous Food Manufacturing	73 ⁺⁺	\$12,992.65*	\$28,280.31 ⁺⁺

NAICS Code	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
321999	All Other Miscellaneous Wood Product Manufacturing	282 ++	\$4,963.32*	\$10,315.61++
324110	Petroleum Refineries	17 ++	\$310,713.51*	\$1,503,441.17++
325110	Petrochemical Manufacturing	Redacted	Redacted+	Redacted++
325180	Other Basic Inorganic Chemical Manufacturing	20 ++	\$80,169.838*	\$146,705.92++
325199	All Other Basic Organic Chemical Manufacturing	15 ++	\$61,754.74*	\$82,389.50++
325311	Nitrogenous Fertilizer Manufacturing	22 ++	\$9,553.14+	\$54,489.98++
325312	Phosphatic Fertilizer Manufacturing	3 ++	Redacted*	\$303,827.12+
325314	Fertilizer (Mixing Only) Manufacturing	18 ++	\$9,831.85*	\$4,824.10++
325320	Pesticide and Other Agricultural Chemical Manufacturing	17 ++	28,209.30+++	\$56,658.42++
325612	Polish and Other Sanitation Good Manufacturing	19 ++	\$5,212.43*	\$7,213.50++
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	62 ++	\$8,489.72 +	\$23,918.87++
326199	All Other Plastics Product Manufacturing	169 ++	\$18,869.06 +	\$25,159.50++
327390	Other Concrete Product Manufacturing	50*	\$15,845.94 +	\$37,149.13++
327420	Gypsum Product Manufacturing	9 ++	\$38,415.66 +	\$64,963.43++
333241	Food Product Machinery Manufacturing	38 ++	\$31,206.27*	\$28,189.33++
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	29 ++	\$29,772.98 +	\$41,248.51++
339999	All Other Miscellaneous Manufacturing	963 ++	\$4,522.90*	\$9,874.17++
423310	Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	420 ++	\$13,394.11 +	\$38,355.14++
423320	Brick; Stone; and Related Construction Material Merchant Wholesalers	175 ++	\$6,631.41 +	\$10,444.70++
423610	Electrical Apparatus and Equipment; Wiring Supplies; and Related Equipment Merchant Wholesalers	609 ++	\$12,820.83 +	\$17,865.28++
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	202 ++	\$10,547.39 +	\$21,575.72++
423830	Industrial Machinery and Equipment Merchant Wholesalers	1134 ++	\$8,940.67 +	\$16,393.09++
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1049 ++	\$2,245.72 +	\$9,143.34++
424440	Poultry and Poultry Product Merchant Wholesalers	55 ++	\$19,911.74 +	\$45,135.62++
424490	Other Grocery and Related Products Merchant Wholesalers	1,046 ++	\$7,269.70 +	\$25,663.43++
424510	Grain and Field Bean Merchant Wholesalers	51 ++	\$10,906.60 +	\$53,558.90++
424520	Livestock Merchant Wholesalers	36 ++	\$2,730.57*	\$4,275.53++
424590	Other Farm Product Raw Material Merchant Wholesalers	370 ++	\$3,948.77 +	\$7,750.68++
424690	Other Chemical and Allied Products Merchant Wholesalers	432 ++	\$8,414.12 +	\$20,277.66++
424910	Farm Supplies Merchant Wholesalers	350 ++	\$10,501.05 +	\$35,044.58++

NAICS Code	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	2,186 ++	\$2,136.61*	\$7,559.52++
425120	Wholesale Trade Agents and Brokers	3661*	\$5,498.01 +	\$6,017.82++
444190	Other Building Material Dealers	1,293 ++	\$8,788.86 +	\$10,571.42++
444220	Nursery; Garden Center; and Farm Supply Stores	1,201 ++	\$4,675.20 +	\$3,798.35++
445220	Fish and Seafood Markets	90 ++	\$2,546.62*	\$4,834.38++
445230	Fruit and Vegetable Markets	505 ++	\$2,435.71 +	\$2,220.48+
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	11,090 ++	\$3,299.06*	\$4,863.58++
454390	Other Direct Selling Establishments	1,616 ++	\$4,034.18*	\$2,740.36+
531311	Residential Property Managers	1,099 ++	\$6,900.22 +	\$2,431.71++
541330	Engineering Services	2,554 ++	\$14,801.92*	\$7,177.43++
541690	Other Scientific and Technical Consulting Services	2,854 ++	\$2,707.38*	\$2,364.27++
541714	Research and Development in Biotechnology (except Nanobiotechnology)	304 ++	\$66,044.66 +	\$21,881.84++
551112	Offices of Other Holding Companies	249 ++	\$20,574.75*	\$4,115.67++
561499	All Other Business Support Services	2,014 ++	\$11,413.97 +	\$8,117.81++
562212	Solid Waste Landfill	25 ++	\$110,043.02 +	\$18,449.23++
562219	Other Nonhazardous Waste Treatment and Disposal	29 ++	\$31,270.90 +	\$50,412.23++
611310	Colleges; Universities; and Professional Schools	354*	\$107,981.59*	\$17,202.82++

