



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: WA State Dept. of Agriculture

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

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

- Yes
 - No
- If Yes, explain:

Purpose: Amendments were made to sections within the Washington Turfgrass Seed Commission's Marketing Order, WAC 16-545. During past legislative sessions, significant amendments were made to the Commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the amendments to WAC 16-545. The changes achieve consistency with the statute, as well as, improve the readability and clarity of the Marketing Order.

Citation of existing rules affected by this order:

Repealed: WAC 16-545-030
 Amended: WAC 16-545-010, 16-545-020
 Suspended:

Statutory authority for adoption: RCW 15.65.047 and chapter 34.05 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-09-104 on April 21, 2004 (date).
 Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- 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.
- 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:

Date adopted: October 25, 2004

NAME (TYPE OR PRINT)

Valoria H. Loveland

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

CODE REVISER USE ONLY

STATE OF WASHINGTON

NOV 1 2004

1137

TIME _____

WSR 04-22-073

AM 3

PW

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>2</u>	Repealed	<u>1</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>2</u>	Amended	<u>2</u>	Repealed	<u>1</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>2</u>	Amended	<u>2</u>	Repealed	<u>1</u>

NEW SECTION

WAC 16-545-005 Marketing order for Washington turfgrass seed--Policy statement. (1) The production of turfgrass seed within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its turfgrass seed be properly promoted by:

(a) Enabling producers of turfgrass seed to help themselves in establishing orderly, fair, sound, efficient, and unhampered grading and standardizing of the turfgrass seed they produce; and

(b) Working towards stabilizing the agricultural industry by sustaining production of turfgrass seed within the state, the nation, and internationally.

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

(a) Enhance the reputation and image of Washington state's turfgrass seed.

(b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's turfgrass seed.

(c) Support and engage in programs or activities that benefit the planting, production, and harvesting of turfgrass seed produced in Washington state.

(d) Support and engage in programs or activities that benefit the use of turfgrass seed by-products 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 turfgrass seed 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 turfgrass seed under the provisions of this marketing order.

NEW SECTION

WAC 16-545-006 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 of turfgrass seed in Washington state. The Washington state turfgrass seed commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

To execute the purposes of the order, the board shall provide for a program in one or more of the following areas:

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

(2) Provide for collection and dissemination of information pertaining to turfgrass seed and turfgrass seed by-products.

(3) Establish and conduct programs to develop markets for turfgrass seed by-products.

(4) Under no circumstances are any sections of this marketing order to be construed as authorizing or permitting any programs pertaining to marketing or promotion of turfgrass seed.

AMENDATORY SECTION (Amending WSR 99-02-064, filed 1/6/99, effective 2/6/99)

WAC 16-545-010 Definitions ((of terms)). Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agriculture Commodity Boards Act. For the purpose of this marketing order, the following additional definitions apply:

(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 of 1961)) Commodity Boards Act or chapter 15.65 RCW.

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

(5) "Affected producer" means any person who produces, or

causes to be produced, in commercial quantities, turfgrass seed in the state of Washington.

(6) "Commercial quantity" means all the turfgrass seed produced for sale in any calendar year by any producer.

(7) "Affected handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing turfgrass seed not produced by the handler and shall include any lending agencies for a commodity credit corporation loan to producers. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Turfgrass seed commodity board" referred to as "board" or "commission" means the turfgrass seed commodity board formed under WAC 16-545-020.

(9) "Turfgrass seed" means Kentucky bluegrass, perennial ryegrass, tall fescue, hard fescue, slender fescue, and creeping red fescue. Forage fescue and reclamation grass seed are excluded from this order.

(10) "Turfgrass seed by-products" means turfgrass seed straw and screenings.

(11) "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.

(12) "Producer-handler" is both a "producer" and a "handler" with respect to turfgrass seed and is covered by this order as a producer when engaged in the business of producing turfgrass seed or a handler when engaged in processing, selling, marketing or distributing turfgrass seed. "To produce" means to act as a producer. For the purposes of the turfgrass seed marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the turfgrass seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(13) "Affected area" or "production area" means that portion of the state of Washington located east of the summit of the Cascade Mountains.

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

(15) "Affected unit" means one pound net pay weight of turfgrass seed.

AMENDATORY SECTION (Amending WSR 99-02-064, filed 1/6/99, effective 2/6/99)

WAC 16-545-020 Turfgrass seed board. (1) Administration. The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board consists of seven members. Five members are affected producers appointed or elected under provisions of this order. One member is an affected handler appointed by the appointed or elected producers. The director appoints one member of the board who is neither an affected producer nor an affected handler to represent the ~~((department and the public))~~ director. The position representing the director shall be a voting member.

