

Title 15

AGRICULTURE AND MARKETING

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Chapter 15.04 RCW GENERAL PROVISIONS

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15.04.010 Definitions. As used in this title except where otherwise defined:

"Department" means the department of agriculture.

"Director" means the director of agriculture.

"Person" includes any individual, firm, corporation, trust, association, cooperative, copartnership, society, any other organization of individuals, and any other business unit, device, or arrangement. [1961 c 11 § 15.04.010. Prior: (i) 1941 c 56 § 3; Rem. Supp. 1941 § 2828-4. (ii) 1941 c 56 § 4; Rem. Supp. 1941 § 2828-5. (iii) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part.]

15.04.090 Lease of unnecessary lands to nonprofit groups—Funds. The director of agriculture may, at his or her discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his or her direction and control, the retention of which he or her [she] deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural, or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the

provisions of this section shall be deposited in the fair fund created under RCW 15.76.115. [2010 c 8 § 6002; 1998 c 345 § 1; 1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

*Reviser's note: Section 16 of this act was vetoed by the governor.

Additional notes found at www.leg.wa.gov

15.04.110 Control of predatory birds. The director of the state department of agriculture may control birds which he or she determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when such cooperation will implement the control of predatory birds injurious to agriculture. [2010 c 8 § 6003; 1961 c 247 § 1.]

15.04.120 Control of predatory birds—Expenditures and contracts. For the purpose of carrying out the provisions of RCW 15.04.110 the director may make expenditures and contract for personal services, control materials and equipment as required to carry out such predatory bird control functions. [1961 c 247 § 2.]

15.04.150 Berry harvesting by youthful workers—Legislative finding. The legislature finds that the crops of berry growers in the state are imperiled by a recent change in the federal law relating to youthful agricultural workers. Since the berry harvest season is so short that few migrant agricultural workers find the trip to this state to pick berries worth the trouble, the long-established use of younger pickers must be permitted to the extent where such employment will not interfere with interstate commerce and the federal law. Further, the legislature finds that such employment is healthful, a good indoctrination for youth in the work ethic and the role of agriculture in society, and an opportunity youths welcome to earn extra spending money. [1975 1st ex.s. c 238 § 1.]

15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions. (1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: PROVIDED, That (a) the employee is employed with the consent of his or her parent or person standing in the place of his or her parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his or her designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: PROVIDED HOWEVER, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act. [2010 c 8 § 6004; 1975 1st ex.s. c 238 § 2.]

15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements. (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, 15.89, 15.115, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [2009 c 33 § 33; 2006 c 330 § 24; 1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

Additional notes found at www.leg.wa.gov

15.04.300 Guide to state and federal programs of assistance to farm families. The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to farmers and ranchers through county extension offices, farm organizations, and other appropriate means. [1987 c 393 § 26.]

15.04.400 Findings—Department's duty to promote agriculture, protect public health and welfare. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state however, the duty shall not be construed as to diminish the responsibility of the department to fully carry out its assigned regulatory responsibilities to protect the public health and welfare. [1994 c 46 § 9; 1991 c 280 § 1.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

15.04.402 Department to advance private sector, economic well-being of agricultural industry. The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek, consistent with its regulatory responsibilities, to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state. [1994 c 46 § 10; 1991 c 280 § 2.]

Additional notes found at www.leg.wa.gov

15.04.410 Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act. (1) Before being offered for retail sale in this state, any agricultural commodity, defined under RCW 15.66.010, that was grown or raised in this state may be advertised, labeled, described, sold, marked, or otherwise held out, with the words "Washington state grown," or other similar language indicating that the product is from Washington state grown or raised agricultural commodities.

(2) An agricultural commodity that was not grown or raised in this state and packages of that product shall not be advertised, labeled, described, sold, marked, or otherwise held out as "Washington state grown," or in any way as to imply that such product is a Washington state grown or raised agricultural commodity.

(3) It is unlawful for any person to violate this section.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 c 97 § 1.]

15.04.415 Information on product country of origin—Findings—Use of placards. (1) The legislature finds that it is a common practice for consumers to be provided information as to the country [of] origin for many products available to them for purchase. The legislature finds that consumers have a right to know the origin of the fresh fruits and vegetables being offered to them at retail sale. The legislature finds that there is value to the consumer being able to make an informed buying decision as to whether the fresh fruit or vegetable was produced under standards and conditions required in the United States. Further, the legislature finds that consumers should be given the ability to make an informed choice to buy fresh fruits and vegetables that are grown in Washington state as a means of supporting the economy of the state.

(2) Stores or other businesses offering fresh fruit and vegetables for retail sale to consumers shall place a placard on the bin, shelf, or other location the product is displayed that informs the consumer where the fruit or vegetable was grown if it was grown in the United States or grown in Washington. The placard shall indicate that the product was either "Grown in United States" or "Grown in Washington." Placards are not required if (a) the product was grown outside of the United States, or (b) each item in the bin, shelf, or other

location contains a sticker or label that indicates where the fruit or vegetable product was grown. [2002 c 40 § 1.]

Chapter 15.08 RCW HORTICULTURAL PESTS AND DISEASES

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15.08.010 Definitions.

- As used in this chapter:
- (1) "Supervisor" means an assistant director known as the supervisor of plant industry.
 - (2) "Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of.
 - (3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.
 - (4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.
 - (5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest or disease that is or may be a source of infestation of other properties.
 - (6) "Commercial area" means a district where any horticultural product is being produced to the extent that a pro-

ducer is dependent thereon, in whole or in part, for his or her livelihood.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "Disinfect," and its derivatives, means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides. [2010 c 8 § 6005; 1981 c 296 § 4; 1961 c 11 § 15.08.010. Prior: (i) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part. (ii) 1941 c 20 § 2; Rem. Supp. 1941 § 2849-1b. (iii) 1941 c 20 § 3; Rem. Supp. 1941 § 2849-1c. (iv) 1941 c 20 § 4; Rem. Supp. 1941 § 2849-1d. (v) 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

Additional notes found at www.leg.wa.gov

15.08.020 Methods of prevention, control and disinfection. The following methods shall be used for the prevention, control or disinfection of pests and diseases:

- (1) Bacterial diseases, removal and destruction of infected plant or part thereof, care being used to disinfect removal tools to prevent infection therefrom;
- (2) Fungus diseases, spraying with effective fungicide;
- (3) Chewing or sucking insect pests, spraying with effective insecticide;
- (4) Fungus insect pests, spraying with other effective solutions or emulsions described in circulars issued by the director. [1961 c 11 § 15.08.020. Prior: 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

15.08.025 Disinfection of fruit trees—Procedures to be followed. The method for disinfecting fruit trees required to be disinfected under the provisions of this chapter shall be as prescribed in the official published recommendations of the Washington State University for the proper prevention, control and eradication of pests and diseases of fruit trees.

Whenever specific recommendations for disinfecting fruit trees are not set forth in the official published recommendations of the Washington State University, the generally accepted horticultural practices for the prevention, control and eradication of any pests and diseases in the producing area shall be used.

The burden of proving that the proper procedures as set forth in this section have been followed shall be upon the person ordered to disinfect fruit trees.

The disinfection of fruit trees as in this section set forth shall in no way limit the authority of the inspection board to determine that such fruit trees constitute a nuisance and thus shall be subject to removal as provided for in this chapter. [1981 c 296 § 5; 1965 c 27 § 2.]

Purpose—1965 c 27: "The production of tree fruits in the state of Washington is a major agricultural industry promoting the general economic welfare of the state and beneficial to the health of the public. The proper maintenance of fruit tree orchards to insure the continued and increased benefits to the health and welfare of the state makes it necessary to prevent, eradicate and control any pests or diseases which are or may be injurious to such fruit trees and the produce therefrom. Such prevention, eradication and control of pests and diseases which are or may be injurious to fruit trees and their crops may require chemical or biological control or removal of host trees which may be hosts and breeding places for such diseases and pests. The provisions of this act are adopted under the police power of the state for the pur-

pose of protecting its health and general welfare, presently and in the future." [1965 c 27 § 1.]

Additional notes found at www.leg.wa.gov

15.08.030 Duty to disinfect, destroy—Disposal of cuttings. It is the duty of every owner, shipper, consignee, or other person in charge of fruits, vegetables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfection as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

In counties where black stem rust infection occurs every owner or person in charge of premises on which barberry bushes of the rust-producing varieties are growing shall forthwith destroy such bushes.

Within forty-eight hours after removal of any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf roller egg clusters the person removing same shall disinfect or destroy them by burning or scorching. [1961 c 11 § 15.08.030. Prior: (i) 1927 c 311 § 3; 1923 c 37 § 2; 1915 c 166 § 4; RRS § 2842. (ii) 1921 c 141 § 8; 1915 c 166 § 18; RRS § 2856.]

15.08.040 Authority to enter premises—Interference unlawful. The director, supervisor, and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him or her. [2010 c 8 § 6006; 1961 c 11 § 15.08.040. Prior: 1915 c 166 § 9; RRS § 2847.]

15.08.050 Condemnation of infected property—Disposal of, unlawful. If the premises or property inspected is found to be infected the inspecting officer shall condemn the same and serve upon the owner or person in charge thereof a written notice of the condemnation, describing the premises or property with reasonable certainty, and ordering the infected portion to be disinfected, or to be destroyed if incapable of disinfection, within a time and in a manner stated therein, and giving notice that if the order is not complied with in the time stated, the officer will disinfect or destroy the property and charge the expense thereof to the owner or against the premises.

No person shall ship, sell, or otherwise dispose of or part with possession of, or transport, any such condemned property until all requirements of said notice and order are complied with and written permit of the inspector so to do is issued. [1961 c 11 § 15.08.050. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.060 Condemnation of infected property—Notice to owner—Division into classes. Said notice of con-

demnation shall also grant permission to the owner or person in charge of infected fruit, vegetables, or nursery stock to divide the same into classes:

- (1) The portion not infected;
- (2) The infected portion which is capable of successful disinfection; and
- (3) The infected portion which is incapable of successful disinfection and must be destroyed.

Said notice shall require the owner or person to disinfect class (2) and destroy class (3) within the time stated. [1961 c 11 § 15.08.060. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit. In the case of fruit or vegetables which cannot be successfully disinfected the inspector may grant to the owner or person in charge thereof a written permit to use the condemned products for stock feed, or manufacture the same into by-products, or ship them to a by-product factory; and it is unlawful for the person receiving such permit to sell or dispose of such products without first having the same manufactured into a by-product or shipped to a by-product factory, or to divert any such shipment when made, or for the consignee of such shipment to sell or dispose of the same until it is manufactured into a by-product. [1961 c 11 § 15.08.070. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted. Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his or her home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be construed to be constructive personal service upon such owner. If the name and address of the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect. [2010 c 8 § 6007; 1961 c 11 § 15.08.080. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs. Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time spec-

ified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He or she shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such. [2010 c 8 § 6008; 1961 c 11 § 15.08.090. Prior: (i) 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part. (ii) 1943 c 150 § 5; 1935 c 168 § 4; 1931 c 27 § 2; 1927 c 311 § 4; 1915 c 166 § 11; Rem. Supp. 1943 § 2849.]

15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents. The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He or she shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables. [2010 c 8 § 6009; 1961 c 11 § 15.08.100. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.110 Sale proceeds—Deficiency—Action to recover. Such sales may be either at public auction or private sale, whichever, in the sound discretion of the officer, will be to the best interests of the state and owner of the property. The proceeds thereof shall be applied to payment of: First, costs of sale; second, expenses of disinfection; third, accrued transportation and storage charges. The balance, if any, shall be paid to the owner.

Should such proceeds be insufficient to pay the costs of sale and expenses of disinfection, the deficiency may be recovered from the owner or person in charge in an action brought in the name of the state on the relation of the director by the prosecuting attorney of the county when directed to do so by the attorney general. [1961 c 11 § 15.08.110. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.120 Record of proceedings—Verified copy as evidence. The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of

sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him or her with a verified copy of the record, and tender him or her the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents. [2010 c 8 § 6010; 1961 c 11 § 15.08.120. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.130 Record of premises disinfected—Costs—Lien. The inspector disinfecting any horticultural premises shall make and sign a detailed record of the proceedings, stating the legal description of the premises; give the name of the owner or reputed owner; the date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; and the cost thereof in detail. If the cost is not paid within five days from the completion of the disinfecting, the inspector shall file with the auditor of the county in which the premises are situated two verified copies of the above record, and a claim of lien against the premises for the amount of the costs and therein refer to the record, which the auditor shall record as other lien claims. The auditor shall charge the same fees as are charged for filing and recording other liens. [1961 c 11 § 15.08.130. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.140 Hearing on costs—Notice—Service. The county auditor shall forthwith issue warrants in payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He or she shall fix the day for hearing on the record before the county commissioners, which shall be not less than twenty days from the date of filing. He or she shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his or her return of service and the amount of his or her fees, which shall be the same as for service of summons in civil proceedings. [2010 c 8 § 6011; 1961 c 11 § 15.08.140. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.150 Payment and release—Order on amount—Priority of lien. If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he or she shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The treasurer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record

and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his or her office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order. [2010 c 8 § 6012; 1961 c 11 § 15.08.150. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.160 Payment date—Cancellation of lien. The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his or her records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien. [2010 c 8 § 6013; 1961 c 11 § 15.08.160. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.170 Failure to pay—Conversion into taxes—Use. If the lien and interest are not paid on or before such first Monday in October the commissioners, when levying taxes for the ensuing year, shall also levy on the premises covered by the lien, a tax for the amount of the lien and interest, together with a penalty of six percent, which tax shall be collected as other taxes for current expenses. The auditor shall then cancel the lien and note thereon that the amount thereof has been charged against the premises as taxes.

The tax shall be credited to the current expense fund and used to defray the expense of horticultural inspection and disinfection in the county, whether or not such expenditure has been included in the estimates made in the current county budget. [1961 c 11 § 15.08.170. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.180 Inspection board—Creation—Duties—Powers. If a horticultural inspector finds premises or property infested, he or she shall make a written report thereof to the inspector-at-large in his or her district stating the disease or infestation found, the estimated extent thereof, and whether in his or her opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infested from said premises or property, and who, with the inspector-at-large or someone delegated by him or her from his or her department, shall appoint a third person likewise a grower of agricultural products which could be so infested. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor, or horticultural

inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture. [2010 c 8 § 6014; 1961 c 11 § 15.08.180. Prior: (i) 1941 c 20 § 5; 1915 c 166 § 6; Rem. Supp. 1941 § 2849-1c. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

15.08.190 Report of inspection—Nuisance abatement. Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

- (1) Whether said premises or a part thereof are infested,
- (2) If infested, the nature and extent of infestation, and
- (3) Whether the infestation constitutes a nuisance. If the

report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him or her, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the petition as an exhibit and made a part thereof. [2010 c 8 § 6015; 1961 c 11 § 15.08.190. Prior: 1941 c 20 §§ 6, 7, part, 8; Rem. Supp. §§ 2849-1f, 2849-1g, part, 2849-1h.]

15.08.200 Notice of hearing—Service—Adjournments. A notice containing a description of the premises, stating the objects and purposes of the petition and the time and place of presentation of the petition to the court, shall be served upon every person named as interested in the premises at least five days prior to the time of presentation. Service of the notice shall be as nearly as possible in the manner provided by law for service of summons in a civil action, except that if service is had by publication the period of publication shall be two weekly publications in a newspaper published or of general circulation in the county, and the service shall be deemed completed on the expiration of fifteen days after the date of the first publication.

Proof of service may be made by affidavit of the person serving or publishing the notice and shall be filed with the clerk of the court on or before the time of presentation of the petition.

On application of any party or its own motion the court may adjourn the hearing from time to time, and may order new or further notice to be given any person whose interest may be affected. [1961 c 11 § 15.08.200. Prior: (i) 1941 c 20 § 9; 1937 c 71 § 2; Rem. Supp. §2849-2. (ii) 1937 c 71 § 3; RRS § 2849-3.]

15.08.210 Order of abatement. At the hearing there must be competent proof that all parties interested in the premises or property have been duly served with said notice, and that the procedure prescribed in RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180 has been duly followed. The report of the inspection board shall be prima facie evidence that the premises are infested and constitute a nuisance. If there is no showing that said

board acted in a capricious, arbitrary or unfair manner, the court shall accept the recommendation of said board and forthwith decree the plants, produce or property on the premises to constitute a nuisance and order the inspector-at-large of the district and the county commissioners to destroy the same, or abate the nuisance in such other manner as the court may direct.

The costs of destruction or abatement, and of the proceedings shall be taxed against the defendants therein. [1961 c 11 § 15.08.210. Prior: (i) 1941 c 20 § 10; Rem. Supp. 1941 § 2849-2a. (ii) 1937 c 71 § 4; RRS § 2849-4.]

15.08.220 Appeals—Bond for damages. An appeal may be taken from the decree by filing notice thereof not later than ten days after issuance of the decree. The appellant shall be required to file an appeal bond of not less than one thousand dollars and sufficient in amount to cover possible damages to neighboring properties due to delay in carrying out the decree. [1961 c 11 § 15.08.220. Prior: 1941 c 20 §§ 11, 12; Rem. Supp. 1941 §§ 2849-2b, 2849-2c.]

15.08.230 Disinfection of public properties. The director may require the governing body of counties, cities, towns and irrigation and school districts or other political subdivisions of the state to disinfect or destroy all infected trees, shrubs, or other nursery stock growing upon public property within their respective jurisdictions, or the director may disinfect or destroy such infected trees, shrubs, or other nursery stock. [1981 c 296 § 6; 1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

Additional notes found at www.leg.wa.gov

15.08.240 Dumping infected products, containers, prohibited. It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products. [1961 c 11 § 15.08.240. Prior: 1943 c 150 § 6; 1941 c 20 § 14; Rem. Supp. 1943 § 2849-2e.]

15.08.250 Host-free districts—Director's duties. Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he or she may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists. [2010 c 8 § 6016; 1961 c 11 § 15.08.250. Prior: 1941 c 20 § 13; Rem. Supp. 1941 § 2849-2d.]

15.08.260 Horticultural tax. At the time of making the regular annual tax levy the board of county commissioners of each county shall include a tax, to be known as the "horticultural tax," upon the taxable property of the county in an amount sufficient to meet the expense of inspecting and disinfecting nursery stock, fruits, vegetables, horticultural or

agricultural products, and horticultural premises under the provisions of this title. Said tax shall be levied and collected in the same manner as are general taxes and when collected shall be placed in the county current expense fund. [1961 c 11 § 15.08.260. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

15.08.270 Basis for estimating the tax. In estimating the amount to be levied for said horticultural tax the board shall take into consideration the expense of such inspection and disinfection for the ensuing year, and the amount which will be collected under the provisions of this chapter on properties disinfected. [1961 c 11 § 15.08.270. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

Chapter 15.09 RCW

HORTICULTURAL PEST AND DISEASE BOARD

Sections

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15.09.010 Purpose. The purpose of this chapter is to enable counties to more effectively control and prevent the spread of horticultural pests and diseases. [1969 c 113 § 1.]

15.09.020 Creation of board. Either upon receiving a petition filed by twenty-five landowners within the county or on its own motion, the board of county commissioners in order to achieve the purposes of this chapter may, following a hearing, create a horticultural pest and disease board. [1969 c 113 § 2.]

15.09.030 Members—Appointment—Terms. Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be appointed by the director. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. If no such qualified candidate resides in the county, a nonresident that owns property in the county and is engaged in the primary and commercial

production of a horticultural product or products may be appointed as a member of the horticultural pest and disease board. [2009 c 96 § 1; 1988 c 254 § 7; 1969 c 113 § 3.]

15.09.040 Meeting—Quorum—Officers. Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. [2010 c 8 § 6017; 1969 c 113 § 4.]

15.09.050 Powers and duties. Each horticultural pest and disease board shall have the following powers and duties:

(1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;

(2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his or her property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter. [2010 c 8 § 6018; 1969 c 113 § 5.]

15.09.055 Contracts and agreements. The horticultural pest and disease board may enter into contracts and agreements with federal, state, and local government agencies, Indian tribes, and any other organization to perform any duties pursuant to the identification, detection, control, or eradication of horticultural pests and diseases. [2000 c 144 § 35.]

15.09.060 Owner's duty to control pests and diseases. Each owner of land containing any plant or plants shall perform or cause to be performed such acts as may be necessary to control and to prevent the spread of horticultural pests and diseases, as such pests and diseases are defined under RCW 15.08.010, as now or hereafter amended, or as such pests and diseases are defined by the director of the department of agriculture in accordance with the purpose of this chapter and with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The word "owner" as used in this section shall mean the possessor or possessors of any form of legal or equitable title to land and entitlement to possession. For purposes of liability under this chapter, the owners of land shall be jointly and severally liable. [1969 c 113 § 6.]

(2018 Ed.)

15.09.070 Right of entry—Search warrant. Any authorized agent or employee of the county horticultural pest and disease board may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens, general inspection, and the performance of such acts as are necessary for controlling and preventing the spreading of horticultural pests and diseases. Such entry may be without the consent of the owner, and no action for trespass or damages shall lie so long as such entry and any activities connected therewith are undertaken and prosecuted with reasonable care.

Should any such employee or authorized agent of the county horticultural pest and disease board be denied access to such property where such access was sought to carry out the purpose and provisions of this chapter, the said board may apply to any court of competent jurisdiction for a search warrant authorizing access to such property for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1969 c 113 § 7.]

15.09.080 Failure to control horticultural pests and diseases—Remedies. (1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his or her land, as is his or her duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. Any action that the board determines requires the destruction of infested plants, absent the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infested plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property; (c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and

prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated. [2010 c 8 § 6019; 1991 c 257 § 1; 1982 c 153 § 4; 1969 c 113 § 8.]

Additional notes found at www.leg.wa.gov

15.09.090 Hearing on liability of owner for costs or charges—Review. Any person upon request and pursuant to the rules and regulations of the horticultural pest and disease board shall be entitled to a hearing before the board on any charge or cost for which such person is alleged to be liable under subsection (2) of RCW 15.09.080. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court of the county where the property is situated and to any damages suffered on account of disinfection work wrongfully undertaken, but no stay or injunction shall lie to delay any such disinfection work subsequent to notice given pursuant to RCW 15.09.080. [1969 c 113 § 9.]

15.09.100 Payment of expenses and costs—Penalty—Collection. Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he or she was billed for such amount. If payment is not made within such sixty day period, the amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: PROVIDED, That where good cause is shown the board may extend for an additional two months the time period during which payment shall be made. [2010 c 8 § 6020; 1969 c 113 § 10.]

15.09.110 Refund of charges paid. In regard to any charge made pursuant to RCW 15.09.080, if either the horticultural pest and disease board or the superior court on judicial review disallows such charge, then any amount paid on

such charge, together with any interest or penalty, shall be promptly refunded by the county from the county's current expense fund or from any other county funds available. In addition, the county shall pay six percent simple annual interest on such amount refunded. [1969 c 113 § 11.]

15.09.120 Disposition of moneys collected. Any moneys collected under this chapter shall be placed in the county current expense fund together with any taxes collected pursuant to the provisions of RCW 15.08.260, as now or hereafter amended. [1969 c 113 § 12.]

15.09.131 Operating budget—Source of funds. Funding of the operating budget of a horticultural pest and disease board may be derived from any or all of the following:

(1) Moneys from the county general fund or other general revenues, as appropriated by the board of county commissioners or other county legislative authority;

(2) A horticultural tax, as authorized in RCW 15.08.260, levied by the county board of commissioners or other county legislative authority; or

(3) An assessment against all lands. [2000 c 144 § 33.]

15.09.135 Assessment—Public hearing—Rate—County review—Lien. (1) Prior to the levying of an assessment authorized in RCW 15.09.131, the horticultural pest and disease board shall hold a public hearing at which it will gather information to serve as a basis for classification and then classify the lands into suitable classification, including but not limited to orchard lands, range lands, dry lands, non-use lands, forestlands, or federal lands.

(2) The board shall develop and forward to the county board of commissioners or other county legislative authority, as a proposed level of assessment for each class, an amount that seems just. The assessment rate shall be either uniform per acre in its respective class, a flat rate per parcel, or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no benefits are found to accrue to a class of land, a zero assessment may be levied.

(3) The county board of commissioners or other county legislative authority, upon receipt of the proposed levels of assessment from the horticultural pest and disease board, after a hearing, shall accept or modify by resolution, or refer back to the horticultural pest and disease board for its reconsideration, all or any portion of the proposed levels of assessment.

(4) The amount of the assessment constitutes a lien against the property. The assessments shall be subject to the same provisions as those for property tax collections, as provided in RCW 84.56.020, and shall be collected by the county treasurer under the authority in RCW 84.56.035. [2000 c 144 § 34.]

15.09.140 Abolishment of board. Upon receipt of a petition signed by twenty-five landowners within the county or on its own motion, the board of county commissioners may abolish the pest and disease board following a hearing and a finding that the purposes of this chapter would not be sufficiently served by the continued existence of such board. [1969 c 113 § 14.]

15.09.900 Chapter cumulative. The effects of the provisions of this chapter on the provisions of chapter 15.08 RCW shall be cumulative. [1969 c 113 § 15.]

Chapter 15.13 RCW

HORTICULTURAL PLANTS, CHRISTMAS TREES, AND FACILITIES—INSPECTION AND LICENSING

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15.13.500	Suspension of license—Reissuance.
15.13.920	Chapter cumulative and nonexclusive.

Prior law: 1961 c 11 §§ 15.12.010 through 15.12.110; 1961 c 221 §§ 1 through 23 (codified as RCW 15.13.010 through 15.13.210, 15.13.900, and 15.13.910).

15.13.250 Definitions. (Effective until July 1, 2020.)

For the purpose of this chapter:

(1) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(2) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material, including Christmas trees.

(3) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting United States number 2 or better standards for Christmas trees as specified by the United States department of agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both; weed and brush control; and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation, and irrigation.

(4) "Christmas tree grower" means any person who grows Christmas trees for sale.

(5) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(6) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

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

(8) "Director" means the director of the department or the director's duly authorized representative.

(9) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants or Christmas trees are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants or Christmas trees.

(10) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(11) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants or Christmas trees at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants or Christmas trees are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants or Christmas trees, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(12) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(13) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(14) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(15) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(16) "This chapter" means this chapter and the rules adopted under this chapter.

(17) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra or use in residential and commercial landscapes. [2013 c 144 § 2; (2013 c 144 § 1 expired July 1, 2014); 2007 c 335 § 1; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2013 c 144 § 2: "Section 2 of this act takes effect July 1, 2014." [2013 c 144 § 57.]

Expiration date—2013 c 144 § 1: "Section 1 of this act expires July 1, 2014." [2013 c 144 § 58.]

Expiration date—2013 c 72; 2007 c 335: "This act expires July 1, 2020." [2013 c 72 § 1; 2007 c 335 § 19.]

15.13.250 Definitions. (Effective July 1, 2020.) For the purpose of this chapter:

(1) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(2) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material.

(3) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(4) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

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

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

(7) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored,

handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants.

(8) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(9) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(10) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(11) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(12) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(13) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(14) "This chapter" means this chapter and the rules adopted under this chapter.

(15) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes. [2013 c 144 § 2; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2013 c 144 § 2: "Section 2 of this act takes effect July 1, 2014." [2013 c 144 § 57.]

15.13.260 Enforcement—Rules—Scope. (Effective until July 1, 2020.) The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant.

(2) The director shall adopt rules for labeling or tagging horticultural plants.

(3) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(4) The director may adopt rules for the inspection and/or certification of any Christmas tree as to freedom from infestation by plant pests.

(5) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection.

(6) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(7) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270.

(8) The director may adopt rules establishing fees for Christmas tree grower licenses and for inspection of Christmas trees and methods of fee collection. [2007 c 335 § 2; 2000 c 144 § 2; 1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.260 Enforcement—Rules—Scope. (Effective July 1, 2020.) The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant.

(2) The director shall adopt rules for labeling or tagging horticultural plants.

(3) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(4) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection.

(5) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(6) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270. [2000 c 144 § 2; 1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

15.13.262 Application of administrative procedure act. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial. [2000 c 144 § 3.]

15.13.265 Enforcement—Access to nursery dealer premises—Inspection. (Effective until July 1, 2020.) (1) The director may enter and inspect the horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes

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requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

(3) Denial of access to the director to perform inspections may subject a nursery dealer or Christmas tree grower to license revocation. [2007 c 335 § 3; 2000 c 144 § 4; 1993 c 120 § 7.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.265 Enforcement—Access to nursery dealer premises—Inspection. (Effective July 1, 2020.) (1) The director may enter and inspect the horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

(3) Denial of access to the director to perform inspections may subject a nursery dealer to revocation of the nursery license. [2000 c 144 § 4; 1993 c 120 § 7.]

15.13.270 Nursery dealer licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. (Effective until July 1, 2020.) (1) The provisions of this chapter relating to nursery dealer licensing do not apply to: (a) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (b) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; (c) educational organizations associated with private or public secondary schools; and (d) the production of marijuana and persons who are licensed as marijuana producers under RCW 69.50.325 with respect to the operations under such license. For the purposes of this subsection, the terms "marijuana" and "marijuana producer" have the same meanings as provided in RCW 69.50.101. However, such a club, conservation district, association, or organization must apply to the director for a permit to conduct such sales.

(2) All horticultural plants sold under such a permit must be in compliance with the provisions of this chapter. [2014 c 140 § 31; 2007 c 335 § 4; 2000 c 144 § 5; 1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

Expiration date—2014 c 140 § 31: "Section 31 of this act expires July 1, 2020." [2014 c 140 § 41.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.270 Licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. (Effective July 1, 2020.) (1) The provisions of this chapter relating to licensing do not apply to: (a) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (b) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; (c) educational organizations associated with private or public secondary schools; and (d) the production of marijuana and persons who are licensed as marijuana producers under RCW 69.50.325 with respect to the operations under such license. For the purposes of this subsection, the terms "marijuana" and "marijuana producer" have the same meanings as provided in RCW 69.50.101. However, such a club, conservation district, association, or organization must apply to the director for a permit to conduct such sales.

(2) All horticultural plants sold under such a permit must be in compliance with the provisions of this chapter. [2014 c 140 § 32; 2000 c 144 § 5; 1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

Effective date—2014 c 140 § 32: "Section 32 of this act takes effect July 1, 2020." [2014 c 140 § 42.]

15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit.

(1) No person may act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license must apply through the business licensing system. The application must be accompanied by the appropriate fee. The director must establish a schedule of fees for retail and wholesale nursery dealer licenses based upon the person's gross annual sales of horticultural plants at each place of business. The schedule for retail licenses must include separate fees for at least the following two categories:

(a) A person whose gross annual sales of horticultural plants do not exceed two thousand five hundred dollars; and

(b) A person whose gross annual sales of horticultural plants exceed two thousand five hundred dollars.

(2) A person conducting both retail and wholesale sales of horticultural plants at the same place of business must secure one of the following:

(a) A retail nursery dealer license if retail sales of the horticultural plants exceed such wholesale sales; or

(b) A wholesale nursery dealer license if wholesale sales of the horticultural plants exceed such retail sales.

(3) The director may issue a wholesale nursery dealer license to a person operating as a farmers market at which individual producers are selling directly to consumers. The license must be at the appropriate level to cover all persons selling horticultural plants at each site at which the person operates a market.

(4) The licensing fee that must accompany an application for a new license must be based upon the applicant's estimated gross sales of horticultural plants for the ensuing licensing year. The fee for renewing a license must be based upon the licensee's gross sales of these products during the preceding licensing year.

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(5) The license expires on the business license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license must be posted in a conspicuous place open to the public in the location for which it was issued.

(6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2013 c 144 § 3; 2000 c 144 § 6; 1993 c 120 § 4; 1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Business licensing

expiration date: RCW 19.02.090.

system

generally: RCW 15.13.250.

to include additional licenses: RCW 19.02.110.

15.13.285 Nursery dealer licenses—Fee surcharge.

The director may, with the advice of the nursery advisory committee, establish by rule a surcharge to the fee for a nursery dealer license. The surcharge shall not exceed twenty percent of the license fee and shall be paid at the same time that the license fee is paid. Moneys collected from the surcharge shall be deposited in the agricultural local fund and shall be used solely to support research projects which are of general benefit to the nursery industry and are recommended by the nursery advisory committee. [2000 c 144 § 7; 1992 c 23 § 1.]

Additional notes found at www.leg.wa.gov

15.13.290 Nursery dealer licenses—Additional charge for late renewal.

If any application for renewal of a nursery dealer license is not filed prior to the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued. [2013 c 144 § 4; 2000 c 144 § 8; 1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Business licensing

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

15.13.300 Nursery dealer licenses—Application—Contents. Application for a license shall include:

(1) The full name of the person applying for the license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director. [2000 c 144 § 9; 1982 c 182 § 22; 1971 ex.s. c 33 § 6.]

Business license system generally: Chapter 19.02 RCW.

15.13.310 Assessment on gross sale price of wholesale market value of certain horticultural plants—Method for determining—Due date—Gross sale period—Audit. (1)

An annual assessment shall be levied on the gross sale price

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of the wholesale market value for all horticultural plants of the genera *Chaenomeles*, *Cydonia*, *Crataegus*, *Malus*, *Prunus*, *Pyrus*, *Sorbus*, and *Vitis* produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer during any license period. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted or budded and planted for growing-on in the nursery. The director shall by rule determine the rate of an assessment needed to carry out the grapevine and fruit tree certification and nursery improvement programs set forth in RCW 15.13.470 and chapter 15.14 RCW.

The wholesale market price may be determined by the wholesale catalogue price of the seller of the horticultural plants assessed under this section or of the shipper moving such nursery stock out of the state. If the seller or shipper does not have a catalogue, then the wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining the average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) The assessment is due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous year.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid. [2002 c 215 § 1; 2000 c 144 § 10; 1993 c 120 § 5; 1990 c 261 § 4; 1987 c 35 § 2; 1983 1st ex.s. c 73 § 4; 1971 ex.s. c 33 § 7.]

15.13.311 Christmas tree grower exemptions—License—Fees. (Expires July 1, 2020.) (1) Any Christmas tree grower owning Christmas trees, whose business consists solely of retail sales to the ultimate consumer, is exempt from the requirements of this section if:

(a) The grower has less than one acre of Christmas trees; or

(b) The grower harvests, by u-cut or otherwise, fewer than four hundred Christmas trees per year.

(2) Licensed nursery dealers who furnish live plants for planting to Christmas tree growers are exempt from the requirements of this section.

(3) No person may operate as a Christmas tree grower without first obtaining a license from the department.

(a) The application must be accompanied by an annual fee, as established by the director in rule. The annual fee must not exceed forty dollars as a basic charge and a maximum of four dollars per acre as an acreage assessment. The annual Christmas tree grower license fee for any person may not exceed five thousand dollars.

(b) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2007 c 335 § 5.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.312 Christmas tree grower license—Application. (Expires July 1, 2020.) Application for a Christmas tree grower license shall include:

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(1) The full name of the person applying for the license, whether the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, and if the applicant is a firm or partnership the full name of each member of the firm or partnership, and if the applicant is an association or corporation the names of the officers of the association or corporation;

(2) The principal business address of the applicant in the state and elsewhere;

(3) The address and acreage of Christmas trees for each location included in the application;

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant; and

(5) Any other information prescribed by the director. [2007 c 335 § 6.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.314 Christmas tree program—Advisory committee. (Expires July 1, 2020.) (1) An advisory committee is established to advise the director in the administration of the Christmas tree program.

(2) When appointing this committee, the director shall consider names submitted by Christmas tree growers and by established Christmas tree grower associations having members in the state.

(3) The committee consists of no fewer than five members, representing the interests of licensed Christmas tree growers and the Christmas tree industry, and the director or the director's designee.

(4) The terms of the members of the committee shall be staggered and the members shall serve a term of three years or until their successor has been appointed.

(5) In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [2007 c 335 § 8.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.315 Grapevine certification and nursery improvement program—Advisory committee. An advisory committee is established to advise the director in the administration of the grapevine certification and nursery improvement program.

(1) The committee consists of two grapevine nursery dealers; three grape growers, at least two of whom grow wine grapes; one winery representative; a university researcher; and the director.

(2) When appointing this committee, the director shall consider names submitted by the Washington association of wine grape growers and the Washington state grape society.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed. [2002 c 215 § 2.]

15.13.320 Fruit tree certification and nursery improvement program—Advisory committee. An advisory

sory committee is hereby established to advise the director in the administration of the fruit tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) When appointing this committee, the director shall consider names submitted by the Washington state nursery and landscape association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [2000 c 144 § 11; 1993 c 120 § 6; 1990 c 261 § 5; 1983 1st ex.s. c 73 § 5; 1971 ex.s. c 33 § 8.]

15.13.335 Nursery advisory committee—Members—Terms. A nursery advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following persons: The president of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or the director's designated appointee.

(2) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [2000 c 144 § 12; 1990 c 261 § 6; 1983 1st ex.s. c 73 § 6.]

15.13.340 Late fee on delinquent assessments. (Effective until July 1, 2020.) (1) A late fee of twenty percent of the amount due shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license or Christmas tree grower license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [2007 c 335 § 9; 2000 c 144 § 13; 1971 ex.s. c 33 § 10.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.340 Late fee on delinquent assessments. (Effective July 1, 2020.) (1) A late fee of twenty percent of the amount due shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [2000 c 144 § 13; 1971 ex.s. c 33 § 10.]

15.13.360 Hearings—Subpoenas. The director may issue subpoenas to compel the attendance of witnesses and/or

production of books, documents, and records for purposes of investigating compliance with this chapter or for any hearing under this chapter. [2000 c 144 § 14; 1971 ex.s. c 33 § 12.]

15.13.370 Request by licensee for inspector's services during shipping season—Certificate of inspection—Other requests for inspection and/or certification services—Fees. (Effective until July 1, 2020.) (1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants or Christmas trees which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants or Christmas trees may request inspection and/or certification services provided for horticultural plants or Christmas trees under this chapter.

(3) To facilitate the marketing of agricultural commodities and other plant products, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service. [2007 c 335 § 10; 2002 c 215 § 3; 2000 c 144 § 15; 1993 c 120 § 8; 1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.370 Request by licensee for inspector's services during shipping season—Certificate of inspection—Other requests for inspection and/or certification services—Fees. (Effective July 1, 2020.) (1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants may request inspection and/or certification services provided for horticultural plants under this chapter.

(3) To facilitate the marketing of agricultural commodities and other plant products, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service. [2002 c 215 § 3; 2000 c 144 § 15; 1993 c 120 § 8; 1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

15.13.380 Inspection fees—When due and payable—Arrears. (1) The inspection fees provided for in this chapter shall become due and payable upon billing by the department.

(2) A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears.

(3) In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person who is in arrears or who fails to pay any assessment due under the provisions of this chapter or assessments

required by law to any agricultural commodity commission unless the person makes payment in full prior to such inspection or certification service. [2000 c 144 § 16; 1990 c 261 § 9; 1971 ex.s. c 33 § 14.]

15.13.390 Unlawful selling, shipment, or transport of horticultural plants or Christmas trees within state, when. (Effective until July 1, 2020.) It is unlawful for any person to sell, ship, or transport any horticultural plant or Christmas tree in this state unless it meets standards established in rule for freedom from infestation by plant pests and the other requirements of this chapter. [2007 c 335 § 11; 2000 c 144 § 17; 1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.390 Unlawful selling, shipment, or transport of plants within state, when. (Effective July 1, 2020.) It is unlawful for any person to sell, ship, or transport any horticultural plant in this state unless it meets standards established in rule for freedom from infestation by plant pests and the other requirements of this chapter. [2000 c 144 § 17; 1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

15.13.400 Unlawful shipment or delivery of horticultural plants into state, when—Certificate and inspection requirements—Christmas trees—Rules—Hearing. (Effective until July 1, 2020.) (1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless it is accompanied by an inspection certificate from the state or country of origin stating that the horticultural plant meets the requirements of this chapter. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director on or before the date the horticultural plants enter into the state.

(2) The director may by rule require that any or all horticultural plants or Christmas trees delivered or shipped into the state be inspected for conformance with the requirements of this chapter prior to release by the person delivering or transporting such horticultural plants or Christmas trees even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW. [2007 c 335 § 12; 2000 c 144 § 18; 1993 c 120 § 10; 1971 ex.s. c 33 § 16.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements—Rules—Hearing. (Effective July 1, 2020.) (1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless it is accompanied by an inspection certificate from the state or country of origin stating that the horticultural plant meets the requirements of this chapter. The director may require the shipper or receiver to file a copy of

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the manifest of nursery cargo or shipment of horticultural plants into this state with the director on or before the date the horticultural plants enter into the state.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter prior to release by the person delivering or transporting such horticultural plants even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW. [2000 c 144 § 18; 1993 c 120 § 10; 1971 ex.s. c 33 § 16.]

15.13.410 Shipments into state to be marked or tagged. Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner.

The director may, whenever the director finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking. [2000 c 144 § 19; 1993 c 120 § 11; 1990 c 261 § 10; 1971 ex.s. c 33 § 17.]

15.13.420 Unlawful acts enumerated. (Effective until July 1, 2020.) It is unlawful for any person:

(1) To falsely claim to be an agent or representative of any nursery dealer in horticultural plants or Christmas tree grower;

(2) To sell or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(3) To alter an official certificate or other official inspection document for plant materials, including Christmas trees, covered by this chapter or to falsely represent a document as an official certificate;

(4) To substitute any horticultural plant, Christmas tree, or agricultural commodity for a horticultural plant, Christmas tree, or agricultural commodity covered by an inspection certificate. [2007 c 335 § 13; 2000 c 144 § 20; 1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.420 Unlawful acts enumerated. (Effective July 1, 2020.) It is unlawful for any person:

(1) To falsely claim to be an agent or representative of any nursery dealer in horticultural plants;

(2) To sell or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the

quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(3) To alter an official certificate or other official inspection document for plant materials covered by this chapter or to falsely represent a document as an official certificate;

(4) To substitute any horticultural plant or agricultural commodity for a horticultural plant or agricultural commodity covered by an inspection certificate. [2000 c 144 § 20; 1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

15.13.425 False advertisements. No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490(2) by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused dissemination of the false advertisement. [2000 c 144 § 21; 1993 c 120 § 13.]

15.13.430 Hold order on damaged, infested, or infested horticultural plants or Christmas trees—Selling or moving unlawful. (Effective until July 1, 2020.) When the director has cause to believe that any horticultural plants or Christmas trees are damaged or are infested or infected by any plant pest, the director may issue a hold order on such horticultural plants or Christmas trees. A hold order may prescribe conditions under which the damaged, infested, or infested material must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the material for sale. It is unlawful to sell or move such plants until released in writing by the director. [2007 c 335 § 14; 2000 c 144 § 22; 1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.430 Hold order on damaged, infested, or infested plants—Selling or moving unlawful. (Effective July 1, 2020.) When the director has cause to believe that any horticultural plants are damaged or are infested or infected by any plant pest, the director may issue a hold order on such horticultural plants. A hold order may prescribe conditions under which plants must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the plant material for sale. It is unlawful to sell or move such plants until released in writing by the director. [2000 c 144 § 22; 1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

15.13.440 Order of condemnation—Grounds for issuance. (Effective until July 1, 2020.) The director shall condemn any horticultural plants shipped or sold when such horticultural plants are found to be dead, in a dying condition, seriously broken, diseased or infested to the extent that treatment is not practical, damaged, frozen, or abnormally pot-

bound. The director shall condemn any Christmas trees shipped or sold if they are found to be diseased, infected, or infested to the extent that treatment is not practical. The director shall order such horticultural plants or Christmas trees to be destroyed or returned at shipper's option. [2007 c 335 § 15; 2000 c 144 § 23; 1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.440 Order of condemnation—Grounds for issuance. (Effective July 1, 2020.) The director shall condemn any horticultural plants shipped or sold when such horticultural plants are found to be dead, in a dying condition, seriously broken, diseased or infested to the extent that treatment is not practical, damaged, frozen, or abnormally pot-bound. The director shall order such horticultural plants to be destroyed or returned at shipper's option. [2000 c 144 § 23; 1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

15.13.445 Order or action of director—Hearing opportunity. Upon issuance of an order or upon action by the director under RCW 15.13.400, 15.13.410, 15.13.430, or 15.13.440, the consignor of the plant material may request a hearing under chapter 34.05 RCW. [2000 c 144 § 24; 1993 c 120 § 16.]

15.13.447 Prohibition on recovery of damages. No state court shall allow the recovery of damages from administrative action, hold order, or condemnation order if the court finds there was probable cause for the action. [2000 c 144 § 25.]

15.13.450 Injunction to prevent violations. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court in Thurston county or the county in which the violation occurs, notwithstanding the existence of other remedies at law. [2000 c 144 § 26; 1971 ex.s. c 33 § 21.]

15.13.455 Injunction to restrain operation as nursery dealer or Christmas tree grower without valid license—Costs, attorneys' fees, and expenses. (Effective until July 1, 2020.) (1) The director may apply to the superior court of Thurston county for a prompt hearing on, and the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant an injunction restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license.

(2) An order restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [2007 c 335 § 16; 2000 c 144 § 27; 1983 1st ex.s. c 73 § 7.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. (Effective July 1, 2020.) (1) The director may apply to the superior court of Thurston county for a prompt hearing on, and the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant an injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [2000 c 144 § 27; 1983 1st ex.s. c 73 § 7.]

15.13.470 Disposition of moneys collected under chapter—Expenditure. (Effective until July 1, 2020.) (1) Except as provided in RCW 15.13.285 and in subsections (2), (3), and (4) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

(3) All fees collected under RCW 15.13.311 shall be deposited in the Christmas tree account within the agricultural local fund to be used only for the Washington Christmas tree program as established under this chapter, which may include market surveys and research related to Christmas trees.

(4) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund. [2007 c 335 § 17; 2002 c 215 § 4; 2000 c 144 § 28; 1999 c 144 § 16; 1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

Additional notes found at www.leg.wa.gov

15.13.470 Disposition of moneys collected under chapter—Expenditure. (Effective July 1, 2020.) (1) Except as provided in RCW 15.13.285 and in subsections (2) and (3) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

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(3) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund. [2002 c 215 § 4; 2000 c 144 § 28; 1999 c 144 § 16; 1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Additional notes found at www.leg.wa.gov

15.13.477 Compliance agreements. The director may enter into compliance agreements with any person for the purpose of carrying out the provisions of this chapter. [2000 c 144 § 29.]

