

Chapter 16-573 WAC

OILSEEDS COMMISSION

WAC	
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

16-573-070	Effective time. [Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-070, filed 2/4/98, effective 6/1/98.] Repealed by WSR 14-06-050, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapters 15.65 and 34.05 RCW.
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WAC 16-573-005 Marketing order for Washington oilseeds—Policy statement. (1) The marketing of canola, rapeseed, and mustard (oilseeds) within this state is in the public interest. It is vital to the continued economic well-being of citizens of this state and their general welfare that its canola, rapeseed, and mustard (oilseeds) industry be properly promoted by:

(a) Enabling producers of canola, rapeseed, and mustard (oilseeds) to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the oilseeds they produce; and

(b) Working towards stabilizing the agricultural industry by increasing production of oilseeds within the state.

(2) That it is in the overriding public interest that support for the oilseed industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that oilseeds be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's oilseeds;

(b) Increase the sale and use of Washington state's oilseeds in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's oilseeds;

(d) Increase the knowledge of the qualities and value of Washington state's oilseed products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of oilseeds produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state oilseeds commodity board exists primarily for the benefit of the people of the state of

Washington and its economy and, with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to oilseeds under the provisions of this marketing order.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-005, filed 2/27/14, effective 3/30/14.]

WAC 16-573-010 Definitions. The following definitions for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

(1) "Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.

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

(3) "Act" means the Washington State Agriculture Enabling Act or chapter 15.65 RCW.

(4) "Person" means any individual, firm, association, corporation, limited liability company, trust, partnership, society, or any other organization of individuals or any unit or agency of local or state government.

(5) "Producer" means any person who produces, or causes to be produced, in commercial quantities, oilseeds in the state of Washington. "To produce" means to act as a producer. For the purposes of this order, a "producer" is the same as an "affected producer" under chapter 15.65 RCW.

(6) "Commercial quantity" means all oilseeds produced for market in any calendar year by any producer.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing oilseeds not produced by the handler and includes any lending agencies for a commodity credit corporation loan to producers. For the purposes of this chapter, a handler is the same as an "affected handler" under chapter 15.65 RCW. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Board" means the oilseeds commodity board formed under WAC 16-573-020.

(9) "Oilseeds" means any of the *Brassica Sp.* oilseeds (canola and rapeseed) and all mustards, produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning on June 1 of any year and ending with the last day of May, both dates being inclusive.

(11) "Affected area" means the state of Washington.

(12) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(13) "Affected unit" means one hundred pounds (hundredweight) of oilseeds as defined in subsection (9) of this section.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-010, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-010, filed 2/4/98, effective 6/1/98.]

WAC 16-573-020 The oilseeds board. (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the oilseeds board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of seven members as follows:

Position 1 is appointed by the director and must be a producer.

Position 2 is appointed by the director and must be a producer.

Position 3 is elected by the producers and must be a producer.

Position 4 is elected by the producers and must be a producer.

Position 5 is elected by the producers and must be a producer.

Position 6 is appointed by the director and must be a handler.

Position 7 is appointed by the director to represent the department and the public and must be neither a producer nor a handler.

(b) Transition to amended marketing order: The position numbers under the prior marketing order correspond to the positions under the amended marketing order as follow:

Prior Marketing Order Position	Amended Marketing Order Position
1	1
2	2
3	3
4	Eliminated
5	4
6	5
7	6
8	7

(c) Board members elected or appointed under the prior marketing order shall continue to serve their respective terms, provided that thirty days from the effective date of this amended marketing order, the board shall forward to the director the names of the board members elected or appointed to position 1, 2, and 6 under this amended marketing order, whereupon the director will appoint the members to serve their respective terms. The qualifications required for each position under this amended marketing order become effective upon expiration of any terms starting under the prior marketing order. Any vacancies on the effective date of this amended marketing order must be filled in conformance with this amended marketing order.

(3) **Board membership qualifications.**

(a) At the time of election or appointment to the board, the producer members of the board must be actually engaged in producing oilseeds in the state of Washington; citizens and residents of the state; over the age of eighteen years; and not

handlers or dealers of oilseeds. Further, the producer members must have derived a substantial portion of income from actually producing oilseeds in Washington during the preceding five-year period.

