

WSR 21-03-088

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed January 20, 2021, 7:57 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-622 WAC, Agriculture marketing and fair practices, the department is proposing amendments to the rule to align with recent changes to chapter 15.83 RCW. These changes include: (1) Expanding the list of agricultural products regulated under the chapter to include pears; and (2) adding provisions for recouping the costs associated with administering the accreditation process and defending decisions related to appeals.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Agricultural Marketing and Fair Practices Act, chapter 15.83 RCW, was passed by the legislature in 1989. The intent of the act was that a workable process be developed through which a fair price and other contract terms could be arrived at through negotiations between processors and an accredited association of producers. The act only pertained to sweet corn and potatoes.

During the 2020 legislative session, HB 2524 (chapter 176, Laws of 2020) was passed, adding pears to the list of agricultural products.

In addition to adding pears to the list of agricultural products covered under the act, the legislation also added a provision that an association of producers requesting accreditation must agree to reimburse the department for all anticipated and uncovered costs that the department may incur when carrying out the provisions of the chapter.

Chapter 16-622 WAC was adopted in 1990 to implement the act. The rule as currently written does not include pears. The program is proposing to use the expedited rule-making process to amend the rule in order to reflect the recent legislative changes. The amendments include adding pears to the list of agricultural products and adding a provision regarding reimbursing the department for costs associated with carrying out the accreditation process and defending a decision made by the department if it is appealed. The proposed amendments would align chapter 16-622 WAC with changes made to chapter 15.83 RCW. The proposed changes go no further than ensuring the agency is implementing regulations that are consistent with the updated statute.

Reasons Supporting Proposal: Proposed changes to the rule bring the language in line with recently passed legislation.

Statutory Authority for Adoption: RCW 15.83.100; chapter 176, Laws of 2020.

Statute Being Implemented: Chapter 15.83 RCW; chapter 176, Laws of 2020.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Ditter, 21 North First Avenue, Suite 110, Yakima, WA 98902, 509-249-6961.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master

programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments would align chapter 16-622 WAC with changes made to chapter 15.83 RCW during the 2020 legislative session (HB 2524). The proposed changes go no further than ensuring the agency is implementing regulations that are consistent with the updated statute. All other changes clarify the rule language without changing the effect and qualify for expedited rule making under RCW 34.05.353 (1) (c).

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 Gloriann Robinson, Agency Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, phone 360-902-1806, fax 360-902-2092, email wsdarulescomments@agr.wa.gov, AND RECEIVED BY March 22, 2021.

January 20, 2021
Brad White
Assistant Director

OTS-2879.1

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-001 Purpose. The department of agriculture promulgates this chapter to implement the provisions of the Agricultural Marketing and Fair Practices Act, chapter 15.83 RCW (~~((chapter 355, Laws of 1989))~~). The purpose of this act is to establish standards of fair practices required of handlers, producers, and association of producers dealing in sweet corn (~~(and)~~), potatoes, or pears and to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-001, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-005 Definitions. (~~((Unless the context clearly requires otherwise,))~~) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiating agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means pears, sweet corn, and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the Federal Agriculture Marketing Act of 1929 or in section 1 of 42 Stat. 388.

(5) "Department" means the department of agriculture of the state of Washington.

(6) "Director" means the director of the department of agriculture or duly authorized representative.

(7) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(8) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date for sweet corn and potatoes, or at least sixty days before the normal harvest date for pears, and concluding within thirty days (~~(prior to)~~) of the normal planting date for sweet corn and potatoes, or within thirty days of the normal harvest date for pears, to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: Provided, That neither party shall be required to disclose proprietary business or financial records or information.

(9) "Negotiating unit" means a negotiating unit approved by the director under the provisions of this chapter and shall include all members of an accredited association of producers supplying qualified commodities to a single processing facility.

(10) "Person" means an individual, partnership, corporation, association, or any other entity.

(11) "Processing facility" means a facility operated by a processor at a single location where qualified commodities purchased from producers are canned, frozen, dried, dehydrated, cooked, pressed, powdered, or otherwise processed in a manner for eventual resale.

