



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: WA Department of Agriculture	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: January 6, 1999	<input type="checkbox"/> Emergency Rule
	<input type="checkbox"/> Expedited Adoption
	<input type="checkbox"/> Expedited Repeal

(2) Purpose: Establish an agricultural commodity commission to represent turfgrass seed growers in eastern Washington. The commission will have authority to collect assessments on turfgrass seed at the first point of sale to fund programs for (1) research in the production, processing or distribution of turfgrass seed, (2) provide for collection and dissemination of information pertaining to turfgrass seed and (3) establish and conduct programs to develop markets for turfgrass seed by-products.

(3) Citation of existing rules affected by this order: New chapter 16-545 WAC
 Repealed: none
 Amended: none
 Suspended: none

(4) Statutory authority for adoption: 15.65.050 RCW
 Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
 Adopted under notice filed as WSR 98-19-118 on Sept. 23, 1998 (date).
 Describe any changes other than editing from proposed to adopted version: WAC 16-545-010(9); fine fescue changed to hard fescue to clarify definition of turfgrass seed. WAC 16-545-020(2)(ii); the words "value of" added for clarification of board membership. WAC 16-545-020(11)(g); frequency of audit changed from annually to every 5 years.

EMERGENCY RULE ONLY
 Under RCW 34.05.350 the agency for good cause finds:
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

 Reasons for this finding:

EXPEDITED REPEAL ONLY
 Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
 Yes No If Yes, explain:

(6) Effective date of rule:

Permanent Rules or Expedited Repeal	Emergency Rules
<input checked="" type="checkbox"/> 31 days after filing	<input type="checkbox"/> Immediately
<input type="checkbox"/> Other (specify) _____ *	<input type="checkbox"/> Later (specify)

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

Name (Type or Print)
 Jim Jesernig

Signature

Title
 Director

Date
 January 6, 1999

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
 STATE OF WASHINGTON
 FILED

JAN 6 1999

TIME 10:58 AM

99-02-064

**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	Amended	Repealed

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

New	<u>8</u>	Amended	Repealed
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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>8</u>	Amended	Repealed



Chapter 16-545 WAC
Turfgrass Seed Commission

NEW SECTION

WAC 16-545-010 Definitions of terms. For the purpose of this marketing order:

(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 or chapter 15.65 RCW.

(4) "Person" means any person, firm, association or corporation.

(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.

(8) "Turfgrass seed commodity board" referred to as "board" 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.

(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.

NEW SECTION

WAC 16-545-015 Turfgrass seed districts. (1) District 1 consists of Chelan, Douglas, Ferry, Okanogan, Pend Orielle, Spokane and Stevens counties.

(2) District 2 consists of Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.

(3) District 3 consists of Adams, Franklin, Grant, and Lincoln counties.

(4) District 4 consists of Benton, Kittitas, Klickitat, and Yakima counties.

NEW SECTION

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 elected under provisions of this order. One member is an affected

handler appointed by the 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.

(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 elected producers.

(iv) Position seven is the member appointed by 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 elected and must be citizens and residents of the state of Washington, over the age of twenty-five years, each of whom is and has 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 years and who is and has 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 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 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) No member of the board can serve more than two full consecutive three-year terms.

(5) Nomination and election of board members.

(a) Each year the director shall call for nomination meetings in those districts whose board members term is about to expire. The meetings must be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every 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. Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting. 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) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy 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 elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

(6) **Election of board members.**

(a) Members of the board must be elected by secret mail ballot within the month of January under the supervision of the director. Affected producer 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) Notice of every election 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. At least ten days before every election 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. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications. Nonreceipt of a ballot by an affected producer will not invalidate the election 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.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

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

(10) **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.

(11) **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.

(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 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) **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).

(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.

NEW SECTION

WAC 16-545-030 Marketing order purposes. The order is to promote the general welfare of the state, to enable producers of turfgrass seed to help themselves establish orderly, fair, sound, efficient, unhampered marketing, grading and standardization of turfgrass seed. 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 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 therefor, 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.

NEW SECTION

WAC 16-545-040 Assessments and collections. (1) Assessments.

(a) The assessment on all varieties of turfgrass seed subject to this marketing order shall be 0.3 percent (three tenths of one percent) of the net receipts at the first point of sale and shall be deducted by the first purchaser from the price paid to the grower. The assessment shall be remitted to the commission board in accordance with procedures adopted by the commission board.

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

(2) **Collections.** Excess moneys collected by the board under the 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 affected 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 the 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 to defray the cost of enforcing the collecting the assessment. 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 thereon, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

NEW SECTION

WAC 16-545-041 Time--Place--Method for payment and collection of assessments. Effective with the growing season of 1999, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-545-040:

(1) All first handlers of turfgrass seed 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 turfgrass seed and transmit it to the commission.

(2) All assessments will be due and payable to the commission 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 commission on forms provided by or approved by the commission.

(3) Any assessments paid after the above deadlines shall be accompanied by an administrative fee of 10% in accordance with RCW 15.65.440 of the act.

NEW SECTION

WAC 16-545-050 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 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.

NEW SECTION

WAC 16-545-080 Separability. 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.