



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule

(1) Date of adoption: March 30, 1990

(2) Purpose:

Implement the Agriculture Marketing and Fair Practices Act
Chapter 15.83 RCW

(3) Citation of existing rules affected by this order: N/A

- Repealed:
- Amended:
- Suspended:

(4) Authority for adoption:

Statute: RCW 15.83.020
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 90-01-038 on December 13, 1989 (date).

Describe any changes other than editing from proposed to adopted version:

None.

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify) _____ *

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Emergency Rules

- Immediately
- Later (specify) _____

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CODE REVISER'S OFFICE
STATE OF WASHINGTON
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APR 6 5 1990

FILE: 2:02

WSR: 90-08-069

NAME (TYPE OR PRINT)

C. Alan Pettibone

SIGNATURE: *C. Alan Pettibone*

TITLE: Director

DATE: 3/30/90

Chapter 16-622 WAC

Agriculture Marketing and Fair Practices

NEW SECTION

WAC 16-622-001 Purpose. The department of agriculture promulgates this chapter to implement the provisions of the Agricultural Marketing and Fair Practices Act, chapter 15.83 RCW (chapter 355, Laws of 1989). The purpose of this act is to establish standards of fair practices required of handlers, producers, and association of producers dealing in sweet corn and potatoes and to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

NEW SECTION

WAC 16-622-005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiating agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means sweet corn and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the Federal Agriculture Marketing Act of 1929 or in section 1 of 42 Stat. 388.

(5) "Department" means the department of agriculture of the state of Washington.

(6) "Director" means the director of the department of agriculture or duly authorized representative.

(7) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(8) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date and concluding thirty days prior to the normal planting date to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: PROVIDED, That neither party shall be required to disclose proprietary business or financial records or information.

(9) "Negotiating unit" means a negotiating unit approved by the director under the provisions of this chapter and shall include all members of an accredited association of producers supplying qualified commodities to a single processing facility.

(10) "Person" means an individual, partnership, corporation, association, or any other entity.

(11) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

(12) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

(13) "Qualified commodity" means agricultural products as defined in subsection (3) of this section.

(14) "Processing facility" means a facility operated by a processor at a single location where qualified commodities purchased from producers are canned, frozen, dried, dehydrated, cooked, pressed, powdered, or otherwise processed in a manner for eventual resale.

NEW SECTION

WAC 16-622-010 Application for accreditation of an association of producers. An association of producers requesting accreditation to serve as the exclusive negotiating agent on behalf of its members who are within a proposed negotiating unit with respect to any qualified commodity shall file with the director an application to accredit a negotiating unit containing the following information:

(1) The name and address of the processing facility for which accreditation of a negotiating unit is being requested.

(2) A description of the geographical boundaries of the proposed negotiating unit, stated in terms of the number of miles, from the processing facility in each direction of the most distant producer in the proposed unit.

(3) A list of the names of producers who are members of the proposed negotiating unit and the total number of acres of qualified commodities contracted for delivery by those producers to the processing facility for each of the previous two years.

(4) The total number of members of the association of producers proposing the negotiating unit, a list of the counties in which those members reside, and the total number of acres of qualified commodities the association of producers had contracts to represent on behalf of its producer members for the previous growing season.

NEW SECTION

WAC 16-622-015 Accreditation file. Both the association of producers requesting accreditation of a negotiating unit and the person operating the processing facility for which the negotiating unit is being proposed shall create and maintain in their possession an accreditation file for the purpose of allowing the director to determine if the association of producers has met the requirements for the accreditation of the negotiating unit. The file shall be available to the department during normal working hours with reasonable advance notice. Documents contained in the file shall become a permanent part of the file and shall be serially numbered and indexed to assure the integrity of the file. Copies of original documents may be placed in the file or new documents may be created to satisfy the requirements of this chapter. The director may examine other records as necessary to confirm the validity of the information contained in the accreditation file. The accreditation files shall be maintained at the principal business address of the association of producers and the person operating the processing facility. In the case where the principal business address of the person operating a processing facility is located outside of the state of Washington, the accreditation file shall be maintained at the processing facility or at some other location within the state of Washington as approved by the director.

NEW SECTION

WAC 16-622-020 Accreditation file requirements--Association of producers.

The association of producers shall create and maintain an accreditation file for each negotiating unit it is requesting accreditation for, which shall include the following:

(1) A copy of the articles of incorporation and by-laws of the association;

(2) A copy of the contract between the association of producers and the producer empowering the association to sell or negotiate the terms of sale of its members qualified commodities and a list of the producers who have executed said contract; and

(3) A list of the names of producers who are members of the proposed negotiating unit together with the number of acres of qualified commodities that each producer had contracted to deliver to the processing facility for each of the previous two growing seasons.

