

**BEFORE THE DIRECTOR OF THE
WASHINGTON STATE DEPARTMENT OF AGRICULTURE**

Proposal to Amend the Washington Dry Pea and Lentil Commission Marketing Order (Chapter 16-536 WAC))

FINDINGS and RECOMMENDED DECISION

INTRODUCTION

This document is a summary of the proposal to amend the Washington Dry Pea and Lentil Commission marketing order. It contains background information on the need for the amendments, summarizes the process that has been followed, recaps the testimony at the public hearings, lists the Director's findings, and recommends the proposal be sent to a referendum of affected pulse crop producers.

BACKGROUND AND TECHNICAL REPORT

The Washington Dry Pea and Lentil Commission petitioned the Director on June 10, 2015 to revise the marketing order, chapter 16-536 WAC, Dry Peas and Lentils. The petition proposed several changes to the order:

- Rename the Commission to the "Washington Pulse Crops Commission" to more accurately capture the commodities covered.
- Add dried faba beans and lupine as commodities covered by the marketing order and redefine pulse crops as the dry seeds of pulse crops including dry peas, chickpeas, lentils, faba beans, and lupine.
- Change board membership qualifications from citizen and Washington resident to resident in order to bring the rule into harmony with state and federal appellate court decisions.
- Increase the assessment rate effective January 1, 2016 through December 31, 2018 from 1% to 2% of the net receipts at the first point of sale. The assessment rate would return to 1% on January 1, 2019.
- Reference the Public Meeting Act, chapter 42.30 RCW, rather than describe procedures calling for special meetings.

At the public hearing held in Colfax on September 15, a representative of the Washington Dry Pea and Lentil Commission board presented background information in the form of a technical report. The marketing order amendments were explained and an opportunity for questions was provided.

The proposed amendments to the Marketing Order are shown in Attachment A.

PROCEDURAL STEPS

This matter came before the Director of the Washington State Department of Agriculture (WSDA) pursuant to a petition filed by the Washington Dry Pea and Lentil Commission requesting amendments to chapter 16-536 WAC, the Dry Peas and Lentils marketing order, under the authority set forth in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act.

On July 1, 2015, WSDA filed with the Washington State Code Reviser a Notice of Proposed Rulemaking (CR-102) requesting comments on the proposed marketing order amendment. The notice was published in the *Washington State Register* on July 15, 2015.

On July 15, 2015, a notice about the petition to amend the marketing order and notice of the public hearing on the proposed amendments was mailed to affected producers and interested parties. A Notice of Public Hearing was also published in the *Capital Press* on July 31, 2015 and in the *Spokesman Review* on August 3 and August 4, 2015.

Pursuant to RCW 15.65.070, a public hearing was held on September 15, 2015, beginning at 9:00 a.m. at Whitman County Public Services Building, 310 N Main St, Colfax, WA. Written comments on the proposal were accepted through the close of business (5:00 p.m.) on September 15, 2015.

TESTIMONY ON AMENDMENTS

Under RCW 15.65.070 through 15.65.170 and chapter 34.05 RCW, the Department collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the dry pea and lentil marketing order.

The Department received written and oral testimony regarding the proposed amendments. At the public hearing, four affected producers spoke in favor of the name change; the inclusion of faba beans and lupine; and the assessment increase. One affected grower spoke in support the name change and the inclusion of faba beans and lupine, but spoke against the assessment increase. Two affected producers spoke against removing the citizen requirement. The Department received written testimony from the Dry Pea and Lentil Commission in favor of all amendments except the removal of the citizen requirement.

FINDINGS

Based on the entire record, including facts, testimony, and evidence presented and received at the public hearing, written comments received by the Department, matters of which the Director may take official notice under RCW 15.65.100, including the history and background of the Washington Dry Pea and Lentil Commission, the Director makes the following findings:

1. The Washington Dry Pea and Lentil Commission was created to carry out promotion, research, and administer specific industry service programs to benefit the planting, production, harvesting, handling, processing, or shipment of dry peas and lentils produced in the state. To fund programs that benefit producers, the commission levies an assessment on all varieties of dry peas and lentils commercially produced in the state.
2. Pursuant to chapter 15.65 RCW, the Washington Dry Pea and Lentil Commission filed a petition requesting amendments to the dry pea and lentil marketing order (chapter 16-536 WAC) on June 10, 2015.
3. Pursuant to chapters 15.65 and 34.05 RCW, WSDA issued notices, held a hearing, and collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the marketing order.
4. On September 24, 2015 the Washington Dry Pea and Lentil Commission revised its original petition to the Director to change the effective date of all of the proposed amendments from January 1, 2016 to July 1, 2016.
5. The Director has considered the revised petition for rulemaking and finds it is appropriate to change the effective dates of the assessment increase from January 1, 2016 through December 31, 2018 to July 1, 2016 through June 30, 2019. This change does affect the merits of the original petition because it does not change the proposed purpose for the increased assessment, because it does not change the amount of the increased assessment, and because the total duration of the increased

assessment period remains the same as under the original petition. Because of this requested change in the timing for the proposed assessment rate, the Director finds it appropriate to change the effective date for all the proposed amendments from January 1, 2016 to July 1, 2016.

6. The Director finds it is not appropriate to include the proposed amendment removing the citizen requirement found in WAC 16-536-020(3)(b). Although this requirement is contrary to state and federal case law under equal protection principles, it remains in the enabling statute, chapter 15.65 RCW.
7. The Director concludes that the evidence and the record support a finding that proposed amendments effectuate the declared policies and purposes of chapters 15.65 RCW and 16-536 WAC.

RECOMMENDED DECISION

NOW, THEREFORE, based on the entire record in this matter, the Director enters the following Recommended Decision:

The proposal to revise the dry pea and lentil marketing order will be sent to a referendum pursuant to RCW 15.65.160.

A ballot will be mailed to all producers on the list of affected pulse crop producers.

If the referendum results approve the marketing order changes, the amendments will be adopted with an effective date of July 1, 2016. If the referendum results defeat the proposal, the current marketing order provisions will remain in effect.

DATED this 30TH day of September, 2015.



Derek I. Sandison, Director
Washington State Department of Agriculture

STATEMENT OF RIGHTS AND FURTHER PROCESS

Under RCW 15.65.110, all interested parties shall have a period of not less than ten (10) days to objections or exceptions to this Recommended Decision. All objections or exceptions must be received at the following address **no later than 5:00 p.m. on October 12, 2015:**

Teresa Norman, Commodity Commission Program
Washington State Department of Agriculture
PO Box 42560
Olympia, WA 98504-2560
FAX: (360) 902-2092
Email: tnorman@agr.wa.gov

The Director will take all objections or exceptions received into consideration when making his Final Decision. The Final Decision may be the same as the Recommended Decision or it may be revised in light of the objections or exceptions received.