15.13.480 Cooperative contracts or agreements to further chapter—Agreements to facilitate export. The director may cooperate with and enter into contracts or agreements with governmental agencies of this state and other states, agencies of the federal government, and any other organization in order to carry out the purpose and provisions of this chapter.

The director may enter into agreements with the United States department of agriculture for the purpose of issuing phytosanitary certificates and other inspection documents, according to federal procedures, to facilitate the export of products from the state. [2000 c 144 § 30; 1993 c 120 § 18; 1971 ex.s. c 33 § 26.]

15.13.490 Compliance with chapter—Violation—Penalties. (Effective until July 1, 2020.) Any person who fails to comply with this chapter may be subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license or Christmas tree grower license; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [2007 c 335 § 18; 2000 c 144 § 31; 1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.490 Compliance with chapter—Violation—Penalties. (Effective July 1, 2020.) Any person who fails to comply with this chapter may be subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [2000 c 144 § 31; 1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

15.13.500 Suspension of license—Reissuance. (Expires July 1, 2020.) The department shall immediately suspend any license issued under this chapter if the holder of

the license has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for licensure during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2007 c 335 § 7.]

Expiration date—2013 c 72; 2007 c 335: See note following RCW 15.13.250.

15.13.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 33 § 22.]

Chapter 15.14 RCW PLANTING STOCK

Sections

15.14.010	Definitions.
15.14.015	Rules—Scope.
15.14.025	Certificates—Samples for inspection and testing—Publish information—Notify purchasers of results.
15.14.035	Inspection of property, premises, or records—Denial of access—Search warrant.
15.14.045	Compliance agreements authorized—Suspension or cancellation—Hearing.
15.14.050	Registered, foundation, and breeder planting stock—Availability to producers and commercial growers—Restrictions on use—Fees.
15.14.065	Acceptance as certified, registered, foundation, or breeder planting stock.
15.14.075	Agreements with Washington State University, governmental entities, and other organizations.
15.14.085	Acquisition of property—Use of property.
15.14.095	Failure to meet certification requirements—Director's options—Notice—Hearing.
15.14.105	Unlawful acts.
15.14.115	Injunctions.
15.14.125	Late charge on fee or assessment.
15.14.135	Noncompliance by growers—Director may withhold services.
15.14.145	Deposit of funds in planting stock certification account—Use.
15.14.900	Chapter cumulative and nonexclusive.

15.14.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department or the director's designee.

(3) "Person" means an individual, firm, partnership, corporation, company, association, or public entity and every officer, agent, or employee of these entities.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or weeds or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Micropropagated plants" means plants propagated using aseptic laboratory techniques and an artificial culture medium.

(6) "Tolerance" means the maximum acceptable percentage of planting stock that is diseased, infected by plant pests, defective, or off-type based on visual inspection or laboratory testing by the director or other authorized person.

(7) "Planting stock" includes any plant material used in the propagation of horticultural, floricultural, viticultural, or olercultural plants for the purpose of being sold, offered for sale, or distributed for planting or reproduction purposes.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or sponsoring plant breeder or institution, which provides the source of foundation planting stock.

(9) "Foundation planting stock" means planting stock that has been so handled as to maintain genetic characteristics and that has been:

(a) Increased directly from breeder planting stock; or

(b) Designated as foundation planting stock by the director.

(10) "Registered planting stock" means planting stock of a quality suitable for the production of certified planting stock that has been so handled as to maintain genetic characteristics and that is:

(a) Increased directly from foundation or registered planting stock; or

(b) Designated as registered planting stock by the director.

(11) "Certified planting stock" means the progeny of foundation, registered, or certified planting stock that has been so handled as to maintain genetic characteristics, that has met certification standards authorized by this chapter, and that has been certified by the director. [1999 c 144 § 1; 1989 c 354 § 84; 1983 c 3 § 19; 1961 c 83 § 1.]

Additional notes found at www.leg.wa.gov

15.14.015 Rules—Scope. The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

(1) Certification of planting stock as to freedom from infection by plant pests, variety, classification, and grade.

(2) Establishment of tolerances for planting stock that is diseased, infected with plant pests, defective, or off-type.

(3) Establishment of standards and grades for planting stock.

(4) Labeling, identification, grading, and packing of foundation, registered, and certified planting stock.

(5) Inspection and testing of foundation, registered, and certified planting stock prior to planting during the growing season or seasons, prior to and during harvest, and subsequent to harvest.

(6) Exclusion and removal of diseased, infected with plant pests, defective, or off-type plants from foundation, registered, and certified planting stock.

(7) Establishing processes, site requirements, and criteria for participation in programs authorized by this chapter.

(8) Cultivation and sanitation practices in growing, storing, distributing, and processing foundation, registered, and certified planting stock.

(9) Establishing recordkeeping requirements.

(10) Production, utilization, and testing of micropropagated plants for foundation, registered, and certified planting stock.

(11) Establishment of fees and assessments for inspection, testing, and certification of planting stock and other services authorized by this chapter. [1999 c 144 § 2; 1961 c 83 § 3. Formerly RCW 15.14.030.]

15.14.025 Certificates—Samples for inspection and testing—Publish information—Notify purchasers of results. The director may:

(1) Issue certificates stating that planting stock found by the director or other authorized person to be in compliance with rules adopted under this chapter is foundation, registered, or certified planting stock.

(2) Take samples in reasonable amounts as necessary of planting stock to inspect and test for genetic characteristics and/or freedom from infection by plant pests.

(3) Publish names of growers participating in certification programs and inspection results.

(4) Require growers participating in certification programs to notify purchasers of planting stock when postharvest inspections or tests show the planting stock represented as foundation, registered, or certified has failed to meet minimum standards for certification. [1999 c 144 § 3; 1961 c 83 § 7. Formerly RCW 15.14.070.]

15.14.035 Inspection of property, premises, or records—Denial of access—Search warrant. In order to carry out the purposes of this chapter, the director may enter at reasonable times as determined by the director and inspect any property or premises and any records required under this chapter. If the director is denied access to any property, premises, or records, the director may suspend, cancel, or refuse certification or other approval of the planting stock or may apply to a court of competent jurisdiction for a search warrant authorizing access to the property, premises, or records. The court may upon the application issue a search warrant for the purpose requested. [1999 c 144 § 4.]

15.14.045 Compliance agreements authorized—Suspension or cancellation—Hearing. The director may enter into compliance agreements with any grower of foundation, registered, or certified planting stock for the purpose of carrying out the provisions of this chapter. The director may suspend or cancel any compliance agreement for cause. Upon notice by the director to suspend or cancel a compliance agreement, a person may request a hearing under chapter 34.05 RCW. [1999 c 144 § 5.]

15.14.050 Registered, foundation, and breeder planting stock—Availability to producers and commercial growers—Restrictions on use—Fees. For purposes of maintaining and/or improving the genetic characteristics and freedom from infection by plant pests of any registered, foundation, and breeder planting stock, the director may acquire, propagate, and distribute registered, foundation, and breeder planting stock to producers and commercial growers. The director may charge fees for the planting stock and may place restrictions on its use and propagation by producers and commercial growers. [1999 c 144 § 6; 1961 c 83 § 5.]

15.14.065 Acceptance as certified, registered, foundation, or breeder planting stock. The director may accept

as certified, registered, foundation, or breeder planting stock any planting stock grown or produced by Washington State University, the United States department of agriculture or other propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted under this chapter. [1999 c 144 § 7; 1961 c 83 § 11. Formerly RCW 15.14.110.]

15.14.075 Agreements with Washington State University, governmental entities, and other organizations. The director may cooperate with and enter into agreements with Washington State University, the United States department of agriculture, other state and federal agencies, and any other organization in order to carry out the purposes and provisions of this chapter. [1999 c 144 § 8; 1961 c 83 § 12. Formerly RCW 15.14.120.]

15.14.085 Acquisition of property—Use of property. The director may acquire by gift, grant, or endowment from public or private sources, as may be made in trust or otherwise, for the use and benefit of the purposes of this chapter, real property and any other type property, and expend the same or any income therefrom according to the terms of the gift, grant, or endowment. [1999 c 144 § 9; 1961 c 83 § 4. Formerly RCW 15.14.040.]

15.14.095 Failure to meet certification requirements—Director's options—Notice—Hearing. The director may suspend, cancel, or refuse certification or other approval of any planting stock that fails to meet the certification requirements authorized in this chapter. Upon notice by the director to suspend, cancel, or refuse certification or other approval of any planting stock, a person may request a hearing under chapter 34.05 RCW. [1999 c 144 § 10.]

15.14.105 Unlawful acts. It is unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent, or to advertise any planting stock as being certified, registered, foundation, or breeder planting stock unless it complies with the requirements of this chapter and rules adopted under this chapter. [1999 c 144 § 11; 1961 c 83 § 14. Formerly RCW 15.14.140.]

15.14.115 Injunctions. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of other remedies at law. [1961 c 83 § 15. Formerly RCW 15.14.150.]

15.14.125 Late charge on fee or assessment. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears for any fee or assessment authorized by this chapter. [1999 c 144 § 12.]

15.14.135 Noncompliance by growers—Director may withhold services. The director may withhold services to growers of planting stock for refusal to comply with the provisions of this chapter or its rules, for nonpayment of fees and assessment moneys owed to the department by law, or

for nonpayment of any assessment moneys due to an agricultural commodity commission. [1999 c 144 § 13.]

15.14.145 Deposit of funds in planting stock certification account—Use. All the moneys collected under the provisions of this chapter shall be paid to the director and deposited in the planting stock certification account within the agricultural local fund and shall be used only to carry out the purposes and provisions of this chapter. [1999 c 144 § 14; 1961 c 83 § 13. Formerly RCW 15.14.130.]

15.14.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 83 § 16.]

Chapter 15.15 RCW CERTIFIED SEED POTATOES

Sections

- 15.15.005 Legislative findings.
- 15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules.
- 15.15.020 Violation or threatened violation of chapter—Action to enjoin.

15.15.005 Legislative findings. The legislature finds that the production of high quality certified seed potatoes within the state requires conditions that are as free as possible from insect pests and plant diseases and that ensuring these conditions exist is in the public interest. The legislature further finds that the production of other potatoes intermixed with or in close proximity to a concentrated seed potato production area poses an increased risk of introduction of plant diseases and insect pests. [1997 c 176 § 1.]

15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules. Growers of seed potatoes, certified in accordance with rules adopted under chapter 15.14 RCW, may submit a petition to the director of the department of agriculture requesting that the director establish a restricted seed potato production area. The petition shall include the proposed geographic boundaries of the restricted seed potato production area, and the types of restrictions that are proposed to apply to the growing of nonseed potatoes. The petition shall contain the signatures of at least fifty percent of the growers of certified seed potatoes who have produced at least fifty percent of the certified seed potatoes within the proposed restricted seed potato production area in each of the two preceding years.

Upon receipt of a petition submitted in accordance with this section, the director of the department of agriculture shall, within sixty days of receipt of the petition, investigate the need of establishing a restricted seed potato production area. The director may propose rules and hold public hearings in the area affected by the proposed rules. The director has the authority to adopt rules in accordance with chapter 34.05 RCW to establish restricted seed potato production areas to prevent the increased exposure to plant diseases and insect pests that adversely affect the ability to meet standards for certification of seed potatoes established under chapter 15.14 RCW. [1997 c 176 § 2.]

15.15.020 Violation or threatened violation of chapter—Action to enjoin. The director of the department of agriculture may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1997 c 176 § 3.]

Chapter 15.17 RCW STANDARDS OF GRADES AND PACKS

Sections

- 15.17.010 Purpose.
- 15.17.020 Definitions.
- 15.17.030 Enforcement—Director's duties—Rules.
- 15.17.050 Rules—Authority of director.
- 15.17.060 Adoption of standards.
- 15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc.
- 15.17.090 Private grades or brands—Approval and registration.
- 15.17.140 Inspections and certifications—Request for—Fees.
- 15.17.143 Certificates of compliance—Petition by shipper—Rules.
- 15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay.
- 15.17.170 Inspection certificate or other official document as evidence.
- 15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants.
- 15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing.
- 15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules.
- 15.17.213 Exemption of certain fruits or vegetables from chapter.
- 15.17.240 Fruit and vegetable inspection account—Fees—Rules.
- 15.17.260 Injunctions.
- 15.17.270 Cooperation with governmental agencies.
- 15.17.290 Violation of chapter or rules—Suspension—Civil penalty.
- 15.17.900 Provisions cumulative and nonexclusive.

Grain and other commodities, standard grades: Chapter 22.09 RCW.

Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.

15.17.010 Purpose. The purpose of this chapter is to provide for the fair and orderly marketing of fruits and vegetables in the state of Washington by establishing uniform grades and standards and by providing for the inspection of these products. This chapter is vital to protecting the national and international reputation of fruit and vegetable products grown and shipped from this state and protecting consumers from the sale of inferior and misrepresented fruits and vegetables. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state. [1998 c 154 § 1; 1963 c 122 § 1.]

15.17.020 Definitions. For the purpose of this chapter:

(1) "Agent" means broker, commission merchant, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(2) "Certification" means, but is not limited to, the issuance by the director of an inspection certificate or other official document stating the grade, classification, and/or condition of any fruits or vegetables, and/or if the fruits or vegetables are free of plant pests and/or other defects.

(3) "Combination grade" means two or more grades packed together as one, except cull grades, with a minimum percent of the product of the higher grade, as established by rule.

(4) "Compliance agreement" means an agreement entered into between the department and a shipper or packer, that authorizes the shipper or packer to issue certificates of compliance for fruits and vegetables.

(5) "Container" means any container or subcontainer used to prepackage any fruits or vegetables. This does not include a container used by a retailer to package fruits or vegetables sold from a bulk display to a consumer.

(6) "Deceptive arrangement or display" means any bulk lot or load, arrangement, or display of fruits or vegetables which has in the exposed surface, fruits or vegetables which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk lot or load, arrangement, or display.

(7) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface fruits or vegetables which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of fruits or vegetables whose size is not an accurate representation of the variation of the size of the fruits or vegetables in the entire container, even though the fruits or vegetables in the container are virtually uniform in size or comply with the specific standards adopted under this chapter.

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

(9) "Director" means the director of the department or his or her duly authorized representative.

(10) "Facility" means, but is not limited to, the premises where fruits and vegetables are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport fruits and vegetables.

(11) "Fruits and vegetables" means any unprocessed fruits or vegetables, but does not include marijuana as defined in RCW 69.50.101.

(12) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing fruits or vegetables that he or she has purchased or acquired from a producer.

(13) "Inspection" means, but is not limited to, the inspection by the director of any fruits or vegetables at any time prior to, during, or subsequent to harvest.

(14) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any wrapper, container, container label or lining, or any placard used in connection with and having reference to fruits or vegetables.

(15) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

(16) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts

thereof, or any processed, manufactured, or other products of plants.

(17) "Sell" means to sell, offer for sale, hold for sale, or ship or transport in bulk or in containers.

(18) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables. [2016 c 229 § 2; 2014 c 140 § 33; 1998 c 154 § 2; 1996 c 188 § 1; 1963 c 122 § 2.]

15.17.030 Enforcement—Director's duties—Rules.

(1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The director shall, whenever he or she considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers or other industry associations, or other persons affected by such rules or amendments. [1998 c 154 § 3; 1963 c 122 § 3.]

15.17.050 Rules—Authority of director. (1) The director shall adopt rules providing standards for apples, apricots, Italian prunes, peaches, sweet cherries, pears, potatoes, and asparagus and may adopt rules providing standards for any other fruit or vegetable. When establishing these standards, the director shall consider the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury and other factors important to marketing.

(2) The director shall adopt rules providing for mandatory inspection of apples, apricots, Italian prunes, peaches, sweet cherries, pears, and asparagus and may adopt rules providing for mandatory inspection of any other fruit or vegetable.

(3) The director may adopt rules:

(a) Fixing the sizes and dimensions of containers to be used for the packing or handling of any fruits or vegetables; and

(b) Establishing combination grades for fruits and vegetables. The standards for combination grades shall, by percentage quantities, include two or more of the grades provided for under this chapter. [1998 c 154 § 4; (2004 c 211 § 1 expired December 31, 2009); 1963 c 122 § 5.]

Additional notes found at www.leg.wa.gov

15.17.060 Adoption of standards. The director may adopt any United States or other state's standard for any fruits and vegetables, if that standard is determined by the director to be substantially equivalent to or better than the standard adopted under this chapter. [1998 c 154 § 5; 1963 c 122 § 6.]

15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc. It is unlawful for any person to sell for fresh consumption any fresh fruits classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. The baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label in clear and legible letters at least two and one-half inches high.

Every bill of lading, invoice, memorandum, and document referring to the fruit shall designate them as culls. [1998 c 154 § 6; 1963 c 122 § 8.]

15.17.090 Private grades or brands—Approval and registration. The director may approve and register a private grade or brand for any fruit or vegetable. The private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted under this chapter for the fruit or vegetable. [1998 c 154 § 7; 1963 c 122 § 9.]

15.17.140 Inspections and certifications—Request for—Fees. (1) Any person financially interested in any fruits or vegetables in this state may request inspection and/or certification services provided for those fruits or vegetables under this chapter.

(2) To facilitate the movement or sale of fruits and vegetables or other agricultural commodities, the director may provide, if requested by growers or other interested persons, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

(3) Persons requesting services shall be responsible for payment of fees for those services prescribed by the director under RCW 15.17.150. [1998 c 154 § 9; 1963 c 122 § 14.]

15.17.143 Certificates of compliance—Petition by shipper—Rules. Any shipper or packer of apples, apricots, cherries, pears, peaches, Italian prunes, potatoes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting this authority, on terms and conditions defined by rule. Certificates of compliance shall only be issued for fruits or vegetables that are in full compliance with this chapter and the rules adopted under this chapter. [1998 c 154 § 20.]

15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay. The director shall adopt rules establishing the necessary fees to recover the costs of providing inspection and/or certification or other requested services.

(1) The fees are due and payable upon billing.

(2) A late fee of one and one-half percent per month on the unpaid balance shall be assessed against persons more than thirty days in arrears.

(3) In addition to other penalties, the director may refuse to perform any inspection or certification service provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(4) The director may refuse to perform inspection or certification service for any person who has failed to pay assessments required by law to any agricultural commodity commission. [1998 c 154 § 10; 1963 c 122 § 15.]

15.17.170 Inspection certificate or other official document as evidence. Every inspection certificate or other official document issued by the director under the provisions of this chapter shall be received in all the courts of the state as

prima facie evidence of the statements therein. [1998 c 154 § 11; 1963 c 122 § 17.]

15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants. The director may enter during business hours and inspect any facility where any fruits or vegetables are processed, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and may inspect all fruits or vegetables and the containers and the equipment in that facility. The director may take for inspection representative samples of fruits or vegetables and containers as may be necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 12; 1963 c 122 § 19.]

15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing. (1) For the purposes of this section, "lot" means any lot or any part of a lot.

(2) When the director determines that any lot of fruits or vegetables fails to comply with the requirements of this chapter, the director may issue a hold order prohibiting the sale or movement of that lot except under conditions that may be prescribed.

(3)(a) Written notice of the hold order must be provided to the person in possession of the lot of fruits or vegetables and a tag may be affixed to the lot or its containers. It is unlawful for any person except the director to alter, deface, or remove the tag or notice or to move or allow the lot of fruits or vegetables to be moved except under the conditions prescribed on the tag or notice.

(b) The notice shall include:

(i) A description of the lot that is in noncompliance;

(ii) The location of the lot;

(iii) The reason that the hold order is placed on the lot;

(iv) Any reconditioning, other corrective measures, or diversion to processing that may be required to release the lot for sale;

(v) Time frames to affect the reconditioning or other corrective measures; and

(vi) A reference to the violation of this chapter that provides the basis for the hold order.

(c) Any corrective measures required by the notice pursuant to (b)(iv) of this subsection and the costs associated therewith are the sole responsibility of the person holding the fruits or vegetables for sale.

(4) Upon issuance of a hold order by the director under this section, the seller or holder of the fruits or vegetables may request a hearing. The request for hearing must be in writing and filed with the director. Any hearing shall be held in conformance with RCW 34.05.422 and 34.05.479. [1998 c 154 § 13; 1987 c 202 § 172; 1963 c 122 § 20.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules. It is unlawful:

(1) To sell any fruits or vegetables:

(a) As meeting the standards for any fruit or vegetable as prescribed by the director unless they in fact do so;

(b) For which no standards have been established under this chapter unless ninety percent or more by weight or count, as determined by the director, are free from plant pest injury that has penetrated or damaged the edible portions and from worms, mold, slime, or decay;

(c) In containers other than the size and dimensions prescribed by the director by rule;

(d) Unless the containers in which the fruits or vegetables are placed or packed are marked with the proper grade and additional information as may be prescribed by rule. The additional information may include:

(i) The name and address of the grower, or packer, or distributor;

(ii) The varieties of the fruits or vegetables;

(iii) The size, weight, and either volume or count, or both, of the fruits or vegetables;

(e) Which are in containers marked or advertised for sale or sold as being either graded or classified, or both, according to the standards prescribed by the director by rule unless the fruits or vegetables conform with the standards;

(f) Which are deceptively packed;

(g) Which are deceptively arranged or displayed;

(h) Which are mislabeled; or

(i) Which do not conform to this chapter or rules adopted under this chapter;

(2) For any person to ship or transport or any carrier to accept any lot of fruits or vegetables without an inspection certificate, permit, or certificate of compliance when the director has prescribed by rule that such products be accompanied by an inspection certificate, permit, or certificate of compliance. The inspection certificate, permit, or certificate of compliance shall be on a form prescribed by the director and may include methods of denoting that all assessments provided for by law have been paid before the fruits or vegetables may lawfully be delivered or accepted for shipment;

(3) For any person to refuse to submit any container, load, or display of fruits or vegetables for inspection by the director, or refuse to stop any vehicle or equipment containing such products for the purpose of inspection by the director;

(4) For any person to move any fruits or vegetables or their containers to which any tag has been affixed, except as provided in RCW 15.17.200; or

(5) After October 1st of any calendar year, for any person to sell containers of apples, containing apples harvested in a prior calendar year, to any retailer or wholesaler for the purpose of resale to the public for fresh consumption. [2002 c 316 § 1; 1998 c 154 § 14; 1994 c 67 § 2; 1963 c 122 § 21.]

15.17.213 Exemption of certain fruits or vegetables from chapter. (1) This chapter does not apply:

(a) To the movement in bulk of any fruits or vegetables from the premises where they are grown or produced to a packing shed, warehouse, or processing plant for the purpose of storing, grading, packing, labeling, or processing prior to entering commercial channels for wholesale or retail sale;

(b) To any processed, canned, frozen, or dehydrated fruits or vegetables;

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(c) To any infected or infested fruits or vegetables to be manufactured into by-products or to be shipped to a by-products plant; or

(d) To the sale of up to five hundred pounds per day of any fruit or vegetable by any producer or handler directly to an individual ultimate consumer unless otherwise established by rule for an individual commodity. These fruits and vegetables shall meet the requirements of RCW 15.17.210(1)(b).

(2) The inspection requirements of this chapter do not apply to the sale or transportation within a zone of production, as defined by rule, of any fruit or vegetable named in RCW 15.17.050(1) or any combination of those fruits and vegetables to a fruit or produce stand or farmers market in a quantity specified by the director by rule. [1998 c 154 § 8; 1963 c 122 § 13. Formerly RCW 15.17.130.]

15.17.240 Fruit and vegetable inspection account—Fees—Rules. (1) The fruit and vegetable inspection account is created in the custody of the state treasurer. All fees collected under this chapter must be deposited into the account. The director may authorize expenditures from the account solely for the implementation and enforcement of this chapter and any other expenditures authorized by statute or session law and applying specifically to the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) By August 1, 2004, and by August 1st of each even-numbered year thereafter, the director shall review the balance in the fruit and vegetable inspection account at the end of the previous fiscal year. If the balance in the account exceeds the sum of the following: An amount equal to the total expenditures of the program served by that account for the last six months of that previous fiscal year; any budgeted capital expenditures from the account for the current fiscal year; and six hundred thousand dollars, the director shall temporarily and equally, on a percentage basis, reduce each of the fees accruing to the account until such time that the account has a balance equal to the amount of the total expenditures from the account for the last seven months of the previous fiscal year, at which time the fees shall be returned to the amounts before the temporary reduction. In making the reductions, the director shall attempt to reduce fees for a twelve-month period so as to apply the reductions to as many of the persons who annually pay fees for services provided by the program. The temporary fee reductions shall be initially provided through the adoption of emergency rules. The emergency and subsequent rules temporarily reducing the fees are exempt from the requirements of RCW 34.05.310 and chapter 19.85 RCW. These fees shall be reinstated through the expiration of the rules temporarily reducing them and the authority to reinstate them is hereby granted. [2016 c 229 § 1; 2002 c 322 § 2; 1998 c 154 § 16; 1975 c 40 § 3; 1963 c 122 § 24.]

Additional notes found at www.leg.wa.gov

15.17.260 Injunctions. The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court of Thurston county or of any county in which such violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 17; 1963 c 122 § 26.]

15.17.270 Cooperation with governmental agencies.

The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1963 c 122 § 31.]

15.17.290 Violation of chapter or rules—Suspension—Civil penalty. Any person who violates this chapter or rules adopted under this chapter may be subject to:

(1) Suspension of any compliance agreement under this chapter to which the person is a party for a period not to exceed twelve consecutive months; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. [1998 c 154 § 18; 1963 c 122 § 30.]

15.17.900 Provisions cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1963 c 122 § 27.]

Chapter 15.19 RCW GINSENG

Sections

15.19.010	Definitions.
15.19.020	Enforcement of chapter.
15.19.030	Adoption of rules.
15.19.040	Fees established by rule—Deposit—Use—Failure to pay.
15.19.050	Inspection of facility—Entry—Samples—Search warrant.
15.19.060	Injunctions.
15.19.070	Cooperative agency agreements.
15.19.080	Public disclosure of information—Exemption.
15.19.090	Violations of chapter or rules—Unlawful.
15.19.100	Violations of chapter or rules—Penalties.
15.19.110	Remedies.

15.19.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Facility" means, but is not limited to, the premises where ginseng is grown, stored, dried, handled, or delivered for sale or transportation, or where records required by rule under this chapter are stored or kept, and all vehicles and equipment, whether aerial or surface, used to transport ginseng.

(4) "Grower" means a person who grows cultivated, wild simulated, and/or woodsgrown American ginseng and sells it to a dealer.

(5) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof. [1998 c 154 § 21.]

15.19.020 Enforcement of chapter. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. [1998 c 154 § 22.]

15.19.030 Adoption of rules. In addition to the powers conferred on the director under this chapter, the director has the power to adopt rules:

(1) Establishing certification requirements for American ginseng (*Panax quinquefolius* L.).

Certification factors include:

(a) Place of origin;

(b) Whether the ginseng is wild or cultivated;

(c) Weight; and

(d) Date of harvest;

and may include whether the ginseng meets requirements for freedom from infestation by plant pests as required by the importing country;

(2) Requiring the registration of ginseng growers and of dealers who purchase and/or sell American ginseng for the purpose of foreign export; and

(3) Requiring that records be maintained by ginseng growers and by dealers who purchase or sell American ginseng for the purpose of foreign export.

The director may adopt any other rules necessary to comply with the requirements of the convention on international trade in endangered species of wild fauna and flora (27 U.S.T. 108); the endangered species act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.); and 50 C.F.R. Part 23 (1995), as they existed on June 6, 1996, or a subsequent date as may be provided by rule, consistent with the purposes of this section. [1998 c 154 § 23.]

15.19.040 Fees established by rule—Deposit—Use—Failure to pay. (1) The director shall adopt rules establishing fees to recover the costs of providing ginseng certification activities authorized under this chapter. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out the purposes of this chapter and rules adopted under this chapter.

(2) In addition to other penalties, the director may refuse to perform any inspection or certification service authorized under this chapter for any person in arrears unless the person makes payment in full prior to performing the service. [1998 c 154 § 24.]

15.19.050 Inspection of facility—Entry—Samples—Search warrant. The director may enter at reasonable times as determined by the director and inspect any facility and any records required under this chapter. The director may take for inspection those representative samples of ginseng necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility or records, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility or records. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 25.]

15.19.060 Injunctions. The director may bring an action to enjoin any violation of this chapter or rule adopted under this chapter in the superior court of Thurston county or of any county in which a violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 26.]

15.19.070 Cooperative agency agreements. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1998 c 154 § 27.]

15.19.080 Public disclosure of information—Exemption. The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.56 RCW. [2005 c 274 § 211; 1998 c 154 § 28.]

15.19.090 Violations of chapter or rules—Unlawful. It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter. [1998 c 154 § 29.]

15.19.100 Violations of chapter or rules—Penalties. Any person who violates the provisions of this chapter or rules adopted under this chapter may be subject to:

(1) A civil penalty in an amount of not more than one thousand dollars for each violation; and/or

(2) Denial, revocation, or suspension of any registration or application for registration issued under this chapter. Upon notice by the director to deny, revoke, or suspend a registration or application for registration, a person may request a hearing under chapter 34.05 RCW. [1998 c 154 § 30.]

15.19.110 Remedies. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy. [1998 c 154 § 31.]

Chapter 15.21 RCW

WASHINGTON FRESH FRUIT SALES LIMITATION ACT

Sections

15.21.010	Declaration of purpose.
15.21.020	Unlawful practices.
15.21.030	Cost.
15.21.040	Combination sales.
15.21.050	Injunction.
15.21.060	Penalties.
15.21.070	Exempt sales.
15.21.900	Chapter cumulative.
15.21.910	Short title.

15.21.010 Declaration of purpose. Limitations or restrictions placed on the buyer by the seller offering fresh fruit for sale as to the amount that such prospective buyer may purchase of the total amount of such fresh fruit owned, possessed or controlled by the seller, may lead to or cause confusion, deceptive trade practices, and interfere with the orderly marketing of fresh fruit necessary for the public health and welfare, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the general health and welfare of the people of this state. [1965 c 61 § 1.]

(2018 Ed.)

15.21.020 Unlawful practices. It shall be unlawful to cause a limitation to be placed on the amount of fresh fruit that a purchaser may buy at retail or wholesale when such fresh fruit is offered for sale, through any media, below cost to the seller. The foregoing shall apply to all such fresh fruit offered for sale below cost and owned, possessed or controlled by such seller. [1965 c 61 § 2.]

15.21.030 Cost. Cost for the purpose of this chapter, shall be that price paid for fresh fruit by the seller or the actual replacement cost for such fresh fruit: PROVIDED, That the delivered invoice price to such seller shall be prima facie evidence of the price paid for such fresh fruit by the seller. [1965 c 61 § 3.]

15.21.040 Combination sales. When one or more items are offered for sale or sold with one or more items at a combined price, or offered individually or as a package or a unit to be given with the sale of one or more items, each and all such items shall for the purpose of this chapter be deemed to be offered for sale, and as to such transaction the cost basis shall be the combined cost basis of all such items as determined pursuant to RCW 15.21.030. [1965 c 61 § 4.]

15.21.050 Injunction. Any person, prosecuting attorney, or the attorney general may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the superior court in the county where such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1965 c 61 § 5.]

15.21.060 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 103; 1965 c 61 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.21.070 Exempt sales. The provisions of this chapter shall not apply to the following sales at retail or sales at wholesale:

(1) When fresh fruit is sold for charitable purposes or to relief agencies;

(2) When fresh fruit is sold on contract to departments of the government or governmental institutions;

(3) When fresh fruit is sold by any officer acting under the order or direction of any court. [1965 c 61 § 7.]

15.21.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 c 61 § 8.]

15.21.910 Short title. This chapter may be cited as the Washington fresh fruit sales limitation act. [1965 c 61 § 9.]

Chapter 15.24 RCW

WASHINGTON APPLE COMMISSION

Sections

15.24.010	Definitions.
15.24.015	Commission—Purpose.
15.24.020	Commission created—Generally.
15.24.030	Members—Appointment—Terms—District representation—Meetings.
15.24.035	Members—Appointments by director—Meeting to nominate candidates—Advisory ballot.
15.24.045	Members—Removal from commission—Process.
15.24.050	Vacancies—Quorum—Compensation—Travel expenses.
15.24.065	Plans, programs, and projects—Approval by director.
15.24.070	Powers and duties—Agency of state government.
15.24.073	Rule-making proceedings—Exemptions.
15.24.080	Research, advertising, and educational campaign—Beneficial purposes.
15.24.090	Assessment—Modification process—Referendum.
15.24.100	Procedure for eliminating assessment.
15.24.110	Collection of assessments—Rule-making authority—Assessment imposed under RCW 15.26.120.
15.24.120	Records kept by dealers, handlers, processors.
15.24.130	Returns rendered by dealers, handlers, processors.
15.24.140	Right to inspect.
15.24.150	Treasurer—Bond—Duties—Funds.
15.24.160	Promotional plans—Purpose—Authority of commission—Limitation on liability.
15.24.180	Enforcement.
15.24.190	Claims enforceable against commission assets—Nonliability of other persons and entities—Exception—Application of chapter 4.92 RCW.
15.24.200	Penalties.
15.24.210	Prosecutions.
15.24.215	Funding staff support—Rules.
15.24.900	Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws.
15.24.910	Liberal construction.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.

15.24.010 Definitions. As used in this chapter:

- (1) "Commission" means the Washington apple commission;
- (2) "Crop year" means the year in which apples are harvested and is designated for those apples based on the date of harvest regardless of when they are subsequently packed or shipped;
- (3) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;
- (4) "Dealer district No. 1" includes the area of the state north of Interstate 90;
- (5) "Dealer district No. 2" includes the area of the state south of Interstate 90;
- (6) "Director" means the director of the department of agriculture or his or her duly authorized representative;
- (7) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority;
- (8) "Fresh apples" means all apples other than processing apples;
- (9) "Grower" means a person engaged in the business of producing apples for market in commercial quantities, whether as an individual, corporation, firm, limited liability company, trust, association, partnership, society, or any other organization of individuals;
- (10) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(11) "Grower district No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(12) "Grower district No. 3" includes all counties in the state not included in the first and second districts;

(13) "Handler" means any person who ships or initiates a shipping operation, whether for himself, herself, or for another;

(14) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article. However, "processing apples" does not include fresh apples sliced or cut for raw consumption;

(15) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article; and

(16) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production. [2016 sp.s. c 15 § 1; 2002 c 313 § 115; 1989 c 354 § 53; 1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

15.24.015 Commission—Purpose. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to apples and apple-related issues. [2004 c 178 § 1.]

15.24.020 Commission created—Generally. There is hereby created a Washington apple commission to be thus known and designated. The commission shall be composed of nine apple growers and four apple dealers. In addition, the director shall be a full voting member of the commission and may in his or her place appoint any other employee of the department of agriculture as a designee to attend commission meetings and otherwise represent the director and exercise the director's vote.

The nine grower members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, currently operates a commercial producing orchard in the district represented, and has during that period derived a substantial portion of his or her income therefrom. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office. A person who meets the qualifica-

tions of both a grower and a dealer as set forth in this section may serve as either a grower member or a dealer member. [2016 sp.s. c 15 § 2; 2004 c 178 § 2; 2002 c 313 § 116; 1989 c 354 § 54; 1967 c 240 § 23; 1963 c 145 § 2; 1961 c 11 § 15.24.020. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Additional notes found at www.leg.wa.gov

15.24.030 Members—Appointment—Terms—District representation—Meetings. Thirteen persons, not including the director or the director's representative, with the qualifications stated in RCW 15.24.020 shall be members of the commission. Nine of the members shall be grower members, and four shall be dealer members. The number of grower members to be appointed from each grower district shall be determined in accordance with the relative acreages of planted commercial apple orchards within the various districts, according to the most recent census of acreages published by the United States department of agriculture, agricultural statistics service. The number of grower members to be appointed from each of the grower districts shall be subject to readjustment every ten years thereafter in accordance with the then most recent census of acreages of planted commercial apple orchards published by the United States department of agriculture, agricultural statistics service. In the event the information from the United States department of agriculture's agricultural statistics service is not published with respect to the specifically defined districts, the commission shall adopt rules to establish equitable apportionment based on the available information. However, at all times at least two grower members shall be from district 1, one of which shall be from Okanogan county; district 2 shall never have fewer than two grower members; and district 3 shall never have fewer than one grower member. The commission shall adopt rules to effect the efficient transition of reapportioned positions.

The regular term of office of the members of the commission shall be three years from March 1st following their appointment by the director and until their successors are appointed. The commission shall hold its annual meeting during the month of March each year and shall hold such other meetings during the year as it shall determine. The first commission meeting that takes place after June 10, 2004, shall be held in Wenatchee, and subsequent commission meetings shall alternate between Yakima and Wenatchee. [2016 sp.s. c 15 § 3; 2004 c 178 § 3; 1989 c 354 § 55; 1967 c 240 § 24; 1963 c 145 § 3; 1961 c 11 § 15.24.030. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Additional notes found at www.leg.wa.gov

15.24.035 Members—Appointments by director—Meeting to nominate candidates—Advisory ballot. (1) The director shall appoint the members of the commission.

(2) Except as provided in RCW 15.24.050, before the expiration of a commission member's term, the commission shall call a meeting of apple growers and dealers for the purpose of nominating candidates whose names will be forwarded to the director for consideration for appointment as a member of the commission. The meetings may be held each year, as far as practicable, at the same time and place as an

annual meeting of a grower or dealer organization that represents a majority of the state's apple growers or dealers, but not while the same is in actual session. Public notice of such meetings must be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person does not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district.

(3) The commission shall hold an advisory vote in the event that more than two candidates are nominated for a position. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for consideration. In the event that only one candidate is nominated, the name must be forwarded to the director for consideration without an advisory vote.

(4) Advisory ballots shall be mailed to all growers for grower positions and to affected dealers for dealer positions. The advisory ballot shall be conducted in a manner so that it is a secret ballot. Nominees to be forwarded to the director for consideration for appointment to dealer positions on the commission shall be selected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. Nominees to be forwarded to the director for consideration for appointment to grower positions on the commission shall be selected by a majority of the votes cast by the apple growers in the respective districts. Each grower engaged in the business of producing apples for market in commercial quantities within the district is entitled to one vote. An individual commercial orchard operator, if otherwise qualified, is entitled to vote, even though he or she is also a member of a partnership or corporation, which also is entitled to vote.

(5) The director has the discretion to appoint or reject any candidate.

(6) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select any candidate for the position or may reject all candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. [2016 sp.s. c 15 § 4; 2008 c 11 § 1; 2004 c 178 § 5.]

15.24.045 Members—Removal from commission—Process. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, the commission may recommend to the director that the commission member be removed from his or her position on the commission. Upon receiving such recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position shall then be declared vacant and must be filled pursuant to the

provisions of this chapter for filling vacancies. [2008 c 11 § 3.]

15.24.050 Vacancies—Quorum—Compensation—Travel expenses. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position shall be filled for the balance of the unexpired term by appointment by the director from at least two nominees submitted by the remaining members of the commission.

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when on official commission business. [2004 c 178 § 7; 2002 c 313 § 118; 1984 c 287 § 12; 1975-'76 2nd ex.s. c 34 § 12; 1967 c 240 § 26; 1961 c 11 § 15.24.050. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.24.065 Plans, programs, and projects—Approval by director. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects within the commission's powers and duties;

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of apples may be encouraged, expanded, improved, or made more efficient; and

(c) The establishment and effectuation of, and/or support of industry organizations work regarding, market access project and programs, trade banner work and industry organization support.

(2) The director shall review the commission's programs to ensure that they properly benefit the people of the state of Washington and its economy and properly speak the message of the state.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its project and program plans and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2004 c 178 § 8.]

15.24.070 Powers and duties—Agency of state government. The Washington apple commission is hereby declared and created an agency of the Washington state government. The powers and duties of the commission shall include the following:

(1) To elect a chair and such other officers as it deems advisable; and to adopt, rescind, and amend rules and orders

for the exercise of its powers under this chapter, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter. Expenses may include reasonable, prudent use of promotional hosting to benefit the purposes of this chapter;

(5) To investigate and prosecute violations of this chapter;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and apple products;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued and have all of the powers of an agency;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(10) To borrow money and incur indebtedness;

(11) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations on any appropriate activity of the commission except as limited by the donor's terms. The commission shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises. The authority to make expenditures granted by this subsection includes the authority to make expenditures to provide scholarships or financial assistance to persons as defined in RCW 1.16.080 or entities associated with the apple industry, but is not limited to the authority to make expenditures for such a purpose;

(12) To engage in appropriate fund-raising activities for the purpose of supporting the activities of the commission authorized by this chapter;

(13) To retain, discharge, or contract with, at its pleasure, accountants, marketing agencies, and other professional consultants as necessary, under procedures for hiring, discharging, and review as adopted by the commission;

(14) To maintain, protect, acquire, or own intellectual property rights, including without limitation, licenses, trademarks, copyrights, artwork, or patents and to sell or license any or all of such rights and collect royalties therefrom and from commission-funded research related to apples;

(15) To apply for and administer federal market access programs and/or similar programs or projects and provide matching funds as may be necessary;

(16) With oversight by the director, provide funding and support to organizations providing general support and leadership to and representation of the apple industry;

(17) With oversight by the director, to speak on behalf of the Washington state government on a nonexclusive basis with regard to apples and apple-related issues, including but not limited to trade negotiations, market access negotiations, and the like, and to fund industry organizations engaging in such activities;

(18) To fund, conduct, or otherwise participate in scientific research relating to apples, including without limitation research regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship;

(19) To provide services relating to the production, promotion, sale and/or distribution of Washington apples on a fee-for-services basis. However, (a) the product of such services shall belong to the funding party, and (b) the fees for such services shall include a reasonable charge for the commission's overhead expenses as determined by the commission; and

(20) To gather, maintain, and distribute data relating to the production, processing, shipment, and sales of apples, in connection with its ordinary operations and collection of assessments and particularly in connection with services provided on a fee-for-service basis. [2004 c 178 § 9; 2002 c 313 § 119; 1994 c 134 § 1; 1987 c 393 § 3; 1986 c 203 § 3; 1963 c 145 § 5; 1961 c 11 § 15.24.070. Prior: (i) 1937 c 195 § 8; RRS § 2874-8. (ii) 1937 c 195 § 5; RRS § 2874-5. (iii) 1937 c 195 § 4, part; RRS § 2874-4, part.]

Additional notes found at www.leg.wa.gov

15.24.073 Rule-making proceedings—Exemptions.

All rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW except that rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, 43.135.055, and the provisions of chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum. [2016 sp.s. c 15 § 5; 2002 c 313 § 125.]

Additional notes found at www.leg.wa.gov

15.24.080 Research, advertising, and educational campaign—Beneficial purposes. In order to benefit the people of this state, the state's economy and its general tax revenues, the commission shall provide for and conduct a comprehensive and extensive research, advertising, and educational campaign as continuous as the crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of growers, conditions of the markets, and extent to which public convenience and necessity require research and advertising to be conducted. [2016 sp.s. c 15 § 6; 2002 c 313 § 120; 1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

Additional notes found at www.leg.wa.gov

15.24.090 Assessment—Modification process—Referendum. (1) There is hereby levied annually upon all fresh apples grown in this state, and all apples packed as Washington apples, including fresh sliced, an assessment of eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight, or reasonable equivalent net product assessment measurement as determined by the commission. All moneys collected under this subsection must be expended to effectuate the purpose and objects of

this chapter. The assessment rates established in this subsection may be increased or decreased pursuant to the procedure in subsection (2) of this section.

(2) If the commission determines based on information available to it that the revenue from the assessment levied under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall commence rule making setting forth the needs of the industry, the extent and probable cost of commission activities identified as necessary to address the needs of the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue from the proposed assessment. A different rate may be proposed for any specific variety or for fresh apples sliced or cut for raw consumption.

(3) Upon receiving the director's approval of the rule making commenced under subsection (2) of this section, and with the oversight of the director, the commission may conduct a referendum to determine whether growers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commission. An increase in the assessment rate is approved if two-thirds of growers vote in favor and the growers voting in favor represent two-thirds of the apples grown in the two prior crop years, based on net shipping weight. A decrease in the assessment rate is approved if a majority of growers vote in favor and the growers voting in favor represent two-thirds of the apples grown in the two prior crop years, based on the net shipping weight. If approved, the new rate must be adopted in rule in accordance with chapter 34.05 RCW. [2016 sp.s. c 15 § 7; 2004 c 178 § 10; 2002 c 313 § 122; 1983 c 95 § 1; 1979 c 20 § 1; 1967 c 240 § 27; 1963 c 145 § 6; 1961 c 11 § 15.24.090. Prior: 1953 c 43 § 1; 1937 c 195 § 13, part; RRS § 2874-13, part.]

Additional notes found at www.leg.wa.gov

15.24.100 Procedure for eliminating assessment. (1)

A petition may be filed with the commission to reduce the assessment authorized in RCW 15.24.090 to zero. To be valid, the petition must be signed by at least eight percent of all apple growers eligible to vote in commission referendum elections. The petition shall contain the name of a person designated to represent the petitioners.

(2) Upon receipt of a valid petition, the commission shall prepare a document discussing the substance of the petition. A statement in favor of the petition shall be written by the proponents of the petition. A statement opposing the petition may be written by the commission or an opponent. The document and a notice of public hearing shall be sent to apple growers eligible to vote in commission referendum elections at least twenty days prior to the scheduled public hearings. The commission shall hold public hearings in Yakima and Wenatchee on the petition.

(3) Following the public hearings, the question of whether to reduce the assessment authorized in RCW 15.24.090 to zero shall be referred to a referendum mail ballot. The commission shall certify to the director a list of apple growers eligible to vote in commission referendum elections. The referendum shall be conducted and supervised by the director using the certified list. Inadvertent failure to notify a grower does not invalidate a referendum.

(4) The referendum will be approved if a simple majority of apple growers voting in the referendum election vote in favor of the elimination of the assessment. The director will certify the results of the vote.

