

WSR 24-24-115

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 4, 2024, 11:20 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 16-536-010, 16-536-020, and 16-536-040.

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 24-20-104 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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-5895.1

AMENDATORY SECTION (Amending WSR 16-15-004, filed 7/7/16, effective 8/7/16)

WAC 16-536-010 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:

"Act" means the Washington State Agricultural Commodity Boards Act, 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 processing, selling, marketing or distributing pulse crops 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.

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

"Affected unit" means (~~one hundred~~) 100 pounds of pulse crops.

"Chickpeas (garbanzo beans)" means all kinds and varieties of dry chickpeas grown in the state of Washington: Provided, That it shall not include dry chickpeas used by the producers thereof on (~~his or her~~) their premises for feed, seed, and personal consumption.

"Commercial quantity" means all the pulse crops produced for market 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.

"Dry peas" means all kinds and varieties of dry peas grown in the state of Washington, including commercially grown wrinkled peas raised for seed: Provided, That it shall not include dry peas used by the producer thereof on his or her premises for feed, seed, and personal consumption: Provided further, That the inclusion of commercially grown wrinkled peas raised for seed will not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

"Faba (fava) beans" means all kinds and varieties of dry faba beans grown in the state of Washington: Provided, That it shall not include faba beans used by the producers thereof on (~~his or her~~) their premises for feed, seed, and personal consumption.

"Lentils" means all kinds and varieties of lentils grown in the state of Washington: Provided, That it shall not include lentils used by the producers thereof on (~~his or her~~) their premises for feed, seed, and personal consumption.

"Lupine (lupin)" means all kinds and varieties of dry lupine grown in the state of Washington: Provided, That it shall not include lupine used by the producers thereof on (~~his or her~~) their premises for feed, seed, and personal consumption.

"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.

"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 pulse crops. A producer-handler shall be deemed to be a producer with respect to the pulse crops which (~~he or she~~) they produce(~~s~~), and a handler with respect to the pulse crops which (~~he or she~~) they handle(~~s~~), including those produced by (~~himself or herself~~) themselves. "To produce" means to act as a producer. For purposes of the pulse crops 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.

"Pulse crops" means the following commodities marketed in their "dry" condition: Dry peas, chickpeas/garbanzo beans, lentils, faba beans, and lupine as defined in this marketing order.

"Pulse crops commodity board" hereinafter referred to as "board" or "commission" means the dry pea and lentil commodity board formed under the provisions of WAC 16-536-020 and renamed the Washington pulse crops commission.

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

AMENDATORY SECTION (Amending WSR 21-15-117, filed 7/21/21, effective 8/21/21)

WAC 16-536-020 The pulse crops 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 (~~ten~~) 10 members. Eight members shall be affected producers appointed as provided in this marketing order. One member shall be an affected handler appointed 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.

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

(i) District I shall have three board members, being positions 1, 2 and 3 and shall include the county of Whitman.

(ii) District II shall have two board members, being positions 4 and 5 and shall include the county of Spokane.

(iii) District III shall have one board member being position 6 and shall include the counties of Walla Walla, Garfield, Columbia and Asotin.

(iv) District IV shall have two board members, being positions 7 and 8 and shall include all other counties of the state of Washington: Provided, That the addition of another member, being position 8, shall not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

(3) **Board membership qualifications.**

(a) The producer members of the board must be practical producers of pulse crops in the district in and for which they are nominated and appointed and each shall be a citizen and resident of the state, over the age of (~~eighteen~~) 18 years. Each producer board member must be and have been actually engaged in producing pulse crops 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 and is not engaged in business, directly or indirectly, as a handler or other dealer.

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

(c) 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 each year.

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

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

Positions seven, eight, nine, and ten - One year

Positions four, five and six - Two years

Positions one, two, and three - Three years

(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 shall be forwarded to the director for appointment within (~~(thirty)~~) 30 days of the effective date of this amended marketing order.

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

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

(b) Each year the director shall call a nomination meeting for director-appointed board members in those districts whose board members term is about to expire. The meeting(s) shall be held at least (~~(thirty)~~) 30 days in advance of the date set by the director for the advisory vote of board members.

(c) Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district 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 such affected district and handlers 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 a nomination meeting.

(e) Any qualified affected producer or handler 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 or affected handlers.

(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 and handlers. Nominating petitions for producers and handlers shall be signed by not less than five affected producers and handlers. Final date for filing nominations shall be not less than (~~(twenty)~~) 20 days after the notice was mailed.

(g) When only one nominee is nominated for a director-appointed position, RCW 15.65.250 shall apply.

(6) **Advisory vote of board members.**

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

(b) An advisory vote shall be conducted for 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.

(c) Notice of every 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 advisory vote. Not less than ~~((ten))~~ 10 days prior to every 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 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 or her))~~ their qualifications.

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

(7) **Vacancies.** 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: Provided, That the total reimbursement to all applicants shall not exceed ~~((two thousand dollars))~~ \$2,000.

(f) To establish a "pulse crops 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, 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 at least annually 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 state of Washington. 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 (~~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.

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

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

(q) 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.

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

(s) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of pulse crops.

(t) 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.

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

(v) 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 pulse crops including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(w) 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.

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

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

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

(aa) 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 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). The 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 (~~ten~~) 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 may call special meetings as provided under RCW 42.30.080.

AMENDATORY SECTION (Amending WSR 16-15-004, filed 7/7/16, effective 8/7/16)

WAC 16-536-040 Assessments and collections. (1) Assessments.

(a) The assessment on all varieties of pulse crops subject to this marketing order shall be one percent of the net receipts at the

first point of sale and shall be deducted by the first purchaser from the price paid to the grower. Such assessment shall be remitted to the commission board in accordance with procedures adopted by the commission board: Provided, That an assessment on commercial wrinkled pea seed shall not become effective unless approved by a referendum vote of the affected wrinkled pea seed producers.

(b) Assessments shall not be payable on any such pulse crops used by the producer thereof on (~~his or her~~) their premises for feed, seed and personal consumption.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and this order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding (~~ten~~) 10 percent of the unpaid assessment to defray the cost of enforcing the collecting of it. In the event of failure of such person or persons to pay any due and payable assessment or other such sum, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified (~~ten~~) 10 percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.