Title of rule and other identifying information: (describe subject) Chapter 173-224 WAC, Water Quality Permit Fees. The purpose of this chapter is to establish a fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by Ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

Hearing location(s):

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location: (be specific)</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 23, 2019</td>
<td>10:00</td>
<td>Webinar and in-person at: 300 Desmond Dr SE, Lacey, WA 98503</td>
<td>Presentation, question and answer session followed by the hearing. We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions: <a href="https://watech.webex.com/watech/onstage/g.php?MTID=ec65bf401d7cf5aa6a404774e7eca2037">https://watech.webex.com/watech/onstage/g.php?MTID=ec65bf401d7cf5aa6a404774e7eca2037</a>. For audio call US Toll number +1-240-454-0887 and enter access code 800 126 755. Or to receive a free call back, provide your phone number when you join the event.</td>
</tr>
</tbody>
</table>

Date of intended adoption: June 26, 2019 (Note: This is NOT the effective date)
**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**
The main goal and objective of RCW 90.48.465 is to establish and maintain a fee schedule for fully funding the administration of the state’s water quality permit programs. Ecology increases permit fees every two years to maintain pace with inflationary cost factors and continue moving toward payment equity between fee categories.

The statute also requires that the department, in establishing the fees, consider the economic impact on small discharges and public entities, and provide appropriate adjustments where applicable. Ecology addresses this requirement through our small business and economic hardship discounts, which are available to permittees that meet the criteria established in rule.

**Reasons supporting proposal:** RCW 90.48.465 requires Ecology to establish, by rule, annual fees that will fund the wastewater and stormwater permit programs. Ecology adopted Chapter 173-224 WAC – Water Quality Permit Fees in response to this law.

This rule amendment allows Ecology to continue recovering expenses in operating and managing the permit programs. Ecology is proposing to increase fees for Fiscal Years 2020 and 2021 in order to collect the revenue needed to recover the costs of administering the wastewater and stormwater programs next biennium and move closer to payment equity between fee categories. Ecology may also propose changes to the structure of specific permit fee categories, including creating the Winery General Permit fee category and a market research and development incentive.

**Statutory authority for adoption:** Chapter 90.48 RCW Water Pollution Control; RCW 90.48-465 Water discharge fees—Report to the legislature.

**Statute being implemented:** RCW 90.48-465 Water discharge fees—Report to the legislature.

**Is rule necessary because of a:**
- Federal Law? ☐ Yes ☒ No
- Federal Court Decision? ☐ Yes ☒ No
- State Court Decision? ☐ Yes ☒ No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Name of proponent:** (person or organization) Department of Ecology

<table>
<thead>
<tr>
<th>Name</th>
<th>Office Location</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting:</td>
<td>Charles Gilman</td>
<td>300 Desmond Dr SE, Lacey, WA 98503</td>
</tr>
<tr>
<td>Implementation:</td>
<td>Charles Gilman</td>
<td>300 Desmond Dr SE, Lacey, WA 98503</td>
</tr>
<tr>
<td>Enforcement:</td>
<td>Charles Gilman</td>
<td>300 Desmond Dr SE, Lacey, WA 98503</td>
</tr>
</tbody>
</table>

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

If yes, insert statement here:

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

Name: N/A
Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:
  Name: Charles Gilman
  Address: 300 Desmond Dr SE, Lacey, WA 98503
  Phone: (360) 407-6425
  Fax: N/A
  TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.
  Email: wqfee_unit@ecy.wa.gov
  Other:
  ☐ No: Please explain:

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

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

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

Citation and description:

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

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

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

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

☐ This rule proposal, or portions of the proposal, is exempt under RCW ______.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is not exempt, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☒ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

WA Department of Ecology
Small Business Economic Impact Statement:
Relevant Information for State Register Publication

Proposed amendments to
This Small Business Economic Impact Statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by Ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to “businesses in an industry” in Washington State. This means that impacts, for this document, are not evaluated for non-profit or government agencies. The existing regulatory environment is called the “baseline” in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from Ecology’s complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the Regulatory Analyses (Ecology publication no. 19-10-017, March 2019)

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES
The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. For this proposed rulemaking, the baseline includes:

- The existing rule: Water Quality Permit Fees rule, chapter 173-224 WAC.
- The authorizing statute: Water Pollution Control law, chapter 90.48 RCW; specifically RCW 90.48.465 Water Discharge Fees.
- Requirements set by other agencies, including the Washington State Liquor and Cannabis Board (LCB).

The proposed rule amendments make the following changes:

- Updating permit fees: Increasing permit fees to recover program costs and to improve equity across fee categories, including adding fees for the Winery General Permit.
- Market research and development: Adding an up to three-year, 75-percent discount for fees for facilities involved in market research for products or processes that reduce or eliminate pollutants or pollutant-generating activity.
- Annual production certification: Requiring winery permit holders to submit information certifying annual production or unit processes.