(5) The referendum vote shall be binding and may not be overturned by action of the commission or director. If the referendum is approved, the commission shall immediately commence activities to wind down its operations. However, the elimination of the assessment shall not be effective until six months from the date the referendum result is certified by the director. If the referendum fails, neither the commission nor the director will take further action on the petition.

(6) The commission is responsible for all its own costs and all the director's costs associated with the hearing, notice, and referendum process. A subsequent petition may not be filed any sooner than five years following the certification of the results of any previously held referendum conducted under this section. [2018 c 22 § 8; 2016 sp.s. c 15 § 8; 2004 c 178 § 11; 2002 c 313 § 123; 1967 c 240 § 28; 1963 c 145 § 7; 1961 c 11 § 15.24.100. Prior: 1937 c 195 § 9; RRS § 2874-9.]

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

Additional notes found at www.leg.wa.gov

15.24.110 Collection of assessments—Rule-making authority—Assessment imposed under RCW 15.26.120.

The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, at the time of shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule prescribe the method of collection of the assessment.

The commission may also collect assessments imposed under RCW 15.26.120, and in that event, the commission shall establish and be reimbursed by the Washington tree fruit research commission an amount representing a reasonable approximation of the actual costs to the commission of such collection. [2016 sp.s. c 15 § 9; 2004 c 178 § 12; 2002 c 313 § 124; 1967 c 240 § 29; 1961 c 11 § 15.24.110. Prior: 1937 c 195 § 12; RRS § 2874-12.]

Additional notes found at www.leg.wa.gov

15.24.120 Records kept by dealers, handlers, processors. Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him or her. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two prior crop years, and be subject to inspection at any time upon demand of the commission or its agents. [2016 sp.s. c 15 § 10; 2010 c 8 § 6021; 1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

15.24.130 Returns rendered by dealers, handlers, processors. Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples

handled, shipped, or processed by him or her during the period prescribed by the commission. The return shall contain such further information as the commission may require. [2010 c 8 § 6022; 1961 c 11 § 15.24.130. Prior: 1937 c 195 § 11; RRS § 2874-11.]

15.24.140 Right to inspect. The commission may inspect the premises and records of any carrier, handler, dealer, or processor for the purpose of enforcing this chapter and the collection of the excise tax. [1961 c 11 § 15.24.140. Prior: 1937 c 195 § 19; RRS § 2874-19.]

15.24.150 Treasurer—Bond—Duties—Funds. The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [2010 c 8 § 6023; 1961 c 11 § 15.24.150. Prior: 1937 c 195 § 6; RRS § 2874-6.]

15.24.160 Promotional plans—Purpose—Authority of commission—Limitation on liability. To maintain and complement the existing comprehensive regulatory scheme, the commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, including but not limited to the director, state agencies such as the Washington state fruit commission and its successors, statewide horticultural associations, organizations or associations engaged in tracking the movement and marketing of horticultural products, and organizations or associations of horticultural growers, for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. The liability of the state for the acts of the commission, or upon its contracts, shall be limited solely to the assets of the commission. In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2004 c 178 § 13; 2002 c 313 § 126; 1961 c 11 § 15.24.160. Prior: 1947 c 280 § 3; Rem. Supp. 1947 § 2909-3.]

Additional notes found at www.leg.wa.gov

15.24.180 Enforcement. All county and state law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.24.180. Prior: 1937 c 195 § 16; RRS § 2874-16.]

15.24.190 Claims enforceable against commission assets—Nonliability of other persons and entities—Exception—Application of chapter 4.92 RCW. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commissioners have been, and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW, as provided in that chapter. [2004 c 178 § 14; 1987 c 393 § 4; 1961 c 11 § 15.24.190. Prior: 1937 c 195 § 7; RRS § 2874-7.]

15.24.200 Penalties. (1) Any person who violates or aids in the violation of any provision of this chapter is guilty of a gross misdemeanor.

(2) Any person who violates or aids in the violation of any rule or regulation of the commission is guilty of a misdemeanor. [2003 c 53 § 104; 1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.24.210 Prosecutions. Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof. [2010 c 8 § 6024; 1961 c 11 § 15.24.210. Prior: 1937 c 195 § 15; RRS § 2874-15.]

15.24.215 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department

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according to the rules adopted by the director. [2002 c 313 § 72.]

Additional notes found at www.leg.wa.gov

15.24.900 Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws. (1) This chapter is passed:

(a) In the exercise of the police power of the state to assure, through this chapter, and other chapters, that the apple industry is highly regulated to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state as a vital and integral part of its economy for the benefit of all its citizens;

(b) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(c) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(d) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(e) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(f) Because the stabilizing and promotion of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure and increase the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(g) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the grower therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the grower will be reduced to the minimum absolutely necessary; and

(h) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put.

(2) The history, economy, culture, and future of Washington state's agricultural industry involves the apple industry. In order to develop and promote apples and apple products as part of an existing comprehensive scheme to regulate those products, the legislature declares:

(a) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its apple and apple products be properly promoted by establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standards of and for apples and apple prod-

ucts; and by working to stabilize the apple industry and by increasing consumption of apples and apple products within the state, nation, and internationally;

(b) That apple growers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural grower's ability to compete in local, domestic, and foreign markets;

(c) That it is in the overriding public interest that support for the apple industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that apples and apple products be promoted individually, as well as part of a comprehensive promotion of the agricultural industry to:

(i) Enhance the reputation and image of Washington state's agricultural industry;

(ii) Increase the sale and use of apples and apple products in local, domestic, and foreign markets;

(iii) Protect the public and consumers by correcting any false or misleading information and by educating the public in reference to the quality, care, and methods used in the production of apples and apple products, and in reference to the various sizes, grades, and varieties of apples and the uses to which each should be put;

(iv) Increase the knowledge of the health-giving qualities and dietetic value of apple products; and

(v) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of apples and apple products;

(d) That the apple industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulation of the industry. Other regulations and restraints applicable to the apple industry include:

(i) Washington agriculture general provisions, chapter 15.04 RCW;

(ii) Pests and diseases, chapter 15.08 RCW;

(iii) Standards of grades and packs, chapter 15.17 RCW;

(iv) Tree fruit research, chapter 15.26 RCW;

(v) Controlled atmosphere storage, chapter 15.30 RCW;

(vi) Higher education in agriculture, chapter 28B.30 RCW;

(vii) Department of agriculture, chapter 43.23 RCW;

(viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;

(ix) Organic products act under chapter 15.86 RCW;

(x) *Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;

(xi) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(xii) Planting stock under chapter 15.14 RCW;

(xiii) Washington pesticide control act under chapter 15.58 RCW;

(xiv) Farm marketing under chapter 15.64 RCW;

(xv) Insect pests and plant diseases under chapter 17.24 RCW;

(xvi) Weights and measures under chapter 19.94 RCW;

(xvii) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(xviii) The federal insecticide, fungicide, and rodenticide act under 7 U.S.C. Sec. 136; and

(e) That this chapter is in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2016 sp.s. c 15 § 11; 2011 c 103 § 27; 2002 c 313 § 134; 1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

*Reviser's note: Chapter 69.04 RCW was renamed "Intrastate commerce in drugs and cosmetics."

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.24.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.24.910. Prior: 1937 c 195 § 17; RRS § 2874-17.]

Chapter 15.26 RCW TREE FRUIT RESEARCH ACT

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15.26.010 Short title. This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

15.26.020 Purpose. The purpose of this chapter is for the creation of a commission which shall promote and carry on research and administer specific industry service programs, including but not limited to sanitation programs, which will or may benefit the planting, production, harvest-

ing, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1983 c 281 § 1; 1969 c 129 § 2.]

15.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

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

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [2010 c 8 § 6025; 1983 c 281 § 2; 1969 c 129 § 3.]

15.26.040 Tree fruit research commission created—Membership. There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the Washington apple commission, and one member representing the winter pear industry to be appointed by the director. The director or his or her duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [2010 c 8 § 6026; 1969 c 129 § 4.]

15.26.050 Qualifications of members. Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his or her income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office. [2010 c 8 § 6027; 1969 c 129 § 5.]

15.26.060 Appointment of members. The Washington apple commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to

positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his or her income from the production of winter pears. [2010 c 8 § 6028; 1969 c 129 § 6.]

15.26.070 Terms of members. The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been appointed and qualified: PROVIDED, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

(1) Positions one, four, and seven, one year.

(2) Positions two, five, and eight, two years.

(3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

15.26.080 Vacancies. In the event a commission member resigns, is disqualified, or vacates his or her position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [2010 c 8 § 6029; 1969 c 129 § 8.]

15.26.090 Quorum. A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: PROVIDED, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

15.26.100 Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.26.110 Powers of commission. The powers of the commission shall include the following:

(1) To elect a chair, treasurer, and such other officers as it deems advisable;

(2) To adopt any rules necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the administrative procedure act, chapter 34.05 RCW, as enacted or hereafter amended;

(3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;

(4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;

(5) To own, lease, or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;

(6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;

(7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;

(8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state, or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) To establish a foundation using commission funds as grant money for the benefit of the tree fruit industry. The foundation may use commission funds for the purposes authorized by this chapter;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in this chapter. Personal service contracts must comply with *chapter 39.29 RCW;

(13) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research;

(14) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;

(15) To accept and expend or retain any gift, bequest, contribution, or grant from private persons or private and public agencies to carry out the purposes provided in this chapter; and

(16) Such other powers and duties that are necessary to carry out the purpose of this chapter. [2010 c 78 § 1; 2010 c 8 § 6030; 1969 c 129 § 11.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2010 c 8 § 6030 and by 2010 c 78 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become

effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the Washington apple commission, Washington state fruit commission, and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [2011 c 103 § 1; 1969 c 129 § 12.]

Purpose—2011 c 103: "The purpose of this act is to make technical, nonsubstantive amendments to the sections included in this act. No substantive changes to the law are intended or implied." [2011 c 103 § 45.]

Collection by the Washington apple commission: RCW 15.24.110.

15.26.125 Assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW—Washington tree fruit research commission. The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on July 1, 1995, to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments. [1995 c 109 § 2.]

Additional notes found at www.leg.wa.gov

15.26.130 List of producers. The Washington apple commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the Washington apple commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director shall for the

purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up-to-date when conducting such referendum. Every person who becomes a producer after the list is compiled shall file with the director a similar report, giving his or her name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [2002 c 313 § 135; 1969 c 129 § 13.]

Additional notes found at www.leg.wa.gov

15.26.140 Increase in assessments by referendum.

The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

15.26.150 Additional assessments for special projects. The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

15.26.155 Additional assessment. The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs and the reregistration of plant protection products for use on minor crops. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1991 c 257 § 2; 1983 c 281 § 3.]

15.26.160 Suspension of assessments. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit. Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he or she has received proof that the assessment due and payable the commission has been paid. [2010 c 8 § 6031; 1969 c 129 § 17.]

15.26.180 Records of persons receiving fruit. Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his or her own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two

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years subject to inspection by duly authorized representatives of the commission. [2010 c 8 § 6032; 1969 c 129 § 18.]

15.26.190 Return of dealers, handlers, and processors—Filing—Contents. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [2010 c 8 § 6033; 1969 c 129 § 19.]

15.26.200 Assessments—When due and payable—Collection. Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

15.26.210 Assessments—Constitute personal debt. Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: PROVIDED, That such extension of time shall not apply to any person who is in arrears in his or her payments to the commission. [2010 c 8 § 6034; 1969 c 129 § 21.]

15.26.220 Assessments—Failure to pay—Collection. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

15.26.230 Disposition of moneys collected—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him or her in banks designated by the commission, and disbursed on the order of the commission.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his or her faithful performance of his or her duties and his or her strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter. [2010 c 8 § 6035; 1969 c 129 § 23.]

15.26.235 Collection, administration, and disbursement of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed [disbursed] separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

15.26.240 Nonliability of state, members, employees. Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [2010 c 8 § 6036; 1969 c 129 § 24.]

15.26.250 Collection of assessments for commission by apple commission and state fruit commission. The Washington apple commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington apple commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington. However, the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay

assessments to the Washington state fruit commission or the Washington apple commission. [2002 c 313 § 136; 1969 c 129 § 25.]

Additional notes found at www.leg.wa.gov

15.26.260 Legal costs and expenses to be borne by commission. All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

15.26.265 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 73.]

Additional notes found at www.leg.wa.gov

15.26.270 Copies of commission's proceedings, records, acts as evidence. Copies of the commission's proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

15.26.280 Moneys collected retained by commission. All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

15.26.290 Contracts with public or private agencies to carry out chapter. The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the state-

ments do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 212; 2002 c 313 § 67.]

Additional notes found at www.leg.wa.gov

15.26.300 Violations—Penalty. (1) Except as provided in subsection (2) of this section, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 105; 1969 c 129 § 30.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.26.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]

Chapter 15.28 RCW SOFT TREE FRUITS

Sections

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15.28.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state fruit commission.

(2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;

(3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;

(4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him or her, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;

(5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;

(6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums, and peaches, which includes all varieties of nectarines. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.

(7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;

(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts;

(13) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail;

(14) "Department" means the department of agriculture;

(15) "Director" means the director of agriculture. [2002 c 313 § 104; 1989 c 354 § 27; 1973 c 11 § 1; 1963 c 51 § 1; 1961 c 11 § 15.28.010. Prior: 1955 c 47 § 1; 1947 c 73 § 1; Rem. Supp. 1947 § 2909-10.]

Additional notes found at www.leg.wa.gov

15.28.015 Regulating soft tree fruits—Commission created—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and the future of Washington state's agriculture involves the production of soft tree fruits. In order to develop and promote Washington's soft tree fruits as part of an existing comprehensive regulatory scheme the legislature declares:

(1) That the Washington state fruit commission is created;

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its soft tree fruits be properly promoted by (a) enabling the soft tree fruit industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered cooperative marketing, grading, and standardizing of soft tree fruits they produce; and (b) working to stabilize the soft tree fruit industry by increasing consumption of soft tree fruits within the state, the nation, and internationally;

(3) That producers of soft tree fruits operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the producers of soft tree fruits in their ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the soft tree fruit industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that soft tree fruits be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's soft tree fruits in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's soft tree fruits;

(d) Increase the knowledge of the health-giving qualities and dietetic value of soft tree fruits;

(e) Support and engage in cooperative programs or activities that benefit the production, handling, processing, marketing, and uses of soft tree fruits produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state and to stabilize and protect the soft tree fruit industry of the state; and

(6) That the production and marketing of soft tree fruit is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the soft tree fruit industry include:

(a) The federal marketing order under 7 C.F.R. Part 922 (apricots);

(b) The federal marketing order under 7 C.F.R. Part 923 (sweet cherries);

(c) The federal marketing order under 7 C.F.R. Part 924 (prunes);

(d) The federal marketing order under 7 C.F.R. Part 930 (tart cherries);

(e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett pears);

(f) Tree fruit research act under chapter 15.26 RCW;

(g) Controlled atmosphere storage of fruits and vegetables under chapter 15.30 RCW;

(h) Organic products act under chapter 15.86 RCW;

(i) The food safety and security act under chapter 15.130 RCW;

(j) Washington food processing act under chapter 69.07 RCW;

(k) Washington food storage warehouses act under chapter 69.10 RCW;

(l) Weighmasters under chapter 15.80 RCW;

(m) Horticultural pests and diseases under chapter 15.08 RCW;

(n) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(o) Planting stock under chapter 15.14 RCW;

(p) Standards of grades and packs under chapter 15.17 RCW;

(q) Washington pesticide control act under chapter 15.58 RCW;

(r) Farm marketing under chapter 15.64 RCW;

(s) Insect pests and plant diseases under chapter 17.24 RCW;

(t) Weights and measures under chapter 19.94 RCW;

(u) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(v) Rules under the Washington Administrative Code, Title 16. [2018 c 236 § 701; 2011 c 103 § 28; 2002 c 313 § 103.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.28.020 Commission composition—Voting—Quorum. The commission is composed of seventeen voting members, as follows: Ten producers, four dealers, and two processors, who are appointed as provided in this chapter. The director, or an authorized representative, shall be a voting member of the commission. Other sections of this chapter that relate to the selection of voting members shall not apply to the director or his or her authorized representative.

A majority of the voting members constitute a quorum for the transaction of any business. [2003 c 396 § 13; 2002 c 313 § 105; 1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

Additional notes found at www.leg.wa.gov

15.28.023 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated under RCW 15.28.060.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for

the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. 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 commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the commission shall select a second candidate whose name will be forwarded to the director.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2003 c 396 § 16.]

Additional notes found at www.leg.wa.gov

15.28.024 Transition to director appointed commission. To accomplish the transition to a commission structure where the director appoints a majority of commission members, the names of the currently elected commission members shall be forwarded to the director for appointment to the commission within thirty days of May 20, 2003. Thereafter, the director shall appoint commission members pursuant to RCW 15.28.023 as the current commission member terms expire. [2003 c 396 § 17.]

Additional notes found at www.leg.wa.gov

15.28.030 Qualifications of voting members. All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his or her income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He or she cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office. [2010 c 8 § 6037; 1967 c 191 § 2; 1961 c 11 § 15.28.030. Prior: 1947 c 73 § 3; Rem. Supp. 1947 § 2909-12.]

15.28.040 Appointment of voting members—Positions. Of the producer members, four shall be appointed from the first district and occupy positions one, two, three and four; four shall be appointed from the second district and occupy positions five, six, seven and eight, and two shall be

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appointed from the third district and occupy positions nine and ten.

Of the dealer members, two shall be appointed from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be appointed from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [2003 c 396 § 14; 1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

Additional notes found at www.leg.wa.gov

15.28.050 Terms of office. The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of appointment and until their successors are appointed and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [2003 c 396 § 15; 1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

Additional notes found at www.leg.wa.gov

15.28.055 Terms of present members. Present members of the state fruit commission as provided for in RCW 15.28.020 shall serve until the first day of May of the year in which their terms would ordinarily expire and until their successors are elected and qualified. [1967 c 191 § 8.]

15.28.060 Nominating meetings—Notice—Appointment—Ballots—Advisory vote—Eligible voters. The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for potential appointment to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's potential appointment to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the appointment of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at the nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to the nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

The director shall cause an advisory vote to be held for commission positions. The advisory vote shall be by secret mail ballot. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a potential member of the commission.

A producer to be eligible to vote in the advisory vote for a nominee as a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning stock therein. [2003 c 396 § 18; 1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

Additional notes found at www.leg.wa.gov

15.28.070 Establishment of subdistricts—Rules and regulations. The commission shall have the authority, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by apportionment or appointment. [2003 c 396 § 19; 1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

Additional notes found at www.leg.wa.gov

15.28.080 Vacancies on commission—How filled. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual nominating meeting, shall be filled by vote of the remaining members of the commission. Following the next annual nomination meeting, the director shall appoint one of the two nominees selected by advisory ballot to fill the balance of the unexpired term. [2003 c 396 § 20; 1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

Additional notes found at www.leg.wa.gov

15.28.090 Compensation of members—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 14; 1975-'76 2nd ex.s. c 34 § 14; 1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.28.100 Powers of commission. The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

- (1) To exercise all of the powers of a corporation;
- (2) To elect a chair and such other officers as it may deem advisable;
- (3) To adopt, amend, or repeal, from time to time, necessary and proper rules, regulations, and orders for the performance of its duties, which rules, regulations, and orders shall have the force of laws when not inconsistent with existing laws;
- (4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks and employees, as it deems necessary and fix their compensation;
- (5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;
- (6) To accept contributions of, or match private, state, or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;
- (7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;
- (8) To sue and be sued. [2010 c 8 § 6038; 1961 c 11 § 15.28.100. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iii) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

15.28.103 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

- (a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodities; and
 - (b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.
- (2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, 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 on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 21.]

Additional notes found at www.leg.wa.gov

15.28.105 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 22.]

Additional notes found at www.leg.wa.gov

15.28.110 Duties of commission. The commission's duties are:

- (1) To adopt a commission seal;
- (2) To elect a secretary-manager and a treasurer, and fix their compensation. The same person may be elected to both offices;
- (3) To establish classifications of soft tree fruits;
- (4) To conduct scientific research and develop the healthful, therapeutic, and dietetic value of fruits, and promote the general welfare of the soft tree fruit industry of the state;
- (5) To conduct a comprehensive advertising and educational campaign to effectuate the objects of this chapter;
- (6) To increase the production, and develop and expand the markets, and improve the handling and quality of fruits;
- (7) To keep accurate accounts and records of all of its dealings, which shall be open to inspection and audit by the state auditor;
- (8) To investigate and prosecute violations of this chapter; and
- (9) To serve as an advisory committee to the director with regard to the adoption and enforcement of rules:
 - (a) Governing the grading, packing, and size and dimensions of commercial containers of soft tree fruits; and
 - (b) Fixing commercial grades of soft tree fruits and the issuance of certificates of inspection for those fruits. [2002 c 313 § 106; 1961 c 11 § 15.28.110. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 14; Rem. Supp. 1947 § 2909-23. (iii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iv) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

Additional notes found at www.leg.wa.gov

15.28.120 Copies of records as evidence. Copies of the commission's proceedings, records, and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1961 c 11 § 15.28.120. Prior: 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

15.28.130 State, personal, nonliability—Obligations limited by collections—Defense to certain civil or criminal actions. Neither the state, nor any member, agent, or employee of the commission, is liable for the acts of the commission, or upon its contracts.

All salaries, expenses, costs, obligations, and liabilities of the commission, and claims arising from the administration of this chapter, are payable only from funds collected under this chapter.

In any civil or criminal action or proceeding for violation of any rule of [or] statutory or common law against monopolies or combinations in restraint of trade, including any action

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under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2002 c 313 § 107; 1961 c 11 § 15.28.130. Prior: 1947 c 73 § 16; Rem. Supp. 1947 § 2909-25.]

Additional notes found at www.leg.wa.gov

15.28.140 District advisory and state commodity committees. There shall be separate district advisory committees and separate state commodity committees for each of the following soft tree fruits, to wit: Bartlett pears, peaches, apricots, prunes and plums, and cherries. The growers, dealers, or processors of each of the soft tree fruits, at their respective annual district meetings may elect separate district advisory committees for each of the soft tree fruits grown, handled, or processed in their respective districts. The district advisory committee shall consist of five members comprising three growers, one dealer and one processor of the respective soft tree fruit groups. Each state commodity committee shall consist of two members from, and selected by, each district advisory committee for each soft fruit. [1961 c 11 § 15.28.140. Prior: 1947 c 73 § 11; Rem. Supp. 1947 § 2909-20.]

15.28.150 Committee organization—Duties. Each district advisory committee and each state commodity committee shall select one of its members as chair. Meetings may be called by the chair or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee. [2010 c 8 § 6039; 1961 c 11 § 15.28.150. Prior: 1947 c 73 § 12; Rem. Supp. 1947 § 2909-21.]

15.28.160 Annual assessment—Exemption—Brined sweet cherries assessable. An annual assessment is hereby levied upon all commercial soft tree fruits grown in the state or packed as Washington soft tree fruit of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder. [1989 c 354 § 28; 1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909-27.]

Additional notes found at www.leg.wa.gov

15.28.170 Research and advertising—Power to increase assessment. The commission shall investigate the needs of soft tree fruit producers, the condition of the markets, and extent to which the same require advertising and research. If the investigation shows that the revenue from the

assessments levied is inadequate to accomplish the objects of this chapter, it shall report its findings to the director, showing the necessities of the industry, the probable cost of the required program, and the probable revenue from the existing levy. It may then increase the assessments to be levied to an amount not exceeding two dollars per each two thousand pounds (net weight) of such fruits so contained or packed. [1961 c 11 § 15.28.170. Prior: 1947 c 73 § 25; Rem. Supp. 1947 § 2909-34.]

15.28.180 Increase of assessment for specific fruit or classification—Procedure. (1) The same assessment shall be made for each soft tree fruit, except that if a two-thirds majority of the state commodity committee of any fruit recommends in writing the levy of an additional assessment on that fruit, or any classification thereof, for any year or years, the commission may levy such assessment for that year or years up to the maximum of eighteen dollars for each two thousand pounds of any fruit except cherries or any classification thereof, as to which the assessment may be increased to a maximum of thirty dollars for each two thousand pounds, and except pears covered by this chapter, as to which the assessment may be increased to a maximum of eighteen dollars for each two thousand pounds: PROVIDED, That no increase in the assessment on pears becomes effective unless the increase is first referred by the commission to a referendum by the Bartlett pear growers of the state and is approved by a majority of the growers voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. Any funds so raised shall be expended solely for the purposes provided in this chapter and solely for such fruit, or classification thereof.

The commission has the authority in its discretion to exempt in whole or in part from future assessments under this chapter, during such period as the commission may prescribe, any of the soft tree fruits or any particular strain or classification of them.

(2) An assessment levied under this chapter may be increased in excess of the fiscal growth factor as determined under chapter 43.135 RCW if the assessment is submitted by referendum to the growers who are subject to the assessment and the increase is approved by a majority of those voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. [1997 c 303 § 3; 1992 c 87 § 1; 1983 1st ex.s. c 73 § 1; 1977 ex.s. c 8 § 1; 1965 ex.s. c 43 § 1; 1963 c 51 § 4; 1961 c 11 § 15.28.180. Prior: 1947 c 73 § 26; Rem. Supp. 1947 § 2909-35.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

15.28.190 Deposit of funds—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him or her in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his or her faithful performance of his or her

duties and his or her strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [2010 c 8 § 6040; 1961 c 11 § 15.28.190. Prior: 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part.]

15.28.200 Use of funds—Contributions. All moneys collected from such levy shall be expended exclusively to effectuate the purposes and objects of this chapter. They shall be generally expended on promotion and improvement of the various commodities approximately in the ratio that funds are derived from such commodities, after deducting suitable amounts for general overhead and basic general research, unless a majority of the functioning state commodity committees consent to a larger expenditure on behalf of any commodity or commodities. Any funds contributed to the commission by any special group or raised by an additional levy on any commodity or classification thereof, shall be expended only in connection with such commodity. [1961 c 11 § 15.28.200. Prior: 1947 c 73 § 19; Rem. Supp. 1947 § 2909-28.]

15.28.210 Records kept—Preservation—Inspection of. Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him or her. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written request of the commission or its duly authorized agents. [2010 c 8 § 6041; 1961 c 11 § 15.28.210. Prior: 1947 c 73 § 20; Rem. Supp. 1947 § 2909-29.]

15.28.220 Returns to commission. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [2010 c 8 § 6042; 1961 c 11 § 15.28.220. Prior: 1947 c 73 § 21; Rem. Supp. 1947 § 2909-30.]

15.28.230 Due date of assessments—Delinquent penalty. All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged back against the grower unless he or she caused such delay in payment of the assessment due. [2010 c 8 § 6043; 1961 c 11 § 15.28.230. Prior: 1955 c 47 § 2; 1947 c 73 § 22; Rem. Supp. 1947 § 2909-31.]

15.28.240 Collection rules—Use of "stamps." The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "Washington state fruit commission stamps" to be purchased from the commission and fixed or attached to the container, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Stamps shall be canceled immediately upon being so attached or fixed, and the date of cancellation shall be placed thereon. [1961 c 11 § 15.28.240. Prior: 1947 c 73 § 23; Rem. Supp. 1947 § 2909-32.]

15.28.250 Responsibility for payment of assessments—Due upon receipt—Delinquencies—Civil action. Unless the assessment has been paid by the grower and evidence thereof submitted by him or her, the dealer, handler, or processor is responsible for the payment of all assessments under this chapter on all soft tree fruits handled, shipped, or processed by him or her but he or she shall charge the same against the grower, who shall be primarily responsible for such payment. Assessments are due upon receipt of an invoice for the assessments.

If the assessment becomes delinquent, the department shall cease to provide inspection services under chapter 15.17 RCW to the delinquent party until that party pays all delinquent assessments, interest, and penalties.

Any assessment due and payable under this section constitutes a personal debt of every person so assessed or who otherwise owes the same. In addition, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons, together with the specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2002 c 313 § 108; 1961 c 11 § 15.28.250. Prior: 1947 c 73 § 24; Rem. Supp. 1947 § 2909-33.]

Additional notes found at www.leg.wa.gov

15.28.260 Publications by commission—Subscriptions. If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to the payment of his or her subscription to such bulletin or publication. [2010 c 8 § 6044; 1961 c 11 § 15.28.260. Prior: 1947 c 73 § 27; Rem. Supp. 1947 § 2909-36.]

15.28.270 Violations—Penalty. Every person shall be guilty of a misdemeanor who:

- (1) Violates or aids in the violation of any provision of this chapter, or
- (2) Violates or aids in the violation of any rule or regulation of the commission. [1961 c 11 § 15.28.270. Prior: 1947 c 73 § 28; Rem. Supp. 1947 § 2909-37.]

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15.28.280 Venue of actions—Jurisdiction of courts. Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his or her principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission. [2010 c 8 § 6045; 1961 c 11 § 15.28.280. Prior: 1947 c 73 § 29; Rem. Supp. 1947 § 2909-38.]

15.28.290 Duty to enforce. It shall be the duty of all state and county law enforcement officers and all employees and agents of the department to aid in the enforcement of this chapter. [1961 c 11 § 15.28.290. Prior: 1947 c 73 § 30; Rem. Supp. 1947 § 2909-39.]

15.28.300 Rules and regulations—Filing—Publication. Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal newspaper of general circulation in each of the three districts. All such rules, regulations, or orders shall become effective pursuant to the provisions of RCW 34.05.380. [1985 c 469 § 7; 1975 1st ex.s. c 7 § 38; 1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909-40.]

15.28.305 Rule making—Exemptions. Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and the provisions of chapter 19.85 RCW, the regulatory fairness act, when adoption of the rule is determined by a referendum vote of the affected parties. [2002 c 313 § 109.]

Additional notes found at www.leg.wa.gov

15.28.310 Authority to agents of commission to inspect. Agents of the commission, upon specific written authorization signed by the chair or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier, railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder. [2010 c 8 § 6046; 1961 c 11 § 15.28.310. Prior: 1947 c 73 § 32; Rem. Supp. 1947 § 2909-41.]

15.28.315 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 213; 2002 c 313 § 68.]

Additional notes found at www.leg.wa.gov

15.28.320 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 74.]

Additional notes found at www.leg.wa.gov

15.28.325 Costs of implementing RCW 15.28.103. The costs incurred by the department of agriculture associated with the implementation of RCW 15.28.103 shall be paid for by the commission. [2003 c 396 § 23.]

Additional notes found at www.leg.wa.gov

15.28.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.28.910. Prior: 1947 c 73 § 33, part; Rem. Supp. 1947 § 2909-42, part.]

Chapter 15.30 RCW

CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

15.30.010	Definitions.
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15.30.230	Chapter cumulative and nonexclusive.
15.30.240	Prior civil or criminal liability not affected.
15.30.250	Penalties for violating chapter.
15.30.260	Cooperation, agreements with other governmental agencies.
15.30.900	Fruits and vegetables in storage prior to enactment of chapter.

15.30.010 Definitions. For the purpose of this chapter: (1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere. [2010 c 8 § 6047; 1961 c 29 § 1.]

15.30.020 Annual license required—Expiration date. It shall be unlawful for any person to engage in the business of operating a controlled atmosphere storage warehouse or warehouses without first obtaining an annual license from the director. Such license shall expire on August 31st of any one year. [1961 c 29 § 2.]

15.30.030 Application for license, contents—Issuance, prerequisites. Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [2010 c 8 § 6048; 1961 c 29 § 3.]

15.30.040 Annual license fee. The application for an annual license to engage in the business of operating a con-

trolled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee prescribed by the director by rule. [1988 c 254 § 6; 1961 c 29 § 4.]

15.30.050 Enforcement—Rules authorized, procedure. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

15.30.060 Rules—Oxygen content, temperature, and time period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored. The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: PROVIDED, That such maximum amount of oxygen retained shall not exceed five percent when apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: PROVIDED, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: PROVIDED, That such period shall not be less than forty-five days for Gala and Jonagold varieties and not less than sixty days for other apples. [1999 c 70 § 1; 1994 c 23 § 1; 1967 c 215 § 1; 1961 c 29 § 6.]

15.30.070 License renewal date—Penalty for late renewal, exception. If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his or her prior license. [2010 c 8 § 6049; 1961 c 29 § 7.]

15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.30.020 subsequent to a hearing, in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [2010 c 8 § 6050; 1961 c 29 § 8.]

15.30.090 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act. All hearings for a denial, suspension, or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 45; 1961 c 29 § 9.]

Additional notes found at www.leg.wa.gov

15.30.100 Subpoenas—Witnesses and fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents and records, anywhere in the state in any hearing affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1961 c 29 § 10.]

15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number. The director when issuing a license to an applicant shall include a warehouse number which shall be preceded by the letters "CA". If the applicant in applying for a license includes a request for a specific warehouse number, the director shall issue such number to the applicant if such number has not been issued to a prior applicant. The letters "CA" and the number issued as provided in this section shall be marked in a manner provided by the director on all containers in which fruits or vegetables subject to the provisions of this chapter are placed or packed. [1961 c 29 § 11.]

15.30.120 Licensee to make daily determination of air components—Record, form, contents. The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the director for a period of two years and shall include the following:

- (1) The name and address of the licensee.
- (2) The number of the warehouse and the storage capacity of the warehouse.
- (3) The date of sealing of the warehouse.
- (4) Date of opening of the warehouse.
- (5) A daily record of the date and time of the tests, including the percentage of carbon dioxide, percentage of oxygen and the temperature. [1961 c 29 § 12.]

15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market. The identity of any fruits or vegetables represented as having been stored in a room or warehouse subject to the provisions of this chapter shall be maintained, by the CA number issued to the licensee in whose warehouse such fruits and vegetables were stored and the state lot inspection number issued by the director for such fruits or vegetables, from the time it leaves such warehouse through the various channels of trade and transportation to the retailer. [1961 c 29 § 13.]

15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter. The director may by rule establish condition and maturity standards for fruits or vegetables subject to the provisions of this chapter which may be higher than maturity and condition standards established for similar grades or classifications of such fruits or vegetables which are not subject to the provisions of this chapter. [1961 c 29 § 14.]

15.30.150 Minimum condition and maturity standards for apples. Minimum condition and maturity stan-

dards for apples subject to the provisions of this chapter shall be the U.S. condition and maturity standards for export as provided in 7 Code of Federal Regulations 51.317 on February 21, 1961: PROVIDED, That the director may adopt any subsequent amendment to such U.S. condition and maturity standards for export prescribed by the secretary of agriculture of the United States. [1961 c 29 § 15.]

15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when. No person in this state shall place or stamp the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits or vegetables, unless the director has inspected such fruits or vegetables and issued a state lot number for such fruits or vegetables in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this chapter and that they meet all other requirements of this chapter or rules adopted hereunder: PROVIDED, That if such fruits or vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or a subsequent similar inspection by the director the letters "CA" and the state lot number shall be eradicated by the licensee. [1961 c 29 § 16.]

15.30.170 Inspection, certification may be requested by financially interested person. Any person financially interested in any fruits or vegetables subject to the provisions of this chapter may apply to the director for inspection and certification as to whether such fruits or vegetables meet the requirements provided for in this chapter or rules adopted hereunder. [1961 c 29 § 17.]

15.30.180 Fees for inspection and certification. The director shall prescribe the necessary fees to be charged to the licensee or owner for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter or rules adopted hereunder. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: PROVIDED, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any fruits or vegetables for such person. [1961 c 29 § 18.]

15.30.190 Certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all courts of the state as prima facie evidence of the statement therein. [1961 c 29 § 19.]

15.30.200 Disposition of fees. All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in chapter 15.17 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived from the inspection of any fruits and vegetables. [2011 c 103 § 2; 1961 c 29 § 20.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import. It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such fruits or vegetables have been stored in controlled atmosphere storage which meets the requirements of this chapter or rules adopted hereunder. [1961 c 29 § 21.]

15.30.220 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1961 c 29 § 22.]

15.30.230 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 29 § 23.]

15.30.240 Prior civil or criminal liability not affected. The enactment of this chapter shall not have the effects of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on February 21, 1961. [1961 c 29 § 24.]

15.30.250 Penalties for violating chapter. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 106; 1961 c 29 § 25.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.30.260 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1961 c 29 § 26.]

15.30.900 Fruits and vegetables in storage prior to enactment of chapter. Any fruits or vegetables now in controlled atmosphere storage and removed after February 21, 1961 may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits and vegetables meet the requirements of this chapter and the rules and regulations adopted hereunder. [1961 c 29 § 28.]

Chapter 15.35 RCW

WASHINGTON STATE MILK POOLING ACT

Sections

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15.35.060	Purposes.

15.35.070	Powers conferred to be liberally construed—Monopoly—Price setting.
15.35.080	Definitions.
15.35.090	Milk control between states.
15.35.100	Director's authority—Subpoena power—Rules.
15.35.105	Minimum milk price—Competition from outside the marketing area.
15.35.110	Referendum on establishing or discontinuing market area pooling arrangement.
15.35.115	Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers.
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15.35.290	Court actions to implement.
15.35.300	General penalty—Misdemeanor—Exception.
15.35.310	Certain producer-dealers exempt.

15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pricing and pooling among producers and processors of milk and milk products. [1993 c 345 § 1; 1971 ex.s. c 230 § 1.]

15.35.030 Declaration of public interest. It is hereby declared that:

- (1) Milk is a necessary article of food for human consumption;
- (2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of adequate supplies of pure and wholesome milk and milk products necessary to its citizens, to promote competitive prices, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;
- (4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;
- (5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1993 c 345 § 2; 1991 c 239 § 1; 1971 ex.s. c 230 § 3.]

(2018 Ed.)

15.35.060 Purposes. The purposes of this chapter are to:

- (1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary to prevent disorderly marketing of milk due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;
- (2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter, in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;
- (3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1993 c 345 § 3; 1991 c 239 § 2; 1971 ex.s. c 230 § 6.]

15.35.070 Powers conferred to be liberally construed—Monopoly—Price setting. It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish wholesale or retail prices for processed milk products. [1993 c 345 § 5; 1991 c 239 § 3; 1971 ex.s. c 230 § 7.]

15.35.080 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of agriculture of the state of Washington;
- (2) "Director" means the director of the department or the director's duly appointed representative;
- (3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;
- (4) "Market" or "marketing area" means any geographical area within the state or another state comprising one or more counties or parts thereof, where marketing conditions are substantially similar and which may be designated by the director as one marketing area;
- (5) "Milk" means all fluid milk from cows as defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW;
- (6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;
- (7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW:
 - (a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and
 - (b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area;
- (8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW or, if the director so provides by rule, a person who markets to a

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milk dealer milk produced under a grade A permit issued by another state;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers. [1994 c 143 § 509; 1993 c 345 § 4; 1992 c 58 § 1; 1991 c 239 § 4; 1971 ex.s. c 230 § 8.]

15.35.090 Milk control between states. (1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter. [1991 c 239 § 5; 1971 ex.s. c 230 § 9.]

15.35.100 Director's authority—Subpoena power—Rules. Subject to the provisions of this chapter, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Establish quota systems within marketing plans, and to determine by using uniform rules, what portion of the milk produced by each producer shall be assigned to each quota classification;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons or contract with such entities as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the available quotas shall be assigned to new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes and policies of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules. Nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state. [1993 c 345 § 6; 1991 c 239 § 6; 1971 ex.s. c 230 § 10.]

15.35.105 Minimum milk price—Competition from outside the marketing area. (1) In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

(a) Cost of producing fluid milk for human consumption;

(b) Transportation costs;

(c) Milk prices in states or regions outside of the state that influence prices within the marketing areas;

(d) Demand for fluid milk for human consumption;

(e) Alternative enterprises available to producers; and

(f) Economic impact on milk dealers.

(2) A milk dealer who believes that actual competition from outside the marketing area is having a significant economic impact on that milk dealer, may petition the director for a public hearing on an expedited basis to consider whether the minimum milk price in the market plan should be changed relative to the milk price to a competitor located outside the state plus transportation costs for that competitor to compete with the petitioning milk dealer.

(a) To be considered, the petition must identify the specific action requested, and must be accompanied by a statement summarizing the facts and evidence that would be provided at a public hearing by or on behalf of the petitioner to support the need for the requested action, including an identification of circumstances that have changed since the last

rule-making proceeding at which the minimum price was established.

(b) Within twenty-one days of receiving the petition, the director shall either:

(i) Adopt rules on an emergency basis, in accordance with RCW 34.05.350;

(ii) File, and distribute to all milk dealers and other interested parties, notice that a hearing will be held within sixty days of receiving the petition;

(iii) Advise the petitioner in writing that the request for rule making is denied, and explain the reasons for the denial; or

(iv) Advise the petitioner in writing that the petition provides insufficient information from which to find that rule making should be initiated, and request that the petition be resubmitted with additional information.

(c) Except as otherwise specifically provided in this section, this petition must be handled in accordance with RCW 34.05.330, and the rule-making procedures of chapter 34.05 RCW.

(3) The director may adopt rules of practice or procedure with respect to the proceedings. [1993 c 345 § 7; 1991 c 239 § 7.]

15.35.110 Referendum on establishing or discontinuing market area pooling arrangement. (1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers and producer-dealers that vote must be in favor of establishing a market area and pooling plan;

(b) Sixty-six and two-thirds percent of the milk dealers and producer-dealers that vote must be in favor of establishing a market area and pooling plan; and

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

(3) Except as provided in subsection (4) of this section, the director, within ninety days from the date the results of a referendum approved under subsection (2) of this section are filed with the secretary of state, shall adopt rules to establish a market pool in the market area, as provided for in this chapter. In conducting hearings on rules proposed for adoption under this subsection, the director shall invite public comment on whether milk regulation similar to the market area pooling plan proposed in the rules exists in neighboring states and whether a lack of such milk regulation in neighboring states would render such a market area pooling plan in this state ineffective or impractical.

(4) If, following hearings held under subsection (3) of this section, the director determines that the lack of milk regulation in neighboring states similar to the market area pooling plan proposed for this state would render such a pooling

arrangement in this state ineffective or impractical, the director shall so state in writing. The director shall file the statement with the code reviser for publication in the Washington State Register. In such a case, a market area pooling plan shall not be established in the market area under subsection (3) of this section based upon the referendum that precipitated the hearings.

If the director determines that such a lack of milk regulation in neighboring states would not render such a market area pooling plan ineffective or impractical in this state, the director shall adopt rules in accordance with subsection (3) of this section.

(5) If fifty-one percent of the producers and producer-dealers voting representing fifty-one percent of the milk produced and fifty-one percent of the milk dealers and producer-dealers in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

(6) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers, milk dealers, and producer-dealers who are subject to the plan may vote on the termination of a pooling plan. [1993 c 345 § 8; 1992 c 58 § 4; 1991 c 239 § 8; 1971 ex.s. c 230 § 11.]

15.35.115 Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers. (1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each producer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated milk dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and milk dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

(3) This subsection applies: To a person who was a producer-dealer at the time the notice was provided to producer-dealers under subsection (1) of this section regarding a referendum which was approved and who did not notify the direc-

tor under subsection (1) of this section to vote in that referendum; and to a person who acquires the facility of such a person.

If such a person's sales of milk in fluid form subsequent to the adoption of the plan increases such that those sales in any year are more than fifty percent greater than the sales of milk in fluid form from the producer facilities during any of the previous five years, RCW 15.35.310(1) does not apply to that person with regard to that plan. Such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the producer-dealer's sales of milk in fluid form during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan.

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount. [1993 c 345 § 9; 1992 c 58 § 2.]

15.35.120 Qualifications for producers to sign petitions or vote in referendums. (1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum. [1991 c 239 § 9; 1971 ex.s. c 230 § 12.]

15.35.130 Form of producer petitions. Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

15.35.140 Director to establish systems within market areas. (1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk. [1991 c 239 § 10; 1971 ex.s. c 230 § 14.]

15.35.150 Determination of quota. (1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk in a market area in fluid form or, in the director's discretion, in other forms.

(2) The director may in each market area subject to a market plan establish each producer's and each producer-dealer's initial quota in the market area. Such initial quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record. In no case shall a producer-dealer receive as a quota an amount which is less than his or her fluid milk sales for the reference period used by the director in determining quotas for other producers.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new increase in available quota in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in milk usage occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. [1993 c 345 § 10; 1992 c 58 § 5; 1991 c 239 § 11; 1971 ex.s. c 230 § 15.]

15.35.160 Contracts, rights and powers of associations not affected. No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

15.35.170 Quotas—Transfer of—Limitations. Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations

regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any producer shall become null and void as of any time the producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property and may be taken or abolished by the state without compensation. [1991 c 239 § 12; 1971 ex.s. c 230 § 17.]

15.35.180 Records of milk dealers and cooperatives, inspection and audit of. The director shall examine and audit not less than one time each year or at any other such time the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes. [1991 c 239 § 13; 1971 ex.s. c 230 § 18.]

15.35.190 Records necessary for milk dealers. All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

15.35.200 Verified reports of milk dealers. Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director, make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

15.35.210 Milk dealer license—Required. It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: PROVIDED, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

15.35.220 Milk dealer license—Application for—Contents. Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

(1) The nature of the business to be conducted;

(2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;

(3) The complete address at which the business is to be conducted;

(4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;

(5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;

(6) Any other reasonable information the director may require. [1971 ex.s. c 230 § 22.]

15.35.230 Milk dealer license—Fees—Additional assessment for late renewal. (1) Application for each milk dealer's license shall be accompanied by an annual license fee to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional assessment shall not apply if the applicant furnishes an affidavit that the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license. [1991 c 239 § 14; 1971 ex.s. c 230 § 23.]

15.35.240 Milk dealer license—Denial, suspension, or revocation of—Grounds. The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he or she is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his or her inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his or her intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been

adjudged bankrupt or where a money judgment has been secured against him or her upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [2010 c 8 § 6051. Prior: 1989 c 307 § 36; 1989 c 175 § 47; 1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

Legislative finding—1989 c 307: See note following RCW 23.86.007. Additional notes found at www.leg.wa.gov

15.35.250 Marketing assessment on producers—Additional assessment for milk testing—Penalty—Court action. (1) There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his or her agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this subsection and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

(2) In the event a producer's milk dealer does not provide milk testing in a state-certified laboratory, the director may levy an additional assessment on all such milk, not to exceed three cents per one hundred pounds of milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or the producer's agent subject to the marketing plan and shall be paid to the director for deposit into the agricultural local fund. Moneys from such assessments shall be used to provide testing of the milk in a state-certified laboratory.