(b) At the time of appointment to the board, the handler member of the board must be actually engaged in handling oilseeds in the state of Washington, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative; a citizen and resident of this state; and over the age of eighteen years. Further, the handler member must have derived a substantial portion of income from actually handling oilseeds in Washington during the preceding five-year period.

(c) Board members must meet the qualifications of board members throughout their term of office.

(4) **Term of office.** The term of office for members of the board is three years beginning under this amended marketing order as follows:

Positions 1 and 3: First term expires May 31, 2014;

Positions 2 and 4: First term expires May 31, 2015;

Positions 5 and 6: First term expires May 31, 2016.

(5) **Nomination of board members.**

(a) Each year the director shall call for nomination meetings for board position terms that are about to expire, regardless of whether the position is elected or director appointed. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election or advisory vote.

(b) Notice of a nomination meeting must be published in newspapers of general circulation within the affected area at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers according to the list maintained by the board pursuant to RCW 15.65.295.

(c) A finding that an interested person did not receive notice will not invalidate the proceedings at the nomination meeting.

(d) Any producer may nominate a qualified producer orally for membership on the board at the nomination meeting. Nominations may also be by written petition signed by at least five producers and filed with the director within five days after the nomination meeting.

(e) If the board moves and the director approves that the nomination meeting procedure be waived, the director shall give notice of the vacancy by mail to all producers. Nominating petitions for producers or handlers must be signed by at least five affected producers or handlers, as applicable. The final date for filing nominations must be at least twenty days after the notice was mailed.

(f) When only one nominee is nominated for any position, RCW 15.65.250 applies and the director shall determine whether the nominee meets the qualifications for the position and, if so, declare the nominee elected or appoint the nominee to the position.

(6) **Election or advisory vote of board members.**

(a) Elections and advisory votes must be conducted by secret mail ballot within the month of April under the supervision of the director. Elected producer members of the board must be elected by a majority of the votes cast by the producers. Each producer is entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) If more than two candidates are nominated for any director-appointed producer or handler board member position, an advisory vote must be conducted under RCW 15.65.-243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. If only two candidates are nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected area at least ten days in advance of the date of the election or advisory vote. At least ten days before every election for board membership, the director shall mail a ballot of the candidates to each producer entitled to vote whose name appears upon the list of the producers maintained by the board pursuant to RCW 15.65.295. Any other producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) A finding that a producer did not receive a ballot will not invalidate the election or advisory vote of any board member.

(7) Vacancies.

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the first or second board meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members will recommend to the director a qualified person for appointment to the vacant position. The director will appoint the person recommended by the board unless the person fails to meet the qualifications of board members under RCW 15.65 and this order.

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No board member will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution a provision for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chair and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney gen-

eral, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check, draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish an "oilseed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The premium for the bond or bonds must be paid by the board from assessments collected. The bond may not be necessary if any board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(j) To establish by resolution a headquarters which shall continue unless changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts and interagency agreements with any private or public agency, whether federal, state, or local. Purchasing and contracting must comply with chapter 39.26 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts of agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of oilseeds.

(s) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(t) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of oilseeds including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(u) To maintain a list of names and addresses of producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(v) To maintain a list of names and addresses of all persons who produce oilseeds and the amount, by unit of oilseeds produced during the past three years pursuant to RCW 15.65.295.

(w) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(x) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The board shall file notice of the time and place of regular meetings with the code reviser on or before January of each year for publication in the state register. The board shall publish notice of any change from such meeting schedule in the state register for distribution at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. The board must give notice of the annual meeting at least ten days prior to the meeting by written notice to each producer.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with reasonable notice to the members. Any board member may waive, in writing, notice of any special meeting. Notice of special meetings must comply with chapter 42.30 RCW.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-020, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-020, filed 2/4/98, effective 6/1/98.]