* 2020 Dataset pulled from USBLS

+ 2020 Dataset pulled from ESD

++ 2020 Dataset pulled from DOR

+++ 2019 Dataset pulled from CBP

The cells in the table above showing as "redacted" reflect data that is suppressed by regulatory entities for confidentiality reasons in industries with a small number of businesses. If both the revenue and the payroll data are suppressed, the department will use \$100 as the minor cost threshold as specified in RCW 19.85.020(2).

A description of how affected Washington businesses, and their relevant North American Industry Classification System (NAICS) codes were identified can be found in section 4 of this statement.

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.

The fee restructuring component of the proposed revision to this rule is not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. It should not cause any changes to sales or revenue.

While the proposed revision aims to restructure the existing fee structure for organic input material registration, it does not rely on any additional recordkeeping or administrative actions beyond those currently present in the existing rule.

The probable cost of compliance will be dependent primarily on the size of a business (total gross annual income) and the number of products registered:

The proposed fee schedule includes an annual product fee of \$350.00 due for each product seeking registration. There is an additional company fee due based on the total gross annual income of the business. The applicable income ranges and corresponding fee is included below.

Total gross annual income in previous calendar year	Company fee due
\$0 - \$249,999	\$125.00
\$250,000 – \$999,999	\$250.00
\$1,000,000 – \$4,999,999	\$500.00
\$5,000,000 – \$19,999,999	\$1,000.00
\$20,000,000 – \$49,999,999	\$1,750.00
\$50,000,000 – and up	\$2,400.00

Companies who do not wish to disclose their gross annual income bracket may instead choose to pay the maximum company fee of \$2,400.00.

Changes were made to the inspection fees as well. Previously, inspection fees were assessed at a cost of \$40 per hour and the sum of travel costs. This proposal changes inspection costs to be \$2,000 per inspection. Out-of-state inspections are assessed at \$3,000 in addition to any travel expenses which exceed \$3,000. Inspections are not part of the standard workflow, only being conducted if compliance concerns cannot be resolved without them. In order to offset the cost, if an inspection is needed for a small business, a \$1,500 discount to the inspection fee is available for small businesses, as defined by RFA.

Additional revisions are being proposed to the way late renewal fees are being calculated. Late fees would be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses. A business which previously might have submitted a late renewal application for 10 products would have been subject to a \$1,000 late fee (\$100 per product) under the current rule would only be subject to a \$100 late fee under the proposed rule.

The proposal also revises sections of the rule to remove ambiguity. For instance, the product specific application requirements have been separated into their own section to clarify a company does not need to resubmit company specific information, such as contact information, with each new product submitted. These changes to the rule only clarify the existing application process and do not result in any additional requirements. They should have no impact on the cost of compliance.

Finally, the proposal includes a revision to the optional logo, which may be used on products registered with WSDA's organic program. The use of this logo is not compulsory. Existing companies would not be required to revise existing labels. Instead, any new labels drafted would be required to replace the previous logo with the proposed logo, if the company wished to use a logo. WSDA's organic program does not perceive this revision to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. It should not cause any changes to sales or revenue.

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

To determine the affected industries, WSDA's organic program reviewed business licensing information available from the Washington state department of revenue (DOR). For each business either registered or seeking registration with WSDA's organic program as of July 1, 2020, WSDA's organic program reviewed their unified business identifier (UBI) to determine their status as a Washington state business and their NAICS code to determine the applicable industry.

Each business is reflected under only a single NAICS code. In the event a business had two or more NAICS codes, the code most applicable to input manufacturing and registration was selected.