(b) Each district has one board member.

(i) Positions one through four represent each of the numbered districts.

(ii) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

(iii) Position six is a handler appointed by the appointed or elected producer~~((s))~~ members of the board.

(iv) Position seven is the member ~~((appointed by))~~ representing the director.

(3) **Board membership qualifications.**

(a) The ~~((affected))~~ producer members of the board must be practical producers of turfgrass seed in the district in and for which they are nominated ~~((and))~~, appointed, or elected and ~~((must))~~ each shall be a citizen~~((s))~~ and resident~~((s))~~ of the state ~~((of Washington))~~, over the age of ~~((twenty-five))~~ eighteen years~~((, each of whom is and has))~~. Each producer board member must be and have been actually engaged in producing turfgrass seed within the state of Washington for a period of three years and has during that time derived a substantial portion of his or her income therefrom and who is not engaged in business as a handler or other dealer.

(b) The ~~((affected))~~ handler member of the board must be a practical handler of turfgrass seed and must be a citizen and resident of the state ~~((of Washington))~~, over the age of ~~((twenty-five))~~ eighteen years ~~((and who is and has))~~. Each handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling turfgrass seed within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.**

(a) The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

(b) Membership positions on the board are designated numerically; affected producers will have positions one through five, the affected handler will have position six and the member ~~((appointed by))~~ representing the director will have position seven.

(c) The term of office for the initial board members must be

as follows:

Positions one and three - three years, ending on January 31, 2002.

Positions two and five - two years, ending on January 31, 2001.

Positions four and six - one year, ending on January 31, 2000

(d) Except for the director's representative, no member of the board can serve more than two full consecutive three-year terms.

(e) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions 1, 4, and 5 shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) **Nomination ((and election)) of elected or director-appointed board members.**

(a) Each year the director shall call ((for)) a nomination meeting((s)) for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. 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 of board members.

(b) Notice of ((every)) a nomination meeting must be published in a newspaper of general circulation within the affected district 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 within the affected district according to the list maintained by the ((director under RCW 15.65.200 of the act)) board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers. ((At the inception of this order, nominations may be made at the issuance hearing.

~~(b))~~ (e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the ((vacancy)) open board position(s) by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be appointed or elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

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

(a) ((Members of the board must be elected by secret mail ballot within the month of January)) An election or advisory vote shall be conducted by secret ballot under the supervision of the

director within the month of January. Each affected producer shall be entitled to one vote. ((Affected producer))

(b) Elected members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. ((Each affected 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) An advisory vote shall be conducted for producer board members appointed by the director under the provision of 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. In the event there are only two candidates nominated for a board position, and 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 district at least ten days in advance of the date of the election or advisory vote. At least ten days before every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of the affected producers maintained by the ((director in accordance with RCW 15.65.200 of the act)) board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by an affected producer will not invalidate the election or advisory vote of any board member.

~~((d) The appointed handler member of the initial board shall be elected by a majority of the elected members at the first meeting.))~~

~~(7) ((Removal of board members. A board member may be removed by a vote of the board if that member fails to attend any three consecutive meetings of the board, duly noticed.~~

~~(8)) Vacancies ((prior to election)).~~

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

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

~~((9))~~ (8) Quorum. A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

~~((10))~~ (9) Board compensation. No member of the board 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 provisions 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.

~~((11))~~ (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 chairman 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 general, 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 a "turfgrass seed 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 at least once every five years 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 board must pay the premium for the bond or bonds from assessments collected. The bond may not be necessary if any blanket bond covering officials or employees of the state of Washington covers any board member or employee.

(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. The board, at least sixty days

prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(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 for the operation of the board, 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 to obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

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

(p) To sue or be sued.

~~((12))~~ (q) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

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

(t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.

(u) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of attorney general.

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

(w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(x) To maintain a list of the names and addresses of affected 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.

(y) To maintain a list of the names and addresses of persons

who handle turfgrass seed within the affected area and data on the amount and value of the turfgrass seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

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

(aa) To maintain a list of all persons who handle turfgrass seed and the amount of turfgrass seed handled by each person during the past three years pursuant to RCW 15.65.295.

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

(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). Notice of the time and place of regular meetings shall be published on or before January of each year in the Washington State Register. Notice of any change to the meeting schedule shall be published in the state register 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. Notice of the annual meeting must be filed in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the annual meeting must be given at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with twenty-four hours written notice to the members. A board member may waive in writing his or her notice of any special meeting. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-545-030

Marketing order purposes.