The amount to be assessed and paid to the director under this subsection shall be determined by the director within the limits prescribed by this subsection.

(3) Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1993 c 345 § 11; 1991 c 239 § 15; 1971 ex.s. c 230 § 25.]

15.35.260 Records and reports of licensees for assessment purposes. Each licensee, in addition to other records required under the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

15.35.270 Assessment due date. All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

15.35.280 Separate account for each marketing plan—Deductions for departmental costs. The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: PROVIDED, That the director may deduct from each such account the necessary costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

15.35.290 Court actions to implement. In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

15.35.300 General penalty—Misdemeanor—Exception. Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: PROVIDED, That this section shall not apply to retail pur-

chasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

15.35.310 Certain producer-dealers exempt. (1) Except as provided in RCW 15.35.115, the provisions of this chapter shall not apply to persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing, and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such

herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred. [1992 c 58 § 6; 1991 c 239 § 16; 1971 ex.s. c 230 § 31.]

Chapter 15.36 RCW MILK AND MILK PRODUCTS

Sections

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15.36.002 Intent. This chapter is intended to enact state legislation that safeguards the public health and promotes public welfare by: (1) Protecting the consuming public from milk or milk products that are: (a) Unsafe; (b) produced under unsanitary conditions; (c) do not meet bacterial standards under the PMO; or (d) below the quality standards under Title 21 C.F.R. or administrative rules and orders adopted under this chapter; and (2) requiring licensing of all aspects of the dairy production and processing industry. [1994 c 143 § 101.]

15.36.012 Definitions. For the purpose of this chapter:

"Adulterated milk" means milk that is deemed adulterated under appendix L of the PMO.

"Colostrum milk" means milk produced within ten days before or until practically colostrum free after parturition.

"DMO" means supplement I, the recommended sanitation ordinance for grade A condensed and dry milk products and condensed and dry whey, to the PMO published by the United States public health service, food and drug administration.

"Dairy farm" means a place or premises where one or more cows, goats, or other mammals are kept, a part or all of the milk or milk products from which is sold or offered for sale.

"Dairy technician" means any person who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized.

"Degrade" means the lowering in grade from grade A to grade C.

"Department" means the state department of agriculture.

"Director" means the director of agriculture of the state of Washington or the director's duly authorized representative.

"Grade A milk processing plant" means any milk processing plant that meets all of the standards of the PMO to process grade A pasteurized milk or milk products.

"Grade A pasteurized milk" means grade A raw milk that has been pasteurized.

"Grade A raw milk" means raw milk produced upon dairy farms conforming with all of the items of sanitation contained in the PMO, in which the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter as determined in accordance with RCW 15.36.201.

"Grade A raw milk for pasteurization" means raw milk produced upon dairy farms conforming with all of the same items of sanitation contained in the PMO of grade A raw milk, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.201.

"Grade C milk" is milk that violates any of the requirements for grade A milk but that is not deemed to be adulterated.

"Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or other mammals.

"Milk hauler" means a person who transports milk or milk products in bulk to or from a milk processing plant, receiving station, or transfer station.

"Milk processing" means the handling, preparing, packaging, or processing of milk in any manner in preparation for sale as food, as defined in chapter 15.130 RCW. Milk processing does not include milking or producing milk on a dairy farm that is shipped to a milk processing plant for further processing.

"Milk processing plant" means a place, premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, aseptically processed, bottled, or prepared for distribution, except an establishment that merely receives the processed milk products and serves them or sells them at retail.

"Milk products" means the product of a milk manufacturing process.

"Misbranded milk" means milk or milk products that carries a grade label unless such grade label has been awarded by the director and not revoked, or that fails to conform in any other respect with the statements on the label.

"Official laboratory" means a biological, chemical, or physical laboratory that is under the direct supervision of the state or a local regulatory agency.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the department, or a milk industry laboratory officially designated by the department for the examination of grade A raw milk for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues and bacterial limits.

"PMO" means the grade "A" pasteurized milk ordinance published by the United States public health service, food and drug administration.

"Pasteurized" means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature and time standards specified in the PMO.

"Person" means an individual, partnership, firm, corporation, company, trustee, or association.

"Producer" means a person or organization who operates a dairy farm and provides, sells, or offers milk for sale.

"Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, distributing, dispensing, delivering, supplying, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Wash station" means a place, facility, or establishment where milk tanker trucks are cleaned in accordance with the standards of the PMO. [2018 c 236 § 702; 2006 c 157 § 2; 1999 c 291 § 1; 1995 c 374 § 1; 1994 c 143 § 102; 1989 c 354 § 1; 1961 c 11 § 15.32.010. Prior: 1955 c 238 § 71; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part. Formerly RCW 15.32.010.]

Findings—2006 c 157: "The legislature finds that chapter 15.36 RCW includes the regulation of raw milk and raw milk products including arrangements known as "cow shares" in which one or more individuals purchase one or more shares in a milk-producing animal in return for a portion of the milk that is produced. The legislature also finds that the agencies charged with protecting public health and safety need to have strong enforcement mechanisms and be able to respond rapidly, comprehensively, and effectively. It is not the intent of this act to prohibit either the sale of raw milk or cow share or similar arrangements by producers and processors who are properly licensed under chapter 15.36 RCW." [2006 c 157 § 1.]

Additional notes found at www.leg.wa.gov

15.36.021 Milk and milk products—Rule-making authority—Grade A pasteurized and raw milk—Grade C milk and milk products. The director of agriculture is authorized to:

(1) Adopt rules necessary to carry out the purposes of chapter 15.36 RCW, which includes rules governing the farm storage tank and bulk milk tanker requirements, however the rules may not restrict the display or promotion of products covered under this section.

(2) By rule, establish, amend, or both, definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by the federal food and drug administration.

(3) By rule, adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.481.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness.

(6) Adopt rules setting standards and requirements for the production of grade C milk and milk products. [1999 c

(2018 Ed.)

291 § 2; 1996 c 188 § 3; 1994 c 143 § 103; 1989 c 354 § 13; 1969 ex.s. c 102 § 1. Formerly RCW 15.36.011.]

Repealed definitions constitute rules: "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as herein-after in section 7 of this 1969 amendatory act repealed are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture." [1969 ex.s. c 102 § 2.]

Additional notes found at www.leg.wa.gov

15.36.025 Application of chapter 34.05 RCW. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial. [1999 c 291 § 3.]

15.36.041 Milk producer's license. Every milk producer must obtain a milk producer's license to operate as a milk producer as defined in this chapter. A milk producer's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 202.]

15.36.051 Milk processing plant license—Fee waiver. (1) A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on June 30th of each year. A milk processing plant may choose to process: (a) Grade A milk and milk products; or (b) other milk products that are not classified grade A.

(2) Only one license may be required to process milk; however, milk processing plants must obtain the necessary endorsements from the department in order to process products as defined for each type of milk or milk product processing. Application for a license shall be on a form prescribed by the director and accompanied by a two hundred fifty dollar annual license fee beginning July 1, 2015. The applicant shall include on the application the full name of the applicant for the license and the location of the milk processing plant he or she intends to operate and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable rules adopted under this chapter by the department, the applicant shall be issued a license or a renewal of a license.

(3) Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. If a license holder wishes to engage in processing a type of milk product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of milk product only after the amendment has been approved by the department.

(4) A licensee under this section shall not be required to obtain a food processing plant license under chapter 69.07 RCW to process milk or milk products.

(5) The director shall waive the fee for a food processing license under chapter 69.07 RCW for persons who are also licensed as a milk processing plant. [2015 3rd sp.s. c 27 § 2; 2005 c 414 § 1; 1999 c 291 § 4; 1994 c 143 § 203; 1991 c 109 § 2; 1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195. Formerly RCW 15.32.110.]

Findings—Intent—2015 3rd sp.s. c 27: "(1) The legislature finds that section 309(4), chapter 4, Laws of 2013 2nd sp. sess. directed the department of agriculture to convene and facilitate a work group with appropriate stakeholders to review fees supporting programs within the department that are also supported with the state general fund.

(2) The legislature further finds that with the help of a consulting firm, the department of agriculture identified fees in the food safety and animal health programs that met the budget proviso criteria. The department then formed a work group with representatives from dairy, food processing, and other relevant professional associations.

(3) The legislature further finds that the work group's final report recommends fee increases for fees that do not completely cover the costs of services provided and that will make programs within the department of agriculture less reliant on the state general fund. Therefore, the legislature intends to implement the recommendations of the work group's report." [2015 3rd sp.s. c 27 § 1.]

Additional notes found at www.leg.wa.gov

15.36.071 Milk hauler's license—Endorsements. A milk hauler must obtain a milk hauler's license to conduct the operation under this chapter. A milk hauler's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. A milk hauler's license shall also contain endorsements for individual milk transport vehicles. The license plate number and registration number for each milk transport vehicle shall be listed on the endorsement. [1995 c 374 § 2; 1994 c 143 § 205.]

Additional notes found at www.leg.wa.gov

15.36.081 Dairy technician's license—Application—Renewal—Fees. (1) A dairy technician must obtain a dairy technician's license to conduct operations under this chapter. Such license shall be limited to those functions which the licensee has been found qualified to perform. Before issuing the license the director shall assess the applicant's qualifications and may test the applicant for the functions for which application has been made.

(2) Application for a license as a dairy technician shall be made upon forms provided by the director, and shall be filed with the department. The director may issue a temporary license to the applicant for such period as may be prescribed and stated in the license, not to exceed sixty days, but the license may not be renewed to extend the period beyond sixty days.

(3) The initial application and renewal for a dairy technician's license must be accompanied by a license fee of twenty-five dollars beginning July 1, 2015. All dairy technicians' licenses shall expire on December 31st of odd-numbered years.

(4) The initial application for any endorsement beyond a dairy technician's license must be accompanied by an

endorsement fee of twenty-five dollars beginning July 1, 2015. [2015 3rd sp.s. c 27 § 3; 1999 c 291 § 5; 1994 c 143 § 206; 1963 c 58 § 6; 1961 c 11 § 15.32.580. Prior: 1943 c 90 § 4; 1927 c 192 § 8; 1923 c 27 § 7; 1919 c 192 § 26; Rem. Supp. 1943 § 6189. Formerly RCW 15.32.580.]

Findings—Intent—2015 3rd sp.s. c 27: See note following RCW 15.36.051.

15.36.091 Dairy technician's license—Records—Inspection of. Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk and milk products bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a copy of every original report of each test, weight, or grade made by him or her for a period of two months after making the report. No unfair, fraudulent, or manipulated sample shall be taken or delivered for analysis. [1994 c 143 § 207; 1963 c 58 § 9; 1961 c 11 § 15.32.590. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part. Formerly RCW 15.32.590.]

15.36.101 Milk wash station license. A wash station operator must obtain a milk wash station license to conduct the operation under this chapter for all wash stations separate from a milk processing plant. A milk wash station license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for such license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 208.]

15.36.111 Inspection of dairy farms and milk processing plants—Violations—Director's access. (1) The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of grade requirement, he or she shall make a second inspection after a lapse of such time as he or she deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Whenever there is any violation of the same requirement of this chapter on the second inspection, the director may initiate proceedings to degrade, suspend the license, or assess a civil penalty.

(2) One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of the milk tank room or a mutually agreed upon location on a dairy farm or given to an operator of the milk processing plant, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

(3) Every milk producer and milk processing plant shall permit the director access to all parts of the establishment

during the working hours of the producer or milk processing plant, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every milk processing plant shall furnish the director, upon his or her request, for official use only, samples of any milk product for laboratory analysis, and a true statement of the actual quantities of milk and milk products of each grade purchased and sold.

(4) The director shall have access to all parts of a dairy farm or facility that is not licensed as a milk producer or milk processing plant if the director has information that the dairy farm or facility is engaged in activities that require a license under this chapter. The director shall have access during the working hours of the dairy farm or facility, which shall at a minimum include the hours from 8 a.m. to 5 p.m. The director shall have the authority to take samples of milk or any milk products and water and environmental samples for laboratory analysis. For all establishments subject to this subsection and subsection (3) of this section, the director shall have access to records including, but not limited to, customer lists, milk production records, temperature records, and records of inspections and tests.

(5) If the director is denied access to a dairy farm or milk processing plant, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested. [2006 c 157 § 3; 1999 c 291 § 6; 1996 c 189 § 1; 1994 c 143 § 209; 1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34. Formerly RCW 15.36.100.]

Findings—2006 c 157: See note following RCW 15.36.012.

Additional notes found at www.leg.wa.gov

15.36.131 Sale of out-of-state grade A milk and milk products. Grade A milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter and the PMO: PROVIDED, That the director shall satisfy himself or herself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1994 c 143 § 211; 1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39. Formerly RCW 15.36.500.]

15.36.141 Grading of milk and milk products. Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in this chapter, with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk product used in its preparation. [1994 c 143 § 510; 1984 c 226 § 3; 1981 c 297 § 2; 1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.120.]

(2018 Ed.)

Additional notes found at www.leg.wa.gov

15.36.151 Unlawful to sell, offer for sale, or deliver certain products—Diseased animals—Colostrum—Exceptions. It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows, goats, or other mammals affected with disease or of which the owner thereof has refused official examination and tests for disease; or

(2) Colostrum milk for consumption by humans, except that this prohibition regarding colostrum milk does not apply to:

(a) Colostrum milk made or to be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk; or

(b) Colostrum milk processed or to be processed by a licensed food processing facility or a milk processing plant as a nutritional supplement in accordance with the federal dietary supplement health and education act. Colostrum milk used for this purpose must be pasteurized or otherwise subjected to a heat process or other treatment sufficient to kill harmful organisms.

Colostrum milk described in subsection (2)(a) or (b) of this section is exempt from the prohibition provided by subsection (2) of this section if it comes from a licensed producer. Such colostrum milk is also exempt from meeting the standards for grade A raw milk required by this chapter. [2000 c 97 § 1; 1999 c 291 § 7; 1994 c 143 § 303; 1981 c 321 § 1; 1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211. Formerly RCW 15.32.160.]

15.36.161 Cows, goats, and other mammals—Animal health requirements. (1) All milking cows, goats, and other mammals must meet the animal health requirements established by the state veterinarian under the authority of chapter 16.36 RCW.

(2) Milk or milk products from cows, goats, and other mammals intended for consumption in the raw state must be from a herd which is tested negative within the previous twelve months for brucellosis, tuberculosis, and any other disease the director may designate by rule. Additions to the herd must be tested negative for the diseases within the previous thirty days before introduction into the herd. The state veterinarian shall direct all testing procedures in accordance with state and national standards for animal disease eradication.

(3) Cows, goats, and other mammals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd. Cows, goats, and other mammals producing bloody, stringy, or otherwise abnormal milk, but with only slight inflammation of the udder shall be excluded from the herd until reexamination shows that the milk has become normal. [1999 c 291 § 8; 1982 c 131 § 2; 1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.150.]

15.36.171 Grades of milk and milk products that may be sold. The director may revoke the license of any milk processing plant or producer whose product fails to qualify as grade A pasteurized or grade A raw, or in lieu thereof may degrade the product to grade C and permit its sale as other than fluid milk or grade A milk products during a period not exceeding thirty days. In the event of an emergency, the director may permit the sale of grade C milk for more than thirty days. [1999 c 291 § 9; 1995 c 374 § 3; 1994 c 143 § 301; 1989 c 354 § 22; 1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37. Formerly RCW 15.36.470.]

Additional notes found at www.leg.wa.gov

15.36.181 Sale of adulterated or misbranded milk or milk products prohibited—Possession restricted. No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded. It is unlawful for any person, elsewhere than in a private home, to have in possession any adulterated or misbranded milk or milk products.

Adulterated or misbranded milk or milk products may be impounded and disposed of by the director. [1999 c 291 § 10; 1994 c 143 § 302; 1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31. Formerly RCW 15.36.070.]

15.36.191 Milk or milk product analysis—Report of violative results. After obtaining a sample of milk or milk product for analysis, the department shall, within ten days of obtaining the result of the analysis, send any violative results to the person from whom the sample was taken or to the person responsible for the condition of the milk. [1999 c 291 § 11; 1994 c 143 § 304; 1989 c 354 § 11; 1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278. Formerly RCW 15.32.530.]

Additional notes found at www.leg.wa.gov

15.36.201 Examination of milk and milk products—Violations—Director's options—Penalty. (1) During any consecutive six-month period, at least four samples of: (a) Either raw milk or raw milk for pasteurization, or both, from each milk producer; or (b)(i) raw milk for pasteurization after receipt by the milk processing plant and prior to pasteurization; (ii) heat-treated milk products; and (iii) pasteurized milk and milk products from each milk processing plant shall be collected and examined in an official laboratory to determine compliance with bacteriological or cooling temperature standards for milk or milk products established in this chapter and rules adopted under this chapter. However, in the case of raw milk for pasteurization, the director may accept the results of an officially designated laboratory.

(2) If a bacterial count, somatic cell count, coliform determination, or cooling temperature exceeds the standard, the director shall send written notice to the milk producer or milk processor. The director may initiate proceedings to degrade or suspend the milk producer's license or milk processing plant license and may assess a civil penalty whenever the standard is again violated. [2013 c 7 § 1; 1999 c 291 § 12. Prior: 1994 c 143 § 401; 1994 c 46 § 11; 1989 c 354 § 17; 1981 c 297 § 1; 1961 c 11 § 15.36.110; prior: 1955 c 238 §

10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35. Formerly RCW 15.36.110.]

Additional notes found at www.leg.wa.gov

15.36.206 Source of milk and milk products—Seller's disclosure. Any person selling milk or milk products shall furnish the director, upon request, with the name of all milk processing plants or distributors from whom their milk and milk products are obtained. [1999 c 291 § 13.]

15.36.221 Grade A raw milk—Cooling. Milk and milk products for consumption in the raw state or for pasteurization shall be cooled within two hours of completion of milking to forty degrees Fahrenheit or less and maintained at that temperature until picked up, in accordance with RCW 15.36.201, so long as the blend temperature after the first and following milkings does not exceed fifty degrees Fahrenheit. [1995 c 374 § 4; 1984 c 226 § 5; 1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.260.]

Additional notes found at www.leg.wa.gov

15.36.231 Raw milk or milk products—Bottling and capping—Packaging—Labeling. (1) Milk and milk products for consumption in the raw state shall be bottled or packaged on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and operations. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used.

(2) All containers enclosing raw milk or any raw milk product shall be plainly labeled or marked with the word "raw" and the name of the producer or packager. The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [2005 c 414 § 2; 1999 c 291 § 14; 1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.265.]

15.36.241 Capping of milk or milk products. Capping of milk or milk products shall be done in a sanitary manner by means of approved equipment and operations. The cap or cover shall cover the pouring lip to at least its largest diameter. [2005 c 414 § 3; 1961 c 11 § 15.36.420. Prior: 1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.420.]

15.36.261 Butter or cheese—Pasteurization of milk or cream. All milk or cream used in the manufacture of pasteurized butter or cheese shall be pasteurized only in the plant where the butter or cheese is manufactured. [1961 c 11 § 15.32.410. Prior: 1919 c 192 § 12; RRS § 6175. Formerly RCW 15.32.410.]

15.36.271 "Pasteurized"—Use of word regulated. No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized in

its final form. [1989 c 354 § 7; 1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233. Formerly RCW 15.32.420.]

Additional notes found at www.leg.wa.gov

15.36.281 Unlawful use of containers—Seizure authorized. (1) It shall be unlawful for a person other than the owner, to possess for sale or barter or to use a container that is used to distribute packaged milk or milk products and that bears the name or trademark of an owner that has been properly registered.

(2) A person receiving packaged dairy products in containers bearing the registered name or trademark of the owner shall return the containers to the owner.

(3) When such a container is in the possession of a person other than the owner, the director may seize and hold it until it is established to the director's satisfaction that such possession is lawful. The director may seize such containers and return them to the owner, in which case the owner shall pay the expenses thereof. Neither the director nor a person who returns such containers shall be liable for containers lost in transportation. [1994 c 143 § 508; 1961 c 11 § 15.32.450. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 3; RRS § 6261. (iii) 1927 c 192 § 22a; 1915 c 101 § 4; RRS § 6262. (iv) 1927 c 192 § 22b; 1915 c 101 § 5; RRS § 6263. Formerly RCW 15.32.450.]

15.36.401 Licenses—Denial, suspension, revocation—Reasons. (1) A license issued under this chapter may be denied, suspended, or revoked by the director when a person:

(a) Fails to comply with the provisions of this chapter or the rules adopted under this chapter;

(b) Refuses the department access to a portion or area of a facility regulated under this chapter, for the purpose of carrying out the provisions of this chapter;

(c) Fails to comply with an order of the director;

(d) Refuses to make available to the department records required to be kept under the provisions of this chapter;

(e) Fails to comply with the applicable provisions of chapter 15.130 RCW, *Washington intrastate commerce in food, drugs, and cosmetics act, or rules adopted under that chapter;

(f) Interferes with the director in the performance of his or her duties; or

(g) Exhibits negligence, misconduct, or lack of qualification in the discharge of his or her functions.

Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

(2) Whenever a milk transport vehicle is found in violation of this chapter or rules adopted under this chapter, the endorsement for that milk transport vehicle contained on a milk hauler's license may be suspended or revoked. The suspension or revocation does not apply to any other milk transport vehicle operated by the milk hauler.

(3) A license may be revoked by the director upon serious or repeated violations or after a license suspension or degrade for thirty continuous days without correction of the items causing the suspension or degrade. [2018 c 236 § 703; 1999 c 291 § 15; 1994 c 143 § 501.]

(2018 Ed.)

*Reviser's note: The chapter name for chapter 15.130 RCW is "food safety and security act."

15.36.412 Issuance of cease and desist order. The director may issue a cease and desist order to any person whom the director has reason to believe is engaged in an activity for which a license is required by this chapter. The person to whom such notice is issued may request an adjudicative proceeding to contest the order. [2006 c 157 § 5.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.421 Milk processing plant or producer—License suspension. (1) If the director finds a milk processing plant or producer operating under conditions that constitute an immediate danger to public health, safety, or welfare or if the licensee or an employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend a license provided for in this chapter.

(2) If a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) If a license is summarily suspended, processing and shipping operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1999 c 291 § 16; 1994 c 143 § 503.]

15.36.451 Regrading of milk or milk products—Reinstatement of license. Any producer or milk processing plant whose milk has been degraded by the director, or whose license has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her license.

In case the lowered grade or the license suspension was the result of violation of the bacteriological or cooling temperature standards, the director may take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the license on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.201.

In case the lowered grade of the applicant's product or the license suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he or she may deem necessary to assure himself or herself that the applicant is again complying with the higher grade requirements. The higher grade or license shall be reinstated upon confirmation that all violated items are corrected and any period for reduction in grade or license suspensions as ordered by the director has been completed. [2013 c 7 § 2; 1999 c 291 § 17; 1996 c 189 § 2; 1994 c 143 § 506; 1961 c 11 § 15.36.480. Prior: 1949

c 168 § 9; Rem. Supp. 1949 § 6266-37a. Formerly RCW 15.36.480.]

Additional notes found at www.leg.wa.gov

15.36.454 Failure to comply with chapter or rules—Civil penalties. (1) Any person who fails to comply with this chapter or the rules adopted under this chapter may be subject to a civil penalty in an amount of not more than one thousand dollars per violation per day.

(2) The director may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Whenever the results of an antibiotic, pesticide, or other drug residue test on a producer's milk are above the actionable level established in the PMO, the producer is subject to a civil penalty under this section in addition to any other action taken under this chapter.

(4) The director may impose a civil penalty under this section for violations of the standards for component parts of fluid dairy products that are established in this chapter or rules adopted under this chapter.

(5) Each violation is a separate and distinct offense. The director shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under this section shall be remitted to the department and deposited into the revolving fund of the Washington state dairy products commission. [2013 c 7 § 3; 1999 c 291 § 18.]

15.36.455 Violations—Notice, orders, damages. (1) When the director has probable cause to believe that milk or milk products are being sold, distributed, stored, or transported in violation of this chapter or rules adopted under this chapter, the director may issue and serve upon the owner or custodian of the milk or milk products a written notice of embargo and order prohibiting the sale of the milk or milk products. If the owner or custodian is not available for service, the director may attach the notice of embargo and order prohibiting sale to the container holding the milk or milk products. The milk or milk products shall not be sold, used, or removed until this chapter has been complied with and the milk or milk products have been released from embargo under conditions specified by the director in writing.

(2) The department may issue a destruction and disposal order covering any embargoed milk or milk products. The destruction and disposal shall occur at the cost of the owner or custodian.

(3) The person to whom the notice of embargo and order prohibiting sale was issued or the person to whom a destruction or disposal order was issued may request an adjudicative proceeding to contest the order.

(4) A state court shall not allow the recovery of damages from an administrative action under this section if the court finds there was probable cause for the action. [2006 c 157 § 6.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.473 Failure to comply with chapter or rules—Criminal penalties. (1) It is unlawful for any person to sell raw milk from a dairy farm that is not licensed as a milk producer or a milk processing plant under this chapter.

(2) The sale of raw milk from a dairy farm that is not licensed as a milk producer and a milk processing plant under this chapter constitutes:

(a) For the first offense, a misdemeanor; and

(b) For the second and subsequent offenses, a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Neither the issuance of a cease and desist order nor payment of a civil penalty relieves the person so selling raw milk from criminal prosecution, but the remedy of a cease and desist order or civil penalty is in addition to any criminal liability. [2006 c 157 § 7.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.475 Laboratory tests—Admission as evidence. Tests performed by an official laboratory or an officially designated laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of a violation in any proceeding to enforce this chapter. [1999 c 291 § 21.]

15.36.481 Violations may be enjoined. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court of the county in which the defendant resides or maintains his or her principal place of business or Thurston county. [1999 c 291 § 22; 1969 ex.s. c 102 § 4. Formerly RCW 15.36.600.]

15.36.491 Licenses—Money deposited in the agricultural local fund. All moneys received for licenses under this chapter shall be deposited in the agricultural local fund established under RCW 43.23.230. [2015 3rd sp.s. c 27 § 4; 2005 c 414 § 4; 1999 c 291 § 23; 1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249. Formerly RCW 15.32.710.]

Findings—Intent—2015 3rd sp.s. c 27: See note following RCW 15.36.051.

Additional notes found at www.leg.wa.gov

15.36.511 Unlawful actions. (1) It is unlawful for any person to:

(a) Interfere with or obstruct any person in the performance of official duties under this chapter;

(b) Employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician;

(c) Alter or tamper with a seal placed by the director;

(d) Alter or tamper with a sample of milk or milk products taken or sealed by the director; or

(e) Operate as a milk producer or milk processing plant without obtaining a license from the director.

(2) Except as provided under RCW 15.36.131, it is unlawful for a milk processing plant to accept milk from a person not licensed as a producer or milk processor. [2006 c 157 § 4; 1999 c 291 § 24; 1961 c 11 § 15.32.730. Prior: 1919 c 192 § 76; RRS § 6238. Formerly RCW 15.32.730.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.525 Sanitary certificates—Rules—Fee for issuance. The department may issue sanitary certificates to milk processing plants under this chapter subject to such requirements as it may establish by rule. The fee for issuance is seventy-five dollars per certificate beginning July 1, 2015. Fees

collected under this section shall be deposited in the agricultural local fund. [2015 3rd sp.s. c 27 § 5; 1999 c 291 § 25.]

Findings—Intent—2015 3rd sp.s. c 27: See note following RCW 15.36.051.

15.36.531 Declaration of police power. It is hereby declared that this chapter is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may by the Constitution of the United States of America have been reserved to the congress thereof. [1961 c 11 § 15.32.900. Prior: 1919 c 192 § 83; RRS § 6245. Formerly RCW 15.32.900.]

15.36.541 Chapter cumulative. Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 15.130 RCW or RCW 69.40.010 through 69.40.025, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not in substitution therefor. And nothing in this chapter shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [2018 c 236 § 704; 1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266. Formerly RCW 15.32.910.]

15.36.551 Dairy inspection program—Assessment. (Expires June 30, 2020.) There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk processing plant receiving the milk for processing. This shall include milk processing plants that produce their own milk for processing and milk processing plants that receive milk from other sources. Milk processing plants whose monthly assessment for receipt of milk totals less than twenty dollars in any given month are exempted from paying this assessment for that month. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry.

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If the operator of a milk processing plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section expires June 30, 2020. [2015 1st sp.s. c 5 § 1; 2010 c 17 § 1; 2004 c 132 § 1; 1999 c 291 § 26; 1995 c 15 § 1; 1994 c 34 § 1; 1993 sp.s. c 19 § 1; 1992 c 160 § 1. Formerly RCW 15.36.105.]

Additional notes found at www.leg.wa.gov

15.36.561 Dairy inspection program—Advisory committee—Purpose—Terms. (1) There is created a dairy inspection program advisory committee. The committee shall consist of eleven members appointed by the director. The director shall solicit nominations for members of the committee from Washington dairy producer organizations and milk processors. The committee shall consist of four members who are producers or their representatives, four members who are milk processors or their representatives, one member who is a producer processor, one member who is a milk hauler, and one member who is a milk equipment dealer.

(2) The purpose of this advisory committee is to advise the director in the administration of the dairy inspection program and regarding policy issues related to this chapter.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years until their successor has been appointed and qualified. In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason the vacancy may be filled by the director under the provisions of this section governing appointments. The director may remove a member for cause.

(4) The committee shall elect one of its members as chair. The committee shall meet by the call of the director, chair, or a majority of the committee. Members of the committee shall serve without compensation. [1999 c 291 § 27; 1994 c 143 § 507; 1994 c 34 § 2; 1992 c 160 § 2. Formerly RCW 15.36.107.]

15.36.571 Department authorized to assess inspection fee on certain manufacturing facilities. The department may, upon inspection, assess an inspection fee on any manufacturing facility that is required to be inspected under the PMO and does not satisfy the definition of "milk processing plant" as defined in this chapter, "food processing plant" as defined in RCW 69.07.010, or "food storage warehouse" as defined in RCW 69.10.005. [2015 3rd sp.s. c 27 § 6.]

Findings—Intent—2015 3rd sp.s. c 27: See note following RCW 15.36.051.

Chapter 15.37 RCW

MILK AND MILK PRODUCTS FOR ANIMAL FOOD

Sections

15.37.010	Definitions.
15.37.020	Enforcement of chapter—Rules, subject to administrative procedure act.
15.37.030	Minimum conditions for sale, etc.—When license required—Expiration date of license.
15.37.040	Application, issuance of license.

15.37.050	License fee on application.
15.37.060	Penalty for delinquency on renewal of license.
15.37.070	Denial, suspension, revocation of license.
15.37.080	Denial, suspension, revocation of license—Hearings subject to administrative procedure act.
15.37.090	Subpoenas—Witness fees.
15.37.100	Coloring of milk in containers, when required.
15.37.110	Labels on containers—Contents.
15.37.120	Entry on premises.
15.37.130	Injunctions authorized.
15.37.140	Chapter cumulative and nonexclusive.
15.37.150	Penalty.

15.37.010 Definitions. For the purpose of this chapter:

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

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be. [2010 c 8 § 6052; 1961 c 285 § 1.]

15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 285 § 2.]

15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license. It shall be unlawful for any person to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk, for animal food consumption, which does not meet, or has not been produced and handled under conditions prescribed for grade A milk as provided in chapter 15.36 RCW as enacted or hereafter amended, without first obtaining an annual license from the director which shall expire on June 30th following the date of issuance unless revoked prior thereto by the director for cause. [1961 c 285 § 3.]

15.37.040 Application, issuance of license. Application for a license shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is a receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.

(5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that

such applicant has paid the required fee. [2010 c 8 § 6053; 1961 c 285 § 4.]

15.37.050 License fee on application. The application for an annual license to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk for animal food consumption shall be accompanied by a license fee of twenty-five dollars. [1961 c 285 § 5.]

15.37.060 Penalty for delinquency on renewal of license. If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his or her prior license. [2010 c 8 § 6054; 1961 c 285 § 6.]

15.37.070 Denial, suspension, revocation of license. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [2010 c 8 § 6055; 1961 c 285 § 7.]

15.37.080 Denial, suspension, revocation of license—Hearings subject to administrative procedure act. All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 50; 1961 c 285 § 8.]

Additional notes found at www.leg.wa.gov

15.37.090 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privileges granted by a license issued under the provisions of this chapter. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 285 § 9.]

15.37.100 Coloring of milk in containers, when required. It shall be unlawful for any person to sell, offer for sale, hold for sale, advertise for sale, trade, barter, or to give as an inducement for the sale of another product, any milk, cream, or skim milk, for animal food consumption which does not meet, or has not been produced under conditions prescribed for grade A milk, as prescribed in chapter 15.36 RCW as enacted or hereafter amended and rules adopted thereunder, and the applicable provisions of chapter 69.04 RCW (the Food, Drug and Cosmetic Act) as enacted and hereafter amended and rules adopted thereunder, in containers provided either by the vendor or vendee and which are

capable of holding less than twenty liquid quarts, unless such milk, cream, or skim milk has been decharacterized with a color prescribed by the director which will not affect its nutritive value for animal food. [1961 c 285 § 10.]

15.37.110 Labels on containers—Contents. It shall be unlawful to sell, offer for sale, hold for sale, trade, barter, or to offer as an inducement for the sale of another product, milk, cream, or skim milk subject to the provisions of this chapter in containers which are not labeled in a conspicuous location readily visible to any person handling such containers with the following:

(1) The name and address of the producer or distributor in letters not less than one-fourth inch in size.

(2) The name of the contents in letters not less than one-fourth inch in size.

(3) The words "not for human consumption" in letters at least one-half inch in size.

(4) The words "decharacterized with harmless food coloring" in letters not less than one-fourth inch in size. [1961 c 285 § 11.]

15.37.120 Entry on premises. The director or his or her duly authorized representative may enter, during reasonable business hours, any premises where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his or her duly authorized representative when he or she is performing or carrying out the duties imposed on him or her by this chapter or rules adopted hereunder. [2010 c 8 § 6056; 1961 c 285 § 12.]

15.37.130 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of any other remedy at law. [1961 c 285 § 13.]

15.37.140 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 285 § 14.]

15.37.150 Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1961 c 285 § 15.]

Chapter 15.44 RCW

DAIRY PRODUCTS COMMISSION

Sections

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15.44.910	Liberal construction.

General obligation bonds: Chapter 43.991 RCW.

15.44.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington state dairy products commission.

(2) "Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate.

(3) "Dealer" means a person doing business in the state of Washington who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products.

(4) "Handler" means a person doing business in the state of Washington who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution.

(5) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(6) "Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers.

(7) "Person" means an individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(8) "Processor" means a person doing business in the state of Washington who uses milk or cream for canning, dry-

ing, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom.

(9) "Producer" means a person doing business in the state of Washington who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses.

(10) "Ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption, or industrial or medicinal uses. [2012 c 107 § 1; 2002 c 313 § 88; 1985 c 261 § 17; 1979 ex.s. c 238 § 1; 1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

15.44.015 Regulating dairy products—Commission created—Existing comprehensive scheme—Laws applicable. The history, economy, culture, and the future of Washington state's agriculture involves the dairy industry. In order to develop and promote Washington's dairy products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state dairy products commission is created. The commission may also take actions under the name "the dairy farmers of Washington";

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its dairy products be properly promoted by (a) enabling the dairy industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the dairy products they produce; and (b) working to stabilize the dairy industry by increasing consumption of dairy products within the state, the nation, and internationally;

(3) That dairy producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the dairy producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the dairy industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that dairy products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's dairy products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's dairy products;

(d) Increase the knowledge of the health-giving qualities and dietetic value of dairy products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of dairy products produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the dairy industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the dairy industry include the:

(a) Federal marketing order under 7 C.F.R., Part 1124;

(b) Dairy promotion program under the dairy and tobacco adjustment act of 1983, Subtitle B;

(c) Milk and milk products act under chapter 15.36 RCW and rules, including:

(i) The national conference of interstate milk shippers pasteurized milk ordinance;

(ii) The national conference of interstate milk shippers dry milk ordinance;

(iii) Standards for the fabrication of single-service containers;

(iv) Procedures governing cooperative state-public health service;

(v) Methods of making sanitation ratings of milk supplies;

(vi) Evaluation and certification of milk laboratories; and

(vii) Interstate milk shippers;

(d) Milk and milk products for animal food act under chapter 15.37 RCW and rules;

(e) Organic products act under chapter 15.86 RCW and rules;

(f) The food safety and security act under chapter 15.130 RCW;

(g) Washington food processing act under chapter 69.07 RCW and rules;

(h) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(i) Animal health under chapter 16.36 RCW and rules;

(j) Weighmasters under chapter 15.80 RCW and rules; and

(k) Dairy nutrient management act under chapter 90.64 RCW and rules. [2018 c 236 § 705; 2011 c 103 § 29; 2002 c 313 § 87.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.44.020 Commission composition. The commission shall be composed of producers and at least one dealer. The director shall be a voting member of the commission.

As used in this chapter, "director" means the director of agriculture or his or her authorized representative. [2012 c 107 § 2; 2008 c 12 § 1; 2003 c 396 § 24; 2002 c 313 § 89; 1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3, part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

Additional notes found at www.leg.wa.gov

15.44.021 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for producer member positions on the commission shall be nominated under RCW 15.44.033. The director may select a nominated candidate for a position or may reject all candidates.

(3) If two candidates are nominated, the director may choose one, reject both, or call for an advisory vote between the two candidates. In the event there are more than two candidates nominated for the producer member positions, the director shall cause an advisory vote to be held. Advisory ballots shall be mailed to all producers in the district or area where a vacancy is about to occur and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. 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 commission.

(4) The director may request that any candidate whose name is forwarded to the director for potential appointment submit a letter stating why he or she wishes to be appointed to the commission.

(5) If the director rejects one or more of the candidates nominated under RCW 15.44.033, the director may request that the commission provide additional qualified nominees for consideration. Upon receipt of the nomination or nominations, the director may select a candidate, cause an advisory vote to be held, or reject the nominees. If the commission does not submit additional nominees to the director within thirty days of the director's request, the director shall nominate additional candidates for an advisory vote.

(6) The commission may appoint up to three nonvoting members who have expertise in marketing, operations, or other topics relevant to the work of the commission. The term of office for each nonvoting position is one year and may be renewed by the commission.

(7) The director shall appoint one person to a dealer position, unless the commission adopts rules providing for additional dealer positions on the commission. [2012 c 107 § 3; 2008 c 12 § 2; 2003 c 396 § 25.]

Additional notes found at www.leg.wa.gov

15.44.022 Transition to defined districts and areas.

(1) To accomplish the transition to the newly defined districts and areas as described in RCW 15.44.027, the initial producer appointments are as follows:

(a) The current incumbent representing district one must be appointed to the new district four position with an expiration date of June 30, 2015;

(b) The current incumbent representing district two must be appointed to the eastern Washington at large position with an expiration date of June 30, 2015;

(c) The current incumbent representing district three must be appointed to the new district one position with an expiration date of June 30, 2013;

(d) The current incumbent representing district four must be appointed to the new district three position with an expiration date of June 30, 2013;

(e) The current incumbent representing district five must be appointed to the state at large position with an expiration date of June 30, 2014;

(f) The current incumbent representing district six must be appointed to the new western Washington at large position with an expiration date of June 30, 2014;

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(g) The current incumbent representing district seven must be appointed to the new district two position with an expiration date of June 30, 2014; and

(h) The current incumbent representing dealers must be appointed to the dealer position with an expiration date of June 30, 2013.

(2) Thereafter, producer and dealer members are nominated and appointed as provided for under RCW 15.44.021 and 15.44.033. [2012 c 107 § 4; 2003 c 396 § 28.]

Additional notes found at www.leg.wa.gov

15.44.023 Associations with same objective—Dual membership—Contracting. Any board member of the commission may be a member or officer of an association that has the same objectives for which the commission was formed. The commission may contract with the association for services necessary to carry out any purposes authorized under this chapter if an appropriate written contract has been entered into. [2002 c 313 § 101.]

Additional notes found at www.leg.wa.gov

15.44.027 Appointment of producer member—Commission's authority—Reasonably equal producer representation. (1) One producer member of the commission must be appointed from each of the following districts or areas:

(a) District one, which includes the counties of Whatcom, Skagit, Snohomish, San Juan, Island, and that portion of King county located north of Interstate 90;

(b) District two, which includes the counties of Clallam, Jefferson, Grays Harbor, Kitsap, Mason, Thurston, Pierce, Lewis, Wahkiakum, Cowlitz, Clark, Skamania, and that portion of King county located south of Interstate 90;

(c) District three, which includes the counties of Yakima, Klickitat, and Benton;

(d) District four, which includes the counties of Kittitas, Grant, Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, Adams, Lincoln, Spokane, Douglas, Chelan, Okanogan, Ferry, Stevens, and Pend Oreille;

(e) Western Washington at large, which includes that portion of the state of Washington located west of the crest of the Cascade mountains;

(f) Eastern Washington at large, which includes that portion of the state of Washington located east of the crest of the Cascade mountains; and

(g) The state at large, which includes the entire state.

(2) The commission may adopt rules to eliminate, combine, revise, amend, or otherwise modify commission districts and areas in accordance with the intent and provisions of this chapter. In the event of redistricting, the procedure for transition of appointments to new districts or areas must be set forth in rule. The commission may adopt rules allowing the appointment of additional dealers to the commission.

(3) The boundaries and numbers of the commission districts or areas shall be maintained in a manner that ensures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members and maintains reasonable apportionment for each historical production or marketing area. However, the requirement of this section for reasonable equal representation of each producer on the com-

mission does not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains.

(4) The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district or area should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of the commission districts or areas to carry out the proper reapportionment of producer representation on the commission.

(5) A review of boundaries and areas must be conducted by the commission at least every five years and take into consideration the distribution of producers, the number of head, production levels, and other relevant factors as determined by the commission. If the commission fails to carry out its responsibilities as set forth in this section, the director may upon request by ten producers institute a hearing to determine if there is reasonably equal representation for each producer on the commission. If the director finds that such reasonably equal representation is lacking, he or she then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer. [2012 c 107 § 5; 2010 c 8 § 6057; 1975 1st ex.s. c 136 § 7.]

15.44.030 Member qualifications. Each of the producer members of the commission shall:

(1) Be a citizen and resident of this state and the district or area which he or she represents; and

(2) Be and for the five years last preceding his or her election have been actually engaged as an owner or shareholder in producing dairy products within this state. These qualifications must continue during each member's term of office.

The dealer member shall be actively engaged as a dealer in dairy products or employed in a dealer capacity as an officer or employee at management level in a dairy products organization. [2012 c 107 § 6; 2008 c 12 § 3; 1975 1st ex.s. c 136 § 2; 1965 ex.s. c 44 § 4; 1961 c 11 § 15.44.030. Prior: 1959 c 163 § 4; prior: 1939 c 219 § 3, part; RRS § 6266-3, part.]

15.44.032 Terms—Vacancies. (1) Except as provided in this section for initial appointments after redistricting or boundary modification, the term of office of each producer member of the commission shall be three years. Commission members shall continue to serve their terms until new appointments are made.

(2) Any vacancies that occur on the commission shall be filled by appointment by the director from a list containing the names of a candidate or candidates forwarded to the director by the commission. The director has the discretion to appoint or reject the candidate or candidates and, if the candidate or candidates are rejected, request additional candidates. The appointee shall hold office for the remainder of the term for which he or she is appointed to fill, so that commission memberships shall be on a uniform staggered basis.

(3) The term of office of each dealer shall be three years or until such time as a successor is duly appointed. Any vacancy for a dealer shall be forthwith filled by the director. The director, in making any dealer appointments, may consider lists of nominees supplied by dealers or producers also acting as dealers. [2012 c 107 § 7; 2008 c 12 § 4; 1975 1st ex.s. c 136 § 3; 1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

15.44.033 Nomination and appointment procedure.

(1) Producer members of the commission shall be nominated by producers within the district or area that such producer members represent.

(2) Nomination for candidates to be appointed to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district or area where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the incumbent's term will expire. The nomination form shall provide for the name of the nominee and the names of five other producers nominating such nominee. The producers nominating such nominee shall sign the form and shall further attest that the nominee meets the qualifications for a producer member to serve on the commission and that he or she will be willing to serve on the commission if appointed.

(3) All nominations as provided for in this section shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the advisory ballot.

(4) Advisory vote ballots for appointing nominees to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts or areas where advisory votes are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

(5) The director shall determine whether the persons nominated possess the qualifications required by statute for the position. [2012 c 107 § 8; 2003 c 396 § 26; 1995 c 374 § 59; 1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Additional notes found at www.leg.wa.gov

15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists. (1) The commission shall

prior to each advisory vote, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district or area for which the advisory vote is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle.

(2) Any producer may on his or her own motion file his or her name with the commission for the purpose of receiving notice of the advisory vote.

(3) It is the responsibility of each producer to ensure that his or her correct address is filed with the commission.

(4) For all purposes of giving notice, holding referenda, and conducting advisory votes for nominees to the commission, the applicable list of producers corrected up to the day preceding the date the list is certified and mailed to the direc-

tor is deemed to be the list of all producers or handlers, as applicable, entitled to notice or to vote. The list shall be corrected and brought up-to-date in accordance with evidence and information provided to the commission. [2012 c 107 § 9; 2003 c 396 § 27; 2002 c 313 § 90; 1965 ex.s. c 44 § 7.]

Additional notes found at www.leg.wa.gov

15.44.038 Quorum—Compensation—Travel expenses. (1) A majority of the commission members shall constitute a quorum for the transaction of all business and the performance of all duties of the commission.

(2) Each member shall be compensated in accordance with RCW 43.03.230. Each member or employee shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise, if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2002 c 313 § 92; 1984 c 287 § 15; 1975-'76 2nd ex.s. c 34 § 15; 1975 1st ex.s. c 7 § 12; 1961 c 11 § 15.44.038. Prior: 1959 c 163 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.44.040 Copies of records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary, shall be admissible in any court and be prima facie evidence of the truth of the statements therein contained. [1961 c 11 § 15.44.040. Prior: 1959 c 163 § 9; prior: 1939 c 219 § 4, part; RRS § 6266-4, part.]