WSDA compiled a list of the 60 different industries currently represented by organic input material registrants. WSDA then calculated the industry specific minor cost threshold by taking the greater of either one percent of average annual payroll as reported by either the Washington state employment security department (ESD), the United States Bureau of Labor Statistics (USBLS) or the United States Census Bureau's County Business Pattern (CBP) or 0.3 percent of average annual revenue as reported by DOR. In the event the information was redacted due to data suppression, WSDA's organic program used a minimum minor cost threshold of \$100.

WSDA's organic program then calculated both the current fees, using the existing fee structure, and the proposed fees using the proposed revision for each of the 176 registrants identified as Washington state businesses. Since gross annual income is not reported under the current system, this information was unavailable to calculate the proposed fees. Instead, each of the proposed fees were calculated using the largest income bracket (businesses with over \$50,000,000 in gross annual income). WSDA identified 15 businesses (8.5 percent) where the difference between the proposed fees and current fees would exceed the minor cost threshold.

The 15 businesses were present in seven different industries. If an industry includes a business with a proposed change that exceeds the minor cost threshold, that industry is included in bold in the table below.

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
111331	Apple Orchards	\$9,820.23	\$2,550.00	\$2,550.00	1
111998	All Other Miscellaneous Crop Farming	\$11,782.08	\$2,850.00	\$2,850.00	1
112111	Beef Cattle Ranching and Farming	\$898.22	\$2,850.00	\$2,625.00	2
112120	Dairy Cattle and Milk Production	\$21,237.13	\$2,550.00	\$2,550.00	3
112990	All Other Animal Production	\$718.62	\$2,550.00	\$2,550.00	3
115112	Soil Preparation; Planting; and Cultivating	\$1,852.47	\$2,700.00	\$2,625.00	4
212312	Crushed and Broken Limestone Mining and Quarrying	\$19,760.09	\$3,750.00	\$3,150.00	2
212393	Other Chemical and Fertilizer Mineral Mining	\$100	\$2,550.00	\$2,475.00	2
238110	Poured Concrete Foundation and Structure Contractors	\$3,442.28	\$2,550.00	\$2,550.00	1

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
238210	Electrical Contractors and Other Wiring Installation Contractors	\$5,941.60	\$2,750.00	\$2,750.00	1
311119	Other Animal Food Manufacturing	\$24,330.37	\$2,700.00	\$2,587.50	4
311613	Rendering and Meat Byproduct Processing	\$32,261.69	\$4,200.00	\$3,375.00	2
311999	All Other Miscellaneous Food Manufacturing	\$28,280.31	\$2,450.00	\$2,450.00	1
321999	All Other Miscellaneous Wood Product Manufacturing	\$10,315.61	\$2,700.00	\$2,700.00	2
324110	Petroleum Refineries	\$1,503,441.17	\$2,450.00	\$2,450.00	1
325110	Petrochemical Manufacturing	\$100.00	\$2,400.00	\$2,400.00	1
325180	Other Basic Inorganic Chemical Manufacturing	\$146,705.92	\$4,150.00	\$4,150.00	1
325199	All Other Basic Organic Chemical Manufacturing	\$82,389.50	\$3,000.00	\$3,000.00	1
325311	Nitrogenous Fertilizer Manufacturing	\$54,489.98	\$7,350.00	\$4,006.25	8
325312	Phosphatic Fertilizer Manufacturing	\$303,827.12	\$2,700.00	\$2,625.00	2
325314	Fertilizer (Mixing Only) Manufacturing	\$9,831.85	\$6,750.00	\$3,255.00	10
325320	Pesticide and Other Agricultural Chemical Manufacturing	\$56,658.42	\$3,050.00	\$2,687.50	4
325612	Polish and Other Sanitation Good Manufacturing	\$7,213.50	\$2,450.00	\$2,450.00	1
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	\$23,918.87	\$4,850.00	\$3,350.00	3
326199	All Other Plastics Product Manufacturing	\$25,159.50	\$2,550.00	\$2,550.00	1
327390	Other Concrete Product Manufacturing	\$37,149.13	\$2,700.00	\$2,625.00	2
327420	Gypsum Product Manufacturing	\$64,963.43	\$2,550.00	\$2,550.00	1
333241	Food Product Machinery Manufacturing	\$31,206.27	\$2,500.00	\$2,500.00	1
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	\$41,248.51	\$2,550.00	\$2,550.00	1
339999	All Other Miscellaneous Manufacturing	\$9,874.17	\$3,150.00	\$3,025.00	2
423310	Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	\$38,355.14	\$2,700.00	\$2,700.00	1
423320	Brick; Stone; and Related Construction Material Merchant Wholesalers	\$10,444.70	\$2,550.00	\$2,550.00	1
423610	Electrical Apparatus and Equipment; Wiring Supplies; and Related Equipment Merchant Wholesalers	\$17,865.28	\$2,550.00	\$2,550.00	1
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	\$21,575.72	\$2,550.00	\$2,550.00	1
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$16,393.09	\$2,600.00	\$2,600.00	1

