

WSR 24-24-113

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 4, 2024, 11:19 a.m., effective January 4, 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 16-529-010, 16-529-040, 16-529-070, 16-529-110, and 16-529-140.

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, 16.67.060.

Other Authority: RCW 43.01.160, 43.23.025.

Adopted under notice filed as WSR 24-20-103 on September 30, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 5, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 4, 2024.

Derek I. Sandison
Director

OTS-5893.1

AMENDATORY SECTION (Amending WSR 17-05-035, filed 2/8/17, effective 3/11/17)

WAC 16-529-010 Definitions. Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

"Act" means the Washington state agricultural commodity boards or chapter 15.65 RCW.

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

"Affected handler" means any person who acts as principal or agent or otherwise in buying, selling, marketing, or distributing alfalfa seed not grown by (~~him or her~~) the affected handler.

"Affected producer" means any person who produces any variety of alfalfa seed in the state of Washington for market in commercial quan-

tities: Provided, That for the purpose of election and membership on the commodity board, a producer-handler shall be considered as acting only as a producer.

"Affected unit" means (~~one hundred~~) 100 weight (cwt) of cleaned alfalfa seed as sold by an affected producer to a handler or other producer.

"Alfalfa seed" means the seed that is harvested from any variety of alfalfa plants.

"Alfalfa seed commodity commission" hereinafter referred to as "commission" means the commodity commission formed under the provisions of WAC 16-529-020 through 16-529-120.

"Commercial quantity" means all alfalfa seed produced in any calendar year by any producer.

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

"Director" means the director of agriculture of the state of Washington or (~~his or 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 June 30th of the year 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 government.

"Producer-handler" means any person who acts both as a "producer" and as a "handler" with respect to the alfalfa seed which (~~he/she~~) they produce(~~s~~), and a handler with respect to the alfalfa seed which (~~he/she~~) they handle(~~s~~), including that produced by (~~himself/herself~~) themselves. "To produce" means to act as a producer. For the purposes of the alfalfa seed 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 seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

"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 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-040 Board membership qualifications. (1) The affected producer members of the board must be practical producers of alfalfa seed and each shall be a citizen and resident of this state, over the age of (~~eighteen~~) 18 years. Each affected producer board member must be and have been actually engaged in producing alfalfa seed 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.

(2) The affected handler member of the board must be a practical handler of alfalfa seed and shall be a citizen and resident of this state, over the age of ~~((eighteen))~~ 18 years. The affected 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 alfalfa seed within the state of Washington for a period of five years and has during that period derived a substantial portion of ~~((his/her))~~ their income therefrom.

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

(4) 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 2, 4, 6, and 7 shall be forwarded to the director for appointment within ~~((thirty))~~ 30 days of the effective date of this amended marketing order.

AMENDATORY SECTION (Amending WSR 23-01-056, filed 12/14/22, effective 7/1/23)

WAC 16-529-070 Election or advisory vote of board members. (1)

An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer and affected handler shall be entitled to one vote.

(2) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers statewide.

If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(3) An advisory vote shall be conducted for affected producer or affected handler 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.

(4) Not less than 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 and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers as maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing ~~((his/her))~~ their qualifications.

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

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-110 Powers and duties of the board. The board shall have the following powers and duties:

(1) To administer, enforce, and control the provisions of this chapter as the designee of the director.

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

(3) 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 this chapter and effectuate the declared policies of the act.

(4) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of this chapter. 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) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating this chapter.

(6) To establish an "alfalfa seed 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 days as advisable.

(7) 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.

(8) 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.

(9) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter 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.

(10) 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.

(11) To 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) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of this chapter and the act, along with the necessary authority and procedure for obtaining such information.
- (13) 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 this chapter.
- (14) 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.
- (15) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.
- (16) 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.
- (17) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.
- (18) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of alfalfa seed.
- (19) 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.
- (20) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.
- (21) 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 alfalfa seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.
- (22) 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.
- (23) To maintain a list of the names and addresses of persons who handle alfalfa seed within the affected area and data on the amount and value of the alfalfa seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.
- (24) To maintain a list of names and addresses of all affected persons who produce alfalfa seed and the amount, by unit, of alfalfa seed produced during the past three years pursuant to RCW 15.65.295.
- (25) To maintain a list of all persons who handle alfalfa seed and the amount of alfalfa seed handled by each person during the past three years pursuant to RCW 15.65.295.
- (26) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.
- (27) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

AMENDATORY SECTION (Amending WSR 23-01-056, filed 12/14/22, effective 7/1/23)

WAC 16-529-140 Assessments. (1) The fixed annual assessment on all varieties of alfalfa seed subject to this marketing order shall be 75 cents per hundredweight of cleaned seed, which shall be paid by the producer thereof upon each and every unit sold, marketed, or delivered for sale by ~~((him))~~ the producer.

(2) First handlers or purchasers shall collect assessments at time of payment for seed from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board.

Producers and producer-handlers who ship their alfalfa seed direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.