

WSR 25-01-162

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 18, 2024, 10:43 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-561 WAC, Washington red raspberry commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to a petition for rule making, the department of agriculture (department) is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Reasons Supporting Proposal: RCW 43.01.160 requires state agencies to use gender-neutral terms in rules unless a specification of gender is intended. Replacing gender-specific terminology supports the department's commitment to integrate inclusive policies and procedures.

Gender-inclusive pronouns are pronouns that are not specifically gendered and can be utilized when referring to each other in the third person. They are linguistic tools that we use to refer to people. Using gender-neutral pronouns can help create a more inclusive and welcoming environment and show respect for people's gender identities.

Statutory Authority for Adoption: RCW 43.23.025.

Statute Being Implemented: Chapter 15.65 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington red raspberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-1887; Implementation and Enforcement: Henry Bierlink, 204 Hawley Street, Lynden, 360-354-8767.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited process is appropriate due to it being name changes and no impact to rule effects.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Megan Finkenbinder, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone 360-902-1887, fax 360-902-2092, email mfinkenbinder@agr.wa.gov, BEGINNING January 2, 8:00 a.m., AND RECEIVED BY February 18, 11:59 p.m.

December 18, 2024
Derek I. Sandison
Director

OTS-6048.1

AMENDATORY SECTION (Amending WSR 18-15-009, filed 7/6/18, effective 8/6/18)

WAC 16-561-010 Definitions. 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.

"Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

"Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors. "To produce" means to act as a producer.

"Affected unit" means one pound net of raspberries.

"Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

"Department" means the department of agriculture of the state of Washington.

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

"Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by ~~((him or her))~~ them. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

"Harvest season" means that period from May 1st to September 15th of each year.

"Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment and normal incidental expenses at meetings or gatherings.

"Marketing season" or "fiscal year" means the ~~((twelve))~~ 12-month period beginning with January 1st of any year and ending with the last day of December following, both dates being inclusive.

"Person" means 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-handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer-handler shall be deemed to be a producer with respect to the raspberries which ~~((he or she))~~ they produce ~~((s))~~ and a handler with respect to the raspberries which ~~((he or she))~~ they handle ~~((s))~~, including those produced by ~~((himself or herself))~~ themselves.

"Promotional hosting" as used in these rules means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations, promoting sales of red raspberries, developing industry unity, and furthering the objectives of the commission.

"Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

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

"Washington red raspberry commission," hereinafter referred to as "board," "commission," or "WRRC" means the commodity board formed under the provisions of WAC 16-561-020.

AMENDATORY SECTION (Amending WSR 18-15-009, filed 7/6/18, effective 8/6/18)

WAC 16-561-020 Red raspberry commodity board. (1) **Administration.** The provisions of this order and the applicable provisions of chapter 15.65 RCW shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of seven voting members. Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the director. The position representing the director shall be a voting member.

(b) Director-appointed producer positions on the board shall be designated as position 1, position 5, and position 6.

(c) Elected producer positions on the board shall be designated as position 2, position 3, and position 4.

(d) The position representing the director who is neither an affected producer nor a handler shall be designated as position 7.

(e) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be that portion of the state of Washington located west of the summit of the Cascade Mountains and shall be divided into two representative districts as follows:

(i) District I shall have three board members, being positions 1, 2, and 3, and shall include the counties of Whatcom, Skagit, Snohomish, and King.

(ii) District II shall have one board member, being position 4, and shall include all western Washington counties not included in District I.

(iii) Positions 5 and 6 are designated as at-large position and may be filled from any western Washington county. The positions are filled in accordance with RCW 15.65.250.

(f) The voting board may also appoint up to two additional non-voting members to serve in an advisory capacity from among the crop advisors, handlers or others with expertise in the red raspberry industry. The voting members of the board will make these appointments at the first meeting of the calendar year. Advisory board member appointments are for a one-year period. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(3) **Board membership qualifications.** The producer members of the board must be practical producers of raspberries and each shall be a resident of this state, and over the age of (~~eighteen~~) 18 years. Each producer board member must be and have been actually engaged in producing raspberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of (~~his or her~~) their income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of appointment or election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) **Term of office.**

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year. Terms shall expire on November 30th.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six and the member representing the director, position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - One year;

Positions three, four, five, and nine - Two years;

Positions six, seven, eight, ten, and eleven - Three years.

(d) To accomplish the transition to the newly defined districts and areas and to a commodity board structure where the director appoints a majority of the voting board members, the initial producer appointments are as follows:

(i) The current incumbent representing position 6 will be appointed to the new position 1 with an expiration date of November 30, 2015;

(ii) The current incumbent representing position 8 will be appointed to the new position 2 with an expiration date of November 30, 2016;

(iii) The current incumbent representing position 3 will be appointed to the new position 3 with an expiration date of November 30, 2014;

(iv) The current incumbent representing position 5 will be appointed to the new position 4 with an expiration date of November 30, 2014;

(v) The current incumbent representing position 9 will be appointed to the new position 5 with an expiration date of November 30, 2015;

(vi) The current incumbent representing position 10 will be appointed to the new position 6 with an expiration date of November 30, 2016.