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$9,143.34	\$2,550.00	\$2,550.00	2
424440	Poultry and Poultry Product Merchant Wholesalers	\$45,135.62	\$2,550.00	\$2,550.00	1
424490	Other Grocery and Related Products Merchant Wholesalers	\$25,663.43	\$2,550.00	\$2,550.00	1
424510	Grain and Field Bean Merchant Wholesalers	\$53,558.90	\$2,550.00	\$2,550.00	1
424520	Livestock Merchant Wholesalers	\$4,275.53	\$2,550.00	\$2,550.00	1
424590	Other Farm Product Raw Material Merchant Wholesalers	\$7,750.68	\$4,800.00	\$3,400.00	3
424690	Other Chemical and Allied Products Merchant Wholesalers	\$20,277.66	\$3,150.00	\$2,588.89	9
424910	Farm Supplies Merchant Wholesalers	\$35,044.58	\$6,850.00	\$2,943.18	44
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	\$7,559.52	\$4,050.00	\$2,850.00	6
425120	Wholesale Trade Agents and Brokers	\$6,017.82	\$2,800.00	\$2,675.00	2
444190	Other Building Material Dealers	\$10,571.42	\$2,550.00	\$2,550.00	1
444220	Nursery; Garden Center; and Farm Supply Stores	\$4,675.20	\$3,900.00	\$2,972.73	11
445220	Fish and Seafood Markets	\$4,834.38	\$2,550.00	\$2,550.00	1
445230	Fruit and Vegetable Markets	\$2,435.71	\$2,700.00	\$2,700.00	1
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$4,863.58	\$3,350.00	\$2,750.00	4
454390	Other Direct Selling Establishments	\$4,034.18	\$2,800.00	\$2,800.00	1
531311	Residential Property Managers	\$6,900.22	\$2,550.00	\$2,550.00	1
541330	Engineering Services	\$14,801.92	\$2,550.00	\$2,550.00	1
541690	Other Scientific and Technical Consulting Services	\$2,707.38	\$3,300.00	\$3,075.00	2
541714	Research and Development in Biotechnology (except Nanobiotechnology)	\$66,044.66	\$2,700.00	\$2,625.00	2
551112	Offices of Other Holding Companies	\$20,574.75	\$2,450.00	\$2,450.00	1
561499	All Other Business Support Services	\$11,413.97	\$2,600.00	\$2,525.00	2
562212	Solid Waste Landfill	\$110,043.02	\$2,550.00	\$2,550.00	1
562219	Other Nonhazardous Waste Treatment and Disposal	\$50,412.23	\$2,850.00	\$2,775.00	2
611310	Colleges; Universities; and Professional Schools	\$107,891.59	\$2,550.00	\$2,550.00	1

Inspections are not part of the standard workflow for this program. They are a tool which may be used to evaluate compliance as needed. The fees have been adjusted to ensure the costs of conducting inspections are recovered if an inspection is needed, however no inspections have been conducted in the last five years. The table above does not reflect the cost of inspections or the \$1,500 discount on inspec-

tion fees provided to businesses that meet the definition of "small business" in RFA.

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 WSDA to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following 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.

As a fee restructuring, without additional recordkeeping requirements the impact is relatively uniform across all businesses. There are no projected increases in equipment, supplies, labor, professional services, or administrative costs. There are no projected losses in sales or revenue.

Logically, gross annual income will correlate to business size, with larger businesses within the same industry likely reporting higher gross annual income. To this effect, the proposal reduces the proportionate impact on small business by charging a comparatively smaller fee to business reporting lower gross annual incomes.

However, the product fee is not adjusted for gross annual income and remains constant without regards to business size. This means the product fee is likely to have a larger impact (cost of fee compared to total gross annual income) for smaller businesses when compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

The table below compares businesses paying the lowest of the company fees, with businesses that have the largest income and paying the largest of the company fees. Ten products are used for both businesses to demonstrate the difference in total fees for small and large businesses.

