

## WSR 23-09-076

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed April 19, 2023, 11:02 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Washington turfgrass seed commission, chapter 16-545 WAC. Specifically, WAC 16-545-015 Turfgrass seed districts and 16-545-020 Turfgrass seed board.

Hearing Location(s): On May 25, 2023, at 10:00 a.m., at Moses Lake Civic Center, Council Chambers, 401 South Balsam Street, Moses Lake, WA 98837.

Date of Intended Adoption: July 21, 2023.

Submit Written Comments to: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, email mfinkenbinder@agr.wa.gov, fax 360-902-2092, by May 25, 2023.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist, phone 360-902-1976, fax 360-902-2092, TTY 800-833-6388, by May 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to combine districts within the turfgrass seed commission marketing order due to the decreasing numbers of turfgrass seed growers and handlers in the state.

Reasons Supporting Proposal: These amendments will implement the petition received from the turfgrass seed commission in accordance with RCW 15.65.050. The commission is proposing to combine districts 1 and 2, and 3 and 4, reducing the total number of districts and allowing for a larger representation to identify qualified individuals for commission positions. This is due in part to the reduction in turfgrass seed growers and handlers and the continued challenges to find representation within a specific district.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules will not be adopted unless they are approved by referendum of affected producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington turfgrass seed commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, 360-902-1887; Implementation and Enforcement: Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA and the Washington turfgrass seed commission are not named agencies in RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

April 19, 2023  
Derek I. Sandison  
Director

**OTS-4465.1**

AMENDATORY SECTION (Amending WSR 16-19-046, filed 9/15/16, effective 10/16/16)

**WAC 16-545-015 Turfgrass seed districts.** (1) District 1 consists of Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Okanogan, Pend Oreille, Spokane, ((and)) Stevens, Walla Walla, and Whitman counties.

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

~~(3) District 3 consists~~) of Adams, Benton, Franklin, Grant, ((and)) Kittitas, Klickitat, Lincoln, and Yakima counties.

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

[Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-015, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-015, filed 1/6/99, effective 2/6/99.]

AMENDATORY SECTION (Amending WSR 18-13-015, filed 6/7/18, effective 7/8/18)

**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 voting members numbered positions one through seven.

(b) Except as otherwise provided by this chapter, each district has (~~one board member in positions one through four representing each of the numbered districts~~) the following positions represented:

District 1 - Positions one and two.

District 2 - Positions three and four.

(c) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

(d) Position six is a handler appointed by the appointed or elected producer members of the board.

(e) Position seven represents and is appointed by the director.

(3) **Board membership qualifications.**

(a) Positions one through five.

(i) Except as otherwise provided by this chapter, board members in positions one through five must be practical producers of turfgrass seed in the district in and for which they are nominated, appointed, or elected and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have 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.

(ii) If any district has fewer than three practical producers of turfgrass seed or if no nominations are made for a district, that district's position is deemed "at large" for that term of office and may be filled by a producer of turfgrass seed in another district who meets all membership qualifications. This provision does not apply to position five.

(b) The board member in position six must be a practical handler of turfgrass seed and must be a citizen and resident of the state, over the age of eighteen years. The handler board member must be and have 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 board member in position seven must be neither a producer nor a handler.

(d) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.** The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

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

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination 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 board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) 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.

(e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) 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 appointed

or elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

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

(b) Elected members of the board must 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 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) An advisory vote shall be conducted for producer board members appointed by the director under the provision 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, and 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 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 or advisory vote. At least ten days before 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 the 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 their qualifications.

(e) Nonreceipt of a ballot by an affected producer will 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 or commission-appointed 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 is a quorum for the transaction of all business and to execute the duties of the board.

(9) **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. 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 market-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 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. The board, at least sixty 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 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 for the operation of the board, 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.

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

(r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local.

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

(t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.

(u) 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 attorney general.

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

(w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(x) 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 15.65.280.

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

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

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

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

(11) **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). 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.

(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. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 18-13-015, § 16-545-020, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-020, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 04-22-073, § 16-545-020, filed 11/1/04, effective 12/2/04. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-020, filed 1/6/99, effective 2/6/99.]