15.44.050 Manager—Secretary-treasurer—Treasurer's bond. The commission shall elect a manager, who is not a member, and fix his or her compensation; and shall appoint a secretary-treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his or her duties and strict accounting of all funds to the commission. [2010 c 8 § 6058; 1979 ex.s. c 238 § 3; 1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

Additional notes found at www.leg.wa.gov

15.44.055 Members—Removal from commission—Process. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, the commission may recommend to the director that the commission member be removed from his or her position on the commission. Upon receiving such a recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position shall then be declared vacant and will be filled pursuant to the

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provisions of this chapter for filling vacancies. [2008 c 12 § 5.]

15.44.060 Powers and duties. The commission shall have the power and duty to:

(1) Elect a chair and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;

(2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;

(3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;

(4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;

(5) Investigate and prosecute violations of this chapter;

(6) Conduct scientific research designed to improve milk production, quality, transportation, processing, and distribution and to develop and discover uses for products of milk and its derivatives;

(7) Make in its name such contracts and other agreements as are necessary to build demand and promote the sale of dairy products on either a state, national, or foreign basis;

(8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state;

(9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets;

(10) Participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation of the production, manufacture, distribution, sale, or use of dairy products, to provide educational meetings and seminars for the dairy industry on such matters, and to expend commission funds for such activities;

(11) Retain the services of private legal counsel to conduct legal actions, on behalf of the commission. The retention of a private attorney is subject to the review of the office of the attorney general;

(12) Work cooperatively with other local, state, and federal agencies, universities, and national organizations for the purposes of this chapter;

(13) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes of this chapter;

(14) Engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;

(15) Expend funds for commodity-related education, training, and leadership programs as the commission deems appropriate;

(16) Work cooperatively with nonprofit and other organizations to carry out the purposes of this chapter; and

(17) Conduct research and education related to economic uses of nutrients produced by dairy farms. [2016 c 101 § 1; 2010 c 8 § 6059; 2002 c 313 § 93; 1999 c 300 § 1; 1979 ex.s.

c 238 § 4; 1961 c 11 § 15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

Additional notes found at www.leg.wa.gov

15.44.061 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education, training and leadership plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 29.]

Additional notes found at www.leg.wa.gov

15.44.062 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 30.]

Additional notes found at www.leg.wa.gov

15.44.063 Reimbursement for costs. (1) The commission shall reimburse the director for necessary costs for services conducted on behalf of the commission under this chapter.

(2) The commission may enter into an agreement with the director to administer this chapter or chapter 34.05 RCW. [2002 c 313 § 91.]

Additional notes found at www.leg.wa.gov

15.44.065 Commission may establish foundations. The commission may establish foundations using commission funds as grant money when the foundation benefits the dairy products industry. Commission funds may only be used for the purposes authorized in this chapter. [2002 c 313 § 100.]

Additional notes found at www.leg.wa.gov

15.44.070 Rules or orders to be filed and published—Rule-making exemptions. (1) Every rule or order made by the commission shall be filed with the director and published in two legal newspapers, one east and one west of the Cascade mountains, within ten days after it is adopted, and is effective as set forth under RCW 34.05.380.

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(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, the provisions of chapter 19.85 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties. [2002 c 313 § 94; 1975 1st ex.s. c 7 § 39; 1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

Additional notes found at www.leg.wa.gov

15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum. (1) There is hereby levied upon all milk produced in this state an assessment of:

(a) 0.75 percent of class I price for 3.5 percent butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; or

(b) While the federal dairy and tobacco adjustment act of 1983, Title I, Subtitle B-dairy promotion program, is in effect:

(i) An assessment rate not to exceed the rate approved at the most recent referendum that would achieve a ten cent per hundredweight credit to local, state, or regional promotion organizations provided by Title I, Subtitle B of the federal dairy and tobacco adjustment act of 1983; and

(ii) An additional assessment of 0.625 of one cent per hundredweight.

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the maximum authorized assessment rate to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of:

(i) Developing better and more efficient methods of marketing milk and related dairy products;

(ii) Aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) Developing and engaging in research for developing better and more efficient production, marketing, and utilization of agricultural products;

(iv) Establishing orderly marketing of dairy products;

(v) Providing for uniform grading and proper preparation of dairy products for market;

(vi) Providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products produced within this state, and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(vii) Restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) Protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

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(c) The extent of public convenience, interest, and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

(3)(a) This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

(b) The increase in the maximum authorized assessment rate to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in the maximum authorized assessment rate provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts the ballots. [2002 c 313 § 95; 1985 c 261 § 18; 1973 1st ex.s. c 41 § 1; 1969 c 60 § 1; 1965 ex.s. c 44 § 1; 1961 c 11 § 15.44.080. Prior: 1959 c 163 § 11; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Additional notes found at www.leg.wa.gov

15.44.085 Assessments on class I or class II milk.

There is hereby levied on every hundredweight of class I or class II milk, as defined in RCW 15.44.087, sold by a dealer, including any milk sold by a producer who acts as a dealer, an assessment of:

(1) Five-eighths of one cent per hundredweight. Such assessment shall be in addition to the producer assessment paid by any producer who also acts as a dealer.

(2) Any additional assessment, within the power and duty of the commission to levy, such that the total assessment shall not exceed one cent per hundredweight, as required to effectuate the purpose of this section.

Such assessment may be increased by approval of dealers and producers who also act as dealers, subject to the standards set forth in chapter 15.44 RCW for increasing or decreasing assessments. The funds derived from such assessment shall be used for educational programs and the sum of such funds derived annually from said dealers and producers who act as dealers shall be matched by assessments derived from producers for the purpose of funding the educational purposes by an amount not less than the moneys collected from dealers and producers who act as dealers. [2002 c 313 § 96; 1979 ex.s. c 238 § 5; 1975 1st ex.s. c 136 § 5.]

Additional notes found at www.leg.wa.gov

15.44.087 Class I and class II milk defined. For the purpose of RCW 15.44.085, class I and class II milk sold means milk from cows produced by a producer as defined in RCW 15.44.010 and utilized as follows:

(1) Class I milk shall be all skim milk and butterfat:

(a) Sold in the form of fluid milk product subject to the following limitations and exceptions:

(i) Any products fortified with added nonfat milk solids shall be class I in an amount equal only to the weight of an

equal volume of like unmodified product of the same butterfat content.

(ii) Fluid milk products in concentrated form shall be class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products sold.

(iii) Products classified as class II pursuant to subsection (2) of this section are excepted.

(b) Packaged fluid milk products in inventory at the end of the month.

(2) Class II milk shall be all skim milk and butterfat:

(a) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, or starter; or

(b) Any milk or milk product, sterilized and either (i) packaged in hermetically sealed metal, plastic, foil, paper, or glass containers and used to produce condensed milk and condensed skim milk, or (ii) in fluid milk products disposed of in bulk to commercial food processing establishments or producer milk sold to a commercial food processing establishment. [1979 ex.s. c 238 § 6; 1975 1st ex.s. c 136 § 6.]

Additional notes found at www.leg.wa.gov

15.44.090 Collection of assessments—Lien. All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him or her in banks designated by the commission to the credit of the commission fund. If a dealer or a producer who acts as a dealer fails to remit any assessments, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him or her, and shall be reported to the county auditor by the commission, supported by proper and conclusive evidence, and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes. [2010 c 8 § 6060; 1979 ex.s. c 238 § 7; 1975 1st ex.s. c 136 § 4; 1961 c 11 § 15.44.090. Prior: 1959 c 163 § 12; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Additional notes found at www.leg.wa.gov

15.44.100 Records of dealers, shippers—Preservation—Inspection. Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him or her. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent. [2010 c 8 § 6061; 1961 c 11 § 15.44.100. Prior: 1959 c 163 § 14; 1939 c 219 § 10; RRS § 6266-10.]

15.44.110 Reports of dealers and shippers to commission—Subpoenas. (1) Each dealer and shipper shall at such times as by rule required file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of dairy products handled, processed, manufactured, delivered, and shipped, and the quantity of all milk and cream delivered to or purchased by such person from the

various producers of dairy products or their agents in the state during the period or periods prescribed by the commission.

(2) The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind and may issue subpoenas to witnesses to give testimony. [2002 c 313 § 97; 1961 c 11 § 15.44.110. Prior: 1959 c 163 § 15; 1939 c 219 § 11; RRS § 6266-11.]

Additional notes found at www.leg.wa.gov

15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure.

(1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertising and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public convenience and necessity require advertising and research to be conducted.

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.05 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment. [1985 c 261 § 19; 1969 c 60 § 2; 1961 c 11 § 15.44.130. Prior: 1959 c 163 § 17; 1949 c 185 § 2; 1939 c 219 § 13; Rem. Supp. 1949 § 6266-13.]

15.44.133 Promotional hosting expenditures—Rules.

The commission is authorized to adopt rules governing promotional hosting expenditures by commission employees, agents, or board members under RCW 15.04.200. [2002 c 313 § 99.]

Additional notes found at www.leg.wa.gov

15.44.140 Authority to inspect premises and records—Subpoenas.

(1) The commission through its agents may inspect the premises and records of any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter.

(2) The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind for any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter. [2002 c 313 § 98; 1961 c 11 § 15.44.140. Prior: 1939 c 219 § 19; RRS § 6266-19.]

Additional notes found at www.leg.wa.gov

15.44.150 Action against commission enforced as if a corporation—Liability—Limitations. Any action by the commission administrator, member, employee, or agent thereof pertaining to the performance or nonperformance or misperformance of any matters or things authorized, required, or permitted by this chapter, and any other liabilities, debts, or claims against the commission shall be enforced in the same manner as if the commission were a corporation. No liability for the debts or actions of the commission shall exist against the state of Washington or any subdivision or instrumentality thereof. Liability for the debts or actions of the commission's administrator, member, employee, or agent incurred in their official capacity under this chapter does not exist either against the administrator, members, employees, and agents in their individual capacity or the state of Washington. The administrator, its members, and its agents and employees are not responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses, and liabilities incurred by the commission shall be payable only from the funds collected under this chapter. [2003 c 396 § 32; 2002 c 313 § 102; 1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

Additional notes found at www.leg.wa.gov

15.44.160 Enforcement of chapter. All state and county law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.44.160. Prior: 1939 c 219 § 16; RRS § 6266-16.]

15.44.170 Penalty. Whoever violates or aids in the violation of the provisions of this chapter shall be guilty of a gross misdemeanor. [1961 c 11 § 15.44.170. Prior: 1939 c 219 § 14; RRS § 6266-14.]

15.44.180 Jurisdiction of courts. The superior courts are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof. [1961 c 11 § 15.44.180. Prior: 1939 c 219 § 15; RRS § 6266-15.]

15.44.185 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.

(1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 214; 2002 c 313 § 69.]

Additional notes found at www.leg.wa.gov

15.44.190 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 75.]

Additional notes found at www.leg.wa.gov

15.44.195 Costs of implementing RCW 15.44.061. The costs incurred by the department of agriculture associated with the implementation of RCW 15.44.061 shall be paid for by the commission. [2003 c 396 § 31.]

Additional notes found at www.leg.wa.gov

15.44.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.44.910. Prior: 1939 c 219 § 17, part; RRS § 6266-17, part.]

Chapter 15.48 RCW SEED BAILMENT CONTRACTS

Sections

- 15.48.270 Definitions.
- 15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.
- 15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens.

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Liens, crop: Chapter 60.11 RCW.

15.48.270 Definitions. As used in this chapter:

(1) "Seed bailment contract" means any bailment contract for the increase of agricultural seeds where the bailor retains title to seed, seed stock, plant life and the seed crop resulting therefrom.

(2) "Bailee" is any tenant farmer or landowner or both, who, for an agreed compensation agrees to plant agricultural seeds furnished by the bailor and to care for, cultivate, harvest and deliver to the bailor the seed resulting therefrom.

(3) "Bailor" is any seed contractor who delivers agricultural seed to a bailee under the terms of a seed bailment contract which requires the bailee to plant, care for, cultivate, harvest and deliver the resultant seed crop to the bailor and requires the bailor to pay the bailee the amount of compensation agreed upon in the contract for the bailees' services in producing the seed. [1967 c 114 § 14.]

Additional notes found at www.leg.wa.gov

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor. Seed bailment contracts for the increase of agricultural seeds shall not

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create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9A RCW. No filing, recording, or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [2011 c 103 § 4; 1967 c 114 § 15.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens. All payments of money required by the terms of a seed bailment contract to be made by a bailor to a bailee shall be subject to security interests perfected as required by *chapter 62A.9 RCW, as amended, and all agricultural liens provided for and perfected in accordance with Title 60 RCW. [1967 c 114 § 16.]

***Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

Additional notes found at www.leg.wa.gov

Chapter 15.49 RCW SEEDS

Sections

- 15.49.005 Purpose—Rules.
- 15.49.011 Definitions.
- 15.49.021 Standards and label requirements—Rules.
- 15.49.031 Labels—Required information.
- 15.49.041 Violations—Civil penalty.
- 15.49.051 Unlawful practices.
- 15.49.061 Exceptions.
- 15.49.071 Damages—Mediation prerequisite to legal action.
- 15.49.091 Mediation—Procedure.
- 15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act.
- 15.49.330 Screenings—Removal required—Disposition.
- 15.49.350 Permit to condition certified seed.
- 15.49.360 Records—Maintenance—Availability of records and samples for inspection.
- 15.49.370 Department's enforcement authority.
- 15.49.380 Dealer's license to distribute seeds.
- 15.49.390 Renewal of dealer's license.
- 15.49.400 Seed labeling permit.
- 15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation.
- 15.49.420 Damages precluded.
- 15.49.460 Injunctions.
- 15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance.
- 15.49.480 Cooperation and agreements with other agencies.
- 15.49.900 Existing liabilities not affected.
- 15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal.
- 15.49.940 Short title.

15.49.005 Purpose—Rules. The purpose of this chapter is to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds so as to facilitate the interstate movement of seed, to protect consumers, and to provide a dispute-resolution process. The department of agriculture is hereby authorized to adopt rules in accordance with chapter 34.05 RCW to implement this chapter. To the extent possible, the department shall seek to incorporate into the rules provisions from the recommended uniform state seed

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law in order to attain consistency with other states. [1989 c 354 § 70.]

Additional notes found at www.leg.wa.gov

15.49.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, cereal, forage, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed using a business license application and a business license expiration date common to each renewable license endorsement.

(6) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(7) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process.

(8) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(9) "Dealer" means any person who distributes.

(10) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(11) "Director" means the director of the department of agriculture.

(12) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(13) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(14) The terms "foundation seed," "registered seed," and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department.

(15) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(16) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(17) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses are not regarded as hybrids. Hybrid designations must be treated as variety names.

(18) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(19) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(20) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(21) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(22) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(23) "Lot number" must identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code.

(24) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(25) "Official sample" means any sample of seed taken and designated as official by the department.

(26) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(27) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(28) "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive, and/or difficult to control by cultural or chemical practices.

(29) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(30) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(31) "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices.

(32) "Retail" means to distribute to the ultimate consumer.

(33) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(34) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(35) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(36) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(37) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(38) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(40) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(41) "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department. [2013 c 144 § 5; 1989 c 354 § 73.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

15.49.021 Standards and label requirements—Rules.

(1) The department shall establish by rule standards and label requirements for the following seed types: Agricultural seed (including grass, lawn, and turf seed), flower seed, and vegetable seed.

(2) The standards and label requirements shall be divided into the following categories:

(a) Percentage of kind and variety of each seed component present; and

(b) Percentage of weed seed (restricted and common).

(3) The standards and label requirements developed by the department shall at a minimum include:

(a) Amount of inert material;

(b) Specifics and warning for treated seed;

(c) Specifics for coated seed;

(d) Specifics and duration for inoculated seed;

(e) Specifics for seed which is below standard;

(f) Specifics for seed contained in containers, mats, tapes, or other planting devices;

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(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures. [1989 c 354 § 71.]

Additional notes found at www.leg.wa.gov

15.49.031 Labels—Required information. In addition to the requirements contained in RCW 15.49.021, each seed label shall contain the following:

(1) The name and address of the person who labeled the seed and who sells, offers, or exposes the seed for sale within the state;

(2) Lot number identification;

(3) Seed origin;

(4) Germination rate and date of germination test or the year for which the seed was packaged for sale. [1989 c 354 § 72.]

Additional notes found at www.leg.wa.gov

15.49.041 Violations—Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than two thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. [1989 c 354 § 74.]

Additional notes found at www.leg.wa.gov

15.49.051 Unlawful practices. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this state unless the test to determine the percentage of germination is completed within a fifteen-month period prior to sale, provided that germination tests for seed packaged in hermetically sealed containers shall be completed within thirty-six months prior to sale. The department shall establish rules for allowing retesting.

(2) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state not labeled in accordance with this chapter or having false or misleading labeling or for which there has been false or misleading advertisement.

(3) It is unlawful to represent seed to be certified unless it has been determined by a seed-certifying agency that such seed conformed to standards of purity and identity or variety in compliance with the rules adopted under this chapter.

(4) It is unlawful to attach any tags of similar size and format to the official certification tag that could be mistaken for the official certification tag.

(5) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state labeled with a variety name but not certified by an official seed-certifying agency when it is a variety for which a United States certification of plant variety protection under the plant variety protection act (7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: PROVIDED, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(6) It is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label required by this chapter or its implementing rules or to alter or substi-

tute seed in a manner that may defeat the purpose of this chapter;

(b) To disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(c) To hinder or obstruct in any way, any authorized person in the performance of his or her duties under this chapter;

(d) To fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby;

(e) To use the word "trace" as a substitute for any statement that is required; and

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(7) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state that consists of or contains: (a) Prohibited noxious weed seeds; or (b) restricted noxious weed seeds in excess of the number declared on the label. [1989 c 354 § 75.]

Additional notes found at www.leg.wa.gov

15.49.061 Exceptions. (1) The provisions of this chapter do not apply to marijuana seed. For the purposes of this subsection, "marijuana" has the same meaning as defined in RCW 69.50.101.

(2) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

(3) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels. [2014 c 140 § 34; 1989 c 354 § 76.]

Additional notes found at www.leg.wa.gov

15.49.071 Damages—Mediation prerequisite to legal action. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first pro-

vided for the mediation of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date mediation proceedings are instituted until ten days after the date on which the mediation proceedings are concluded. Mediation proceedings are instituted from the date the buyer mails the dealer the buyer's complaint with its request to engage in mediation as provided under RCW 15.49.091.

(2) Conspicuous language calling attention to the requirement for mediation under this section shall be referenced or included on the analysis label required under this chapter.

(3) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of five thousand dollars. All claims for five thousand dollars or less may be commenced in either district court or small claims court.

(4) The mediation provisions under this section apply only to a dealer subject to this state's jurisdiction in relation to the buyer's claims. [2017 c 33 § 1; 2005 c 433 § 36; 1989 c 354 § 77.]

Additional notes found at www.leg.wa.gov

15.49.091 Mediation—Procedure. (1) To submit a claim for mediation, the buyer shall make and file a sworn complaint against the dealer alleging the damages sustained. The sworn complaint may take the form of a declaration or affidavit. The buyer shall send a copy of the complaint to the dealer by United States registered mail.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the buyer, by United States registered mail, the answer to the complaint. The answer shall agree to participate in mediation under chapter 7.07 RCW or shall state the dealer's grounds for refusing to engage in such mediation. Failure of a dealer to file a timely answer to the complaint and the request to engage in mediation shall be documented for the record supporting the buyer's option to maintain a legal action for its claim against the dealer.

(3) The parties shall be equally responsible for the mediator's fees unless otherwise agreed between the parties before retaining the mediator.

(4) The mediator must be selected by mutual agreement of the parties from mediators qualified to conduct mediations under chapter 7.07 RCW. The mediation must take place within the part of the state where the buyer conducts the buyer's operations unless otherwise agreed between the parties. [2017 c 33 § 2; 1989 c 354 § 79.]

Additional notes found at www.leg.wa.gov

15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act. The department shall administer, enforce, and carry out the provisions of this chapter and may adopt regulations necessary to carry out its purpose. The adoption of regulations shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted and hereafter amended.

The department when adopting regulations in respect to the seed industry shall consult with affected parties, such as growers, conditioners, and distributors of seed. Any final regulation adopted shall be based upon the requirements and

conditions of the industry and shall be for the purpose of promoting the well-being of the purchasers and users of seed as well as the members of the seed industry.

When seed labeling, terms, methods of sampling and analysis, and tolerances are not specifically stated in this chapter or otherwise designated by the department, the department shall, in order to promote uniformity, be guided by officially recognized associations, or regulations under The Federal Seed Act. [1981 c 297 § 9; 1969 c 63 § 31.]

Additional notes found at www.leg.wa.gov

15.49.330 Screenings—Removal required—Disposition. (1) All screenings, removed in the cleaning or conditioning of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed conditioning plant only under conditions that will prevent weed seeds from being dispersed into the environment.

(2) The director may by regulation adopt requirements for moving, conditioning, and/or disposing of screenings. [1981 c 297 § 11; 1979 c 154 § 1; 1969 c 63 § 33.]

Additional notes found at www.leg.wa.gov

15.49.350 Permit to condition certified seed. Upon application for a permit to condition certified seed, the department shall inspect the seed conditioning facilities of the applicant to determine that genetic purity and identity of seed conditioned can be maintained. Upon approval, the department shall issue a seed conditioning permit, for each regular place of business, which shall be conspicuously displayed in the office of such business. The permit shall remain in effect as long as the facilities comply with the department's requirements for such permit. [1981 c 297 § 13; 1969 c 63 § 35.]

Additional notes found at www.leg.wa.gov

15.49.360 Records—Maintenance—Availability of records and samples for inspection. The seed labeling registrant whose name appears on the label shall:

(1) Keep, for a period of two years after the date of final disposition, complete records of each lot of seed distributed: PROVIDED, That the file sample of each lot of seed distributed need be kept for only one year.

(2) Make available, during regular working hours, such records and samples for inspection by the department. [1969 c 63 § 36.]

15.49.370 Department's enforcement authority. The department shall have the authority to:

(1) Sample, inspect, make analysis of, and test seeds distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such seeds are in compliance with the provisions of this chapter. The methods of sampling and analysis shall be those adopted by the department from officially recognized sources. The department, in determining for administrative purposes whether seeds are in violation of this chapter, shall be guided by records, and by the official sample obtained and analyzed as provided for in this section. Analysis of an official sample, by the department, shall be accepted as prima facie evidence by any court of competent jurisdiction.

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(2) Enter any dealer's or seed labeling registrant's premises at all reasonable times in order to have access to seeds and to records. This includes the determination of the weight of packages and bulk shipments.

(3) Adopt and enforce regulations for certifying seeds, and shall fix and collect fees for such service. Fees authorized under this subsection may be used for services involving breeder seed, foundation seed, registered seed, and certified seed. The director of the department may appoint persons as agents for the purpose of assisting in the certification of seeds.

(4) Adopt and enforce regulations for inspecting, grading, and certifying growing crops of seeds; inspect, grade, and issue certificates upon request; and fix and collect fees for such services.

(5) Make purity, germination and other tests of seed on request, and fix and collect charges for the tests made.

(6) Establish and maintain seed testing facilities, employ qualified persons, establish by rule special assessments as needed, and incur such expenses as may be necessary to carry out the provisions of this chapter.

(7) Adopt a list of the prohibited and restricted noxious weed seeds.

(8) Publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production.

(9) Deny, suspend, or revoke licenses, permits and certificates provided for in this chapter subsequent to a hearing, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, in any case in which the department finds that there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. [2018 c 233 § 1; 1981 c 297 § 14; 1969 c 63 § 37.]

Additional notes found at www.leg.wa.gov

15.49.380 Dealer's license to distribute seeds. (1) No person may distribute seeds without having obtained a dealer's license for each regular place of business. However, a license is not required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant. Moreover, a license is not required of any grower selling seeds of his or her own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license costs one hundred twenty-five dollars, must be issued through the business license [licensing] system, must bear the date of issue, must expire on the business licensing [license] expiration date, and must be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration are considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed must be through the business licensing system and must include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other

reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [2013 c 144 § 6; 2012 c 61 § 1; 2010 c 8 § 6064; 1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Business licensing system to include additional licenses: RCW 19.02.110.

Additional notes found at www.leg.wa.gov

15.49.390 Renewal of dealer's license. If an application for renewal of the dealer's license provided for in RCW 15.49.380, is not filed prior to the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued. [2013 c 144 § 7; 1982 c 182 § 25; 1969 c 63 § 39.]

Business licensing

*delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.*

15.49.400 Seed labeling permit. (1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: PROVIDED, That such additional fee shall not apply if the applicant furnishes an affidavit that he or she has not labeled seed for distribution in this state subsequent to the expiration of his or her prior permit. [2010 c 8 § 6065; 1969 c 63 § 40.]

15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation. (1) When the department has determined or has probable cause to suspect that any lot of seed or screenings is mislabeled and/or is being distributed in violation of this chapter or regulations adopted hereunder, it may issue and enforce a written or printed "stop sale, use or removal order" warning the distributor not to dispose of the lot of seed or screenings in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of seed or screenings so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained, the department may bring proceedings for condemnation.

(2) Any lot of seed or screenings not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the locality in which the seed or screenings are located. In the event the court finds the seed or screenings to be in violation of this chapter and orders the condemnation of said seed or screenings, such lot of seed or screenings shall be denatured, conditioned, destroyed, relabeled, or otherwise

disposed of in compliance with the laws of this state: PROVIDED, That in no instance shall the court order such disposition of said seed or screenings without first having given the claimant an opportunity to apply to the court, within twenty days, for the release of said seed or screenings or for permission to condition or relabel it to bring it into compliance with this chapter. [1981 c 297 § 16; 1969 c 63 § 41.]

Additional notes found at www.leg.wa.gov

15.49.420 Damages precluded. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.49.410 if the court finds that there was probable cause for such action. [1969 c 63 § 42.]

15.49.460 Injunctions. The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulations promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1969 c 63 § 46.]

15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance. All moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the seed fund on June 9, 1988, shall be transferred to that account within the agricultural local fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1988 c 254 § 2; 1987 c 202 § 176; 1975 1st ex.s. c 257 § 2; 1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

15.49.480 Cooperation and agreements with other agencies. The department may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1969 c 63 § 48.]

15.49.900 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969. [1969 c 63 § 49.]

15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal. The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and

RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after July 1, 1969, shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules. [1969 c 63 § 52.]

15.49.940 Short title. RCW 15.49.020 through *15.49.950 shall be known as the "Washington State Seed Act." [1969 c 63 § 53.]

*Reviser's note: RCW 15.49.950 was decodified pursuant to 2017 3rd sp.s. c 25 § 4.

Chapter 15.51 RCW BRASSICA SEED PRODUCTION

Sections

15.51.010	Findings—Purpose.
15.51.020	Definitions.
15.51.030	Brassica seed production districts—Grower's petition—Rules.
15.51.040	Brassica production agreements.
15.51.050	Rules.
15.51.060	Violation or threatened violation of chapter—Action to enjoin.
15.51.070	Application of chapter 34.05 RCW.

15.51.010 Findings—Purpose. The legislature finds that the growing, production, or formation of seed from plants of the genus *Brassica* for the purpose of producing seed, oil, biofuel or associated by-products, commercial vegetables, forage, or cover crops is in the interest of the public welfare. The legislature finds that species, hybrids, varieties, and variations of plants of the genus *Brassica* have potential to form genetic crosses, particularly when they are grown in geographic proximity, and will, if not properly regulated, result in significant loss of quality, purity, and value in the seed produced.

The legislature finds that production of biofuel using *Brassica* seed crops, generally known as canola or rapeseed, can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, improve air and water quality, and create new industries and jobs for Washington citizens. The legislature also finds that Washington state offers conditions uniquely suited to the production of high quality, high value *Brassica* vegetable seed, and that the vegetable seed industry is a significant contributor to the diversity and economic viability of the agricultural community.

The purpose of chapter 181, Laws of 2007 is to provide for the orderly production of potentially incompatible varieties of *Brassica* seed crops. [2007 c 181 § 1.]

15.51.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "*Brassica*" means any plants in the genus *Brassica*.

(2) "*Brassica* seed crop" means any commercial production of any species, hybrid, or variety of the genus *Brassica* that results in pollen or seed formation. *Brassica* seed crop

includes, but is not limited to, *Brassica* seeds grown for planting, and species generally known as rapeseed or canola, including *Brassica napus*, *Brassica rapa*, and *Brassica juncea*, grown for oil or biofuel and associated by-products. For purposes of this chapter, forage and cover crops from the genus *Brassica* are considered *Brassica* seed crops. Plants from the genus *Brassica* grown as vegetables for human or animal consumption such as cabbage, broccoli, rutabaga, and kohlrabi are not *Brassica* seed crops as long as they are not allowed to produce pollen or seed.

(3) "Department" means the state department of agriculture.

(4) "Director" means the director of the department or the director's authorized representative.

(5) "Grower" means a person who grows a *Brassica* seed crop within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(6) "Processor" means a person who commercially uses, sells, or processes a *Brassica* seed crop grown within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(7) "Volunteer and weed *Brassica* plants" means plants of the genus *Brassica* that arise from accidental or unintentional scattering or occurrence of seed. [2007 c 181 § 2.]

15.51.030 Brassica seed production districts—Grower's petition—Rules. Any grower or processor of a *Brassica* seed crop may submit a petition to the director requesting establishment of a *Brassica* seed production district. The petition must include proposed geographic boundaries of the district and the proposed types of regulations for designated *Brassica* seed crop species within the district. The petition must contain the signatures of at least ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed *Brassica* seed production district. If there are fewer than ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed district, then the applicant may submit a list of names and contact information for all *Brassica* seed crop growers and processors within the proposed district and a petition signed by at least fifty percent of these persons. In response to the petition, the director may adopt rules to establish *Brassica* seed production districts. [2007 c 181 § 3.]

15.51.040 Brassica production agreements. (1) Any person who wishes to conduct an activity otherwise prohibited within a *Brassica* seed production district must first enter into a *Brassica* production agreement with the director. Each *Brassica* production agreement shall be developed by the applicant and the director in consultation with an advisory committee comprised of at least three individuals appointed by the director, none of whom shall have a financial interest in the request for agreement or its outcome and at least one of whom shall be a grower in or processor of *Brassica* seed crops grown within the *Brassica* seed production district. The director shall not enter into any *Brassica* production agreement unless the director, in the exercise of his or her discretion, is satisfied that the agreement contains terms and conditions that are necessary and sufficient to mitigate reasonably

possible risks to the economic well-being of growers within the *Brassica* seed production district from the proposed activity.

(2) The applicant or any grower or processor of a *Brassica* seed crop grown within the *Brassica* seed production district that would be affected by the *Brassica* production agreement may appeal, under RCW 34.05.570(4), the director's decision whether or not to enter into a *Brassica* production agreement. Any such appeal must be filed in the superior court of Thurston county or the county in which the activity to be allowed under the *Brassica* production agreement would occur. [2007 c 181 § 4.]

15.51.050 Rules. The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

- (1) *Brassica* seed production districts;
- (2) Notification of a designated central clearinghouse for growers to report their intention to plant a *Brassica* seed crop within a *Brassica* seed production district;
- (3) Isolation distances between *Brassica* seed crops within a *Brassica* seed production district;
- (4) Exclusion of designated *Brassica* seed crops within a *Brassica* seed production district, except under terms of a *Brassica* production agreement;
- (5) Control of volunteer and weed *Brassica* plants within a *Brassica* seed production district; and
- (6) *Brassica* production agreements. [2007 c 181 § 5.]

15.51.060 Violation or threatened violation of chapter—Action to enjoin. The director or any grower or processor of a *Brassica* seed crop grown within a *Brassica* seed production district may bring an action to enjoin the violation or threatened violation of any provision of this chapter or its rules, or any *Brassica* production agreement entered into by an applicant and the director, in the superior court of Thurston county or the county in which the violation or threatened violation occurs or is about to occur. [2007 c 181 § 6.]

15.51.070 Application of chapter 34.05 RCW. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making. [2007 c 181 § 7.]

Chapter 15.53 RCW COMMERCIAL FEED

Sections

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15.53.901 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Brand name" means a word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole seeds or physically altered seeds are not chemically changed or not adulterated within the meaning of RCW 15.53.902, are exempt. The department by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of RCW 15.53.902.

(3) "Contract feeder" means a person who is an independent contractor and feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the instructions of the final purchaser.

(5) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

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

(7) "Distribute" means to offer for sale, sell, exchange or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) "Distributor" means a person who distributes.

(9) "Drug" means an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than people and articles, other than feed intended to affect the structure or a function of the animal body.

(10) "Facility" means any place where a commercial feed is manufactured, repackaged, sold, transloaded, or stored for later distribution.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Final purchaser" means a person who purchases commercial feed to feed to animals in his or her care.

(13) "Initial distributor" means a person who first distributes a commercial feed in or into this state.

(14) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(15) "Labeling" means all labels and other written, printed, or graphic matter: (a) Upon a commercial feed or any of its containers or wrappers; or (b) accompanying such commercial feed.

(16) "Licensee" means a person who holds a commercial feed license as prescribed in this chapter.

(17) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(18) "Medicated feed" means a commercial feed containing a drug or other medication.

(19) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(20) "Official sample" means a sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024 (3), (5), or (6).

(21) "Percent" or "percentage" means percentage by weight.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Pet" means a domesticated animal normally maintained in or near the household of the owner of the pet.

(24) "Pet food" means a commercial feed prepared and distributed for consumption by pets.

(25) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(26) "Responsible buyer" means a licensee who is not the final purchaser of a commercial feed and has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute.

(27) "Retail" means to distribute to the final purchaser.

(28) "Sell" or "sale" includes exchange.

(29) "Specialty pet" means a domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(30) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

(31) "Ton" means a net weight of two thousand pounds avoirdupois.

(32) "Transload" means to transfer commercial feed from one carrier to another carrier without processing or blending the ingredients, for example, transferred from rail-car to trucks or shipping containers.

(33) "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count. [2005 c 18 § 1; 1995 c 374 § 33; 1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

Additional notes found at www.leg.wa.gov

15.53.9012 Administration and administrative rules.

(1) The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. In adopting such rules, the director shall consider (a) the official definitions of feed ingredients

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and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and (b) any regulation adopted pursuant to the authority of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301, et seq.), if the department would have the authority under this chapter to adopt the regulations. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act).

(2) The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed and for the general welfare of the people of the state. [1995 c 374 § 34; 1965 ex.s. c 31 § 3.]

Additional notes found at www.leg.wa.gov

15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for noncompliance—Violation—Penalty—Rules.

(1) Except as provided under subsection (2) of this section, any person: (a) Who manufactures a commercial feed in this state; (b) who distributes a commercial feed in or into this state; or (c) whose name appears on a commercial feed label as guarantor, must first obtain from the department a commercial feed license for each facility that distributes in or into this state.

(2) The following persons are exempt from the requirement of a commercial feed license:

(a) Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for reporting and paying the inspection fee due under chapter 18, Laws of 2005;

(b) Any person distributing only pet food or specialty pet food;

(c) Any person distributing food processing by-products from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants, except that the distribution of by-products or products of sugar refineries are not exempt from the requirement of a commercial feed license; and

(d) Any person distributing bona fide experimental feed on which accurate records and experimental programs are maintained.

(3) Application for a commercial feed license must be made annually on forms provided by the department and must be accompanied by a fee of fifty dollars.

(4) The commercial feed license expires on June 30th of each year. The application and fee for a commercial feed license renewal is due July 1st of each year. If a completed application and appropriate fee is not received by July 1st, a late renewal fee of fifty dollars per facility will be assessed in addition to the license fee and must be paid by the applicant before the renewal license is issued. A late renewal fee will not apply if the applicant furnishes an affidavit that he or she

has not distributed a commercial feed subsequent to the expiration of his or her prior license. The assessment of the late renewal fee will not prevent the department from taking other action as provided for in this chapter.

(5) An application for a commercial feed license must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the facility;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(6) The department may deny a license application if the applicant is not in compliance with this chapter or applicable rules, and may cancel a license if the licensee is not in compliance with this chapter or applicable rules. Prior to denial or cancellation of a license, the department shall provide notice and an opportunity to correct deficiencies. If an applicant or licensee fails to correct the deficiency, the department shall deny or cancel the license. If aggrieved by the decision, the applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(7) Notwithstanding the payment of a late renewal fee, it is a violation to distribute a commercial feed by an unlicensed person, and nothing in this chapter prevents the department from imposing a penalty authorized by this chapter for the violation.

(8) The department may under conditions specified by rule, request submission of labels and labeling in order to determine compliance with the provisions of this chapter. [2005 c 18 § 2; 1995 c 374 § 35.]

Additional notes found at www.leg.wa.gov

15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty. (1) A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) All applications for registration must be submitted on forms provided by the department and must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the applicant;
- (c) The name, contact information, and signature of the applicant;
- (d) Indication of the package sizes distributed for each product; and
- (e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

- (a) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;
- (b) Ninety dollars per product for those products distributed in packages of less than ten pounds; or
- (c) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending

twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) A distributor is not required to register a pet food or specialty pet food that is already registered under this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department may deny registration of any pet food or specialty pet food not in compliance with this chapter and its rules. The department may cancel any registration subsequently found to be not in compliance with this chapter and its rules. Prior to denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of twenty dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation. [2005 c 18 § 4; (2005 c 18 § 3 expired July 1, 2006); 1995 c 374 § 36; 1993 sp.s. c 19 § 2; 1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

Additional notes found at www.leg.wa.gov

15.53.9015 Responsible buyer status—Application—Removal—List. (1) To become a responsible buyer, a commercial feed licensee must apply for responsible buyer status on forms provided by the department. The application must include:

- (a) The name and mailing address of the licensee;
- (b) The physical address of the licensee;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(2) To be removed from responsible buyer status, the licensee must notify the department in writing. The licensee is not released from responsible buyer status until the department notifies the licensee in writing of such release.

(3) The department will maintain a current list of all responsible buyers and make the list available on request. [2005 c 18 § 5.]

15.53.9016 Labeling—Required information—Recordkeeping—Rules. (1) Any commercial feed, except a customer-formula feed, distributed in this state must be accompanied by a legible label bearing the following information:

(a) The product name and the brand name, if any, under which the commercial feed is distributed.

(b) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(c) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(d) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(e) Adequate directions for use for all commercial feeds containing drugs and for all such other commercial feeds as the department may require by rule as necessary for their safe and effective use.

(f) Those precautionary statements the department by rule determines are necessary for the safe and effective use of the commercial feed.

(g) The net weight as required under chapter 19.94 RCW.

(2) When a commercial feed, except a customer-formula feed, is distributed in this state in bags or other containers, the label must be placed on or affixed to the container; when a commercial feed, except a customer-formula feed, is distributed in bulk the label must accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer-formula feed must be labeled by shipping document. The shipping document, which is to accompany delivery and be supplied to the purchaser at the time of delivery, must bear the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of delivery;

(d) Product name and the net weight as required under chapter 19.94 RCW;

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use;

(f) The directions for use and precautionary statements as required by subsection (1)(e) and (f) of this section; and

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules established by the department.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the customer formula feed must be on file at the plant producing the product. These records must be kept on file for one year after

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the last sale. This information must be made available to the purchaser, the dealer making the sale, and the department on request. [2005 c 18 § 6; 1995 c 374 § 37; 1965 ex.s. c 31 § 5.]

Additional notes found at www.leg.wa.gov

15.53.9018 Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality. (1) Every registrant or licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state. The report must be filed regardless of the amount of feed distributed or inspection fees owed. The report must include:

(a) The name and mailing address of the registrant or licensee;

(b) The physical address of the registrant or licensee;

(c) The name, contact information, and signature of the person filing the report;

(d) The total number of tons distributed in or into this state;

(e) The total number of tons on which the registrant or licensee is paying;

(f) If the registrant or licensee is not paying inspection fees on all commercial feed he or she distributed in or into this state, information regarding the registrants or licensees that are responsible for paying the inspection fees and the number of tons involved; and

(g) Other information required by the department by rule.

(2) Except as provided in subsections (3) through (5) of this section, each initial distributor or responsible buyer must pay to the department an inspection fee on all commercial feed distributed by such person during the reporting period. The inspection fee must accompany the report required in subsection (1) of this section. The inspection fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the department by rule. These fees shall be used for enforcement and administration of this chapter and its rules.

(3) The initial distributor is not required to pay an inspection fee for commercial feed he or she distributed to a responsible buyer.

(4) In a situation where a responsible buyer is distributing to another responsible buyer, the inspection fee must be paid by the last responsible buyer to distribute the commercial feed.

(5) The initial distributor or responsible buyer is not required to pay an inspection fee for: (a) Pet food and specialty pet food distributed in packages weighing less than ten pounds; (b) distribution of bona fide experimental feeds on which accurate records and experimental programs are maintained; (c) commercial feed distributed to points outside this state; and (d) food processing by-products from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants.

(6) Tonnage will be reported and inspection fees will be paid on (a) by-products or products of sugar refineries; and (b) materials used in the preparation of pet foods and specialty pet food.

(7)(a) Each person made responsible by this chapter for filing a report or paying inspection fees must do so according to the following schedule:

(i) For the period January 1st through June 30th of each year, the report and inspection fees are due on July 31st of that year; and

(ii) For the period July 1st through December 31st of each year, the report and inspection fees are due on January 31st of the following year.

(b) If a complete report is not received by the due date or the appropriate inspection fees are not received by the due date, the person responsible for filing the report or paying the inspection fee must pay a late fee equal to fifteen percent of the inspection fee owed or fifty dollars, whichever is greater.

(c) The department may cancel the registration of a person's commercial feed or may cancel a person's commercial feed license if that person fails to pay the late fee. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(8) If inspection fees are owed, the minimum inspection fee is twelve dollars and fifty cents.

(9) For the purpose of verifying the accuracy of reports and payment of appropriate inspection fees, the department may examine, at reasonable times, a registrant's or licensee's distribution records and may require each registrant or licensee to maintain records or file additional reports. These records must be maintained in usable condition by the registrant or licensee for a period of three years unless by rule this retention period is extended and must be submitted to the department upon request.

(10) The report required by subsection (1) of this section shall not be a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from public disclosure under chapter 42.56 RCW, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure under chapter 42.56 RCW. However, this subsection does not prevent the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(11) Any commercial feed obtained by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [2006 c 209 § 2; 2005 c 18 § 7; 1995 c 374 § 38; 1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

Additional notes found at www.leg.wa.gov

15.53.902 Adulteration—Definition—Unlawful to distribute. It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(4) If it is ruminant feed and is, bears, or contains any animal protein prohibited in ruminant feed that is unsafe within the meaning of federal regulations promulgated under section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(5) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act; or

(6) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 721 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 379e); or

(7) If it is, or it bears or contains any new animal drug that is unsafe within the meaning of section 512 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 360b); or

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(9) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(10) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In adopting such rules, the department shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the department determines that they are not appropriate to the conditions that exist in this state; or

(11) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains via-

ble, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW and rules adopted thereunder. [2012 c 25 § 2; 2005 c 40 § 1; 1995 c 374 § 39; 1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

Additional notes found at www.leg.wa.gov

15.53.9022 Misbranding—Definition—Unlawful to distribute. It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is distributed under the name of another commercial feed;
- (3) If it is not labeled as required in RCW 15.53.9016 and in rules prescribed under this chapter;
- (4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed or feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rule of the department. In the adopting of such rules the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;
- (5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. [1995 c 374 § 40; 1965 ex.s. c 31 § 8.]

Additional notes found at www.leg.wa.gov

15.53.9024 Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized. (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether an operation is subject to such provisions, inspectors duly designated by the director, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (a) to enter, during normal business hours, any facility within the state in which commercial feeds are manufactured, transloaded, processed, packed, distributed, or held for distribution, or to enter a vehicle being used to transport or hold such feeds; and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner, the facilities, or vehicles and all pertinent equipment, finished and unfinished materials, containers, labeling, and records. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with this chapter and its rules.

(2) A separate notice shall be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable prompt-

ness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the inspector or employee making such inspection of a facility or vehicle has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(4) If the owner of a facility or vehicle described in subsection (1) of this section, or his or her agent, refuses to admit the director or his or her agent to inspect in accordance with subsections (1) and (2) of this section, the director or his or her agent is authorized to obtain from any court of competent jurisdiction a warrant directing such owner or his or her agent to submit the premises described in the warrant to inspection.

(5) For the enforcement of this chapter, the director or his or her duly assigned agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser, if known. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the department shall furnish to the registrant or licensee a portion of the sample concerned. If referee analysis is requested, a portion of the official sample shall be furnished by the department and shall be sent directly to an independent lab agreed to by all parties.

(8) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(20) and obtained and analyzed as provided for in this section.

(9) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [2005 c 18 § 8; 1995 c 374 § 41; 1965 ex.s. c 31 § 9.]

Prosecutions, official analysis as evidence: RCW 15.53.904.

Additional notes found at www.leg.wa.gov

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure. (1) When the department has reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any rules hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, or "stop sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department. The department shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, parties may agree to an alternative disposition in

writing or the department may institute condemnation proceedings in a court of competent jurisdiction.

(2) Any lot of commercial feed not in compliance with the provisions and rules is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. The court shall first give the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter. [1995 c 374 § 42; 1982 c 177 § 5; 1975 1st ex.s. c 257 § 7; 1965 ex.s. c 31 § 16.]

Additional notes found at www.leg.wa.gov

15.53.904 Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions. (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor as provided in RCW 9A.20.021. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Any person convicted of intentionally violating RCW 15.53.902(4) or the rules issued thereunder is guilty of a gross misdemeanor as provided in RCW 9A.20.021.

(3) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present the distributor's view in writing or orally to the department.

(5) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [2005 c 40 § 2; 1965 ex.s. c 31 § 17.]

Analysis of official sample as evidence: RCW 15.53.9024.

15.53.9042 Department to publish distribution information, production data, and analyses comparison. The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed

within the state as compared with the analyses guaranteed on the label or as calculated from the invoice data for customer-formula feeds: PROVIDED, That the information concerning production and use of commercial feeds shall not disclose the operations of any person. [1995 c 374 § 43; 1965 ex.s. c 31 § 18.]