Business size	Income Level	Company Fee	Number of Products	Total Product Fees	Total Fees	Cost Per \$100 of Sales
Small	\$200,000	\$125	10	\$3,500	\$3,625	\$1.81
Largest	\$50,000,00	\$2,400	10	\$3,500	\$5,900	\$0.01

Since the product fee is the same for all businesses, regardless of business size, WSDA's organic program projects that this fee restructure will have a greater impact in cost per one hundred dollars of sales on small businesses when compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

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:* These regulatory requirements are set by the USDA National Organic Program and are outside the scope of the WSDA's organic program. Reducing, modifying, or eliminating regulatory requirements are not an option to reduce the cost of the rule on small businesses.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* The proposed rule does not change any of the current recordkeeping or reporting requirements. Reducing, modifying, or eliminating recordkeeping or reporting requirements are not an option to reduce the cost of the rule on small businesses.

(c) *Reducing the frequency of inspections:* The requirements for input materials used by organically certified operations is set by the USDA National Organic Program. As such, any changes to inspection frequency or schedule would be outside the scope of the WSDA's organic program and not an option to reduce the cost of the rule on small businesses.

(d) *Delaying compliance timetables:* WSDA's organic program is required by statute to recover the full cost of administering the program (RCW 15.86.070). This fee restructuring is being implemented to ensure compliance with this requirement. Delaying implementation or compliance timetables would prevent the program from fully recovering costs. In order to reduce costs on small businesses where we can, WSDA's organic program will implement flexible timetables on nonfee-related components such as use of the updated logo.

(e) *Reducing or modifying fine schedules for noncompliance:* The new fee structure substantially reduces the impact of late fees, the most common fee for noncompliance. Under the current fee structure, late fees are incurred on a per product basis at \$100 per month. After two months, late fees are often equivalent to the full renewal amount. Under the new fee structure, late fees are incurred on a per company basis. This will result in a substantial reduction of penalties for companies with multiple products.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* The current fee structure is based entirely on the type and number of products seeking registration. This means costs increase proportionally to the number of products you are registering without consideration to the size of your business or scope of the product line. WSDA's organic program hopes that by shifting some of the burden of fees from number of products to the size of the business, using a company fee based on gross annual income, that small businesses will be afforded more flexibility in developing and marketing their smaller product lines, as adding new products will have a lesser relative impact on their total fees. Additionally, new product and new company fees have been reworked to make their costs consistent with renewal fees. Under the previous fee structure, the fees for new products was larger than the fee for renewing products. Under the proposed fee structure the same product fee is due with your initial or renewal application annually. A \$1,500 discount to the inspection fee is available for small businesses, as defined by RFA. The standard inspection fee is \$2,000. This represents a 75 percent reduction for small businesses. There were no other mitigation techniques suggested by small businesses or small business advocates.

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

The WSDA's organic advisory board (OAB) was established in 1987 to advise WSDA concerning the implementation of the organic program. OAB consists of small and large businesses in Washington state. It includes and supports: Organic farmers, processors, handlers, input material suppliers, and other interested parties. They provide feedback on how the program can improve the services.

A fee restructure has been a conversation with the WSDA OAB over the last decade due to the requirements for the program to recover expenses in response to increased costs. Ongoing work with this group helped inform the design of the new logo and established the goals for the fee increase.

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

It is unlikely that the revisions will have any appreciable effect on a business's ability to comply with the requirements of the rule and should not result in the loss or creation of any jobs.

A copy of the statement may be obtained by contacting [no information supplied by agency].

August 21, 2023

Luisa F. Castro, Assistant Director
Food Safety and Consumer Services Division

OTS-4882.2

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-010 Purpose of this chapter. This chapter specifies the process for registering companies and listing materials approved for use in organic production, processing and handling on the department's brand name materials list, also known as the organic input material list. This chapter is promulgated pursuant to chapter 109, Laws of 2010 to implement the brand name materials list.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-120 Applications. (1) Registration with the department and listing of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the (~~brand name materials~~) department's organic input material list.