Any remaining board members not appointed to a new position will serve out the remainder of their existing term.

(e) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms. Any previous board member may be reelected to a qualified position after such term limits if at least one full three-year period has passed since the last date of the second consecutive term in office.

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

Each year the director shall call a nomination meeting for elected or director-appointed producer board members. The meeting(s) shall be held at least (~~thirty~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of a nomination meeting shall be published in a newspaper of general circulation within the affected area not less than (~~ten~~) 10 days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by not less than five affected producers.

(6) Election or advisory vote of board members.

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of October. Each affected producer shall be entitled to one vote.

(b) Elected members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area.

(c) If a nominee for an elected position does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(d) An advisory vote shall be conducted for producer board members appointed by the director under the provisions 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, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(e) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected area not less than (~~ten~~) 10 days in advance of the date of the election. Not less than (~~ten~~) 10 days prior to 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 on the list of affected producers within the affected area maintained by the 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 (~~his or her~~) their qualifications.

(f) Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(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 board's first or second meeting after the position becomes vacant.

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

(8) **Quorum.** A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each voting and advisory board member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. 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.

(10) **Procedures for board.**

(a) The board shall hold regular meetings, at least four times annually, and such meetings shall be 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 of the regular

meeting schedule shall be published in the *Washington State Register* at least (~~twenty~~) 20 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 budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least (~~ten~~) 10 days prior to the meeting by written notice to each producer and by regular news service.

(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: Provided, that the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice of special meetings will be in compliance with chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 18-15-009, filed 7/6/18, effective 8/6/18)

WAC 16-561-035 Powers and duties of the board. The board shall have the following powers and duties to:

(1) Administer, enforce, and control the provisions of this order as the designee of the director.

(2) Elect a chairman and such other officers as the board deems advisable.

(3) Employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of chapter 15.65 RCW.

(4) 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. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(5) Reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(6) Establish a "raspberry board marketing revolving fund" and such fund to be deposited 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 shall be deposited as often as advisable.

(7) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within (~~thirty~~) 30 days after the completion thereof to the governor, the director, the state auditor, and the board.

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

(9) 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 (~~fifteen~~) 15 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.

(10) Establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(11) Adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(12) Carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of chapters 16-561 WAC and 15.65 RCW, along with the necessary authority and procedure for obtaining such information.

(13) 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 upon (~~him~~) them by chapter 15.65 RCW or 16-561 WAC.

(14) 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.

(15) Authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.

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

(17) Enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.26 RCW.

(18) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(19) Enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of red raspberries.

(20) 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.

(21) Engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(22) 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 red raspberries, including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(23) 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 units of each producer's production pursuant to RCW 15.65.295. This

list may be compiled from information used to collect producer assessments for a three-year period.

(24) Maintain a list of the names and addresses of persons who handle red raspberries within the affected area and data on the amount of the red raspberries handled by each person pursuant to RCW 15.65.295 for a minimum three-year period.

(25) Establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(26) Acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to red raspberries.

(27) Submit for review and approval by the director of any new or amended marketing, including for the purposes required under RCW 15.65.287.

(28) Carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

AMENDATORY SECTION (Amending WSR 18-15-009, filed 7/6/18, effective 8/6/18)

WAC 16-561-041 Time—Place—Method for payment and collection of assessments. Effective with the growing season of 1977, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-561-040:

(1) All first handlers of raspberries for resale or for processing shall withhold the amount of the assessment from their remittance to growers and transmit same to the commission. Where the first handler does not remit proceeds to the producer, the first handler shall include in (~~his~~) their bill for services the assessment due and upon payment by the producer shall remit same to the commission. All such assessments accumulated will be due and payable to the commission in four installments payable December 1st of the current calendar year, followed by February 1st, April 1st, and concluding June 1st of the following calendar year. First handlers shall submit to the commission on or before October 1st of each year, a report listing the name, address, pounds handled or purchased, and amount deducted or collected for each producer on forms provided by the commission.

(2) All growers selling raspberries other than to first handlers for resale or processing, whether selling direct or through brokers, and including all sales at retail, shall submit to the commission on or before October 1st of each year, a report listing the pounds produced in the current harvest season on forms provided by the commission, and shall pay the assessment directly to the commission in four installments payable December 1st of the current year, followed by February 1st, April 1st, and concluding June 1st of the following calendar year.

(3) All growers having raspberries in cold storage that are not sold on September 15th of each year, shall compute the assessment due on such berries and pay same to the commission by September 30th of each year.

(4) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of (~~ten~~) 10 percent as provided in RCW 15.65.440.