Additional notes found at www.leg.wa.gov

15.53.9044 Disposition of moneys. All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. [2005 c 18 § 9; 1988 c 254 § 5; 1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

Additional notes found at www.leg.wa.gov

15.53.9046 Cooperation with other entities. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter. [1965 ex.s. c 31 § 24.]

15.53.9048 Chapter is cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 ex.s. c 31 § 20.]

15.53.9056 Short title. This chapter shall be known as the "Washington Commercial Feed Law." [1965 ex.s. c 31 § 1.]

Chapter 15.54 RCW

FERTILIZERS, MINERALS, AND LIMES

Sections

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- 15.54.950 Short title.

Crop liens: Chapter 60.11 RCW.

15.54.265 Intent—1998 c 36. (1) The legislature intends to strengthen the state's fertilizer adulteration laws to protect human health and the environment by:

- (a) Ensuring that all fertilizers meet standards for allowable metals;
- (b) Allowing fertilizer purchasers and users to know about the contents of fertilizer products; and
- (c) Clarifying the department of ecology's oversight authority over waste-derived fertilizers.

(2) The legislature intends to provide better information to the public on fertilizers, soils, and potential health effects by authorizing additional studies on plant uptake of metals and levels of dioxins in soils and products. [1998 c 36 § 1.]

Additional notes found at www.leg.wa.gov

15.54.270 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.
- (2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.
- (3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.
- (4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.
- (5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.
- (6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.
- (7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.
- (8) "Director" means the director of the department of agriculture.
- (9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.
- (10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

- (a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;
- (b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	percent
Available phosphoric acid (P ₂ O ₅)	percent
Soluble potash (K ₂ O)	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄·2H₂O) shall be given along with the percentage of total sulfur.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33)(a) "Turf" means land, including residential property, commercial property, and publicly owned land, which is planted in closely mowed, managed grass.

(b) "Turf" does not include pasture land, land used to grow grass for sod, or any other land used for agricultural production or residential vegetable or flower gardening.

(34) "Turf fertilizer" means a commercial fertilizer that is labeled for use on turf.

(35) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(36) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. [2011 c 73 § 1; 1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 73: "This act takes effect January 1, 2013." [2011 c 73 § 5.]

Additional notes found at www.leg.wa.gov

15.54.275 Bulk fertilizer distribution license. (1) No person may distribute a bulk fertilizer in this state until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes bulk fertilizer in Washington state. An application for each location must be filed on forms provided by the business licensing system established under chapter 19.02 RCW and must be accompanied by an annual fee of twenty-five dollars per location. The license expires on the business license expiration date.

(2) An application for license must include the following:

(a) The name and address of licensee.

(b) Any other information required by the department by rule.

(3) The name and address shown on the license must be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to the business license expiration date, a delinquency fee of twenty-five dollars must be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. The assessment of this delinquency fee does not prevent the department from taking any other action as provided for in this chapter. The penalty does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license. [2013 c 144 § 8; 1998 c 36 § 3; 1993 c 183 § 2.]

Additional notes found at www.leg.wa.gov

15.54.325 Commercial fertilizer registration—Required for distribution—Application—Fees. (1) No person may distribute in this state a commercial fertilizer until it has been registered with the department by the producer, importer, or packager of that product.

(2) An application for registration must be made on a form furnished by the department and must include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name, address, and phone number of the registrant;
- (e) A label for each product being registered;
- (f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphate;
- (g) The concentration of each metal, for which standards are established under RCW 15.54.800, in each product being registered, unless the product is (i) anhydrous ammonia or a solution derived solely from dissolving anhydrous ammonia in water, (ii) a customer-formula fertilizer containing only registered commercial fertilizers, or (iii) a packaged commercial fertilizer whose plant nutrient content is present in the form of a single chemical compound which is registered in compliance with this chapter and the product is not blended with any other material. The provisions of (g)(i) of this subsection do not apply if the anhydrous ammonia is derived in whole or in part from waste such that the fertilizer is a "waste-derived fertilizer" as defined in RCW 15.54.270. Verification of a registration relied on by an applicant under (g)(iii) of this subsection must be submitted with the application;
- (h) If a waste-derived fertilizer or micronutrient fertilizer, information to ensure the product complies with chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and
- (i) Any other information required by the department by rule.

(3) All companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) An application for registration must be accompanied by a fee of fifty dollars for each product.

(6) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of ten dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from taking any action authorized by this chapter for the violation. [2008 c 292 § 1. Prior: 1999 c 383 § 1; 1999 c 382 § 1; 1998 c 36 § 4; 1993 c 183 § 3.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

15.54.330 Commercial fertilizer registration—Application review—Labels and guarantees. (1) The department shall examine the commercial fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular commercial fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant.

(2) In reviewing the commercial fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations, product review evaluations, or other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(3) In determining whether approval of a labeling statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

(4) Before registering a waste-derived fertilizer or micronutrient fertilizer, the department shall obtain written approval from the department of ecology as provided in RCW 15.54.820. Once a waste-derived fertilizer or micronutrient fertilizer has been approved by the department of ecology, its subsequent use in another product during that registration cycle shall not require department of ecology review. This subsection shall apply to new and renewal registration applications for periods beginning July 1, 1999, and thereafter. [1999 c 383 § 2; 1998 c 36 § 5; 1993 c 183 § 4; 1967 ex.s. c 22 § 21.]

Additional notes found at www.leg.wa.gov

15.54.340 Labeling requirements. (1) Any packaged commercial fertilizer distributed in this state that is not a customer-formula fertilizer must have placed on or affixed to the package a label stating in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;
- (e) Any information required under WAC 296-307-560 through 296-307-56050;
- (f) A statement, established by rule, referring persons to the department's Uniform Resource Locator (URL) internet address where data regarding the metals content of the product is located; and
- (g) Other information as required by the department by rule.

(2) Any commercial fertilizer that is distributed in bulk in this state that is not a customer-formula fertilizer must be accompanied by a written or printed statement that includes

the information required by subsection (1) of this section and must be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer in this state must be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the name and amount of each ingredient; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

(4) Each delivery of a customer-formula fertilizer must contain the ingredients specified by the purchaser. A record of the invoice or statement of each delivery must be kept by the registrant or licensee for twelve months and must be available to the department upon request. [2008 c 292 § 2; 2003 c 15 § 1; 1999 c 381 § 1; 1998 c 36 § 6; 1993 c 183 § 5; 1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Additional notes found at www.leg.wa.gov

15.54.350 Inspection fees. (1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants or nonlicensees an inspection fee of fifteen cents per ton of lime and thirty cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) Distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant or licensee who distributes to a nonregistrant or nonlicensee is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer. [1993 c 183 § 6; 1987 c 45 § 13; 1981 c 297 § 18; 1975 1st ex.s. c 257 § 9; 1967 ex.s. c 22 § 23.]

Additional notes found at www.leg.wa.gov

15.54.362 Reports—Inspection fees—Late fees—Confidentiality—Penalty—Exception. (1) Every registrant or licensee who distributes commercial fertilizer in this state must file a semiannual report on forms provided by the department stating the number of net tons of each commercial fertilizer distributed in this state.

(a) For the period January 1st through June 30th of each year, the report is due on July 31st of that year; and

(b) For the period July 1st through December 31st of each year, the report is due on January 31st of the following year.

Upon permission of the department, a person distributing in the state less than one hundred tons for each six-month period during any annual reporting period of July 1st through June 30th may submit an annual report on a form provided by the department that is due on the July 31st following the period. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state must include the inspection fees with each semiannual or annual report. If in an annual reporting period a registrant or licensee distributes less than eighty-three tons of commercial

fertilizer or less than one hundred sixty-seven tons of commercial lime or equivalent combination of the two, the registrant or licensee must pay the minimum inspection fee of twenty-five dollars.

(3) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4)(a) If a complete report is not received by the due date, the person responsible for filing the report must pay a late fee of twenty-five dollars.

(b) If the appropriate inspection fees are not received by the due date, the person responsible for paying the inspection fee must pay a late fee equal to ten percent of the inspection fee owed or twenty-five dollars, whichever is greater.

(c) Payment of a late fee does not prevent the department from taking any other action authorized by this chapter for the violation.

(5) It is a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is authorized and which shall be as an action at law in the name of the director of the department. [2008 c 292 § 3; 1993 c 183 § 7; 1987 c 45 § 14.]

Additional notes found at www.leg.wa.gov

15.54.370 Official samples—Inspection, analysis, testing—Right of entry. (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW 15.54.270 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the registrant or licensee and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant or licensee a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1993 c 183 § 8; 1987 c 45 § 16; 1967 ex.s. c 22 § 25.]

Additional notes found at www.leg.wa.gov

15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties. (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) of this subsection, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant or licensee. The department shall deposit the amount of the penalty into an account with the agricultural local fund.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) of this section.

(4) The civil penalties payable in subsections (1) and (2) of this section shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant or licensee paying said civil penalties. [1998 c 36 § 7; 1993 c 183 § 9; 1987 c 45 § 17; 1967 ex.s. c 22 § 26.]

Additional notes found at www.leg.wa.gov

15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments. For the purpose of determining the commercial value to be applied under the provisions of RCW 15.54.380, the department shall determine and publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalty payments and shall be established by rule. [1987 c 45 § 18; 1967 ex.s. c 22 § 27.]

(2018 Ed.)

Additional notes found at www.leg.wa.gov

15.54.400 Restrictions on sale—Minimum percentages. No superphosphate containing less than eighteen percent of available phosphoric acid may be sold or offered for sale in this state. Specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed. [1987 c 45 § 19; 1967 ex.s. c 22 § 28.]

Additional notes found at www.leg.wa.gov

15.54.412 Misbranding. No person may distribute misbranded commercial fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) If it is distributed under the name of another fertilizer product;

(3) If its labeling bears any reference to registration under this chapter unless such reference is required by rule under this chapter;

(4) If any word, statement, or other information, required by this chapter or rules adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) If it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by the department by rule. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. [1987 c 45 § 20.]

Additional notes found at www.leg.wa.gov

15.54.414 Adulteration. No person may distribute an adulterated commercial fertilizer. A commercial fertilizer is adulterated:

(1) If it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling;

(3) If it contains unwanted viable seed; or

(4) If the concentration of any nonnutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label. [1998 c 36 § 8; 1993 c 183 § 10; 1987 c 45 § 21.]

Additional notes found at www.leg.wa.gov

15.54.420 Unlawful acts. It shall be unlawful for any person to:

- (1) Distribute an adulterated or misbranded commercial fertilizer;
- (2) Fail, refuse, or neglect to place upon or attach to each package of distributed commercial fertilizer a label containing all of the information required by this chapter;
- (3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter;
- (4) Distribute a commercial fertilizer product which has not been registered with the department;
- (5) Distribute bulk fertilizer without holding a license to do so;
- (6) Refuse or neglect to keep and maintain records, or to make reports when and as required; or
- (7) Make false or fraudulent applications, records, invoices, or reports. [1998 c 36 § 9; 1993 c 183 § 11; 1987 c 45 § 22; 1967 ex.s. c 22 § 30.]

Additional notes found at www.leg.wa.gov

15.54.430 Publication of distribution information, analyses results. The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed. [1967 ex.s. c 22 § 31.]

15.54.433 Fertilizer database—Public availability—Biennial report to legislature. (1) The department shall maintain a fertilizer database that includes the information required for registration under RCW 15.54.325 and 15.54.330.

(2) Except for confidential information under RCW 15.54.362 regarding fertilizer tonnages distributed in the state, information in the fertilizer database must be made available to the public upon request.

(3) The department, and the department of ecology in consultation with the department of health, shall biennially prepare a report to the legislature presenting information on levels of nonnutritive substances in fertilizers and the results of any agency testing of products. The first report must be provided to the legislature by December 1, 1999.

(4) The department shall post on the internet the information contained in applications for fertilizer registration. [2008 c 292 § 4; 1998 c 36 § 21.]

Additional notes found at www.leg.wa.gov

15.54.436 Cancellation of license to distribute or of registration—Refusal to register if fraudulent or deceptive practices used—Opportunity for hearing. The department may cancel the license to distribute commercial fertilizer or registration of any commercial fertilizer product or refuse to license a distributor or register any commercial fertilizer product as provided in this chapter due to:

- (1) An incomplete or insufficient license or registration application;
- (2) The misbranding or adulteration of a commercial fertilizer; or
- (3) A violation of this chapter or rules adopted under this chapter.

If the department cancels or refuses to renew an existing license or registration due to the misbranding or adulteration of a commercial fertilizer or due to a violation of this chapter or a rule adopted hereunder, the licensee/registrant or applicant may request a hearing as provided for in chapter 34.05 RCW. [1998 c 36 § 10; 1993 c 183 § 12; 1987 c 45 § 24.]

Additional notes found at www.leg.wa.gov

15.54.440 "Stop sale," "stop use," or "withdrawal from distribution" order, when issued—Release—Associated costs. (1) Commercial fertilizers that are not registered in Washington state or that fail to meet the Washington standards for total metals pose an emergency situation because they may contain certain metals at levels which are harmful to Washington soils and plants and may contain substances which are harmful to the public without its knowledge. Commercial fertilizers that are not registered or that fail to meet the Washington standards for total metals are subject to immediate stop sale, stop use, or withdrawal from distribution in this state and seizure, disposal, or both.

(2) The department may issue and enforce a written "stop sale," "stop use," or "withdrawal from distribution" order to the distributor, owner, or custodian of any lot of commercial fertilizer to hold the commercial fertilizer at a designated place when the department has reasonable cause to believe such fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter.

(3) The department may issue and enforce a written immediate "stop sale," "stop use," or "withdrawal from distribution" order to any distributor, owner, or custodian of commercial fertilizer in the state for any commercial fertilizer that:

- (a) Is not registered in Washington state; or
- (b) According to the department, fails to meet the Washington standards for total metals, as established in RCW 15.54.800 or the rules adopted under this chapter.

(4) The department shall release the commercial fertilizer stopped or withdrawn under subsection (2) or (3) of this section when the distributor, owner, or custodian has complied with the provisions of this chapter and the rules adopted under it and the department has issued a written release order. If compliance is not or cannot be obtained, the department may institute proceedings under RCW 15.54.450 or may agree in writing with the distributor, owner, or custodian of the commercial fertilizer to an alternative disposition of the commercial fertilizer.

(5) All costs associated with any "stop sale," "stop use," or "withdrawal from distribution" incurred by the distributor, owner, or custodian of a commercial fertilizer are the responsibility of the distributor, owner, or custodian. [1999 c 383 § 3; 1987 c 45 § 23; 1967 ex.s. c 22 § 32.]

Additional notes found at www.leg.wa.gov

15.54.450 Noncompliance—Seizure—Disposition—Associated costs. (1) Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial fertilizer is located.

(2) Any commercial fertilizer that is not registered in the state or that fails to meet the Washington standards for total

metals is subject to seizure on complaint of the department in the name of the state to Thurston county superior court or other court of competent jurisdiction.

(3) In the event the court finds, upon application by the department under subsection (1) or (2) of this section, that a commercial fertilizer violates this chapter or the rules adopted under it and orders the condemnation of the commercial fertilizer, the commercial fertilizer shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: PROVIDED, That in no instance shall the disposition of the commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial fertilizer or for permission to process or relabel the commercial fertilizer to bring it into compliance with this chapter and the rules adopted under it.

(4) All costs associated with disposal are the responsibility of the distributor, owner, or custodian of the commercial fertilizer unless such a distributor, owner, or custodian is the consumer or is a person whose role as a distributor, owner, or custodian of the fertilizer is only that of a transporter of the fertilizer. Such disposal costs shall not be the responsibility of the consumer or such a transporter of the commercial fertilizer. [1999 c 383 § 4; 1967 ex.s. c 22 § 33.]

Additional notes found at www.leg.wa.gov

15.54.460 Damages from administrative action, stop sales or seizures. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.54.440 and 15.54.450 if the court finds that there was probable cause for such action. [1967 ex.s. c 22 § 34.]

15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions. (1) Except for violations of RCW 15.54.500, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [2011 c 73 § 3; 1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

(2018 Ed.)

Effective date—2011 c 73: See note following RCW 15.54.270.

Additional notes found at www.leg.wa.gov

15.54.474 Penalty—Failure to comply with chapter or rule. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section. [1998 c 36 § 12; 1987 c 45 § 10.]

Additional notes found at www.leg.wa.gov

15.54.480 Disposition of moneys. (1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter.

(2) Moneys collected under RCW 15.54.474 shall be deposited in the general fund. [1998 c 36 § 13; 1988 c 254 § 3; 1975 1st ex.s. c 257 § 11; 1967 ex.s. c 22 § 36.]

Additional notes found at www.leg.wa.gov

15.54.490 Cooperation with other entities. The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

15.54.500 Turf fertilizer—Prohibitions on application, sales, and retail display. (1) A person may not:

- (a) Except as otherwise provided in this section, apply turf fertilizer that is labeled as containing phosphorus to turf;
- (b) Apply turf fertilizer labeled as containing phosphorus to turf when the ground is frozen;
- (c) Intentionally apply turf fertilizer labeled as containing phosphorus to an impervious surface;
- (d) Except as otherwise provided in this section, sell turf fertilizer that is labeled as containing phosphorus; or
- (e) Display turf fertilizer that is labeled as containing phosphorus in a retail store unless the turf fertilizer is also clearly labeled for a use permitted by this section.

(2) The prohibitions in this section on the application, sale, and retail display of turf fertilizer that is labeled as containing phosphorus, other than the prohibitions in subsection (1)(b) and (c) of this section, do not apply in the following instances:

- (a) Application for the purpose of establishing grass or repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established;
- (b) Application to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than thirty-six months before the application; or
- (c) Application to pasture, interior house plants, flower and vegetable gardens located on either public or private

property, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

(3) If a retailer can show proof that a product prohibited for sale under subsection (1)(d) and (e) of this section was in stock and physically in the retail location before January 1, 2012, that retail location may sell that product until it is sold out.

(4)(a) Nothing in this section:

(i) Requires the enforcement or monitoring of compliance with this section by local governments; or

(ii) Requires local governments to participate in the administration of this section, including the verification of soil tests under subsection (2)(b) of this section.

(b) A city or county may not adopt a local ordinance regarding the application or sale of turf fertilizer that is labeled as containing phosphorus that is less restrictive than this section. [2011 c 73 § 2.]

Effective date—2011 c 73: See note following RCW 15.54.270.

15.54.800 Enforcement of chapter—Adoption of rules. (1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapter 34.05 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Definitions of terms;

(b) Determining standards for labeling and registration of commercial fertilizers;

(c) The collection and examination of commercial fertilizers;

(d) Recordkeeping by registrants and licensees;

(e) Regulation of the use and disposal of commercial fertilizers for the protection of groundwater and surface water; and

(f) The safe handling, transportation, storage, display, and distribution of commercial fertilizers.

(3)(a) Standards are established for allowable levels of nonnutritive substances in commercial fertilizers. These standards are Canadian figures for agricultural and agri-food Canadian maximum acceptable cumulative metal additions to soil established under Trade Memorandum T-4-93 dated August 1996. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.

(b) If federal or other risk-based standards are adopted or scientific peer-reviewed studies show that the standards adopted in this section are not at the appropriate level to protect human health or the environment, the department, in consultation with the departments of ecology and health, may initiate a rule making [may adopt a rule] to amend these standards. [1998 c 36 § 15; 1997 c 427 § 3; 1993 c 183 § 14; 1987 c 45 § 9.]

Additional notes found at www.leg.wa.gov

15.54.820 Department of ecology—Waste-derived or micronutrient fertilizer—Standards—Written decision—Appeal of decision. (1) After receipt from the department of the completed application required by RCW 15.54.325, the department of ecology shall evaluate whether the use of the

proposed waste-derived fertilizer or the micronutrient fertilizer as defined in RCW 15.54.270 is consistent with the following:

(a) Chapter 70.95 RCW, the solid waste management act;

(b) Chapter 70.105 RCW, the hazardous waste management act; and

(c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and recovery act.

(2) The department of ecology shall apply the standards adopted in RCW 15.54.800. If more stringent standards apply under chapter 173-303 WAC for the same constituents, the department of ecology must use the more stringent standards.

(3) Within sixty days of receiving the completed application, the department of ecology shall advise the department as to whether the application complies with the requirements of subsections (1) and (2) of this section. In making a determination, the department of ecology shall consult with the department of health and the department of labor and industries.

(4) A party aggrieved by a decision of the department of ecology to issue a written approval under this section or to deny the issuance of such an approval may appeal the decision to the pollution control hearings board within thirty days of the decision. Review of such a decision shall be conducted in accordance with chapter 43.21B RCW. Any subsequent appeal of a decision of the hearings board shall be obtained in accordance with RCW 43.21B.180. [1998 c 36 § 16.]

Additional notes found at www.leg.wa.gov

15.54.910 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1967 ex.s. c 22 § 38.]

15.54.940 Continuation of rules adopted pursuant to repealed sections. The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1967 ex.s. c 22 § 41.]

Repeal of prior law by 1967 act: "Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed." [1967 ex.s. c 22 § 43.]

15.54.950 Short title. RCW 15.54.270 through 15.54.490 and 15.54.910 through 15.54.940 shall be known as the "Washington Commercial Fertilizer Act." [1967 ex.s. c 22 § 42.]

Chapter 15.58 RCW

WASHINGTON PESTICIDE CONTROL ACT

Sections

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15.58.010 Short title. This chapter may be known and cited as the Washington Pesticide Control Act. [1971 ex.s. c 190 § 1.]

15.58.020 Declaration of public interest. The formulation, distribution, storage, transportation, and disposal of

any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1971 ex.s. c 190 § 2.]

15.58.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed using a business license application and a business license expiration date common to each renewable license endorsement.

(5) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(6) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

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

(8) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(9) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(10) "Director" means the director of the department or a duly authorized representative.

(11) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(12) "EPA" means the United States environmental protection agency.

(13) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(14) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(15) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(16) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(17) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(18) "Inert ingredient" means an ingredient which is not an active ingredient.

(19) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement must also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. The ingredient statement for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(20) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(21) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(22) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(23) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar

federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(25) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but does not include substances insofar as they are

intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

(41) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(42) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(43) "Weed" means any plant which grows where not wanted.

(44) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(45) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms. [2013 c 144 § 9. Prior: 2011 c 103 § 35; 2004 c 100 § 6; 2003 c 212 § 1; 2000 c 96 § 1; 1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.58.040 Director's authority—Rules. (1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest inspection;

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) The disposition of any portion of the treated crop;

(m) Fixing and collecting examination fees; and

(n) Requiring individuals to earn recertification credits in the classifications in which they are licensed.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency. [2003 c 212 § 2; 2000 c 96 § 8; 1997 c 242 § 1; 1996 c 188 § 4; 1991 c 264 § 2; 1989 c 380 § 2; 1971 ex.s. c 190 § 4.]

15.58.045 Disposal of unusable pesticides—Rules.

The director of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons licensed under chapter 15.58 RCW or regulated under chapter 17.21 RCW. For purposes of this section, the department may become licensed as a hazardous waste generator. The department may set fees to cover expenses in connection with pesticide waste received from persons licensed under chapter 15.58 RCW. [1989 c 354 § 57.]

Additional notes found at www.leg.wa.gov

15.58.050 Registration of pesticides—Generally.

Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the director subject to the provisions of this chapter. However, registration is not required if: A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this chapter; or a written permit has been obtained from the director to distribute or use the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [2002 c 274 § 1; 1989 c 380 § 3; 1971 ex.s. c 190 § 5.]

Additional notes found at www.leg.wa.gov

15.58.060 Statement for registration—Contents. (1)

The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.56.070;

(d) Other necessary information required for completion of the department's application for registration form; and

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule. [2005 c 274 § 215; 1989 c 380 § 4; 1971 ex.s. c 190 § 6.]

15.58.065 Protection of privileged or confidential information. (1) In submitting data required by this chapter, the applicant may:

(a) Mark clearly any portions which in the applicant's opinion are trade secrets or commercial or financial information; and

(b) Submit such marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make public information which in the director's judgment should be privileged or confidential because it contains or relates to trade secrets or commercial or financial information except that, when necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director when necessary under this chapter.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, the director shall notify the applicant or registrant in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in the superior court of Thurston county for a declaratory judgment as to whether such information is subject to protection under subsection (2) of this section. [1989 c 380 § 5; 1979 c 146 § 4.]

15.58.070 Pesticide annual registration fee—Expiration of registrations—Deposit in agricultural local fund.

(1) All registrations issued by the department expire December 31st of the following year except that registrations issued by the department to a registrant who is applying to register an additional pesticide during the second year of the registrant's registration period shall expire December 31st of that year.

(2) An application for registration must be accompanied by a fee of three hundred ninety dollars for each pesticide, except that a registrant who is applying to register an additional pesticide during the year the registrant's registration expires shall pay a fee of one hundred ninety-five dollars for each additional pesticide.

(3) Fees must be deposited in the agricultural local fund to support the activities of the pesticide program within the department.

(4) Any registration approved by the director and in effect on the last day of the registration period, for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [2008 c 285 § 15; 2002 c 274 § 3; (2002 c 274 § 2 expired January 1, 2004); 1997 c 242 § 2; 1995 c 374 § 66; 1994 c 46 § 1; 1989 c 380 § 6; 1983 c 95 § 2; 1971 ex.s. c 190 § 7.]

Effective date—2008 c 285 §§ 15-26: "Sections 15 through 26 of this act take effect January 1, 2009." [2008 c 285 § 27.]

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.080 Additional fee for late registration renewal. If the renewal of a pesticide registration or special needs registration is not filed by the day the registration expires, an additional fee of fifty dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that the applicant did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry. [2002 c 274 § 4; 1994 c 46 § 2; 1989 c 380 § 7; 1983 c 95 § 3; 1971 ex.s. c 190 § 8.]

Additional notes found at www.leg.wa.gov

15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180. All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of RCW 15.58.180. [1971 ex.s. c 190 § 9.]

15.58.100 Criterion for registering. (1) The director shall require the information required under RCW 15.58.060 and shall register the label or labeling for such pesticide if he or she determines that:

- (a) Its composition is such as to warrant the proposed claims for it;
- (b) Its labeling and other material required to be submitted comply with the requirements of this chapter;
- (c) It will perform its intended function without unreasonable adverse effects on the environment;
- (d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;
- (e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets (a), (b), (c), and (d) of this subsection and the following criteria:
 - (i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;
 - (ii) A special local need exists.
- (2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide. [2010 c 8 § 6066; 1979 c 146 § 2; 1971 ex.s. c 190 § 10.]

15.58.110 Refusing or canceling registration—Procedure. (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or rules adopted under this chapter, the registrant shall be notified of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the correc-

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tions the director shall refuse to register the pesticide. The applicant may request a hearing as provided for in chapter 34.05 RCW.

(2) The director may, when the director determines that a pesticide or its labeling does not comply with the provisions of this chapter or the rules adopted under this chapter, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.05 RCW. [1989 c 380 § 8; 1971 ex.s. c 190 § 11.]

15.58.120 Suspension of registration when hazard to public health. The director may, when the director determines that there is or may be an imminent hazard to the public health and welfare, suspend on the director's own motion, the registration of a pesticide in conformance with the provisions of chapter 34.05 RCW. [1989 c 380 § 9; 1971 ex.s. c 190 § 12.]

15.58.130 "Misbranded" as applicable to pesticides, devices, or spray adjuvants. The term "misbranded" shall apply:

- (1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - (2) To any pesticide:
 - (a) If it is an imitation of or is offered for sale under the name of another pesticide;
 - (b) If its labeling bears any reference to registration under the provision of this chapter unless such reference be required by rules under this chapter;
 - (c) If any word, statement, or other information, required by this chapter or rules adopted under this chapter to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (d) If the label does not bear:
 - (i) The name and address of the manufacturer, registrant or person for whom manufactured;
 - (ii) Name, brand or trademark under which the pesticide is sold;
 - (iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: PROVIDED, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;
 - (iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living people, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to people, determined as provided by RCW 15.58.040, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the rules adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1989 c 380 § 10; 1971 ex.s. c 190 § 13.]

15.58.140 "Adulterated" as applicable to pesticides.

The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard. [1971 ex.s. c 190 § 14.]

15.58.150 Unlawful practices. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide unless it has been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the

pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a pest inspection or to fail to comply with criteria established by rule for structural pest inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation;

(g) For any person to act as, or advertise that they perform the services of, a structural pest inspector without having a license to act as a structural pest inspector;

(h) For a business to conduct one or more complete wood destroying organism inspections without first having obtained a structural pest inspection company license from the department. [2012 c 25 § 6; 2003 c 212 § 3; 2000 c 96 § 6; 1991 c 264 § 3; 1989 c 380 § 11; 1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Additional notes found at www.leg.wa.gov

15.58.160 Violations of chapter—"Stop sale, use or removal" order. When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, the director may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [1989 c 380 § 12; 1971 ex.s. c 190 § 16.]

15.58.170 "Stop sale, use or removal" order—Adjudication. (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in which a violation of this chapter or rules adopted under this chapter is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or rules adopted under this chapter: PROVIDED, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury: PROVIDED, That the pesticide or device shall not be sold contrary to the provisions of this chapter or rules adopted under this chapter. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. [1997 c 242 § 3; 1989 c 380 § 13; 1971 ex.s. c 190 § 17.]

15.58.180 Pesticide dealer license—Generally. (1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license expires on the business license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state must obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such a licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license must be accompanied by a fee of sixty-seven dollars and must be made through the business licensing system and must include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be given on the application. The application must state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the appli-

cant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when pesticides are dispensed only through apparatuses used for pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW. [2013 c 144 § 10; 2008 c 285 § 16; 1997 c 242 § 4; 1989 c 380 § 14; 1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Business licensing system: Chapter 19.02 RCW.

Additional notes found at www.leg.wa.gov

15.58.200 Pesticide dealer manager—License qualifications. The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license must be accompanied by a fee of thirty-three dollars. The pesticide dealer manager license expires annually on a date set by rule by the director. [2008 c 285 § 17; 1997 c 242 § 5; 1992 c 170 § 2; 1991 c 109 § 38; 1989 c 380 § 15; 1981 c 297 § 19; 1971 ex.s. c 190 § 20.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.205 Structural pest inspector licenses—Required—Exemptions. (1) No individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of sixty dollars.

(2) The following are exempt from the application fee requirement of this section when acting within the authorities of their existing licenses issued under this chapter or chapter 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for

damage caused by wood destroying organisms if the inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest inspector licensing requirement.

(4) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license. [2008 c 285 § 18; 2003 c 212 § 5.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

15.58.206 Structural pest inspector licenses—Exemption—Home inspectors. A person licensed as a home inspector under chapter 18.280 RCW is exempt from licensing as a structural pest inspector except when reporting on the identification of or damage by wood destroying insects. [2008 c 119 § 23.]

15.58.207 Structural pest inspector licenses—Examination. The director shall require each applicant for a structural pest inspector license to demonstrate to the director the applicant's knowledge of applicable laws and regulations; structural pest identification and damage; and conditions conducive to the development of wood destroying organisms by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [2003 c 212 § 6.]

15.58.210 Pest control consultant licenses—Required—Exemptions. (1) No individual may perform services as a pest control consultant without obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of sixty dollars.

(2) The following are exempt from the licensing requirements of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet. [2008 c 285 § 19; 2003 c 212 § 4; 2000 c 96 § 9; 1997 c 242 § 6; 1992 c 170 § 3. Prior: 1991 c 264 § 4; 1991 c 109 § 39; 1989 c 380 § 16; 1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.220 Public pest control consultant license. For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant. No person may act as a public pest control consultant without first obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of thirty-three dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision. [2008 c 285 § 20; 1997 c 242 § 7; 1991 c 109 § 40; 1989 c 380 § 17; 1986 c 203 § 4; 1981 c 297 § 20; 1971 ex.s. c 190 § 22.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.230 Consultant's license—Requirements. The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [1989 c 380 § 18; 1971 ex.s. c 190 § 23.]

15.58.233 Renewal of licenses—Recertification standards. (1) The director may renew any license issued under this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to perform in those areas licensed.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Individuals licensed under this chapter may qualify for continued licensure through accumulation of recertification credits. Individuals licensed under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Individuals licensed under this chapter may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director shall waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through:

(a) Another state or jurisdiction;

(b) A government agency plan that has been approved by the federal environmental protection agency; or

(c) A private entity that has been approved by the department. The department shall confer with private entities offering continuing education programs that include pest management credit accreditation and accumulation to develop an effective and efficient system to coordinate pest management credit accounting. The pest management credit accounting system must accord with the goals and other requirements of the department's pesticide license recertification program and this chapter. If the department and the private entity or entities agree on the substantive provisions of the system, the department shall develop an implementation strategy for private entities pursuing pesticide credit reciprocity. The department shall submit a report to the legislature on its collaborative efforts, pest management credit accounting system, and implementation strategy by December 31, 2015. [2015 c 184 § 1; 2003 c 212 § 7; 2000 c 96 § 7; 1997 c 242 § 10.]

15.58.235 Renewal of licenses—Delinquency. (1) If an application for renewal of a pesticide dealer license is not filed on or before the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued.

(2) If application for renewal of any license provided for in this chapter other than the pesticide dealer license is not filed on or before the expiration date of the license, a penalty equivalent to the license fee must be assessed and added to the original fee, and must be paid by the applicant before the renewal license is issued. However, such penalty does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(3) Any license for which a renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [2013 c 144 § 11; 1989 c 380 § 19.]

15.58.240 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license the licensee shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may charge an examination fee established by the director by rule when an examination is necessary, before a license may be issued or when application for a license and examination is made at other than a regularly scheduled examination date. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are

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required to carry out the responsibilities of the licensee. [1989 c 380 § 20; 1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

15.58.250 Recordkeeping requirements. Any person issued a license or permit under the provisions of this chapter may be required by the director to keep accurate records on a form prescribed by the director which may contain the following information:

- (1) The delivery, movement or holding of any pesticide or device, including the quantity;
- (2) The date of shipment and receipt;
- (3) The name of consignor and consignee; and
- (4) Any other information, necessary for the enforcement of this chapter, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this chapter. [1989 c 380 § 22; 1971 ex.s. c 190 § 25.]

15.58.260 Civil penalties and/or denial, suspension, or revocation of license, registration or permit. The director is authorized to impose a civil penalty and/or deny, suspend, or revoke any license, registration or permit provided for in this chapter subject to a hearing and in conformance with the provisions of chapter 34.05 RCW (Administrative Procedure Act) in any case in which the director finds there has been a failure or refusal to comply with the provisions of this chapter or rules adopted under this chapter. [1989 c 380 § 23; 1985 c 158 § 2; 1971 ex.s. c 190 § 26.]

15.58.270 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1971 ex.s. c 190 § 27.]

15.58.280 Sampling and examination of pesticides or devices—Procedure when criminal proceedings contemplated. The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or rules adopted under this chapter, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his or her views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or rules adopted under this chapter have been violated by such person, the director shall refer a copy of the results of the analy-

sis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred. [2010 c 8 § 6067; 1989 c 380 § 24; 1971 ex.s. c 190 § 28.]

15.58.290 Minor violations, warning notice in writing. Nothing in this chapter shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this chapter when the director believes that the public interest will be best served by a suitable notice of warning in writing. [1989 c 380 § 25; 1971 ex.s. c 190 § 29.]

15.58.300 Persons exempted from certain penalties under RCW 15.58.150. The penalties provided for violations of RCW 15.58.150(1)(a), (b), (c), (d), and (e) shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides. [1971 ex.s. c 190 § 30.]

15.58.310 Pesticides for foreign export not in violation of chapter. No pesticides shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply. [1971 ex.s. c 190 § 31.]

15.58.320 Certain pharmacists exempted from licensing provisions. The license provisions of this chapter shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this chapter. [1971 ex.s. c 190 § 32.]

15.58.330 Violation of chapter—Misdemeanor. Any person violating any provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor. [1989 c 380 § 26; 1971 ex.s. c 190 § 33.]

15.58.335 Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 27; 1985 c 158 § 1.]

15.58.340 Injunction. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 380 § 28; 1971 ex.s. c 190 § 34.]

15.58.345 Damages—Civil action not precluded. Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 29.]

15.58.350 Persons charged with enforcement barred from interest in pesticides, devices. No person charged with the enforcement of any provision of this chapter shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device. [1971 ex.s. c 190 § 35.]

15.58.360 No recovery of damages when probable cause. No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action. [1971 ex.s. c 190 § 36.]

15.58.400 Cooperation and agreements with other agencies. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1971 ex.s. c 190 § 40.]

15.58.405 Emergency situations—Special local needs—Experimental use permits. For the purpose of exercising the authority granted to the state under the provisions of FIFRA, the director may:

(1) Meet emergency conditions in this state by applying for an exemption from any provision of FIFRA as provided for by section 18 of that act. If such exemption is granted by the administrator of EPA the director may carry out and enforce the requirements and conditions of the exemption;

(2) Comply with the requirements necessary to issue special local needs registration under section 24(c) of FIFRA; and

(3) Comply with the requirements necessary to issue experimental use permits under section 5(f) of FIFRA. [1979 c 146 § 5.]

15.58.411 Use of license fees—Deposit of money collected for civil penalties. All license fees collected under this chapter shall be paid to the director for use exclusively in the enforcement of this chapter. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1997 c 242 § 8; 1995 c 374 § 67.]

Additional notes found at www.leg.wa.gov

15.58.420 Report to legislature. By February 1st of each year the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report

shall include, at a minimum, a review of the department's enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed. [1997 c 242 § 9; 1989 c 380 § 30.]

15.58.445 Wood destroying organism inspections—

License required. It is unlawful for any business to conduct complete wood destroying organism inspections without having obtained a company license from the director. Application for a structural pest inspection company license must be on a form prescribed by the director. The application must include the following information:

- (1) The full name of the individual applying for such license;
- (2) The full name of the company that employs structural pest inspectors;
- (3) The physical and mailing addresses of the company, and the telephone and facsimile numbers, if available;
- (4) A list of the names of the structural pest inspectors who are employed by the company;
- (5) The unique business identifier for the company; and
- (6) Any other necessary information prescribed by the director.

Any changes to the information on the prescribed structural pest inspection company license form shall be reported by the company to the department within thirty days of the change. [2003 c 212 § 8.]

15.58.450 Wood destroying organism inspection report—Unique inspection control number required.

It is unlawful for any person to issue a wood destroying organism inspection report, prepared in conjunction with the transfer, exchange, or refinancing of any structure, without recording a unique inspection control number on the wood destroying organism inspection report. All wood destroying organism inspection reports completed by the same inspector, relating to a single transfer, exchange, or refinance, shall bear the same unique inspection control number. The responsibility to record the unique inspection control number on the report under this section lies solely with the person issuing the wood destroying organism inspection report. [2000 c 96 § 2.]

15.58.460 Structural pest inspector—Evidence of financial responsibility required—Exemptions.

(1) The director shall not issue a license to any individual who intends to act as a structural pest inspector until evidence of financial responsibility, required and described in subsection (2) of this section, is furnished by the applicant or the business employing the applicant. Licensed commercial applicators that have met the requirements of RCW 17.21.160 and their licensed commercial operator employees are exempt from this financial responsibility requirement when performing specific wood destroying organism inspections. Public employees licensed to perform structural pest inspections are exempt from this licensing requirement when acting within their official capacities.

(2) Evidence of financial responsibility, consisting of one of the following, must be provided and maintained as a condition of licensure:

(a) An errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(a);

(b) A surety bond, the amounts and terms of which are consistent with the requirements of RCW 15.58.465(1)(b);

(c) A surety bond and an errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(c);

(d) An assigned account, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(d);

(e) Any other type of evidence of financial responsibility identified by the director by rule that provides coverage equivalent to that provided by any of (a) through (d) of this subsection.

(3) Evidence of financial responsibility must be supplied to the department on a financial responsibility insurance certificate, surety bond form, assigned account form, or other form prescribed by the director with regard to evidence provided under subsection (2)(e) of this section. [2003 c 212 § 9; 2000 c 96 § 3.]

15.58.465 Structural pest inspector—Forms of evidence of financial responsibility—Amount—Terms.

(1) The following requirements apply to the forms of evidence of financial responsibility required under RCW 15.58.460.

(a) **Errors and Omissions Insurance.** The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(a) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy. However, the policy may limit the insurer's liability on the policy in effect at the time of the inspection to two years from the date of the inspection.

(b) **Surety Bond.** The amount of the surety bond required by RCW 15.58.460(2)(b) shall not be less than twenty-five thousand dollars. The surety bond shall be maintained at not less than the required sum at all times during the licensed period. Any person having a claim against the structural pest inspector for legal damages as a result of the actions of the structural pest inspector may bring suit upon the bond in the court of the county in which the inspection took place or of the county in which jurisdiction of the structural pest inspector may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. The suit upon the bond must be commenced within two years of the date of the inspection.

(c) **Surety Bond and Errors and Omissions Insurance.** The amount of the surety bond required by RCW 15.58.460(2)(c) shall not be less than twelve thousand five hundred dollars. Except as to the amount of the bond, the terms of the bond shall be identical to those set forth in (b) of this subsection. The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(c) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy.

(d) **Assigned Account.** The amount of the assigned account required by RCW 15.58.460(2)(d) shall not be less than twenty-five thousand dollars. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the inspector for legal damages resulting from errors and omissions in the conduct of an inspection, according to the provisions of the assigned account agreement. The department has no liability for payment in excess of the amount of the assigned account.

(i) The assigned account agreement filed with the director as evidence of financial responsibility shall be canceled at the expiration of two years after the inspector's license has expired or been revoked, or at the expiration of two years after the inspector has furnished another form of evidence of financial responsibility required by RCW 15.58.460, unless legal action has been instituted against the inspector prior to the expiration of the two-year period and the director has been provided written notice of the same by the claimant. In such a case the director shall not cancel the assigned account agreement until the director either receives a copy of the order dismissing the action by registered or certified mail, or has received a copy of the unsatisfied judgment and has complied with the requirements of (d)(ii) of this subsection.

(ii) Any person having an unsatisfied final judgment against the inspector for legal damages awarded based on errors and omissions in the conduct of an inspection may execute upon the funds in the assigned account by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall direct the financial institution to pay from the assigned account, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment from the assigned account shall be the order of receipt of the final judgment by the department.

(2) Nothing in subsection (1) of this section that limits the time period in which a suit must be commenced on a surety bond or in which a claim must be made on a policy effects the statute of limitations applicable to any claim any person may have against the structural pest inspector or company.

(3) The director may only accept a surety bond or insurance policy as evidence of financial responsibility if the bond or policy is issued by an insurer authorized to do business in this state. The director shall be notified ten days before any reduction of insurance coverage at the request of the applicant or cancellation of the surety bond or insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the surety bond or insurance policy. The director may accept a surety bond or insurance policy in the proper sum that has a deductible clause in an amount not exceeding five thousand dollars for the total amount of surety bond or insurance required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause may not be accepted by the director unless the applicant furnishes the director with a surety bond or insurance policy which satisfies the amount of the deductible as to all claims that may arise. [2003 c 212 § 10; 2000 c 96 § 4.]

15.58.470 Structural pest inspector—Failure to meet financial responsibility requirements. Whenever the form of evidence of financial responsibility for a structural pest inspector license is reduced below the requirements of RCW 15.58.465 or no longer applies to the structural pest inspector, or whenever the licensee or the business that employs the licensee has failed to provide evidence of financial responsibility as required by RCW 15.58.460 by the expiration date of any previous form of evidence of financial responsibility, the director shall immediately suspend the structural pest inspector license until the requirements of RCW 15.58.465 are met again. [2003 c 212 § 11; 2000 c 96 § 5.]

15.58.910 Continuation of rules adopted pursuant to repealed sections. The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. All such rules shall be considered to have been adopted under the provisions of this chapter. [1989 c 380 § 31; 1971 ex.s. c 190 § 43.]

15.58.920 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this chapter becomes effective. [1971 ex.s. c 190 § 44.]

Chapter 15.60 RCW APIARIES

Sections

15.60.005	Definitions.
15.60.010	Apiary advisory committee.
15.60.021	Registration of hives.
15.60.031	Late registration fee.
15.60.040	Money collected under chapter—Placement—Disbursement.
15.60.055	Violations—Penalty.
15.60.065	Apiary coordinated areas—Hearing to establish.
15.60.075	Apiary coordinated areas—Order describing.
15.60.085	Apiary coordinated areas—Boundary change procedure.
15.60.095	Apiary coordinated areas within certain counties.
15.60.901	Effective date—2000 c 100.

Honey, standards and marketing: Chapter 69.28 RCW.

Honey bee commission: Chapter 15.62 RCW.

15.60.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

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

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" means a site where hives of bees or hives are kept or found.

(4) "Apiarist" means any person who owns bees or is a keeper of bees in Washington.

(5) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(6) "Colony" refers to a natural group of bees having a queen or queens.

(7) "Hive" means a manufactured receptacle or container prepared for the use of bees, that includes movable frames, combs, and substances deposited into the hive by bees.

(8) "Person" means a natural person, individual, firm, partnership, company, society, association, corporation or every officer, agent, or employee of one of these entities.

(9) "Broker" means a person who is engaged in pollinating agricultural crops for a fee using hives that are owned by another person. [2000 c 100 § 1; 1994 c 178 § 1; 1993 c 89 § 1; 1988 c 4 § 1; 1977 ex.s. c 362 § 1; 1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

15.60.010 Apiary advisory committee. The director may establish an apiary advisory committee including members representing the major segments of the apiary industry including commercial and noncommercial beekeepers, representatives from the Washington State University apiary program or cooperative extension, and receivers of pollination services as deemed appropriate.

The committee shall advise the director on administration of this chapter and issues affecting the apiary industry. The committee may also advise the director on the funding of research projects of benefit to the apiary industry.

The committee shall meet at the call of the director. Members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred in attending meetings of the committee and any other official duty authorized by the director, pursuant to RCW 43.03.050 and 43.03.060. [2000 c 100 § 2; 1994 c 178 § 3; 1993 c 89 § 3; 1975-'76 2nd ex.s. c 34 § 16; 1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

Additional notes found at www.leg.wa.gov

15.60.021 Registration of hives. (1) Each person owning one or more hives with bees, brokers renting hives, and apiarists resident in other states who operate hives in Washington shall register with the director by April 1st each year.

