



RULE-MAKING ORDER

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

Agency: WA State Department 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 Barley Commission's Marketing Order, WAC 16-530. During the past 3 legislative sessions, significant amendments were made to the Commission's enabling statute, chapter 15.66 RCW. These statutory changes prompted the proposed amendments to WAC 16-530. 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Repealed: WAC 16-530-030
 Amended: WAC 16-530-010, 16-530-020, 16-530-040
 Suspended:

Statutory authority for adoption: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-03-111 on Jan. 21, 2004.
 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: July 26, 2004

NAME (TYPE OR PRINT)
 Valoria H. Loveland

SIGNATURE

TITLE
 Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
 STATE OF WASHINGTON
 FILED

JUL 26 2004
 315

TIME _____
 WSR 04-16-036 (P2)

**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>3</u>	Repealed	<u>1</u>

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

New	<u>2</u>	Amended	<u>3</u>	Repealed	<u>1</u>
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____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

New	_____	Amended	_____	Repealed	_____
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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>3</u>	Repealed	<u>1</u>

NEW SECTION

WAC 16-530-005 Marketing order for Washington barley--Policy statement. (1) The marketing of barley 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 barley be properly promoted by:

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

(b) Working towards stabilizing the agricultural industry by increasing consumption of barley within the state, the nation, and internationally.

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

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

(b) Increase the sale and use of Washington state's barley 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 barley.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's barley and products.

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

(3) The director is authorized to implement, administer, and enforce chapter 15.66 RCW through this marketing order.

(4) The Washington state barley commission exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the commission is authorized to speak on behalf of Washington state government with regard to barley under the provisions of this marketing order.

NEW SECTION

WAC 16-530-006 Marketing order purposes. (1) Purposes. This marketing order for barley 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 consumption of barley in Washington state. The Washington state barley commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(a) To establish plans and conduct programs for marketing, education, and sales promotion. The commission may also engage in cooperative efforts in the domestic or foreign marketing of barley food products.

(b) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, handling, transportation, and marketing of barley.

(c) To adopt rules in accordance with chapter 34.05 RCW to provide for improving standards and grades of barley by defining, establishing, and providing labeling requirements with respect to the same.

(d) To investigate and take necessary action to prevent unfair trade practices.

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

(f) To conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of barley.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) Barley-related education and training.

(2) 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 barley.

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

AMENDATORY SECTION (Amending Order 1857, filed 5/22/85, effective 7/1/85)

WAC 16-530-010 Definition of terms. (~~As used in this marketing order, the following terms shall have the following meanings:-~~) 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 barley marketing order, the following additional definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or (~~the director's duly appointed representatives~~) any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(2) "Act" means the Washington (~~Agriculture Enabling~~) State Agricultural Commodity Commissions Act (~~(of 1955 or)~~), chapter 15.66 RCW.

(3) "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 government.

(4) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, barley grown in the designated affected area of the state of Washington. "To produce" means to act as a producer. For the purposes of the barley marketing order, "producer" shall include persons who contract to produce or grow any agricultural product on behalf of another person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(5) "Affected producer" means any producer who is subject to this marketing order.

(6) "Commercial quantities" shall mean and include twenty tons produced for market in any calendar year by any producer.

~~((6))~~ (7) "Barley" means and includes all kinds and varieties of barley grown in the state of Washington.

~~((7))~~ (8) "Barley commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-530-020 of this marketing order.

~~((8) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, the following year, both dates inclusive:-)~~

(9) "Marketing year" refers to the twelve-month period beginning June 1 of any year and ending on May 31. "Fiscal year" refers to the twelve-month period beginning July 1 of any year and ending on June 30.

(10) "Handler" means any person (~~engaged in the business of handling, selling, processing, storing, shipping, or distributing barley which he/she has purchased or acquired from a producer, or which he/she is shipping for or on behalf of a producer, and shall include any lending agency for a commodity credit corporation loan~~

to producers)) who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of barley that is 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.

~~((i0))~~ (11) "Commercial channels" means the sale of barley for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any barley, or products produced from barley.

~~((ii))~~ (12) "Affected area" shall mean and include the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

AMENDATORY SECTION (Amending Order 1857, filed 5/22/85, effective 7/1/85)

WAC 16-530-020 Barley commission. (1) Establishment and membership. A barley commission is hereby established to administer this marketing order and shall be composed of five members who shall be affected producers (~~(elected)~~) appointed by the director as provided in this section and two members who shall be appointed by the (~~elected producer~~) commission members. In addition, the director shall be (~~an ex officio~~) a voting member of the commission.

(2) Representative districts. The affected area shall be divided into the five following districts:

(a) District I shall have one commission member, and shall include the counties of Chelan, Douglas, Ferry, Grant, Okanogan, Spokane, Stevens, and Pend Oreille.

(b) District II shall have one commission member, and shall include Whitman county.

(c) District III shall have one commission member, and shall include the counties of Asotin, Benton, Columbia, Garfield, and Walla Walla.

(d) District IV shall have one commission member, and shall include the counties of Adams, Franklin, Kittitas, Klickitat, and Yakima.

(e) District V shall have one commission member, and shall include Lincoln county.

~~((Each district shall nominate one or more nominees, but elect one commission member only.))~~ Producer positions appointed by the director shall be numbered one through five. Positions appointed by the commission members shall be numbered six and seven. The director's position shall be position eight.

(g) Nomination and appointment of director-appointed

commission members shall be as set forth in chapter 15.66 RCW and specified by the director.

(3) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of (~~twenty-five~~) eighteen years. Producer members of the commission shall be producers of barley in the district in and for which they are nominated and (~~elected~~) appointed. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(4) Term of office (~~(--Initial commission)~~).