COSTS OF COMPLIANCE: EQUIPMENT
Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

COSTS OF COMPLIANCE: SUPPLIES
Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR
Under the proposed amendments, wineries would annually certify their production to Ecology. They would incur the additional labor costs to fill out a form and submit it to Ecology. We assumed this would take one hour of time, using known
production values. If an environmental engineer performed this certification, it would cost $50. At the 174 identified wineries with existing individual permits or positive production values in available LCB data, this would be a total annual cost of $8,700. The equivalent 20-year present value cost is $159 thousand.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES
Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS
Where applicable, Ecology estimates administrative costs (“overhead”) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER
Initial fee changes at the permittee level (during the two years specified in the proposed amendments) range from a fee reduction of $1 thousand to a fee increase of $943 thousand per year, across both winery assumptions, in 2021. In 20-year present values, individual permittees would pay between $0 and $24 million more under the proposed amendments. Total 20-year present value costs across all likely permittees range between $199 million (if all wineries use the general permit) and $202 million (if wineries maintain existing individual permits).

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES

Small businesses
- Fee increases: Increased compliance costs (for permittees with proposed higher fees; see section 2.3.1 for list) per employee at small businesses would range from $95 to $123 thousand.
- There would be no increase in compliance costs for small businesses in fee categories that would not have explicit higher fees under the proposed amendments (see section 2.3.1 for list of categories with no proposed change in 2020 and 2021 fees).

Largest ten percent of businesses
- Increased compliance costs per employee at the largest ten percent of businesses would range from $5 to $5 thousand.
- There would be no increase in compliance costs for the largest ten percent of businesses that would not have explicit higher fees under the proposed amendments (see section 2.3.1 for list of categories with no proposed change in 2020 and 2021 fees).

Assuming that all wineries currently holding an individual permit switch to the general permit would:
- Reduce compliance costs at small (by employment) wineries by between $60 and nearly $2 thousand per employee, in 2020 and 2021.
- Reduce compliance costs at the largest ten percent (by employment) of wineries by between $21 and $600 per employee, in 2020 and 2021.

CONSIDERATION OF LOST SALES OR REVENUE
Ecology used the REMI PI+ model for Washington State to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: inter-industry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.
- Prices:
  - In modeled results, the overall price level for all goods, including housing, would be virtually unaffected.
  - Correspondingly, most commodity prices would also not change, as compared to the baseline forecast.
  - Food and beverage prices, however, were modeled as increasing by 1/100th of a percent, compared to the baseline forecast for the state economy. Alcoholic beverages in particular would see a 1/50th of a percent increase in prices.
- Output/sales:
  - Apparel, leather, and similar products manufacturing would experience a reduction in the value of their output, of up to 1/5th of a percent of the baseline forecast sales. This is because this market is relatively small in the state. The nominal value of this impact is about $1 million by 2038.
  - Similarly, textile manufacturing would experience an up to 1/20th of a percent of the baseline sales forecast. The nominal value of this impact is about $276 thousand by 2038.
Some manufacturing sectors would experience sales losses by 2038 of up to 1/100th of a percent of the baseline sales forecast.

MITIGATION OF DISPROPORTIONATE IMPACT

The RFA (19.85.030(2) RCW) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

a) Reducing, modifying, or eliminating substantive regulatory requirements;
b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
c) Reducing the frequency of inspections;
d) Delaying compliance timetables;
e) Reducing or modifying fine schedules for noncompliance; or
f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule amendments that reduce costs. In addition, Ecology considered the alternative rule contents discussed in Chapter 6, and excluded those elements that would have imposed excess compliance burden on businesses.

Due to the narrow scope of this rulemaking, the options for reducing disproportionate impacts on small businesses were limited. However,

- The existing rule (as well as the amended rule) include opportunity for small businesses to demonstrate hardship and reduce their fees.
- In line with the goals and objectives of the authorizing statute (see Chapter 6), fees were set with operation size (complexity of permit management and support) in mind. To the extent that operation size correlates with the number of employees, this would work to reduce relative compliance burden on small businesses.
- While this rule does not contain many of the substantive regulatory requirements suggested for reduction in the RFA (compliance requirements for permits, inspection, timetables, fines for noncompliance), it does contain some reporting requirements. The proposed amendments add reporting of production at wineries. This requirement was, however, designed to impose minimal burden, relying on known information and simplified reporting through a form.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

Ecology involved small businesses and local government in our development of the proposed rule amendments, using the methods below. About 80 percent of permittees are small businesses or local governments.

- Water Quality listserv, including business association, individual business, and local government representatives.
- Permittee list from fee invoicing software (5,848 permittees with contact information)
- Stakeholder meetings including municipality and county representatives.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

112X Animal production and aquaculture (various)
1151 Support activities for crop production
2121 Coal mining
2122 Metal ore mining
2123 Nonmetallic mineral mining and quarrying
2211 Electric power generation, transmission, and distribution
2213 Sewer systems
2213 Water, sewage, and other systems
23XX Construction
3114 Fruit and vegetable preserving and specialty food manufacturing
3117 Seafood product preparation and packaging
IMPACT ON JOBS
Under the assumption that wineries with existing individual permits would continue to operate under those permits (the highest compliance cost assumption), the Washington State economy could experience a net gain of between 23 jobs (in 2020) and 49 jobs (in 2038) across all industries. In this model, jobs are one year of full time equivalent employment.
Economic activity across sectors of the state economy results in spending on goods and services, including those provided by the state government. This is how a broad-based set of compliance costs (primarily fees) results in a benefit to the state economy, when considered together.

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

Name: Charles Gilman
Address: 300 Desmond Dr SE, Lacey, WA 98503
Phone: (360) 407-6425
Fax: N/A
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.
Email: wqfee_unit@ecy.wa.gov
Other:

Date: 3/7/2019
Name: Polly Zehm
Title: Deputy Director
Signature: Polly Zehm