(2) (~~Registration~~) The listing of a material on the (~~brand name materials~~) organic input material list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material (~~registered on the brand name materials~~) listed on the organic input material list.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-130 General application requirements. (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration (~~on the brand name material list to the department.~~

~~(2) Manufacturers may submit applications to the department at:~~

~~Washington State Department of Agriculture
Organic Food Program
P.O. Box 42560
Olympia, WA 98504-2560.~~

~~These forms may also be found on the department's website at:
<http://agr.wa.gov/foodanimal/organic>~~

~~(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.)~~ with the department's organic program.

(2) Current registrants and potential applicants may submit applications for products to be listed on the organic input material list.

(3) The department approves product applications when the applicant demonstrates the material meets the requirements for products as outlined in WAC 16-160-165.

(4) All registrations and product listings expire on ((October)) December 31st of the registration year.

(5) During the term of registration, if at any time the registrant has no approved or pending product listings, the registration will be canceled.

(6) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-140 Initial application requirements. (1) (~~Applications must be submitted on the form provided by the department, and must include:~~

~~(a))~~ To have products listed on the organic input material list, manufacturers must register with the department. To apply for registration, applicants must submit:

(a) An application form.

(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.

~~((b))~~ (c) The name and address of the registrant.

~~((e))~~ (d) A product application for each product to be listed on the organic input material list.

(2) Each product application must include:

(a) The brand name the material is sold under.

(b) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the ~~((registered))~~ brand name material.

~~((d) The brand name that the material is sold under.~~

~~(e))~~ (c) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

~~((f))~~ (d) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

~~((g))~~ (e) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with ~~((the standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205):

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

~~((h))~~ (f) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

~~((i))~~ (g) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

~~((j))~~ (h) The intended use of the material.

~~((k))~~ (i) The required fee for registration.

~~((l) Signature by authorized representative.~~

~~(m))~~ (j) Applicants seeking to list fertilizers and pesticides must submit verification of a valid registration from the department's pesticide management division. This requirement may be waived if the applicant verifies the product will not be sold or distributed in Washington state.

(k) The department may request additional information related to the items above as necessary to demonstrate that the material meets ~~((the standards of the National Organic Program.~~

~~(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.~~

~~(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department))~~ USDA organic regulations (7 C.F.R. Part 205).

(3) Registrants packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the

person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-150 Renewal application requirements. (1) (~~Renewal applications must be submitted on the form provided by the department, and must include the following:~~

~~(a-))~~ To renew a registration, registrants must submit:

~~(a)~~ An application form;

~~(b)~~ A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;

~~((b-))~~ (c) The name(s) of the material(s) seeking renewal;

~~((c) Name and address of the manufacturing facility(ies) for each registered material;))~~

~~(d) Notification of any unreported changes to the ((original application))~~ company or product information; and

~~(e) ((Signature of authorized representative; and~~

~~(f-))~~ The required fee for renewal. Renewal applications post-marked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.

(2) Registrants (~~who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.))~~ packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180 every five years.

(3) Full disclosure of the complete formula of the material, including active and inert ingredients, and any other information necessary to demonstrate compliance is required every five years.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-160 Updating an application. If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration, either in part or in full.

NEW SECTION

WAC 16-160-165 Product requirements. Products listed on the organic input material list must meet all requirements in this section. If at any time a listed product or product application is found to be in violation of one or more of these requirements, the company's registration may be denied, suspended, or revoked as provided under WAC 16-160-220. Products must:

(1) Meet the requirements of the USDA organic regulations (7 C.F.R. Part 205) and be approved for use in organic production, processing, or handling in accordance with the USDA organic regulations (7 C.F.R. Part 205). Materials may not be prohibited for use in the production or handling of organics per section 205.105 of the USDA organic regulations, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(2) Be clearly distinguishable from other products.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-180 Inspections. (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;

(b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and

(c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

(4) ~~((Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.~~

~~(5))~~ Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, or fails to provide samples as provided in this

section ~~((, or fails to provide the department with the consent described in subsection (4) of this section))~~.

~~((+6))~~ (5) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205).