WAC 16-573-030 Marketing order purposes. This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic and foreign markets; or increasing production efficiency, ensuring a fair regulatory

environment; or increasing per capita use of oilseed products grown in Washington state. The Washington state oilseeds board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) Establish plans and conduct programs for marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for oilseeds. The programs shall be directed toward increasing the sale of oilseeds without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of oilseeds nor disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provide for research in the production, processing, irrigation, transportation, handling or distribution of oilseeds and expend the necessary funds for such purposes. Insofar as practicable, the research must be carried out by Washington State University, but if in the judgment of the board the Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities, the project may be carried out by other research agencies selected by the board.

(3) Provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market.

(4) Conduct programs for the purpose of providing information and education including:

(a) Marketing information and services for producers of oilseeds for the verification of grades, standards, weights, tests and sampling of quality and quantity of oilseeds purchased by handlers from producers;

(b) Information and services enabling producers to meet their resource conservation objectives;

(c) Oilseed-related education and training.

(5) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of oilseeds produced in Washington state to any elected official or officer or employee of an agency.

(6) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation and administration of programs authorized under this section for advertising and promotion of oilseeds.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of oilseeds may be encouraged, expanded, improved, or made more efficient.

(7) Prohibit making or publishing false or misleading advertising. The regulation may authorize uniform trade practices applicable to all similarly situated handlers and, or other persons.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-030, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-030, filed 2/4/98, effective 6/1/98.]

WAC 16-573-040 Assessments and collections. (1) Assessments.

(a) The assessment on all varieties of oilseeds subject to this marketing order shall be ten cents per hundredweight and shall be deducted by the first purchaser from the price paid to

the grower. The assessment shall be remitted to the board in accordance with procedures adopted by the board.

(b) The assessments shall not be payable on any oilseeds used by the producer on their premises for feed, seed and personal consumption.

(2) **Collections.** Excess moneys collected by the board under this order during the fiscal year may be carried over and used during the next successive fiscal year. The board may also recommend that excess moneys at the close of a fiscal year be refunded on a pro rata basis to the producers from whom the moneys were collected.

(3) **Penalties.** Any due and payable assessment levied in the specified amount as may be determined by the board under the act and this order is a personal debt of the person assessed or who owes the debt, and it is due and payable to the board when payment is called for by the board. If a person fails to pay the board the full amount of the assessment by the date due, the board may add to the unpaid assessment or sum an amount not exceeding ten percent of the amount owed. In the event of failure of the person or persons to pay the full amount due, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-040, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-040, filed 2/4/98, effective 6/1/98.]

WAC 16-573-041 Time—Place—Method for payment and collection of assessments. Effective with the growing season of 1998, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-573-040:

(1) All first handlers of oilseeds grown in the state of Washington, or the person acting on behalf of a first buyer, shall withhold the amount of assessment from their remittance to growers of oilseeds and transmit it to the board.

(2) All assessments will be due and payable to the board within thirty days of collection. With the submission of the assessments, a report listing the name, address, volume handled or purchased and amount deducted or collected for each producer must be submitted to the board on forms provided by or approved by the board.

(3) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of ten percent in accordance with RCW 15.65.440 of the act.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-041, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-041, filed 2/4/98, effective 6/1/98.]

WAC 16-573-050 Obligations of the board. Obligations incurred by the board or employee or agent pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by the act or this order, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under the order were a corporation. No liability for the debts or actions of the board, employee or agent incurred in their official capacity under

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this order shall exist either against the board, officers, employees or agents in their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent) established under this act or the assets thereof. The board, and its agents and employees, shall not be held responsible individually in any way whatever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible individually for any act or omission of any other board, member of the board, or other person. The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.

[Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-050, filed 2/4/98, effective 6/1/98.]

WAC 16-573-060 Termination of the order. Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-060, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-060, filed 2/4/98, effective 6/1/98.]

WAC 16-573-080 Severability. If any provisions of the order are declared invalid, or the applicability to any person, circumstances or thing is held invalid, the validity of the remainder provisions or of the applicability to any other person, circumstances or thing shall not be affected.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 14-06-050, § 16-573-080, filed 2/27/14, effective 3/30/14. Statutory Authority: Chapter 15.65 RCW. WSR 98-04-093, § 16-573-080, filed 2/4/98, effective 6/1/98.]