(12) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

~~((12))~~ (13) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

~~((13))~~ (14) "Qualified commodity" means agricultural products as defined in subsection (3) of this section.

~~((14) "Processing facility" means a facility operated by a processor at a single location where qualified commodities purchased from producers are canned, frozen, dried, dehydrated, cooked, pressed, powdered, or otherwise processed in a manner for eventual resale.)~~

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-005, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-010 Application for accreditation of an association of producers. An association of producers requesting accreditation to serve as the exclusive negotiating agent on behalf of its members who are within a proposed negotiating unit with respect to any qualified commodity shall file with the director an application to accredit a negotiating unit containing the following information:

(1) The name and address of the processing facility for which accreditation of a negotiating unit is being requested ~~((-))~~ ;

(2) A description of the geographical boundaries of the proposed negotiating unit, stated in terms of the number of miles, from the processing facility in each direction of the most distant producer in the proposed unit ~~((-))~~ ;

(3) A list of the names of producers who are members of the proposed negotiating unit and the total number of acres of qualified commodities contracted for delivery by those producers to the processing facility for each of the previous two years ~~((-))~~ ;

(4) The total number of members of the association of producers proposing the negotiating unit, a list of the counties in which those members reside, and the total number of acres of qualified commodities the association of producers had contracts to represent on behalf of its producer members for the previous growing season; and

(5) A statement expressing their agreement to reimburse the department for all anticipated and uncovered costs incurred by the de-

partment for actions necessary to carry out the provisions of this chapter and chapter 15.83 RCW.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-010, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-015 Accreditation file. (1) Both the association of producers requesting accreditation of a negotiating unit and the person operating the processing facility for which the negotiating unit is being proposed shall create and maintain in their possession an accreditation file for the purpose of allowing the director to determine if the association of producers has met the requirements for the accreditation of the negotiating unit. The file shall be available to the department during normal working hours with reasonable advance notice.

(2) Documents contained in the file shall become a permanent part of the file and shall be serially numbered and indexed to assure the integrity of the file. Copies of original documents may be placed in the file or new documents may be created to satisfy the requirements of this chapter.

(3) The director may examine other records as necessary to confirm the validity of the information contained in the accreditation file.

(4) The accreditation files shall be maintained at the principal business address of the association of producers and the person operating the processing facility. In the case where the principal business address of the person operating a processing facility is located outside of the state of Washington, the accreditation file shall be maintained at the processing facility or at some other location within the state of Washington as approved by the director.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-015, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-025 Accreditation file—Processor. The processor shall create and maintain an accreditation file for each processing facility where a negotiating unit is being proposed by an association of producers, which shall include the following:

(1) A list of the names of producers for each facility with whom the processor had an advance contract for qualified commodities for each of the previous two growing seasons;

(2) The total number of acres of qualified commodities the processing facility had contracted to receive the production from under the provisions of advance contracts for each of the previous two growing seasons ~~((-))~~; and

(3) A copy of the contract between the processor and producer supplying the affected commodities.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-025, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-030 Accreditation procedure. (1) The director shall, upon receipt of an application for accreditation of a negotiating unit, promptly notify in writing the processor who operates the processing facility. The director shall schedule a time to examine the accreditation files of both the association of producers and the processor operating the processing facility. This examination shall not occur prior to five working days following the receipt of the notice to the processor of the application for accreditation of the negotiating unit.

(2) The director shall issue a report of findings resulting from the examination of the accreditation files of both parties which shall include:

~~((1))~~ (a) Whether the association of producers is owned and controlled by producers and that one of its functions is to act as principal or agent for its members in negotiations with processors;

~~((2))~~ (b) Whether the association of producers has valid and binding contracts with its members who are part of the proposed negotiating unit;

~~((3))~~ (c) Whether the members of the proposed negotiating unit represent more than fifty percent of the total average number of producers of record at the processing facility with advance contracts for the previous two growing seasons, or whether the number of acres of qualified commodities produced by members of the proposed negotiating unit, who were producers of records at the processing facility, represents more than fifty percent of the total average number of acres of qualified commodity obtained through advance contracts for the previous two growing seasons; and

(d) Sufficient resources, including public funds and any funds to be provided by the applicant under reimbursement agreements, will be available to cover department costs for services provided by the department in carrying out the provisions of this chapter, including department costs to defend a decision made by the department under this chapter and chapter 15.83 RCW if such a decision is appealed.