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-190 Recordkeeping requirements. (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, processing, or handling and comply with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205). These records may include:

- (a) Records pertaining to incoming raw materials:
 - (i) Invoices/bills of lading;
 - (ii) Transportation documentation;
 - (iii) Material safety data sheets;
 - (iv) Storage documentation.
 - (b) Production records:
 - (i) Material formulations;
 - (ii) Dates of production;
 - (iii) Amount of ingredients used in each batch;
 - (iv) Amount of final materials;
 - (v) Sampling and/or laboratory analyses;
 - (vi) Lot identification and tracking;
 - (vii) Other records maintained during manufacturing.
 - (c) Finished material records:
 - (i) Packaging documentation;
 - (ii) Sales documentation;
 - Purchase orders;
 - Receipts;
 - Shipping documents;
 - (iii) Storage documentation.
- (2) Records shall be maintained for six years.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-200 Fees. ~~((The following fees apply to applicants and registrants to the brand name materials list.~~

~~(1) **Initial material registration:**~~

~~(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is five hundred dollars per material.~~

~~(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.~~

~~(2) **Renewal registration:** The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock~~

production aid or postharvest material is three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.

(3) ~~**Late fees:** Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.~~

If your application is postmarked after October 31st but before:	Then the late fee is:
December 1	\$100
January 1	\$200
February 1	\$300

(4) ~~**Inspections:** Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.~~

(5) ~~**Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.~~

(6) ~~**Expedited evaluation fees:** Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars per hour.)~~ To receive or maintain registration, businesses must submit an application packet and fees to the department each year.

(1) **New application fee:** A new application fee is due with each annual application for registration.

(a) A new application fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>New company fee due</u>
<u>\$0 - \$249,999</u>	<u>\$125.00</u>
<u>\$250,000 - \$999,999</u>	<u>\$250.00</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$500.00</u>
<u>\$5,000,000 - \$19,999,999</u>	<u>\$1,000.00</u>
<u>\$20,000,000 - \$49,999,999</u>	<u>\$1,750.00</u>
<u>\$50,000,000 - and up</u>	<u>\$2,400.00</u>

(b) Businesses who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A new application fee includes a product fee which is assessed based on the total number of products included in the application. The product fee is \$350 per product application.

(d) While a registrant's account is active, with either listed products or products pending evaluation, companies may submit applications for new products without incurring a company fee. The product fee is \$350 per product included in subsequent applications.

(2) **Renewal fee:** A renewal fee must be submitted annually by October 31st with each renewal application.

(a) A renewal fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>Renewing company fee due</u>
<u>\$0 - \$249,999</u>	<u>\$125.00</u>
<u>\$250,000 - \$999,999</u>	<u>\$250.00</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$500.00</u>
<u>\$5,000,000 - \$19,999,999</u>	<u>\$1,000.00</u>
<u>\$20,000,000 - \$49,999,999</u>	<u>\$1,750.00</u>
<u>\$50,000,000 - and up</u>	<u>\$2,400.00</u>

(b) Companies who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A renewal fee includes a product fee which is assessed based on the total number of products being renewed. The product fee is \$350 per renewing product.

(d) Renewal applications and fees submitted after October 31st must include a late fee in addition to the appropriate company and product fees. Renewal applications submitted after February 2nd will not be accepted, and applicants must reapply as new applicants.

<u>If a renewal application is submitted after:</u>	<u>Late fee due</u>
<u>October 31st</u>	<u>\$100.00</u>
<u>November 30th</u>	<u>\$200.00</u>
<u>December 31st</u>	<u>\$300.00</u>

(3) **Inspection fee:** An inspection fee must be submitted after each inspection conducted by the department. The inspection fee is \$2,000.

(a) Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), qualify for a \$1,500 discount to their inspection fee.

(b) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged to the operation at a rate of \$3,000 and include any travel expenses in excess of \$3,000. Out-of-state inspection fees do not replace, and are in addition to, the standard inspection fee as outlined under this section.

(4) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department or at the cost for analyses performed by another laboratory.

(5) **Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient capacity is available to expedite the work. Fees for expedited services do not replace, and are in addition to, any other required fees as outlined in this section.

(a) Expedited services not requiring an inspection are charged a rate of \$500 to receive an evaluation and certification decision within five business days from the acceptance of the request.

(b) Expedited services requiring an inspection prior to a certification decision are charged a rate of \$750. Expedited services under this subsection take production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-210 Labels and logos. (1) A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material.

The logos found in this section may be printed in black and white as displayed in this chapter. Alternatively, a color version with blue leaves, circle and background may be used. Electronic copies of the logos are available by request from the department.

(2) Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term.

(3) Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material.

(4) In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.





AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations. (1) Registrations (~~((on the brand name materials list))~~) with the department's organic program, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration (~~((on the brand name materials list))~~) with the department, in part or in full, if the director determines that a registrant has failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) (~~(Application or registrations)~~) Product applications or listings will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.