(a) The term of office of commission members shall be three years from the date of their (~~(election)~~) appointment and until their successors are (~~(elected and qualified)~~) appointed. The terms of office for the initial commission members shall be as follows:

District I shall terminate December 31, 1986.

Districts II and III shall terminate December 31, 1987.

Districts IV and V shall terminate December 31, 1988.

One appointed member's term shall terminate December 31, 1986.

The second appointed member's term shall terminate December 31, 1988.

The appointed members of the initial commission shall be elected by a majority of the elected commissioners on or before the adjournment of its third meeting.

(b) Within thirty days of the effective date of this amended marketing order, the names of the currently elected board members shall be forwarded to the director for appointment to the commission.

(5) Nomination and (~~(election)~~) appointment of commission members.

(a) Nomination and (~~(election)~~) appointment of director-appointed commission members shall be as set forth in (~~(the act)~~) chapter 15.66 RCW and specified by the director. Dates will be set as follows:

(i) Nominating petitions for director-appointed positions shall be mailed not earlier than September 17 and not later than October 2 of each year in the district wherein (~~(a vacancy)~~) an open commission position(s) will occur. Nominating petitions shall be signed by not less than five affected producers of the district from which such a candidate will be (~~(elected)~~) appointed.

(ii) Final date for filing of nominating petitions for director-appointed positions to the director shall not be earlier than October 8 and not later than October 13 of each year.

(iii) Ballots for an advisory vote will be mailed to all producers in the district wherein (~~(a vacancy)~~) an open commission position(s) will occur, not earlier than October 18 and not later than November 2 of each year.

(iv) Ballots for an advisory vote shall be returned not later than December 2 of such year. An affected producer is entitled to one vote.

(v) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

~~(b) ((With respect to the initial barley commission, the director shall call for nominations and elections as soon as practical after passage of the referendum. The ballot for the election of commissioners shall be secret.~~

~~(c) When only one nominee is nominated for any position on the board, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.)) Except with respect to the initial barley commission, the members of the commission not elected by the producers or appointed by the director shall be appointed by a majority of the commission within ninety days prior to the expiration of the term.~~

~~(6) Vacancies. ((In the event of a vacancy in an elected or appointed position on the commission, the remaining elected members of the commission shall select a qualified person to fill the unexpired term, at its first meeting after the occurrence of the vacancy.))~~

~~(a) In the event of a vacancy in a commission-appointed position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission'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 chapter 15.66 RCW.~~

~~(7) Powers and duties of commission. The commission shall have the following powers and duties:~~

~~(a) To elect a chairman and such other officers as determined advisable.~~

~~(b) To adopt, rescind and amend rules ((and regulations)) reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order.~~

~~(c) To administer, enforce, direct, and control the provisions of the marketing order and of this chapter relating thereto.~~

~~(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same.~~

~~(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same.~~

~~(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order.~~

~~(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by legal agencies of the state and make annual reports therefrom to the state auditor.~~

~~(h) Borrow money and incur indebtedness.~~

~~(i) Make necessary disbursements for routine operating expenses.~~

~~(j) Such other powers and duties that are necessary to carry~~

out the purposes of this chapter.

(k) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with, and to effectuate the purposes of the act, and this marketing order.

(l) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least thirty 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.

(m) To accept and receive gifts and grants from private persons or private and public agencies and expend same.

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

(o) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW.

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

(q) 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 the attorney general.

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

(s) 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 barley including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(t) 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 15.66.140.

(u) To maintain a list of names and addresses of persons who handle barley within the affected area and data on the amount and value of the barley handled for a minimum three-year period by each person pursuant to RCW 15.66.140.

(v) To maintain a list of names and addresses of all affected persons who produce barley and the amount, by unit, of barley produced during the past three years pursuant to RCW 15.66.143.

(w) To maintain a list of all persons who handle barley and the amount of barley handled by each person during the past three years pursuant to RCW 15.66.143.

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

(y) To request records and audit the records of producers or

handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid.

(z) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity.

(8) Procedure for commission.

(a) The commission shall, by resolution, establish a headquarters which shall continue as such unless and until so changed by the commission at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. 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.

(c) The commission shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the barley commission at least ten days prior to the meeting, through the regular news media.

(d) The commission shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: Provided, (~~however,~~) That the notice to a member of any special meeting may be waived by a waiver (~~thereof signed by each~~) from that member (~~thereof~~) of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

(e) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(f) A quorum of the commission shall consist of at least five members.

(g) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall receive an amount not to exceed the amount specified in RCW (~~15.66.130~~) 43.03.230 as it exists now or as hereafter amended, for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses allowed by (~~law to state employees~~) RCW 43.03.050 and 43.03.060. The commission may adopt by resolution provisions for reimbursement of actual expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

WAC 16-530-040 Assessments and collection. (1) Assessments.

The assessment on barley shall be one percent of the net receipts at the first point of sale. The assessment shall be levied and paid by the producer, or deducted, as provided in this section, whether the barley is sold in this or any other state.

(2) Collection of assessments. The collection of the assessment made and levied by the barley commission, pursuant to the provisions of the act, shall be paid by the producer (~~thereof~~) upon all commercial quantities of barley sold, under any or all of the methods of collection set forth in RCW 15.66.150, in accordance with rules (~~and regulations~~) to be (~~promulgated~~) adopted by the barley commission: Provided, (~~however,~~) That no assessment shall be levied or collected on barley grown and used by the producer for feed, seed, or personal consumption.

(3) Funds. All moneys collected by the barley commission shall be used 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 the barley marketing order.

At the end of each fiscal year, the commission shall credit each producer with any amount paid by (~~such~~) the producer in excess of the assessment rate. Refund may be made only upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-530-030 Marketing order purposes.