(2) The registration application shall include:

(a) The name, address, and phone number of the apiarist or broker;

(b) The number of colonies of bees to be owned, brokered, or operated in Washington that year;

(c) A registration fee as prescribed in rule by the director, with the advice of the apiary advisory committee; and

(d) Any other information required by the department by rule.

(3) The director shall issue to each apiarist or broker registered with the department an apiarist identification number. [2000 c 100 § 3; 1994 c 178 § 6; 1993 c 89 § 11; 1988 c 4 § 9; 1977 ex.s. c 362 § 5; 1961 c 11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6. Formerly RCW 15.60.050.]

15.60.031 Late registration fee. A late fee of one and one-half percent per month shall be assessed on registration fees received after April 1st. [2000 c 100 § 4; 1994 c 178 § 5; 1993 c 89 § 10; 1988 c 4 § 8; 1981 c 296 § 9; 1977 ex.s. c 362 § 9. Formerly RCW 15.60.043.]

Additional notes found at www.leg.wa.gov

15.60.040 Money collected under chapter—Placement—Disbursement. All money collected under this chap-

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ter shall be placed in an account in the agricultural local fund. Money in the account shall be used to carry out the purposes of this chapter and may be used for apiary-related activities of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee. No appropriation is required for disbursement from the account. [2000 c 100 § 5; 1994 c 178 § 4; 1993 c 89 § 8; 1988 c 4 § 6; 1981 c 296 § 8; 1977 ex.s. c 362 § 4; 1961 c 11 § 15.60.040. Prior: 1959 c 174 § 1; 1955 c 271 § 6; prior: (i) 1949 c 105 § 2; 1933 ex.s. c 59 § 3; Rem. Supp. 1949 § 3170-3. (ii) 1933 ex.s. c 59 § 4; RRS § 3170-4.]

Additional notes found at www.leg.wa.gov

15.60.055 Violations—Penalty. (1) Except as provided in subsection (2) of this section, a person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor.

(3) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [2003 c 53 § 107; 1993 c 89 § 17; 1991 c 363 § 15; 1989 c 354 § 64. Formerly RCW 15.60.170.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

15.60.065 Apiary coordinated areas—Hearing to establish. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in this section and RCW 15.60.075 and 15.60.085. [2011 c 103 § 5; 1993 c 89 § 18; 1989 c 354 § 65. Formerly RCW 15.60.180.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.60.075 Apiary coordinated areas—Order describing. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the apiary coordinated areas within the county as to the maximum allowable number of hives per site, the minimum allowable distance between sites, and the minimum required setback from property lines. The order shall be

entered upon the records of the county and published in a newspaper having general circulation in the county at least once each week for four successive weeks. [1989 c 354 § 66. Formerly RCW 15.60.190.]

Additional notes found at www.leg.wa.gov

15.60.085 Apiary coordinated areas—Boundary change procedure. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW 15.60.065. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks. [2011 c 103 § 6; 1989 c 354 § 68. Formerly RCW 15.60.210.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.60.095 Apiary coordinated areas within certain counties. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.075, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area. [2011 c 103 § 7; 1993 c 89 § 20. Formerly RCW 15.60.220.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.60.901 Effective date—2000 c 100. This act takes effect June 30, 2001. [2000 c 100 § 9.]

Chapter 15.61 RCW

LADYBUGS AND OTHER BENEFICIAL INSECTS

Sections

15.61.010	Administrative declaration—Regulation of commercial movement.
15.61.020	Intergovernmental cooperation.
15.61.030	Injunctions.
15.61.040	Nonapplicability to honey bees and insects used for research.
15.61.050	Violations—Penalty.

15.61.010 Administrative declaration—Regulation of commercial movement. The director of agriculture in order to protect the production of native and/or domestic plants or their products in this state, may declare ladybugs or any other insects to be beneficial insects and necessary to maintain a beneficial biological balance over insects which are detrimental to such native and/or domestic plants or their products. Such declaration shall be made only after a hearing as prescribed in the administrative procedure act, chapter 34.05 RCW.

[Title 15 RCW—page 108]

Upon declaring ladybugs or other insects to be beneficial insects the director of agriculture may regulate or prohibit the commercial movement of such beneficial insects from this state. [1963 c 232 § 10.]

15.61.020 Intergovernmental cooperation. The director of agriculture may cooperate and enter into agreements with governmental agencies, other states, and agencies of the federal government to carry out the purposes and provisions of this chapter or rules adopted hereunder. [1963 c 232 § 11.]

15.61.030 Injunctions. The director of agriculture may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to said sections in the county where such violation has occurred, notwithstanding the existence of any other remedies at law. [1963 c 232 § 12.]

15.61.040 Nonapplicability to honey bees and insects used for research. The provisions of this chapter shall not apply to honey bees or to those beneficial insects used for research purposes. [1963 c 232 § 13.]

15.61.050 Violations—Penalty. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 108; 1963 c 232 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.62 RCW

HONEY BEE COMMISSION

Sections

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15.62.310	Termination or suspension of commission.
15.62.900	Liberal construction.

Apiary regulation: Chapter 15.60 RCW.

15.62.010 Purpose and findings. The purpose of this chapter is to advance the public welfare and education and to promote the interest, products, services, and stabilization of Washington's honey bee industry.

The legislature finds that:

(1) Increasing the consumption of products of the honey bee industry and promoting the use of its services and stabilizing the honey bee industry within the state and nation is a valid and necessary exercise of the power of the state to protect the public health, to provide for the economic development of the state, and to promote the welfare of the people of the state;

(2) Honey bee industry products produced and services provided in Washington make an important contribution to the agricultural industry of the state of Washington. The business of researching, marketing, and distributing such products and the promotion of its services is in the public interest;

(3) It is necessary to enhance the reputation of Washington honey bee industry products and services in domestic and national markets;

(4) It is necessary to promote and educate the public regarding the value of honey bee industry products and services, and to spread that knowledge throughout the state and nation to increase the awareness and consumption of honey bee products and the use of honey bee services;

(5) State and national markets for Washington honey bee industry products may benefit from promotion of honey bee products through education and advertising;

(6) It is necessary to stabilize the Washington honey bee industry, to enlarge its markets, and increase the consumption of Washington honey bee industry products and services to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of a reasonable standard of living;

(7) Providing information to the public on the manner, cost, and expense of producing, and the care taken to produce and sell, honey bee industry products and services of the highest quality, the methods and care used in their preparation for market, and the methods of sale and distribution is in the public interest;

(8) It is necessary to protect the public by educating it on the various benefits of honey bee industry services, the food value of its products, and their industrial and medicinal uses. [1989 c 5 § 1.]

15.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Affected person" means an apiarist, manufacturer, processor, first handler, broker, or volunteer who shall pay to the commission the minimum assessments required in RCW 15.62.140.

(2) "Apiarist" means any person, firm, partnership, association, or corporation who owns, operates, manages, or brokers ten or more honey bee (*Apis mellifera*) colonies or any volunteer participant having less than ten colonies in the state of Washington.

(3) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more

queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(4) "Broker" means any person other than an apiarist who, for a fee, places or sets twenty-five or more bee colonies for pollination or buys and sells one thousand dollars or more per year of industry products he or she does not produce or manufacture.

(5) "Commission" means the Washington state honey bee industry commission or its authorized agents.

(6) "Department" means the department of agriculture.

(7) "Director" means the director of the department of agriculture.

(8) "First handler" means any person in Washington who imports industry products or bee supplies and equipment into Washington for processing, packing, or sale in the state of Washington.

(9) "Industry products" means queen bees, packaged bees, and items which are made by bees including, but not limited to, honey, pollen, bees wax, and propolis and items manufactured for use in the honey bee industry as enumerated under "manufacturer" in this section.

(10) "Manufacturer" means any person making bee supplies and equipment such as: Supers (hive boxes), frames, bees wax foundation, smokers, extractors, bee veils, pollen traps, queen rearing equipment, bee cages and packages, queen excluders, and other bee supplies used in the honey bee industry.

(11) "Person" means any individual, firm, partnership, or corporation engaged in the apiculture industry.

(12) "Processor" means any person processing, selling, marketing, or distributing bee industry products.

(13) "Retail sales" means those sales made directly to consumers whether apiarists, brokers, or persons involved in the apiculture industry, or the public. [1989 c 5 § 2.]

15.62.030 Commission established by referendum.

The Washington state honey bee commission shall be established following approval of a referendum by a majority of the affected apiarists and brokers, as set forth in RCW 15.62.140(4) for assessment increases. [1989 c 5 § 3.]

15.62.040 Powers and duties of commission. The commission shall have the following powers and duties:

(1) To elect a chairperson and other officers as it deems advisable;

(2) To promulgate rules and regulations under the administrative procedure act, chapter 34.05 RCW, and RCW 15.04.200 as necessary to effectuate the purpose and policies of this chapter;

(3) To administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to fulfill the purpose thereof;

(4) To employ and discharge advertising agents, attorneys as permitted by the attorney general, agents, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(5) To establish offices, hire employees who shall be exempt from chapter 41.06 RCW, incur expenses which shall not exceed revenues, enter into contracts, and create such liabilities as are reasonable and proper for the administration of this chapter;

(6) To investigate and refer violations of this chapter to local prosecuting attorneys or special prosecutors appointed by the commission and the local prosecuting attorney;

(7) To contract for scientific research designed to improve production, pollination, management, quality, processing, and distribution and to develop and discover uses for products of the honey bee industry;

(8) To make in its name advertising contracts and other agreements necessary to promote the industry and bee products and services in state, national, and foreign markets;

(9) To keep accurate records of all commission dealings, which shall be open to public inspection and audit by authorized state agencies;

(10) To contract for research to develop more efficient methods of promoting the honey bee industry and its products and services;

(11) To develop and conduct educational programs for the benefit of industry and to inform the public regarding Washington's honey bee industry;

(12) To enter into contracts and agreements for purposes consistent with this chapter;

(13) To publish at least an annual report of its activities and financial status subject to audit by the state auditor;

(14) To establish an operating monetary reserve and carry over to subsequent fiscal periods any excess funds in the reserve: PROVIDED, That the reserve funds shall not exceed one fiscal period's budget. The reserve funds shall only be used to defray any expenses authorized under this chapter;

(15) To audit any affected person's records as described in RCW 15.62.200; and

(16) To consider the assessment of honey or manufactured bee supplies produced or sold in Washington. Assessments shall only be levied after a referendum is conducted and approved by a majority vote, as set forth in RCW 15.62.140(4), of persons engaged in the honey bee industry of Washington. [1989 c 5 § 13.]

15.62.050 Commission compositions—Eleven positions. The commission shall consist of the following members:

(1) Apiarist position one shall represent area one, which includes the counties of Whatcom, San Juan[,] Island, Skagit, Snohomish, and King; and

(2) Apiarist position two shall represent area two, which includes the counties of Pierce, Kitsap, Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, [and] Skamania; and

(3) Apiarist positions three and four shall represent area three, which includes the counties of Kittitas, Yakima, Klickitat, and Benton; and

(4) Apiarist position five shall represent area four, which includes the counties of Okanogan, Chelan, and Douglas; and

(5) Apiarist position six shall represent area five, which includes the counties of Grant, Adams, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

(6) Apiarist position seven shall represent area six, which includes the counties of Spokane, Lincoln, Ferry, Stevens, and Pend Oreille; [and]

(7) Position eight, appointed by the director, shall be a manufacturer or broker of industry products representing Washington residents engaged in the apiculture industry; and

(8) Position nine, appointed by the director, shall be a processor or first handler representing residents engaged in Washington's honey bee industry; and

(9) Position ten shall be the director of the Washington state department of agriculture, who shall be a nonvoting ex officio member; and

(10) Position eleven, appointed by the director, may be an affected person representing out-of-state interests who are not Washington residents but are active as affected persons in Washington. [1989 c 5 § 4.]

15.62.060 Position qualifications. (1) Commission positions one through seven shall be filled by persons who meet the following requirements:

(a) Resident of this state;

(b) Resident of the area they represent; and

(c) Actually engaged in owning, operating, or as a broker of bee colonies for the five years immediately preceding their election.

(2) Commission positions eight and nine shall be filled by persons who meet the following requirements:

(a) Resident of this state; and

(b) Actually engaged as a manufacturer, broker of industry products, processor, or first handler for the five years immediately preceding their election.

(3) Commission members shall be immediately disqualified if they no longer meet the qualifications during their terms of office. The vacancy on the commission shall be filled according to *section 38 of this act.

(4) Position eleven shall be filled by a person who qualifies under subsection (1)(c) or (2)(b) of this section and is not a resident of Washington. [1989 c 5 § 5.]

**Reviser's note:* The reference to "section 38 of this act" is incorrect. Apparently a reference to "section 6 of this act," codified as RCW 15.62.070, was intended.

15.62.070 Terms of office—Vacancies. (1) The regular terms of office of each elected member of the commission shall be three years, except that the term of office for the initial members shall be as follows:

(a) Positions for areas one, four, and seven - one year.

(b) Positions for areas two, five, and eight - two years.

(c) Positions for areas three, six, and nine - three years.

(d) If filled, position for area eleven - three years.

(2) No elected member of the board may serve more than two full consecutive three-year terms.

(3) Terms of office shall end on August 31 of the last year of the elected or appointed term.

(4) Any vacancies on the commission shall be filled by a person meeting the qualifications established in *section 37 of this act appointed by the other voting members of the commission. The appointee shall hold office for the remainder of the term, at which time an election for that position shall be conducted. [1989 c 5 § 6.]

**Reviser's note:* The reference to "section 37 of this act" is incorrect. Apparently a reference to "section 5 of this act," codified as RCW 15.62.060, was intended.

15.62.080 Apiarist members—Election. (1) Apiarist members of the commission shall be nominated and elected by the apiarists within the district they are to represent in the year in which a member's term expires. The candidate receiving the largest number of votes cast shall be elected. The election shall be by secret mail ballot and shall be conducted by the director, who shall be reimbursed for actual expenses of conducting the election by the commission.

(2) The director shall provide forms for the nomination of candidates to each affected person. The nomination form shall provide for the name of the person being nominated and the names of five persons supporting the nomination.

(3) The persons nominating the candidate shall affirm that the candidate meets the qualifications and is willing to serve by signing the nomination form.

(4) The nomination forms shall be returned to the director by June 30 of the election year, and the director shall not accept any nomination postmarked later than midnight of that date.

(5) In the event no nomination is submitted for a position, the director shall nominate at least two, but no more than three, qualified persons and place their names on the election ballot as nominees. Any qualified person may be elected by write-in ballot, even though his or her name was not placed in nomination.

(6) Ballots for electing commission members shall be mailed by the director to all apiarists and brokers in areas where elections are to be held no later than July 15. Ballots, to be valid, shall be returned to the director postmarked no later than July 31. Elected persons shall take office effective September 1 of the year elected except initial elections shall take place within one hundred twenty days after July 23, 1989. [1989 c 5 § 7.]

15.62.090 Notice, elections, referenda—Lists of apiarists, manufacturers, processors, and first handlers.

(1)(a) The director shall cause a list to be prepared of all apiarists, as defined in RCW 15.62.020, from the list of apiarists registered with the department under *RCW 15.60.030. A qualified person may, at any time, have his or her name placed on the list by registering with the department.

(b) The director shall cause a list to be prepared of manufacturers, processors, and first handlers. The list shall be prepared from any information the director has at hand or may readily obtain. A qualified person may, at any time, have his or her name placed on the list by notifying the department and providing such information as the department deems necessary to determine whether the person qualifies as a manufacturer, processor, or first handler under RCW 15.62.020.

(c) For all purposes of giving notice and conducting elections or referenda, the lists the director has on hand under this section, corrected up to the day next preceding the date for issuing notices or ballots, are, for purposes of this chapter, deemed to be the lists of all persons entitled to notice or to assent or dissent or to vote.

(2) Any person may file his or her name and address with the commission for the purpose of receiving notices regarding the activities of the commission. Persons who are not Washington residents but are active as affected persons in this state and who wish to be considered for appointment to position eleven on the commission may file their names with

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the director. A person desiring such consideration must supply such information as the director deems appropriate. [1989 c 5 § 8.]

*Reviser's note: RCW 15.60.030 was repealed by 2000 c 100 § 8, effective June 30, 2001.

15.62.100 Costs of elections and referendums—Reimbursement. The commission shall reimburse the director for the actual costs incurred in conducting the elections and referendums, and acquiring lists of affected persons. [1989 c 5 § 9.]

15.62.110 Quorum—Travel expenses. (1) A majority of the commission members shall constitute a quorum for the transaction of all business of the commission.

(2) Members of the commission shall be reimbursed for travel expenses, as prescribed by the commission, for each day spent in attendance at, or traveling to and from, commission meetings or when conducting authorized commission business. [1989 c 5 § 10.]

15.62.120 Certified copies of commission's proceedings, records, and acts—Admissible in court. Copies of the proceedings, records, and acts of the commission, when certified by the secretary, shall be admissible in any court and be evidence of the truth of the statements therein contained. [1989 c 5 § 11.]

15.62.130 Commission officers—Members' fidelity bonds. The commission may elect an executive secretary who is not a member and fix his or her compensation and may appoint a treasurer who shall sign all vouchers and receipts for moneys received by the commission. The commission shall purchase for each of its members a fidelity bond executed by a surety company authorized to do business in the state, in favor of the state and the commission, in a sum to be determined by the commission. [1989 c 5 § 12.]

15.62.140 Assessments—Minimum—Increase. (1) The commission shall collect annual assessments as follows:

(a) Twenty-five cents for each colony operated by an apiarist or broker in Washington at any time in a calendar year. Each colony shall be assessed only once per calendar year. There shall be a minimum assessment of ten dollars.

(b) The sale of a business enterprise by an apiarist or broker shall not be assessed.

The provisions of this subsection (1) are effective only if the referendum required by RCW 15.62.030 on the creation of the commission is adopted.

(2) Subject to approval by referendum, the commission shall have the power and duty to increase the amount of the assessments as necessary to fulfill the purposes of this chapter.

(3) In determining the necessity for an assessment increase, the commission shall consider:

- (a) The purpose of the commission;
- (b) The extent and probable cost of required research, promotion, and advertising;
- (c) The extent of public convenience, interest, and necessity; and
- (d) The expected revenue from the increased assessment.

(4) The increase in assessment shall not become effective until approved by a majority of the affected persons voting in a referendum conducted by the commission. The referendum must be approved by:

(a) Either fifty-one percent of the apiarists and brokers representing sixty-six percent of the colonies registered in Washington in the twelve months preceding voting; or

(b) Sixty-six percent of the apiarists and brokers representing fifty-one percent of the colonies registered in Washington in the twelve months preceding voting; and

(c) Either fifty-one percent of manufacturers, processors, and first handlers representing sixty-six percent of industry products sold in Washington by its residents; or

(d) Sixty-six percent of manufacturers, processors, and first handlers representing fifty-one percent of industry products sold in Washington by its residents. [1989 c 5 § 14.]

15.62.150 Assessments—Collection—Deposit in local fund—Gifts, grants, and endowments—Failure to remit assessment. (1) All assessments shall be collected by the commission on a quarterly basis or as otherwise determined by the commission.

(2) The commission shall create a local fund in a local financial institution approved by the director and shall deposit therein, each day, all moneys received by the commission except an amount for petty cash as fixed by commission regulations. Moneys in the fund shall only be expended for the purposes of this chapter. Moneys in the fund are not subject to appropriation.

(3) The commission fund is authorized to receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(4) If an affected person fails to remit any assessment, such assessment plus interest at the rate of one percent per month from the due date shall constitute a personal debt of the person assessed or who otherwise owes the assessment and shall be due and payable within thirty days from the date it becomes first due the commission. In the event of failure of the person to pay due and payable assessments, the commission may bring civil action against the person in a state court of competent jurisdiction for collection thereof, together with any reasonable costs including attorneys' fees. The action shall be tried and judgment rendered as in any other cause of action for debt due and payable. This provision is in addition to the penalty section contained in RCW 15.62.220. [1989 c 5 § 15.]

15.62.160 Assessment error—Refund. A person shall be entitled to a refund of assessed money held by the commission fund when it has been determined by the commission that the affected person was assessed and made payment in error. [1989 c 5 § 16.]

15.62.170 Recordkeeping. (1) Each apiarist and broker shall keep accurate records of the number of colonies owned or operated during each calendar year.

(2) Each manufacturer shall keep accurate records of gross sales of industry products or manufactured goods sold in the state of Washington.

(3) Each processor shall keep accurate records of the pounds of honey sold in the state of Washington.

(4) Each first-handler shall keep accurate records of the industry products sold in the state of Washington.

(5) The records shall contain information required by the commission and shall be preserved for a period of five years.

(6) The records shall be made available for audit upon request of the commission or its agent, as authorized in RCW 15.62.040 and 15.62.200. [1989 c 5 § 17.]

15.62.180 Reporting. Each affected person shall, as required, file with the commission a return under oath on forms to be furnished by the commission, stating the information requested by the commission regarding the ownership, handling, processing, manufacturing, delivering, shipping, sale, and brokering of various honey bee industry products and activities as defined in RCW 15.62.020. The report shall cover the period or periods of time prescribed by the commission. [1989 c 5 § 18.]

15.62.200 Audit of records of affected persons. The commission through its agents may audit the records of any affected person for the purpose of enforcing the provisions of this chapter. The commission must first notify the affected person of their intention to audit and may request supporting documents of the affected person regarding reports submitted on commission forms under RCW 15.62.180. [1989 c 5 § 20.]

15.62.210 Nonliability of state—Salaries, expenses, and liabilities. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All salaries, expenses, and liabilities incurred by persons employed or contracting under this chapter for the commission shall be limited to, and payable only from, the funds collected hereunder. [1989 c 5 § 21.]

15.62.220 Violations—Misdemeanor. Any person who violates or aids in the violation of any provision of this chapter or any rule or regulation of the commission shall be guilty of a misdemeanor. [1989 c 5 § 22.]

15.62.230 Prosecutions—Superior court jurisdiction—Equitable remedies. (1) Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The commission is hereby vested with the authority to utilize the services of the local prosecuting attorneys or special prosecutors as agreed upon by the commission and the local prosecutor for purposes of carrying out the prosecution of cases brought under this chapter.

(3) The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter, and the rules and regulations of the commission issued hereunder, and to

prevent and enjoin and restrain violations thereof. [1989 c 5 § 23.]

15.62.300 Termination, suspension, or continuance of commission. In the seventh year following the inception of the commission, a referendum shall be conducted by the department of agriculture to determine if the commission is still desired by the beekeeping industry in Washington. The commission shall continue if the director finds that affected apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such continuance, otherwise it shall be terminated or suspended as in RCW 15.62.310. [1989 c 5 § 25.]

15.62.310 Termination or suspension of commission. The commission shall be terminated or suspended if the director finds that apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such termination or suspension. A referendum may be called by a majority of the commission or by twenty percent of the resident affected persons representing twenty percent of the colonies and industry products sold in Washington.

Any moneys in the treasury at the time of an affirmative termination or suspension vote shall first be used to effect all acts associated with the termination or suspension procedures and liquidation of the affairs of the commission.

Any residual funds not necessary to defray the expenses of termination or suspension of the commission shall be turned over to Washington State University to be used in conducting research on the honey bee *Apis mellifera*. [1989 c 5 § 26.]

15.62.900 Liberal construction. This chapter shall be liberally construed to effectuate the policies and purpose set forth herein. [1989 c 5 § 24.]

Chapter 15.64 RCW FARM MARKETING

Sections

15.64.010	Director's duties and powers.
15.64.030	Studies of farm marketing problems—Rules.
15.64.040	Use of funds for studies—Joint studies with other agencies.
15.64.050	Small farm direct marketing assistance program—Created—Duties.
15.64.060	Farm-to-school program.

15.64.010 Director's duties and powers. The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he or she may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative

societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of intermediaries handling farm products, and in so doing, he or she may hear complaints and suggestions and may visit places of business of all such intermediaries and may examine under oath, the officers and employees thereof;

(4) If he or she finds further legislation on this subject advisable, he or she shall make recommendations thereon to the governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state, and municipal agencies engaged in similar work;

(7) Investigate the methods, charges, and delays of transportation of farm products and assist producers in relation thereto. [2010 c 8 § 6068; 1961 c 11 § 15.64.010. Prior: 1917 c 119 § 3; RRS § 2876.]

15.64.030 Studies of farm marketing problems—Rules. The director shall enact rules and regulations governing the pursuit of technical studies of farm marketing problems. Said studies shall be under the supervision of the director of the experimental station of Washington State University. The extension service of Washington State University shall provide for dissemination to the public of knowledge gained by such studies. [1961 c 11 § 15.64.030. Prior: 1947 c 280 § 2; Rem. Supp. 1947 § 2909-2.]

15.64.040 Use of funds for studies—Joint studies with other agencies. Moneys appropriated to the department for agricultural marketing research shall be expended by the department to further studies by the department, the experiment station of Washington State University and the extension service of Washington State University. The studies shall be made jointly or in conjunction with those made by the United States Department of Agriculture as provided for in the Flannigan-Hope Act, Title II "The Agricultural Marketing Act of 1946" Public Law 733. All funds appropriated shall be expended jointly and as matching funds with any federal funds made available for such purposes. [1961 c 11 § 15.64.040. Prior: 1947 c 280 § 1; Rem. Supp. 1947 § 2909-1.]

15.64.050 Small farm direct marketing assistance program—Created—Duties. (1) The small farm direct marketing assistance program is created.

(2) The director shall employ a small farm direct marketing assistant.

(3) The small farm direct marketing assistance program shall assist small farms in their direct marketing efforts. In carrying out this duty the program shall:

(a) Assist small farms in complying with federal, state, and local rules and regulations as they apply to direct marketing of agricultural products;

(b) Assist in developing infrastructure to increase direct marketing opportunities for small farms;

(c) Provide information on direct marketing opportunities for small farms;

- (d) Promote localized food production systems;
- (e) Increase access to information for farmers wishing to sell farm products directly to consumers;
- (f) Identify and help reduce market barriers facing small farms in direct marketing;
- (g) Assist in developing and submitting proposals to grant programs to assist small farm direct marketing efforts; and
- (h) Perform other functions that will assist small farms in directly marketing their products. [2007 c 522 § 947; 2007 c 122 § 1; 2001 2nd sp.s. c 3 § 2.]

Findings—2001 2nd sp.s. c 3: "The legislature finds that:

- (1) Many consumers in this state appreciate and seek out the opportunity to purchase local farm products.
- (2) Consumers and small-scale farmers would both benefit from increased opportunities to market farm products locally. Direct marketing provides farmers with the opportunity to realize an increased share of consumers' food dollars and provides consumers with a greater opportunity to support local agriculture and understand farm operations, farm culture, and the role farms play in meeting our food needs.
- (3) The state would greatly benefit from a focused effort to increase the economic viability and profitability of small farms through increasing their ability to market their products directly to consumers.
- (4) Direct marketing opportunities are often not feasible for farmers to undertake because of market barriers and the difficulty of obtaining information related to marketing.
- (5) A direct marketing assistance program for small farmers could provide the needed information, technical assistance, and barrier clearing work that is a key to increasing direct marketing of farm products." [2001 2nd sp.s. c 3 § 1.]

Additional notes found at www.leg.wa.gov

15.64.060 Farm-to-school program. (1) A farm-to-school program is created within the department to facilitate increased procurement of Washington grown food by schools.

(2) The department, in consultation with the department of health, the office of the superintendent of public instruction, the department of enterprise services, and Washington State University, shall, in order of priority:

(a) Identify and develop policies and procedures to implement and evaluate the farm-to-school program, including coordinating with school procurement officials, buying cooperatives, and other appropriate organizations to develop uniform procurement procedures and materials, and practical recommendations to facilitate the purchase of Washington grown food by the common schools. These policies, procedures, and recommendations shall be made available to school districts to adopt at their discretion;

(b) Assist food producers, distributors, and food brokers to market Washington grown food to schools by informing them of food procurement opportunities, bid procedures, school purchasing criteria, and other requirements;

(c) Assist schools in connecting with local producers by informing them of the sources and availability of Washington grown food as well as the nutritional, environmental, and economic benefits of purchasing Washington grown food;

(d) Identify and recommend mechanisms that will increase the predictability of sales for producers and the adequacy of supply for purchasers;

(e) Identify and make available existing curricula, programs and publications that educate students on the nutritional, environmental, and economic benefits of preparing and consuming locally grown food;

- (f) Support efforts to advance other farm-to-school connections such as school gardens or farms and farm visits; and
- (g) As resources allow, seek additional funds to leverage state expenditures.

(3) The department in cooperation with the office of the superintendent of public instruction shall collect data on the activities conducted pursuant to chapter 215, Laws of 2008 and communicate such data biennially to the appropriate committees of the legislature beginning November 15, 2009. Data collected may include the numbers of schools and farms participating and any increases in the procurement of Washington grown food by the common schools.

(4) As used in this section, RCW 28A.335.190, and 28A.235.170, "Washington grown" means grown and packed or processed in Washington. [2015 c 225 § 9; 2008 c 215 § 2.]

Findings—Intent—2008 c 215: "(1) The legislature recognizes that the benefits of local food production include stewardship of working agricultural lands; direct and indirect jobs in agricultural production, food processing, tourism, and support industries; energy conservation and greenhouse gas reductions; and increased food security through access to locally grown foods.

(2) The legislature finds there is a direct correlation between adequate nutrition and a child's development and school performance. Children who are hungry or malnourished are at risk of lower achievement in school.

(3) The legislature further finds that adequate nutrition is also necessary for the physical health of adults, and that some communities have limited access to healthy fruits and vegetables and quality meat and dairy products, a lack of which may lead to high rates of diet-related diseases.

(4) The legislature believes that expanding market opportunities for Washington farmers will preserve and strengthen local food production and increase the already significant contribution that agriculture makes to the state and local economies.

(5) The legislature finds that the state's existing procurement requirements and practices may inhibit the purchase of locally produced food.

(6) The legislature intends that the local farms-healthy kids act strengthen the connections between the state's agricultural industry and the state's food procurement procedures in order to expand local agricultural markets, improve the nutrition of children and other at-risk consumers, and have a positive impact on the environment." [2008 c 215 § 1.]

Short title—2008 c 215: "This act may be known and cited as the local farms-healthy kids act." [2008 c 215 § 12.]

Captions not law—2008 c 215: "Captions used in this act are not any part of the law." [2008 c 215 § 13.]

Conflict with federal requirements—2008 c 215: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2008 c 215 § 14.]

Chapter 15.65 RCW

WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

Sections

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15.65.010 Short title. This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

15.65.020 Definitions. The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is

stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case, the director may in his or her discretion: (a) Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

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

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement

or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list shall contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list shall contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list shall contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

(18) "Member of a cooperative association" means any producer who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(19) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(20) "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, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended

"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.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

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

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(30) "Vacancy" means that a board member leaves or is removed from a board position prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement. [2011 c 103 § 23. Prior: 2009 c 549 § 1007; 2002 c 313 § 1; 1993 c 80 § 2; 1986 c 203 § 15; prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.028 Regulating agricultural commodities—Existing comprehensive scheme. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of agricultural products within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its agricultural commodities be properly promoted by (a) enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the commodities they produce and (b) working towards stabilizing the agricultural industry by increasing consumption of agricultural commodities within the state, the nation, and internationally;

(2) That farmers and ranchers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is now in the overriding public interest that support for the agricultural industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that each agricultural commodity be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agricultural commodities;

(b) Increase the sale and use of Washington state's agricultural commodities in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's agricultural commodities;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's agricultural commodities and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of agricultural commodities produced in Washington state;

(4) That the director seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber, and seek to maintain the economic well-being of the agricultural industry in Washington state consistent with its regulatory activities and responsibilities;

(5) That the director is hereby authorized to implement, administer, and enforce this chapter through the adoption of marketing orders that establish commodity boards; and

(6) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. [2002 c 313 § 2.]

Additional notes found at www.leg.wa.gov

15.65.033 Regulating agricultural commodities—Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

- Chapter 15.08 RCW Horticultural pests and diseases;
- Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;
- Chapter 15.14 RCW Planting stock;
- Chapter 15.15 RCW Certified seed potatoes;
- Chapter 15.17 RCW Standards of grades and packs;
- Chapter 15.19 RCW Certification and inspection of ginseng;
- Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;
- Chapter 15.49 RCW Seeds;
- Chapter 15.53 RCW Commercial feed;
- Chapter 15.54 RCW Fertilizers, minerals, and limes;
- Chapter 15.58 RCW Washington pesticide control act;
- Chapter 15.60 RCW Apiaries;
- Chapter 15.64 RCW Farm marketing;
- Chapter 15.83 RCW Agricultural marketing and fair practices;
- Chapter 15.85 RCW Aquaculture marketing;
- Chapter 15.86 RCW Organic products;
- Chapter 15.92 RCW Center for sustaining agriculture and natural resources;
- The food safety and security act under chapter 15.130 RCW;
- Chapter 17.24 RCW Insect pests and plant diseases;
- Chapter 19.94 RCW Weights and measures;
- Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;
- Chapter 22.09 RCW Agricultural commodities;
- Chapter 69.07 RCW Washington food processing act;
- Chapter 69.25 RCW Washington wholesome eggs and egg products act;
- Chapter 69.28 RCW Honey;
- 7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the dry pea and lentil industry is regulated by or must comply with the additional laws and rules adopted under 7 U.S.C., chapter 38, agricultural marketing act. [2018 c 236 § 706; 2011 c 103 § 24; 2002 c 313 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.040 Establishing a commodity board—Marketing order—Purposes. The director may adopt a marketing order that establishes a commodity board under this chapter for any of the following purposes:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state:

(a) To develop, and engage in research for developing, better and more efficient production, irrigation, processing, transportation, handling, marketing, and utilization of agricultural products;

(b) To establish orderly marketing of agricultural commodities;

(c) To provide for uniform grading and proper preparation of agricultural commodities for market;

(d) To provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(e) To eliminate or reduce economic waste in the marketing and/or use of agricultural commodities;

(f) To restore and maintain adequate purchasing power for the agricultural producers of this state;

(g) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(h) To provide marketing information and services for producers of an agricultural commodity;

(i) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(j) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(k) To provide for commodity-related education and training; and

(l) To accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [2002 c 313 § 4; 2001 c 315 § 4; 1961 c 256 § 4.]

Additional notes found at www.leg.wa.gov

15.65.043 Board may establish foundation. A commodity board may establish a foundation using commission funds as grant money when the foundation benefits the commodity for which the board was established. Commission funds may be used for the purposes authorized in the marketing order. [2001 c 315 § 7.]

15.65.047 Director's duties and responsibilities—Amendments to marketing orders or agreements without a referendum—Rules. (1) The director may adopt rules necessary to carry out the director's duties and responsibilities under this chapter including:

(a) The issuance, amendment, or termination of marketing orders or agreements;

(b) Procedural, technical, or administrative rules which may address and include, but are not limited to:

(i) The submission of a petition to issue, amend, or terminate a marketing order or agreement under this chapter;

(ii) Nominations conducted under this chapter;

(iii) Elections of board members or referenda conducted under this chapter;

(iv) Actions of the director upon a petition to issue, amend, or terminate a marketing order or agreement;

(c) Rules that provide for a method to fund:

(i) The costs of staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if the position is not directly funded by the legislature; and

(ii) The actual costs related to the specific activity undertaken on behalf of an individual commodity board or commission.

(2) The director may adopt amendments to marketing agreements or orders without conducting a referendum if the amendments are adopted under the following criteria:

(a) The proposed amendments relate only to internal administration of a marketing order or agreement and are not subject to violation by a person;

(b) The proposed amendments adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, or rules of other Washington state agencies, if the material adopted or incorporated regulates the same activities as are authorized under the marketing order or agreement;

(c) The proposed amendments only correct typographical errors, make address or name changes, or clarify language of a rule without changing the marketing order or agreement; and

(d) The content of the proposed amendments is explicitly and specifically dictated by statute.

A marketing order or agreement shall not be amended without a referendum to provide that a majority of the commodity board members be appointed by the director. [2002 c 313 § 7.]

Additional notes found at www.leg.wa.gov

15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, notice, grounds for amendments. The director shall administer and enforce this chapter and it shall be his or her duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, and/or suspension of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever he or she has reason to believe that the issuance or amendment of a marketing agreement or order will tend to effectuate any declared policy or purpose of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or when a petition for amendment is submitted by majority vote of a commodity board, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance or amendment, and the director shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend the same whenever upon compliance with and on

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the basis of facts adduced in accordance with the procedural requirements of this chapter he or she shall find that such agreement, order, or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [2002 c 313 § 5; 1961 c 256 § 5.]

Additional notes found at www.leg.wa.gov

15.65.060 Form, filing of marketing agreement, order, amendment, and other proceedings. The director shall cause any marketing agreement, order proposed for issuance, or amendment to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [2002 c 313 § 6; 1961 c 256 § 6.]

Additional notes found at www.leg.wa.gov

15.65.070 Notice of hearing on proposal—Publication—Contents. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department. [2002 c 313 § 8; 1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

Additional notes found at www.leg.wa.gov

15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses. The director shall have the power to issue subpoenas for the production of any books, records, or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to

incriminate him or her or subject him or her to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he or she may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him or her: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his or her examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of the witness or the production of the papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him or her in accordance with RCW 2.40.020 and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause, or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he or she has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that the witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [2002 c 313 § 9; 1961 c 256 § 9.]

Additional notes found at www.leg.wa.gov

15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies. The director shall make and publish findings based upon the facts, testimony, and evidence received at the public hearings together with any other relevant facts available to him or her from official publications of the United States or any state thereof or any institution of recognized standing and he or she is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his or her findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [2010 c 8 § 6069; 1961 c 256 § 10.]

15.65.110 Filing objections to recommended decision—Final decision—Waiver. After the issuance of a rec-

ommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his or her final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his or her discretion omit compliance with the provisions of this section. [2010 c 8 § 6070; 1961 c 256 § 11.]

15.65.120 Contents and scope of recommended and final decision—Delivery of copies. The recommended decision shall contain the text in full of any recommended agreement, order, or amendment, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, or amendment containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, or amendment covered thereby, and the director shall issue and deliver or mail copies of the final decision to all producers and handlers within the affected area who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director. [2002 c 313 § 10; 1985 c 261 § 3; 1961 c 256 § 12.]

Additional notes found at www.leg.wa.gov

15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective. With respect to marketing agreements, the director shall after publication of his or her final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: PROVIDED, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and PROVIDED, FURTHER, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he or she shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration, and

enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [2010 c 8 § 6071; 1961 c 256 § 13.]

15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly assessing handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified

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therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1985 c 261 § 5; 1961 c 256 § 15.]

15.65.160 Ascertainment of required assent percentages. After publication of his or her final decision, the director shall ascertain (either by written agreement in accordance with subsection (1) of this section or by referendum in accordance with subsection (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment, or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of subsection (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: PROVIDED, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [2010 c 8 § 6072; 1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 1961 c 256 § 16.]

15.65.170 Issuance or amendment of marketing order—Assent—Rules. If the director determines that the requisite assent has been given to issue or amend a marketing

order, the issuance or amendment shall be adopted by rule by the director within thirty days of the validation of the vote. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [2002 c 313 § 11; 1987 c 393 § 6; 1961 c 256 § 17.]

Additional notes found at www.leg.wa.gov

15.65.175 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums. The director shall not be required to hold a public hearing or a referendum more than once in any twelve-month period on petitions to issue, amend, or terminate a commodity marketing order if any of the following circumstances are present:

(1) The petition proposes to establish a marketing order or agreement for the same commodity;

(2) The petition proposes the same or a similar amendment to a marketing order or agreement; or

(3) The petition proposes to terminate the same marketing order or agreement. [2002 c 313 § 12.]

Additional notes found at www.leg.wa.gov

15.65.180 Suspension of marketing agreement or order upon advice of commodity board—Certain prerequisites waived. The director may, upon the advice of the commodity board serving under any marketing agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170, suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if the director finds that such suspension will tend to effectuate the declared policy of this chapter. Any suspension of all or substantially all of a marketing agreement or order by the director shall not become effective until the end of the then current marketing season. [2002 c 313 § 13; 1961 c 256 § 18.]

Additional notes found at www.leg.wa.gov

15.65.183 Termination of marketing order or agreement—Petition—Procedure. The director may terminate a marketing order or agreement in accordance with this chapter.

(1) To terminate a marketing order or agreement:

(a) The director must receive a petition by affected producers under this chapter signed by at least ten percent of the affected producers; or

(b) A majority of a commodity board may file a petition with the director.

(2) The petitioners must include in the petition at the time of filing:

(a) A statement of why the marketing order or agreement and the commodity board created under it no longer meets [meet] the purposes of this chapter;

(b) The name of a person designated to represent the petitioners; and

(c) The effective date of a marketing order or agreement termination, which may not be less than one year from the date the petition was filed with the director.

(3) Within sixty days of receipt of a petition meeting the requirements of this section, the director shall commence

rule-making proceedings to repeal the marketing order or agreement and, subsequently, a referendum on the issue.

(4) The director shall include a copy of a petition to terminate a marketing order or agreement with the notice to affected producers when rule-making proceedings are commenced.

(5) If the petitioners fail to meet the requirements of this chapter, the director shall deny the petition and a referendum vote will not be conducted. The person designated to represent the petitioners shall be notified if a petition is denied. [2002 c 313 § 14.]

Additional notes found at www.leg.wa.gov

15.65.185 Referendum prior to termination of a marketing order or agreement—Procedure—Exceptions. Except as provided in RCW 15.65.190 or subsection (4) of this section, the director, prior to termination of the marketing order or agreement, shall conduct a referendum as provided in this chapter, the rules adopted by the director, and the applicable marketing order or agreement.

(1) If a referendum on the termination of a marketing order or agreement is assented to, the referendum proposal shall be adopted by the director within thirty days of the count of the ballots and shall go into effect under chapter 34.05 RCW. If those affected producers eligible to vote in the referendum do not assent, no further action shall be taken by the director on the proposal.

(2) The list of affected producers used for conducting a referendum on the termination of a marketing order or agreement shall be kept in the rule-making file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify an affected producer does not invalidate a referendum.

(3) The list of affected producers that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided for in RCW 15.65.190.

(4) If the director determines that one hundred percent of the affected producers have filed a written application with the director requesting that a marketing order or agreement be terminated, the director may terminate the marketing order or agreement without conducting a referendum. The termination of the marketing order or agreement shall go into effect under chapter 34.05 RCW, but no sooner than at the end of the marketing season then current. [2002 c 313 § 15.]

Additional notes found at www.leg.wa.gov

15.65.190 Termination of agreement or order on assent of producers—Procedure. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him or her for such termination. No such termination shall become effective until the expiration of the marketing season then current. [2010 c 8 § 6073; 1985 c 261 § 7; 1961 c 256 § 19.]

15.65.193 When marketing order or agreement is terminated—Duties of affected commodity board. If after complying with the procedures outlined in this chapter and a referendum proposal to terminate a marketing order or agreement is assented to, the affected commodity board shall:

(1) Document the details of all measures undertaken to terminate the marketing order and identify and document all closing costs;

(2) Contact the office of the state auditor and arrange for a final audit of the commodity board. Payment for the audit shall be from commodity board funds and identified in the budget for closing costs;

(3) Provide for the reimbursement to affected producers of moneys collected by assessment. Reimbursement shall be made to those considered affected producers over the previous three-year time frame on a pro rata basis and at a percent commensurate with their volume of production over the previous three-year period unless a different time period is specified in the marketing order or agreement. If the commodity board finds that the amounts of moneys are so small as to make impractical the computation and remitting of the pro rata refund, the moneys shall be paid into the state treasury as unclaimed trust moneys; and

(4) Transfer all remaining files to the department for storage and archiving, as appropriate. [2002 c 313 § 16.]

Additional notes found at www.leg.wa.gov

15.65.200 Lists of affected parties—Information used to establish lists—Purpose and use. (1) Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or a designee shall establish a list of affected parties along with volume of production data covering a minimum three-year period, or in such lesser time as the affected party has produced the commodity in question, from information provided by the petitioners, by obtaining information on affected parties from applicable producer, handler, or processor organizations or associations or other sources identified as maintaining the information.

(2) The director shall use the list of affected parties for the purpose of notice, referendum proceedings, and electing and selecting members of commodity boards in accordance with this chapter.

(3) An affected party may at any time file his or her name and mailing address with the director. A list of affected parties may be brought up-to-date by the director up to the day preceding a mailing of a notice or ballot under this chapter and that list is deemed the list of affected parties entitled to vote.

(4) The list of affected parties used for the issuance of a marketing order or agreement shall be kept in a file maintained by the director. The list shall be certified as a true representation of the mailing list. Inadvertent failure to notify an affected party does not invalidate a proceeding conducted under this chapter.

(5) The list of affected parties that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided in this chapter.

(6) The director shall provide the commodity board the list of affected and interested parties once a marketing order

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or agreement is adopted and a commodity board is established as provided in this chapter. [2002 c 313 § 17; 1985 c 261 § 8; 1961 c 256 § 20.]

Additional notes found at www.leg.wa.gov

15.65.203 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity board records, and department of agriculture records relating to commodity boards and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity board for the purpose of administering this chapter or a marketing order or agreement may be shared between the department and the applicable commodity board. They may also be used, if required, in any suit or administrative hearing involving this chapter or a marketing order or agreement.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order or agreement as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity board of the name of any person violating any marketing order or agreement and a statement of the manner of the violation by that person. [2005 c 274 § 216; 2002 c 313 § 18.]

Additional notes found at www.leg.wa.gov

15.65.205 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes. (1) Upon completion of any vote, referendum, or nomination and elections, the department shall tally the results of the vote and provide the results to affected parties.

(2) If an affected party disputes the results of a vote, that affected party, within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount.

(3) Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. [2002 c 313 § 19.]

Additional notes found at www.leg.wa.gov

15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel. The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he or she shall include in each order and he or she may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he or she determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal, and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebted-

ness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [2010 c 8 § 6074; 1977 ex.s. c 26 § 4; 1961 c 256 § 21.]

