

## WSR 24-23-106

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed November 20, 2024, 11:09 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-520-003, 16-520-010, 16-520-035, and 16-520-040.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060.

Other Authority: RCW 43.01.160, 43.23.025.

Adopted under notice filed as WSR 24-19-068 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2024.

Derek I. Sandison  
Director

**OTS-5817.1**

AMENDATORY SECTION (Amending Order and Findings, issued 9/18/56)

**WAC 16-520-003 Director's order creating seed potato commission and making marketing order effective.** (1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in ~~((him))~~ the director by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on August 17, 1956, that certain marketing order entitled, "Marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090; and ~~((τ))~~

(2) Whereas, the director of agriculture has found that more than ~~((fifty-one))~~ 51 percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington seed potatoes has been assented to

in writing by more than (~~sixty-five~~) 65 percent of the producers who produced more than (~~fifty-one~~) 51 percent by volume of the said seed potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of seed potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said act, do hereby make effective the said marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission, said order to be effective at 12:01 a.m. October 1, 1956.

AMENDATORY SECTION (Amending WSR 17-09-074, filed 4/19/17, effective 5/20/17)

**WAC 16-520-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

"Act" means the Washington State Agricultural Commodity Commissions Act, chapter 15.66 RCW;

"Affected area" means and includes all of the state of Washington;

"Affected producer" means any producer who is subject to this marketing order;

"Commercial quantities" means (~~five thousand~~) 5,000 hundred-weight or more;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act (~~for him or her~~) on the director's behalf concerning some matter under this marketing order or chapter 15.66 RCW;

"Disclosure" means inspection or copying;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" and "affected unit" are synonymous and mean and include each (~~one hundred~~) 100 pound unit or any combination of packages making a (~~one hundred~~) 100 pound unit of seed potatoes;

"Marketing season" and "fiscal year" are synonymous and mean the (~~twelve~~) 12-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

"Producer" means any person engaged in the business of producing or causing to be produced for market in the state of Washington seed

potatoes in commercial quantities. "To produce" means to act as a producer;

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics;

"Sale" means a transaction wherein the property in or to seed potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

"Seed potato commission" and "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;

"Seed potatoes" means and includes all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

**WAC 16-520-035 Limitation of liability of commission members and employees.** Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in (~~his or her~~) their individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for (~~his or her~~) their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 18-01-053, filed 12/13/17, effective 1/13/18)

**WAC 16-520-040 Assessments and assessment funds.** (1) **Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by (~~him or her~~) the producer or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to

become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ~~((ten))~~ 10 cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by ~~((him or her or his or her))~~ the producer on their own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of ~~((five hundred))~~ 500 pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) **Collection of assessment.**

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the ~~((twentieth))~~ 20th day of the succeeding month for the previous month's collections. Each handler shall at the times as required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds.**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.