NEW SECTION

WAC 16-622-025 Accreditation file--Processor. The processor shall create and maintain an accreditation file for each processing facility where a negotiating unit is being proposed by an association of producers, which shall include the following:

(1) A list of the names of producers for each facility with whom the processor had an advance contract for qualified commodities for each of the previous two growing seasons;

(2) The total number of acres of qualified commodities the processing facility had contracted to receive the production from under the provisions of advance contracts for each of the previous two growing seasons.

(3) A copy of the contract between the processor and producer supplying the affected commodities.

NEW SECTION

WAC 16-622-030 Accreditation procedure. The director shall, upon receipt of an application for accreditation of a negotiating unit, promptly notify in writing the processor who operates the processing facility. The director shall schedule a time to examine the accreditation files of both the association of producers and the processor operating the processing facility. This examination shall not occur prior to five working days following the receipt of the notice to the processor of the application for accreditation of the negotiating unit. The director shall issue a report of findings resulting from the examination of the accreditation files of both parties which shall include:

(1) Whether the association of producers is owned and controlled by producers and that one of its functions is to act as principal or agent for its members in negotiations with processors;

(2) Whether the association of producers has valid and binding contracts with its members who are part of the proposed negotiating unit;

(3) Whether the members of the proposed negotiating unit represent more than fifty percent of the total average number of producers of record at the processing facility with advance contracts for the previous two growing seasons, or whether the number of acres of qualified commodities produced by members of the proposed negotiating unit, who were producers of records at the processing facility, represents more than fifty percent of the total average number of acres of qualified commodity obtained through advance contracts for the previous two growing seasons.

If the director's findings regarding subsection (1), (2), and (3) above are that the association meets the criteria for accreditation, a notice of accreditation of the negotiating unit will be issued to both parties. If the finding regarding any of the subsections above is that the association fails to meet any of the criteria, a notice citing the specific deficiency will be issued to both parties pending the filing of an amended application in a timely manner.

The director shall not accredit more than one bargaining unit for each processing facility. Should more than one proposed bargaining unit meet the criteria for accreditation the director shall accredit the proposed negotiating unit that would function as the most effective agent for producers in negotiating with the processor. The director, when considering the accreditation of proposed negotiating units, shall consider the ratio of the number of producers to acres previously contracted by those producers, with substantial weight given to the number of acres contracted.

NEW SECTION

WAC 16-622-035 Amended application for accreditation. An association of producers upon receiving notice of deficiencies in the application for accreditation of a proposed negotiating unit may file an amended application with the director. The amended application will be examined in the same manner as the initial application. Amended applications must be filed with the director within thirty days of receipt of the notice of deficiencies in the application.

NEW SECTION

WAC 16-622-040 Renewal of application for accreditation. An affected processor or an affected association of producers may petition the director to require an accredited association of producers to renew the application for accreditation of a negotiating unit. If the director concurs with the request of the petitioners or determines that a renewed application would best carry-out the purposes of the chapter, then the parties will be notified of the requirement that a new application be filed. The renewed application shall be examined in the same manner as an initial application.

NEW SECTION

WAC 16-622-045 Hearings. A hearing, conducted under the provisions of chapter 34.05 RCW, to determine whether alleged violations of RCW 15.83.030 or 15.83.040 have occurred may be held concurrently with the hearing for civil penalty under section (9) of the act.

NEW SECTION

WAC 16-622-050 Negotiating period. The negotiating period provided in RCW 15.83.010 and 15.83.060 shall commence each year on February 1st for potatoes and on February 5th for sweet corn. Negotiations may begin at any time prior to these dates and may continue past the date which is thirty days following these dates by mutual consent of the affected parties. Contracts which are agreed to during this mutual consent period will be considered advance contracts.

NEW SECTION

WAC 16-622-055 Deadline for application for or review of negotiating unit accreditation. Applications for accreditation of a negotiating unit or petitions by affected parties for renewal of an existing negotiating unit shall be received by the director by September 1st of each year to allow sufficient time to determine if the criteria for accreditation has been met. Applications or petitions received after that date will be considered for the next succeeding negotiating period. Applications for accreditation of negotiating units for the 1990 growing season will be accepted until January 10, 1990.

NEW SECTION

WAC 16-622-900 Severability. If any section or provision of this rule shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the rule as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional.