

WSR 25-03-141

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 22, 2025, 11:34 a.m., effective February 22, 2025]

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 16-540-010 and 16-540-020.

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, and 16.67.060.

Other Authority: RCW 43.01.160 and 43.23.025.

Adopted under notice filed as WSR 24-23-089 on November 19, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 22, 2025.

Derek I. Sandison
Director

OTS-5972.1

AMENDATORY SECTION (Amending WSR 17-05-034, filed 2/8/17, effective 3/11/17)

WAC 16-540-010 Definitions. 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 shall apply:

"Act" means the Washington State Agricultural Commodity Boards Act or chapter 15.65 RCW.

"Affected area" means the state of Washington.

"Affected handler" means any person who acts as principal or agent or otherwise in buying, selling, marketing or distributing mint oils produced from mint plants not grown by ((him/her)) them. Affected handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

"Affected producer" or "producer" means any person who produces, or causes to be produced in commercial quantities, in the state of

Washington, any variety of mint plant from which the essential oil is distilled or extracted. "To produce" means to act as a producer. For the purposes of the mint 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 essential oil and its resulting agricultural product or the agricultural product delivered for further production or increase.

"Affected unit" means one pound of mint oil as distilled from mint plants grown by an affected producer.

"Commercial quantity" means all of the mint plants produced in any calendar year by any producer, from which the essential oil is distilled or extracted.

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

"Director" means the director of agriculture of the state of Washington or ((his/her)) the director's duly appointed representative.

"Disclosure" means inspection or copying.

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

"Mint commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under WAC 16-540-020.

"Mint oil" means essential oil that is distilled from any variety of mint plant.

"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 government.

"Producer-handler" means any person who acts both as a "producer" and as a "handler" with respect to mint oil. A producer-handler shall be deemed to be a producer with respect to the mint plants and/or oil which ((he/she produces)) they produce, and a handler with respect to the mint oil which ((he/she handles)) they handle, including those produced by ((himself/herself)) themselves.

"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 department regardless of physical form or characteristics.

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

AMENDATORY SECTION (Amending WSR 19-12-103, filed 6/5/19, effective 7/6/19)

WAC 16-540-020 The mint commodity board. (1) Administration.

The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership.

(a) The board shall consist of eight members. Seven members shall be affected producers appointed or elected as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the

director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as position 1, position 2, position 6, and position 7.

(ii) Elected affected producer positions on the board shall be designated as position 3, position 4, and position 5.

(iii) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

(b) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into two representative districts as follows:

(i) District I shall have four board members, being positions 1, 2, 3 and 4 and shall include the counties of Kittitas, Yakima and Benton.

(ii) District II shall have three board members, being positions 5, 6 and 7 and shall include all other counties located in the state of Washington.

(3) Board membership qualifications.

(a) The affected producer members of the board must be practical producers of mint plants in the district in and for which they are nominated and appointed or elected and each shall be a citizen and resident of the state of Washington, over the age of (~~eighteen~~) 18 years. Each affected producer board member must be and have been actually engaged in producing mint plants within the state of Washington for a period of five years and has during that time derived a substantial portion of (~~his/her~~) their income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) 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 shall be three years, and one-third of the membership as nearly as possible shall be appointed or elected each year.

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

Positions one and two - One year

Positions three, four and eight - Two years

Positions five, six and seven - Three years

(c) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms.

(d) 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 one, two, six and seven shall be forwarded to the director for appointment within (~~thirty~~) 30 days of the effective date of this amended marketing order.

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

(a) For the purpose of nominating candidates for appointment or election to board membership the director shall call separate meetings of affected producers.

(b) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer board members in those districts whose board members' term are about to expire. The

meeting 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.

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

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

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

(f) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(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 June. Each affected producer shall be entitled to one vote.

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

(c) An advisory vote shall be conducted for affected 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.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than (~~(ten)~~) 10 days in advance of the date of the election or advisory vote. 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 upon the list of such affected producers 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/her)~~) their qualifications.

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

(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 position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the 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 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) **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 such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such 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 carry out 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. 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.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order.

(f) To establish a "mint board 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, except as the amount of petty cash for each day's needs, not to exceed (~~one hundred dollars~~) \$100, 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 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 of the commission. 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.

(h) To 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.

(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~~) 60 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 as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such 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 upon (~~him~~) them by the act or order.

(n) To 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.

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

(p) 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.

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

(r) To enter into contract or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of mint.

(s) 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.

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

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

(v) 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 affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle mint within the affected area and data on the amount and value of the mint handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

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

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

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

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

(11) **Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the 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 to the meeting schedule shall be published in the 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 proposed 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 through regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings 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 for special meetings shall be in compliance with chapter 42.30 RCW.