(3) If the director's findings regarding subsection ~~((1), (2), and (3) above)~~ (2) of this section are that the association meets the criteria for accreditation, a notice of accreditation of the negotiating unit will be issued to both parties. If the findings regarding ~~((any of the subsections above is))~~ subsection (2) of this section are that the association fails to meet any of the criteria for accreditation, a notice citing the specific deficiency will be issued to both parties pending the filing of an amended application in a timely manner.

(4) The director shall not accredit more than one ~~((bargaining))~~ negotiating unit for each processing facility. Should more than one proposed ~~((bargaining))~~ negotiating unit meet the criteria for accreditation, the director shall accredit the proposed negotiating unit

that would function as the most effective agent for producers in negotiating with the processor. The director, when considering the accreditation of proposed negotiating units, shall consider the ratio of the number of producers to acres previously contracted by those producers, with substantial weight given to the number of acres contracted.

(5) The department shall provide the association of producers an estimate of expenses that may be incurred prior to the department's provision of services.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-030, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-045 Hearings. A hearing, conducted under the provisions of chapter 34.05 RCW, to determine whether alleged violations of RCW 15.83.030 or 15.83.040 have occurred may be held concurrently with the hearing for civil penalty under (~~section (9) of the act~~) RCW 15.83.080.

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-045, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 92-07-030, filed 3/10/92, effective 4/10/92)

WAC 16-622-050 Negotiating period. The negotiating period provided in RCW 15.83.010 shall commence each year on January 15th for potatoes and sweet corn and June 1st for pears. Negotiations may begin at any time prior to this date and may continue past the date which is (~~forty five~~) thirty days following this date by mutual consent of the affected parties. Contracts which are agreed to during this mutual consent period will be considered advance contracts.

[Statutory Authority: RCW 15.83.100. WSR 92-07-030, § 16-622-050, filed 3/10/92, effective 4/10/92. Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-050, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-055 Deadline for application for or review of negotiating unit accreditation. Applications for accreditation of a negotiating unit or petitions by affected parties for renewal of an existing negotiating unit shall be received by the director by September 1st of each year to allow sufficient time to determine if the criteria for accreditation has been met. Applications or petitions received after that date will be considered for the next succeeding negotiating period. (~~Applications for accreditation of negotiating units for the 1990 growing season will be accepted until January 10, 1990.~~)

[Statutory Authority: RCW 15.83.020. WSR 90-08-069, § 16-622-055, filed 4/2/90, effective 5/3/90.]

AMENDATORY SECTION (Amending WSR 92-07-030, filed 3/10/92, effective 4/10/92)

WAC 16-622-060 Report of negotiating session. (1) Each accredited association of producers and handler shall, within a reasonable time following a negotiating session, place a copy of a summary of the discussions into their respective accreditation file maintained for that negotiating unit. For the purposes of this section, a negotiating session is a meeting of the parties at which pertinent information is exchanged. Each summary shall accurately reflect the substance of discussions and the points raised by either side. Each summary shall be signed by an authorized representative of the association of producers or handler which prepared it. Each summary shall contain the last offer of contract terms placed on the table during that negotiating session. Either party may place supplementary materials regarding the negotiation into their file.

(2) At the conclusion of the forty-five day negotiating period which is thirty days prior to the normal planting date for sweet corn and potatoes or sixty days prior to the normal harvest date for pears, each of the parties to a negotiation shall place, in their respective accreditation file for that negotiating unit, a report summarizing the negotiations and indicating whether an agreement was reached.

[Statutory Authority: RCW 15.83.100. WSR 92-07-030, § 16-622-060, filed 3/10/92, effective 4/10/92.]