15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes. (1) Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to (a) qualification, (b) nomination, (c) election or appointment by the director, (d) term of office, and (e) powers, duties, and all other matters pertaining to such board.

(2) The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the marketing agreement or order, but in any marketing order or agreement the number of handlers on the board shall not exceed the number of producers thereon. The marketing order or agreement may provide that a majority of the board be appointed by the director, but in any event, no less than one-third of the board members shall be elected by the affected producers.

(3) In the event that the marketing order or agreement provides that a majority of the commodity board be appointed by the director, the marketing order or agreement shall incorporate the provisions of RCW 15.65.243 for board member selection.

(4) The director shall appoint to every board one member who represents the director. The director shall be a voting member of each commodity board. [2003 c 396 § 9; 2002 c 313 § 20; 1961 c 256 § 22.]

Additional notes found at www.leg.wa.gov

15.65.230 Qualifications of members of commodity boards. A producer member of each commodity board must be a practical producer of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each producer board member must be and have been actually engaged in producing such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom and not be engaged in business, directly or indirectly, as a handler or other dealer. A handler member of each board must be a practical handler of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each handler board member must be and have been, either individually or as an officer or employee of a corporation, firm, partnership, association, or cooperative, actually engaged in handling such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom. The qualification of a member of the board as set forth in this section must continue during the term of office. [2002 c 313 § 21; 2001 c 315 § 5; 1961 c 256 § 23.]

Additional notes found at www.leg.wa.gov

15.65.235 Producer-handlers as producers for membership purposes—Exception. Whenever any commodity

board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of membership on a commodity board: PROVIDED, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [2002 c 313 § 22; 1971 c 25 § 1.]

Additional notes found at www.leg.wa.gov

15.65.240 Terms of members of commodity boards—Elections or appointment. The term of office of board members shall be three years, and one-third as nearly as may be shall be elected or appointed every year: PROVIDED, That at the inception of any agreement or order the entire board shall be elected or appointed one-third for a term of one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected or appointed each year.

Any marketing agreement or order may provide for election or appointment of board members by districts, in which case district lines and the number of board members to be elected or appointed from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [2002 c 313 § 23; 1961 c 256 § 24.]

Additional notes found at www.leg.wa.gov

15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the board positions as set forth under RCW 15.65.220(3).

(2) Candidates for director-appointed board positions on a commodity board shall be nominated under RCW 15.65.250.

(3) The director shall cause an advisory vote to be held for the director-appointed positions. Not less than ten days in advance of the vote, advisory ballots shall be mailed to all producers or handlers entitled to vote, if their names appear upon the list of affected parties or affected producers or handlers, whichever is applicable. Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of the vote. The advisory ballot shall be conducted in a manner so that it is a secret ballot. 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) The candidates whose names are forwarded to the director for potential appointment shall submit to the director

a letter stating why the candidate wishes to be appointed to the board. The director may select either person for the position. [2011 c 103 § 18; 2002 c 313 § 24.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.250 Nominations for election to commodity board—When only one nominee. For the purpose of nominating candidates for board memberships, the director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts the director shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all on the list of affected parties or affected producers and/or handlers, whichever is applicable. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order or agreement and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

Not more than one board member may be part of the same "person" as defined by this chapter. When only one nominee is nominated for any position on the board, the director shall determine whether the nominee meets the qualifications for the position and, if so, the director shall declare the nominee elected or appoint the nominee to the position. [2002 c 313 § 26; 1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 1961 c 256 § 25.]

Additional notes found at www.leg.wa.gov

15.65.260 Election of members of commodity board—Procedure. (1) The elected members of every commodity board shall be elected by secret mail ballot under the supervision of the director. Elected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer within the affected area shall be entitled to one vote. Elected handler members of the board shall

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be elected by a majority of the votes cast by the affected handlers within the affected area, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler within the affected area shall be entitled to one vote.

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.

(2) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list of affected parties or affected producers or handlers, whichever is applicable. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [2002 c 313 § 27; 1985 c 261 § 10; 1961 c 256 § 26.]

Additional notes found at www.leg.wa.gov

15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members and employees.

(1) In the event of a vacancy in an elected position on the board, the remaining board members shall select a qualified person to fill the vacant position for the remainder of the current term or as provided in the marketing order or agreement.

(2) In the event of a vacancy on the board in a position appointed by the director, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under this chapter and the marketing order or agreement.

(3) A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(4) Each member of the board shall be compensated in accordance with RCW 43.03.230. Members and employees of the board may be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter, as defined under the commodity board's marketing order or agreement. Otherwise, if not defined or referenced in the marketing order or agreement, reimbursement for travel expenses shall be at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [2002 c 313 § 28; 2001 2nd sp.s. c 6 § 1; 1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.65.280 Powers and duties of commodity board—Reservation of power to director. The powers and duties of the board shall be:

(1) To elect a chair and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;

(4) To advise the director upon all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;

(8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with *chapter 39.29 RCW;

(9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;

(10) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a board. The retention of a private attorney is subject to review by the office of the attorney general;

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) 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 affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(14) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order or agreement, and data on the value of each producer's production for a minimum three-year period;

(15) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person; and

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so

requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [2011 c 103 § 14; 2011 c 60 § 1; 2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 1 and by 2011 c 103 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized. Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

15.65.285 Restrictive provisions of chapter 43.19 RCW not applicable to promotional printing and literature of commodity boards. The restrictive provisions of chapter 43.19 RCW shall not apply to promotional printing and literature for any commodity board. [2015 c 225 § 10; 1972 ex.s. c 112 § 2.]

15.65.287 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, 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 on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 10.]

Additional notes found at www.leg.wa.gov

15.65.289 Commission speaks for state—Director's oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 11.]

Additional notes found at www.leg.wa.gov

15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc. Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee, or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees, and/or agents in his or her or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or her or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [2010 c 8 § 6076; 1961 c 256 § 29.]

15.65.295 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists. (1) Each commodity board shall prepare a list of all affected producers from any information available from the department, producers, producer associations or organizations, or handlers of the affected commodity. This list shall contain the names and addresses of all affected persons who produce the affected commodity and the amount, by unit, of the affected commodity produced during at least the past three years.

(2) Each commodity board shall prepare a list of all persons who handle the affected commodity and the amount of the commodity handled by each person during at least the past three years.

(3) It is the responsibility of all affected parties to ensure that their correct address is filed with the commodity board. It is also the responsibility of affected parties to submit pro-

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duction data and handling data to the commodity board as prescribed by the board's marketing order or agreement.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commodity board. The lists shall be corrected and brought up-to-date in accordance with evidence and information provided to the commodity board.

(5) At the director's request, the commodity board shall provide the director a list of affected producers or handlers that is certified by the commodity board to be complete according to the commodity board's records. The list shall contain all information required by the director to conduct a referendum or board member election or selection under this chapter and the marketing order or agreement.

(6) For all purposes of giving notice, holding referenda, and electing or selecting members of a commodity board, the applicable list corrected up to the day preceding the date the list is certified by the commodity board and mailed to the director is deemed to be the list of all affected producers or affected handlers, as applicable, entitled to notice or to vote. Inadvertent failure to notify an affected producer or handler does not invalidate a proceeding conducted under this chapter. [2002 c 313 § 30.]

Additional notes found at www.leg.wa.gov

15.65.300 Agreement or order to contain detailed statement of powers and purposes. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

15.65.305 Promotional hosting expenditures—Rules. Agricultural commodity boards shall adopt rules governing promotional hosting expenditures by commodity board employees, agents, or board members under RCW 15.04.200. [2002 c 313 § 31.]

Additional notes found at www.leg.wa.gov

15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor dispar-

age the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

15.65.320 Agreement and order provisions for research. Any marketing agreement or order may provide for research in the production, processing, and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his or her designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his or her designee. [2010 c 8 § 6077; 1961 c 256 § 32.]

15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his or her designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages, and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers, and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling, or otherwise commercially disposing of the affected commodity and/or in offering, advertising, and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his or her designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: PROVIDED, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [2010 c 8 § 6078; 1961 c 256 § 33.]

15.65.340 Agreement and order provisions prohibiting or regulating certain practices. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his or her customer or his or her supplier or of otherwise dealing or trading with him or her or of diverting trade from a competitor, to wit:

- (1) Paying rebates, commissions, or unearned discounts;
- (2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

- (3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier, or other person;

- (4) Discriminating between customers, or suppliers of like class;

- (5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

- (6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [2010 c 8 § 6079; 1961 c 256 § 34.]

15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area." Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 1961 c 256 § 35.]

15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural com-

modity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [2011 c 103 § 8; 2002 c 313 § 32; 1988 c 54 § 1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.380 Additional agreement or order provisions. Any marketing agreement or order may contain any other, further, and different provisions which are incidental to and not inconsistent with this chapter and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. The provisions shall set forth the detailed application of this chapter to the affected agricultural commodity. [2002 c 313 § 33; 1961 c 256 § 38.]

Additional notes found at www.leg.wa.gov

15.65.390 Annual assessment—Limitation generally. There is hereby levied, and the director or his or her designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him or her, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him or her: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [2010 c 8 § 6080; 1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural

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requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his or her determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [2010 c 8 § 6081; 1987 c 393 § 10; 1961 c 256 § 40.]

15.65.410 Time, place, method for payment and collection of assessments. The director shall prescribe in each marketing order and agreement the time, place, and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or her or his or her designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his or her designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued. [2010 c 8 § 6082; 1985 c 261 § 14; 1961 c 256 § 41.]

15.65.420 Use of moneys collected—Departmental expenses. Moneys collected by the director or his or her designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his or her designee only for the purpose of pay-

ing for expenses and costs arising in connection with the formulation, issuance, administration, and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [2010 c 8 § 6083; 1961 c 256 § 42.]

15.65.430 Refunds of moneys received or collected.

Any moneys collected or received by the director or his or her designee pursuant to the provisions of any marketing agreement or 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 director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or order, to all persons from whom such 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 director or a designee finds that the same will tend to effectuate such policies and purposes. [2002 c 313 § 34; 1961 c 256 § 43.]

Additional notes found at www.leg.wa.gov

15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his or her designee pursuant to the provisions of this chapter and such agreement or 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 director or his or her designee when payment is called for by him or her. In the event any person fails to pay the director or his or her designee the full amount of such assessment or such other sum on or before the date due, the director or his or her designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his or her designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2010 c 8 § 6084; 1985 c 261 § 15; 1961 c 256 § 44.]

15.65.450 Deposit to defray department's expenses—Circumstances requiring reimbursement. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him or her such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order.

(1) A commodity board shall reimburse the department for expenses incurred by the department when a commodity board petitions the director to amend or terminate a marketing order or agreement and for other services provided by the department under this chapter. The department shall provide to a commodity board an estimate of expenses that may be

incurred to amend or terminate a marketing order or agreement prior to any services taking place.

(2) Petitioners who are not a majority of a commodity board, and who file a petition with the director to issue, amend, or terminate a marketing order or agreement, shall deposit funds with the director to pay for expenses incurred by the department, under rules adopted by the director.

(3) A commodity board shall reimburse petitioners the amount paid to the department under the following circumstances:

(a) If the petition is to issue a marketing order or agreement, the commodity board shall reimburse the petitioners the amount expended by the department when funds become available after establishment of the commodity board; or

(b) If the petition is to amend or terminate a marketing order or agreement and the proposal is assented to by the affected parties or affected producers, the commodity board shall reimburse the petitioners within thirty days of the referendum.

(4) If for any reason a proceeding is discontinued, the commodity board or petitioners, whichever is applicable, shall only reimburse the department for expenses incurred by the department up until the time the proceeding is discontinued. [2002 c 313 § 35; 1961 c 256 § 45.]

Additional notes found at www.leg.wa.gov

15.65.470 Depositaries for revolving fund—Deposits.

The director or his or her designee shall designate financial institutions which are qualified public depositaries under chapter 39.58 RCW as depositary or depositaries of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day in a designated depositary. [1987 c 393 § 8; 1961 c 256 § 47.]

15.65.480 Separate accounts for each agreement or order—Disbursements. The director and each of his or her designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his or her designee. [2010 c 8 § 6085; 1961 c 256 § 48.]

15.65.490 Records of financial transactions to be kept by director—Audits. The director and each of his or her designees shall keep or cause to be kept separately for each agreement and order 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 such order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. [2010 c 8 § 6086; 1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

Additional notes found at www.leg.wa.gov

15.65.500 Bonds of administrator, board, employee. The director or his or her designee shall require that a bond be given by every administrator, administrative board, and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his or her designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: PROVIDED, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [2010 c 8 § 6087; 1961 c 256 § 50.]

15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or the director's designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or

(2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [2011 c 103 § 19; 1989 c 354 § 29; 1961 c 256 § 51.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.520 Criminal acts and penalties. It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement, or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement, or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his or her designee or his or her duly authorized agents, upon request, information concerning the name and address of the person from whom he or she has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade,

standard, quality, or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: PROVIDED, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under subsection (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [2010 c 8 § 6088; 1961 c 256 § 52.]

15.65.530 Civil liability—Use of moneys recovered.

Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his or her designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this section shall be allocated to and used for the purposes of the agreement or order concerned. [2010 c 8 § 6089; 1961 c 256 § 53.]

15.65.540 Jurisdiction of superior courts—Who may bring action. The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain, and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition, and provision thereof, regardless of the existence of any other remedy at law;

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him or her by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him or her by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such

cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [2010 c 8 § 6090; 1961 c 256 § 54.]

15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director. Upon the request of the director or his or her designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his or her designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his or her designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [2011 c 103 § 20; 2010 c 8 § 6091; 1961 c 256 § 55.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.65.560 Remedies additional. The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

15.65.570 Proceedings subject to administrative procedure act—Exemptions. (1) All proceedings conducted under this chapter shall be subject to the provisions of chapter 34.05 RCW unless otherwise provided for in this chapter.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. [2002 c 313 § 36; 1961 c 256 § 57.]

Additional notes found at www.leg.wa.gov

15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board. In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating

or conflicting personnel: PROVIDED, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity.

The director and his or her designee are hereby authorized 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, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [2010 c 8 § 6092; 1961 c 256 § 59.]

15.65.600 Public interest to be protected—Establishment of prices prohibited. The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter. Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), to [the] dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to the grain commission (chapter 15.115 RCW). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [2009 c 33 § 34; 1961 c 256 § 62.]

(2018 Ed.)

15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 1961 c 256 § 63.]

15.65.640 Chapter not to apply to green pea grower or processor. Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

15.65.650 Hop commodity board—Powers. In order to ensure a viable and stable hop industry within the state of Washington and to further the policies set forth in RCW 15.65.040(2) (d) and (f), the legislature specifically recognizes that the hop commodity board has the power to enter into contracts, at its discretion, with individual producers of hops to set aside or remove from production existing planted hop acreage until such time as the need to contract with individual producers of hops is eliminated based on the adoption of a federal marketing order. This section does not limit the director's duty under RCW 15.65.600. [2002 c 313 § 138.]

Additional notes found at www.leg.wa.gov

15.65.670 Costs of implementing RCW 15.65.287. The costs incurred by the department associated with the implementation of RCW 15.65.287 shall be paid for by the affected commodity commissions. [2003 c 396 § 12.]

Additional notes found at www.leg.wa.gov

15.65.680 Appointment of nonvoting advisory members. (1) A commodity board may appoint up to two nonvoting advisory members to the board who have expertise in marketing, operations, or other topics relevant to the work of the board. The term of office for each nonvoting advisory member must be established in each board's marketing order or agreement, but may not exceed three years. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(2) Nonvoting advisory members do not count toward establishing a quorum of the board.

(3) Nonvoting advisory members must be compensated in the same manner as board members under RCW 15.65.270(4). [2013 c 40 § 1.]

15.65.900 Savings—1961 c 256. This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

Reviser's note: The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.

Chapter 15.66 RCW

WASHINGTON STATE AGRICULTURAL
COMMODITY COMMISSIONS

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15.66.010 Definitions. For the purposes of this chapter:
(1) "Affected commodity" means the agricultural commodity that is specified in the marketing order.

(2) "Affected handler" means any handler of an affected commodity.

(3) "Affected parties" means any producer, affected producer, handler, or commodity commission member.

(4) "Affected producer" means any producer who is subject to a marketing order.

(5) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Assessment" means the monetary amount established in a marketing order that is to be paid by each affected producer to a commission in accordance with the schedule established in the marketing order.

(7) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

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

(10) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(11) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of an agricultural commodity that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list must contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list must contain the names and addresses of all affected parties

and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list must contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(17) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

(18) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(19) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local, state, or federal government.

(20) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. "To produce" means to act as a producer. For the purposes of this chapter, "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.

(21) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(22) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(23) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(24) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(25) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(26) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order. [2011 c 103 § 25; 2002 c 313 § 39; 1993 c 80 § 3; 1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

15.66.015 Regulating agricultural commodities—Existing comprehensive scheme. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of agricultural products within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its agricultural commodities be properly promoted by (a) enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the commodities they produce; and (b) working towards stabilizing the agricultural industry by increasing consumption of agricultural commodities within the state, the nation, and internationally;

(2) That farmers and ranchers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is now in the overriding public interest that support for the agricultural industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that each agricultural commodity be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agricultural commodities;

(b) Increase the sale and use of Washington state's agricultural commodities in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's agricultural commodities;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's agricultural commodities and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, pro-

cessing, marketing, and uses of agricultural commodities produced in Washington state;

(4) That the director seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber, and seek to maintain the economic well-being of the agricultural industry in Washington state consistent with its regulatory activities and responsibilities;

(5) That the director is hereby authorized to implement, administer, and enforce this chapter through the adoption of marketing orders that establish commodity commissions; and

(6) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. [2002 c 313 § 38.]

Additional notes found at www.leg.wa.gov

15.66.017 Regulating agricultural commodities—Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

- Chapter 15.08 RCW Horticultural pests and diseases;
- Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;
- Chapter 15.14 RCW Planting stock;
- Chapter 15.15 RCW Certified seed potatoes;
- Chapter 15.17 RCW Standards of grades and packs;
- Chapter 15.19 RCW Certification and inspection of ginseng;
- Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;
- Chapter 15.49 RCW Seeds;
- Chapter 15.53 RCW Commercial feed;
- Chapter 15.54 RCW Fertilizers, minerals, and limes;
- Chapter 15.58 RCW Washington pesticide control act;
- Chapter 15.60 RCW Apiaries;
- Chapter 15.64 RCW Farm marketing;
- Chapter 15.83 RCW Agricultural marketing and fair practices;
- Chapter 15.85 RCW Aquaculture marketing;
- Chapter 15.86 RCW Organic products;
- Chapter 15.92 RCW Center for sustaining agriculture and natural resources;
- Chapter 15.130 RCW Food safety and security act;
- Chapter 17.24 RCW Insect pests and plant diseases;
- Chapter 19.94 RCW Weights and measures;
- Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;
- Chapter 22.09 RCW Agricultural commodities;
- Chapter 69.07 RCW Washington food processing act;
- Chapter 69.25 RCW Washington wholesome eggs and egg products act;
- Chapter 69.28 RCW Honey;
- 7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the potato industry is regulated by or must

comply with the following additional laws and the rules or regulations adopted thereunder:

(a) 7 C.F.R., Part 51, United States standards for grades of potatoes;

(b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes grown in Washington;

(c) 7 C.F.R., Part 1207, Potato research and promotion plan.

(3) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the wheat and barley industries are regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 7 U.S.C., section 1621, Agricultural marketing act;

(b) Chapter 70.94 RCW, Washington clean air act, agricultural burning.

(4) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the poultry industry is regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;

(b) 21 U.S.C., chapter 9, Packers and stockyards;

(c) 7 U.S.C., section 1621, Agricultural marketing act;

(d) Washington fryer commission labeling standards. [2018 c 236 § 707; 2011 c 103 § 26; 2002 c 313 § 41.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.66.023 Commission may establish foundation. A commodity commission may establish a foundation using commission funds as grant money when the foundation benefits the commodity for which the commission was established. Commission funds may be used for the purposes authorized in the marketing order. [2001 c 315 § 8.]

15.66.030 Marketing orders authorized—Purposes. Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices;

(5) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(6) To provide marketing information and services for producers of an agricultural commodity;

(7) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(8) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(9) To provide for commodity-related education and training; and

(10) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity. [2003 c 396 § 1; 2002 c 313 § 40; 2001 c 315 § 1; 1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

Additional notes found at www.leg.wa.gov

15.66.040 Prerequisites to marketing orders—Director's duties. Marketing orders and orders modifying or terminating existing marketing orders shall be promulgated by the director only after the director has done the following:

(1) Received a petition as provided for in RCW 15.66.050;

(2) Given notice of hearing as provided for in RCW 15.66.060;

(3) Conducted a hearing as provided for in RCW 15.66.070;

(4) Made findings and decision as provided for in RCW 15.66.080;

(5) Determined assent of affected producers as provided for in RCW 15.66.090. [1961 c 11 § 15.66.040. Prior: 1955 c 191 § 4.]

15.66.050 Petition for marketing order—Deposit to defray department's expenses—Circumstances requiring reimbursement. (1) Petitions for issuance, amendment or termination of a marketing order shall be signed by not less than five percent or one hundred of the producers alleged to be affected, whichever is less, and shall be filed with the director. A petition for amendment or termination of a marketing order may be submitted to the director by majority vote of a commission.

(2) A commission shall reimburse the department for expenses incurred by the department when a commodity commission petitions the director to amend or terminate a marketing order and for other services provided by the department under this chapter. The department shall provide to a commodity commission an estimate of expenses that may be incurred to amend or terminate a marketing order prior to any services taking place.

(3) Petitioners who are not a majority of a commission, and who file a petition with the director to issue, amend, or terminate a marketing order, shall deposit funds with the director to pay for expenses incurred by the department, under rules adopted by the director.

(4) A commission shall reimburse petitioners the amount paid to the department under the following circumstances:

(a) If the petition is to issue a marketing order, the commission shall reimburse the petitioners the amount expended by the department when funds become available after establishment of the commission; or

(b) If the petition is to amend or terminate a marketing order, the commission shall reimburse the petitioners within thirty days of the referendum if the proposal is assented to by the affected producers.

(5) If for any reason a proceeding is discontinued, the commission or petitioners, whichever is applicable, shall reimburse the department only for expenses incurred by the department up until the time the proceeding is discontinued. [2002 c 313 § 42; 1961 c 11 § 15.66.050. Prior: 1955 c 191 § 5.]

Additional notes found at www.leg.wa.gov

15.66.053 Proceedings subject to administrative procedure act—Exemptions. (1) All rule-making proceedings conducted under this chapter shall be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties.

(3) The director may adopt amendments to marketing orders without conducting a referendum if the amendments are adopted under the following criteria:

(a) The proposed amendments relate only to internal administration of a marketing order and are not subject to violation by a person;

(b) The proposed amendments adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, or rules of other Washington state agencies, if the material adopted or incorporated regulates the same activities as are authorized under the marketing order;

(c) The proposed amendments only correct typographical errors, make address or name changes, or clarify language of a rule without changing the marketing order;

(d) The content of the proposed amendments is explicitly and specifically dictated by statute.

A marketing order shall not be amended without a referendum to provide that a majority of the commodity commission members be appointed by the director. [2002 c 313 § 43.]

Additional notes found at www.leg.wa.gov

15.66.055 Director's duties and responsibilities—Rules. The director may adopt rules necessary to carry out the director's duties and responsibilities under this chapter including:

(1) The issuance, amendment, suspension, or termination of marketing orders;

(2) Procedural, technical, or administrative rules which may address and include, but are not limited to:

(a) The submission of a petition to issue, amend, or terminate a marketing order under this chapter;

(b) Nominations conducted under this chapter;

(c) Elections of commission members or referenda conducted under this chapter; and

(d) Actions of the director upon a petition to issue, amend, or terminate a marketing order;

(3) Rules that provide for a method to fund:

(a) The costs of staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if the position is not directly funded by the legislature; and

(b) The actual costs related to the specific activity undertaken on behalf of an individual commodity board or commission. [2002 c 313 § 44.]

Additional notes found at www.leg.wa.gov

15.66.060 Lists of affected parties—Notice—Use of lists. (1) Upon receipt of a petition for the issuance of a marketing order, the director shall establish a list of affected parties of the agricultural commodity affected. In establishing a list of affected parties and their individual production, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a report showing the producer's name, mailing address, and the yearly average quantity of the affected commodity produced by him or her in the three years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. Information as to production may also be accepted from other valid sources if readily available. Notice of a proposed marketing order issuance shall be as provided for in RCW 15.66.070.

(2) The director shall use the list of affected parties for the purpose of notice, referendum proceedings, and electing or selecting members of the commission in accordance with this chapter and rules adopted under this chapter.

(3) An affected party may at any time file his or her name and mailing address with the director. A list of affected parties may be brought up-to-date by the director up to the day preceding a mailing of a notice or ballot under this chapter and that list is deemed the list of affected parties entitled to vote.

(4) The list of affected parties shall be kept in the rule-making file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify an affected party does not invalidate a proceeding conducted under this chapter.

(5) The list of affected parties that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided in this chapter.

(6) The director shall provide the commodity commission the list of affected and interested parties once a marketing order is adopted and a commodity commission is established as provided in this chapter. [2002 c 313 § 45; 1975 1st ex.s. c 7 § 7; 1969 c 66 § 1; 1961 c 11 § 15.66.060. Prior: 1955 c 191 § 6.]

Additional notes found at www.leg.wa.gov

15.66.070 Petitions for marketing orders—Public hearing—Legal notice. (1) The substance of a petition received under RCW 15.66.050 shall be set out in detail and designated as the proposal. A copy of the proposal shall be mailed to all affected parties or producers based on the list provided for in RCW 15.66.060 or 15.66.143, as applicable, and shall be posted on the department's web site.

(2) Notice of a public hearing to issue, amend, or terminate a marketing order shall be published in the form of a legal notice for a period of two days in a newspaper of general circulation within the affected areas, as the director may

prescribe. The notice must also be posted on the department's web site. The director shall mail a copy of the public hearing notice along with a copy of the proposal as provided in subsection (1) of this section to all affected parties or affected producers, as applicable, who may be directly affected by the proposal and whose names and addresses appear on the list compiled under this chapter. The mailing must include the department's web site address along with a description of the process for the issuance, amendment, or termination of a marketing order, as applicable.

(3) At a public hearing the director shall receive testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base any findings upon the testimony received at the hearing, together with any other relevant facts available from official publications of institutions of recognized standing. The director shall describe in the findings such official publications upon which any finding is based.

(4) The director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records, or documents of any kind.

(5) The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. The director, in case of the refusal of any witness to attest or testify or produce any papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of attendance of the witness or the production of the papers and that the witness has been summoned in the manner prescribed in this chapter and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause, or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order the witness shall be dealt with as for contempt of court. [2004 c 179 § 1; 2002 c 313 § 46; 1961 c 11 § 15.66.070. Prior: 1955 c 191 § 7.]

Additional notes found at www.leg.wa.gov

15.66.080 Findings, conclusions, and recommended decision of the director—Notification—Final decision. (1) The director shall make findings upon material points controverted at the hearing and required by this chapter and

upon such other matters and things as he or she may deem fitting and proper. Based upon those findings, the director shall make conclusions and develop and issue a recommended decision. The findings, conclusions, and recommended decision, and the full text of the proposal shall be posted on the department's web site. For amendment and termination petitions, the affected commission may include a link on its web site to the department's web site.

(2) The recommended decision may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he or she shall find with respect thereto:

(a) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

(b) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(c) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

(3) If the director's recommended decision does not make any changes to the proposal, notification will be made by mail in the form of a postcard reciting the director's recommended decision. The postcard will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(4) If the director's recommended decision makes changes to the proposal or does not support the proposal, notification will be made by mail in the form of a letter describing the changes made or explaining the reason for not supporting the proposal and a referendum. The letter will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(5) After the director issues his or her findings, conclusions, and recommended decision all interested parties shall have a period of not less than fifteen days from the date of the mailing of the postcard or letter to file statements with the director in support of or in opposition to the recommended decision. The director shall consider the additional statements and shall issue his or her final decision. The final decision may be the same as the recommended decision or may be revised in light of the additional information received in response to the recommended decision. The director shall notify affected parties of his or her final decision by mail in the form of a postcard. Notification shall include the department's web site address where any person can access the full text of the director's findings, conclusions, and final decision and the full text of the final proposal. If the final decision denies the proposal in its entirety, no further action shall be taken by the director.

(6) Affected parties who do not have access to materials posted on the department's web site may request notification by fax or mail. [2004 c 179 § 2; 1961 c 11 § 15.66.080. Prior: 1955 c 191 § 8.]

15.66.090 After final decision—Assent of affected parties determined by referendum. After the director issues his or her final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected parties or producers assent to the proposed action or not. The director shall conduct the referendum among the affected parties or producers based on the list as provided for in RCW 15.66.060 or 15.66.143, as applicable, and the affected parties or producers shall be deemed to have assented to the proposed issuance or termination order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent to the proposed order. The determination by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stockholders in or under contract with such association of cooperative producers: PROVIDED, That the association shall first determine that a majority of the membership of the association authorize its action concerning the specific marketing order. Results of the referendum shall be mailed to all affected parties in the form of a postcard. If the requisite assent is given, the director shall adopt the order. [2004 c 179 § 3; 2002 c 313 § 47; 1975 1st ex.s. c 7 § 8; 1961 c 11 § 15.66.090. Prior: 1955 c 191 § 9.]

Additional notes found at www.leg.wa.gov

15.66.093 Suspension of marketing order upon request of commodity commission. The director may, upon the request of a commodity commission and without compliance with RCW 15.66.070 through 15.66.090, suspend the commission's order or term or provision thereof for a period of not to exceed one year, if the director finds that the suspension will tend to effectuate the declared policy of this chapter. Any suspension of all, or substantially all, of a marketing order by the director is not effective until the end of the then current marketing season. [2002 c 313 § 48.]

Additional notes found at www.leg.wa.gov

15.66.097 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums. The director is not required to hold a public hearing or a referendum more than once in any twelve-month period on petitions to issue, amend, or terminate a marketing order if any of the following circumstances are present:

(1) The petition proposes to establish a marketing order for the same commodity;

(2) The petition proposes the same or a similar amendment to a marketing order; or

(3) The petition proposes to terminate the same marketing order. [2002 c 313 § 49.]

Additional notes found at www.leg.wa.gov

15.66.100 Contents of marketing order. A marketing order shall define the area of the state to be covered by the order which may be all or any portion of the state; shall contain provisions for establishment of a commodity commission and administration and operation and powers and duties of same; shall provide for assessments as provided for in this chapter and shall contain one or more of the provisions as set forth in RCW 15.66.030. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced. A marketing order may provide that one commodity commission may administer marketing orders for two or more affected commodities, if approved by a majority, as provided in this chapter for the creation of a marketing order, of the affected producers of each affected commodity concerned. [1961 c 11 § 15.66.100. Prior: 1955 c 191 § 10.]

15.66.105 Certain records exempt from public disclosure—Exemptions—Actions not prohibited by chapter. (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity commission records, and department of agriculture records relating to commodity commissions and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity commission for the purpose of administering this chapter or a marketing order may be shared between the department and the applicable commodity commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity commission of the name of any person violating any marketing order and a statement of the manner of the violation by that person. [2005 c 274 § 217; 2002 c 313 § 50.]

Additional notes found at www.leg.wa.gov

15.66.110 Commodity commission—Composition—Terms. (1) Every marketing order shall establish a commodity commission composed of not less than five nor more than fifteen members. Commission members shall be citizens and residents of this state if required by the marketing order, and over the age of eighteen. Not more than one commission member may be part of the same "person" as defined by this chapter. The term of office of commission members shall be three years with the terms rotating so that one-third of the terms will commence as nearly as practicable each year.

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However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Except as provided in subsection (2) of this section, no less than sixty percent of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. Except as provided in subsection (4) of this section, the remaining members shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity, or persons not so related.

(2) A marketing order may provide that a majority of the commission be appointed by the director.

(3) In the event that the marketing order provides that a majority of the commission be appointed by the director, the marketing order shall incorporate the provisions of RCW 15.66.113 for member selection.

(4) The director shall appoint to every commission one member who represents the director. The director is a voting member of each commodity commission. [2003 c 396 § 4; 2002 c 313 § 51; 2001 c 315 § 2; 1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

Additional notes found at www.leg.wa.gov

15.66.113 When director appoints majority of the commission—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the positions of the commission as set forth under RCW 15.66.110(3).

(2) Candidates for director-appointed positions on a commission shall be nominated under RCW 15.66.120(1).

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. 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 commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2011 c 103 § 21; 2002 c 313 § 52.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.66.120 Commodity commission—Nominations—Elections—Vacancies. (1) Not less than ninety days nor more than one hundred and five days prior to the beginning of each term of each elected commission member, notice shall be mailed to all affected producers with a call for nominations in accordance with this section and provisions of the marketing order. The notice shall give the final date for filing

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nominations, which shall not be less than eighty days nor more than eighty-five days before the beginning of such term. The notice shall also advise that nominating petitions shall be signed by five persons qualified to vote for such candidates or, if the number of nominating signers is provided for in the marketing order, then the number provided in the marketing order.

(2) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member term, the director shall mail ballots to all affected producers. Ballots shall be required to be returned to the director not less than thirty days prior to the commencement of the term. The mail ballot shall be conducted in a manner so that it shall be a secret ballot. With respect to the first commission for a particular commodity, the director may call for nominations for commission members in the notice of the director's decision following the hearing and the ballot may be submitted at the time the director's proposed order is submitted to the affected producers for their assent.

(3) Commission members may be elected or appointed from various districts within the area covered by the marketing order if the order so provides, with the number of members from each district to be in accordance with the provisions of the marketing order.

(4) The members of the commission not elected by the affected producers shall be elected by a majority of the commission at a meeting of the commission within ninety days prior to expiration of the term, or appointed by the director under this chapter and the marketing order.

(5) When only one nominee is nominated for any position on the commission, the director shall determine whether the nominee meets the qualifications of the position and, if so, the director shall declare the nominee elected or appoint the nominee to the position.

(6) In the event of a vacancy in an elected commission member position on a commodity commission, the remaining members shall select a qualified person to fill the vacant position for the remainder of the current term or as provided in the marketing order.

(7) In the event of a vacancy in an appointed member position on a commodity commission, the appointment of members shall be as specified in the marketing order.

(8) In the event of a vacancy in a director-appointed member position on a commodity commission, the remaining members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the commission unless the person fails to meet the qualifications of commission members under this chapter and the marketing order. [2002 c 313 § 54; 1975 1st ex.s. c 7 § 9; 1961 c 11 § 15.66.120. Prior: 1955 c 191 § 12.]

Additional notes found at www.leg.wa.gov

15.66.123 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes.

(1) Upon completion of any vote, referendum, or nomination and elections, the department shall tally the results of the vote and provide the results to affected parties.

(2) If an affected party disputes the results of a vote, that affected party, within sixty days from the announced results,

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shall provide in writing a statement of why the vote is disputed and request a recount.

(3) Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. [2002 c 313 § 55.]

Additional notes found at www.leg.wa.gov

15.66.130 Commodity commission—Meetings—Quorum—Compensation—Travel expenses for members and employees. Each commodity commission shall hold such regular meetings as the marketing order may prescribe or that the commission by resolution may prescribe, together with such special meetings that may be called in accordance with provisions of its resolutions upon reasonable notice to all members thereof. A majority of the voting members shall constitute a quorum for the transaction of all business of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230. Members and employees of the commission may be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter, as defined under the commodity commission's marketing order. Otherwise, if not defined or referenced in the marketing order, reimbursement for travel expenses shall be in accordance with RCW 43.03.050 and 43.03.060. [2002 c 313 § 56; 2001 2nd sp.s. c 6 § 2; 1984 c 287 § 17; 1975-'76 2nd ex.s. c 34 § 20; 1975 1st ex.s. c 7 § 10; 1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.66.140 Commodity commission—Powers and duties. Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and

audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the commission's marketing order. Personal service contracts must comply with *chapter 39.29 RCW;

(13) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) 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 affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) 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 the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 15; 2011 c 60 § 2; 2003 c 396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 2 and by 2011 c 103 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

15.66.141 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, 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 on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 5.]

Additional notes found at www.leg.wa.gov

15.66.142 Commission speaks for state—Director's oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 6.]

Additional notes found at www.leg.wa.gov

15.66.143 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists. (1) Each commodity commission shall prepare a list of all affected producers from any information available from the department, producers, producer associations, organizations, or handlers of the affected commodity. This list shall contain the names and addresses of all affected persons who produce the affected commodity and the amount, by unit, of the affected commodity produced during at least the past three years.

(2) Each commodity commission shall prepare a list of all persons who handle the affected commodity and the amount of the commodity handled by each person during at least the past three years.

(3) It is the responsibility of all affected parties to ensure that their correct address is filed with the commodity commission. It is also the responsibility of affected parties to sub-

mit production data and handling data to the commission as prescribed by the commission's marketing order.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commission. The lists shall be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) At the director's request, the commodity commission shall provide the director a certified list of affected producers or affected handlers from the commodity commission records. The list shall contain all information required by the director to conduct a referendum or commission member elections under this chapter.

(6) For all purposes of giving notice and holding referenda on amendment or termination proposals, and for giving notice and electing or selecting members of a commission, the applicable list corrected up to the day preceding the date the list is certified by the commission and mailed to the director is deemed to be the list of all affected producers or affected handlers, as applicable, entitled to notice or to vote. Inadvertent failure to notify an affected producer or handler does not invalidate a proceeding conducted under this chapter. [2002 c 313 § 58.]

Additional notes found at www.leg.wa.gov

15.66.145 Members may belong to association with same objectives—Contracts with associations authorized.

Any member of an agricultural commission may also be a member or officer of an association which has the same objectives for which the agricultural commission was formed. An agricultural commission may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 4.]

15.66.150 Annual assessments—Rate—Collection.

There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored, or delivered for sale, processing, or storage by him or her. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment

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above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored, or delivered for sale, processing, or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his or her bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him or her during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehouse operators and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [2011 c 336 § 415; 1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Additional notes found at www.leg.wa.gov

15.66.153 Promotional hosting expenditures—Rules.

Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by commodity com-

mission employees, agents, or commission members under RCW 15.04.200. [2002 c 313 § 59.]

Additional notes found at www.leg.wa.gov

15.66.157 When commodity commission is terminated—Duties of affected commodity commission. If after complying with the procedures outlined in this chapter and a referendum proposal to terminate a commodity commission is assented to, the affected commodity commission shall:

(1) Document the details of all measures undertaken to terminate the commodity commission and identify and document all closing costs;

(2) Contact the office of the state auditor and arrange for a final audit of the commission. Payment for the audit shall be from commission funds and identified in the budget for closing costs;

(3) Provide for the reimbursement to affected producers of moneys collected by assessment. Reimbursement shall be made to those considered affected producers over the previous three-year time frame on a pro rata basis and at a percent commensurate with their volume of production over the previous three-year period unless a different time period is specified in the marketing order. If the commodity commission finds that the amounts of moneys are so small as to make impractical the computation and remitting of the pro rata refund, the moneys shall be paid into the state treasury as unclaimed trust moneys; and

(4) Transfer all remaining files to the department for storage and archiving, as appropriate. [2002 c 313 § 60.]

Additional notes found at www.leg.wa.gov

15.66.160 Annual assessments—Disposition of revenue. Moneys collected by any commodity commission pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the commission only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order.

Upon the termination of any marketing order any and all moneys remaining with the commodity commission operating under that marketing order and not required to defray expenses or repay obligations incurred by that commission shall be returned to the affected producers in proportion to the assessments paid by each in the two year period preceding the date of the termination order. [1961 c 11 § 15.66.160. Prior: 1955 c 191 § 16.]

15.66.170 Annual assessments—Payments—Civil action to enforce. Any due and payable assessment herein levied, and every sum due under any marketing order in a specified amount 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 commission when payment is called for by the commission. In the event any person fails to pay the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against

such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 11 § 15.66.170. Prior: 1955 c 191 § 17.]

15.66.180 Expenditure of funds collected. All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used solely by and for the commodity commission concerned and shall not be used for any other commission, nor the department except as otherwise provided in this chapter. Such moneys shall be deposited in a separate account or accounts in the name of the individual commission in any bank which is a state depository. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or expended. [2002 c 313 § 61; 1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

Additional notes found at www.leg.wa.gov

15.66.185 Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies, and mutual savings banks. (1) Any funds of any agricultural commodity commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded such accounts by the Federal Deposit Insurance Corporation.

(2) This section shall apply to all funds which may be lawfully so invested, which in the judgment of any agricultural commodity commission are not required for immediate expenditure. The authority granted by this section is not exclusive and shall be construed to be cumulative and in addition to other authority provided by law for the investment of such funds, including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW. [2003 c 396 § 3; 2002 c 313 § 62; 1967 ex.s. c 54 § 2. Formerly RCW 30.04.370.]

Additional notes found at www.leg.wa.gov

15.66.190 Official bonds required. Every administrator, employee or other person occupying a position of trust under any marketing order and every member actually handling or drawing upon funds shall give a bond in such penal amount as may be required by the affected commission or by the order, the premium for which bond or bonds shall be paid by the commission. [1961 c 11 § 15.66.190. Prior: 1955 c 191 § 19.]

15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling. An affected producer subject to a marketing order may file a written petition with the

director stating that the order, agreement, or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He or she shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his or her ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his or her principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter. [2010 c 8 § 6093; 1961 c 11 § 15.66.200. Prior: 1955 c 191 § 20.]

15.66.210 Unlawful acts—Penalties—Injunctions—Investigations. It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement, or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him or her with such information as he or she finds to be necessary to enable him or her to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies, and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control of any such person from whom such report

was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, documents, or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe. [2010 c 8 § 6094; 1961 c 11 § 15.66.210. Prior: 1955 c 191 § 21.]

15.66.220 Compliance with chapter a defense in any action. In any civil or criminal action or proceeding for violation of any rule of [or] statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this chapter or a marketing order issued under this chapter, and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding. [1961 c 11 § 15.66.220. Prior: 1955 c 191 § 22.]

15.66.230 Liability of commission, state, etc. Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee, or agent of the board in his or her individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member. [2010 c 8 § 6095; 1961 c 11 § 15.66.230. Prior: 1955 c 191 § 23.]

15.66.240 Marketing agreements. Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public hearing upon such application. Not less than five days prior thereto he or she shall give written notice thereof to all producers whom he or she determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he or she shall find:

(1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;

(2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;

(3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration, and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: PROVIDED, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his or her approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director. Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination. [2010 c 8 § 6096; 1961 c 11 § 15.66.240. Prior: 1955 c 191 § 24.]

15.66.245 Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [2011 c 103 § 9; 2002 c 313 § 63; 1988 c 54 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.66.250 Price fixing and product limiting prohibited. Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production and no marketing order or agreement or any rule or regulation thereunder shall contain any such provisions. [1961 c 11 § 15.66.250. Prior: 1955 c 191 § 25.]

15.66.260 Costs of conducting nominations and elections—Reimbursement. The department shall be reimbursed for actual costs incurred in conducting nominations and elections for members of any commodity commission established under the provisions of this chapter. Such reimbursement shall be made from the funds of the commission for which the nominations and elections were conducted by the director. [2002 c 313 § 64; 1969 c 66 § 2; 1961 c 11 § 15.66.260. Prior: 1955 c 191 § 26.]

Additional notes found at www.leg.wa.gov

15.66.263 Costs of implementing RCW 15.66.141. The costs incurred by the department of agriculture that are associated with the implementation of RCW 15.66.141 shall be paid for by the affected commodity commissions. [2003 c 396 § 8.]

Additional notes found at www.leg.wa.gov

15.66.270 Exempt commissions—Marketing agreements and orders. This chapter does not apply to any provision of the statutes of the state of Washington relating to the Washington apple commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW), to the dairy products commission (chapter 15.44 RCW), or to the Washington grain commission (chapter 15.115 RCW). Marketing agreements or orders shall not be issued with respect to apples, soft tree fruits, dairy products, or wheat or barley for the purposes specified in RCW 15.66.030 (1) or (2). [2009 c 33 § 35; 2007 c 234 § 100; 1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

15.66.275 Applicability of chapter to state agencies or other governmental units. The provisions of this chapter and any marketing order established thereunder shall be applicable to any state agency or other governmental unit engaged in the production for sale of any agricultural commodity subject to such marketing order, especially those relating to RCW 15.66.150 concerning assessments. Such assessments shall be paid by the state agency or governmental agency made subject to the marketing order from the proceeds derived from the sale of said agricultural commodities. [1967 ex.s. c 55 § 1.]

15.66.280 Restrictive provisions of chapter 43.19 RCW not applicable to promotional printing and literature of commissions. The restrictive provisions of chapter 43.19 RCW shall not apply to promotional printing and literature for any commission formed under this chapter. [2015 c 225 § 11; 1972 ex.s. c 112 § 5.]

15.66.900 Short title. This chapter shall be known and may be cited as the "Washington Agricultural Enabling Act." [1961 c 11 § 15.66.900. Prior: 1955 c 191 § 29.]

Chapter 15.70 RCW
RURAL REHABILITATION

Sections

15.70.010	Director may receive federal funds for rural rehabilitation corporation.
15.70.020	Director may delegate certain powers to secretary of agriculture.
15.70.030	Deposit and use of funds.
15.70.040	Powers of director—In general.
15.70.050	No liability as to United States.

15.70.010 Director may receive federal funds for rural rehabilitation corporation. The director of the state department of agriculture is hereby designated as the state official of the state of Washington to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of public law 499, 81st congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Washington rural rehabilitation corporation. [1961 c 11 § 15.70.010. Prior: 1951 c 169 § 1.]

15.70.020 Director may delegate certain powers to secretary of agriculture. The director of agriculture is authorized, in his or her discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend, and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [2010 c 8 § 6097; 1961 c 11 § 15.70.020. Prior: 1951 c 169 § 2.]

15.70.030 Deposit and use of funds. Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him or her deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499. [2010 c 8 § 6098; 1961 c 11 § 15.70.030. Prior: 1951 c 169 § 3.]

15.70.040 Powers of director—In general. The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter

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or under any mortgage, lease, contract, or agreement entered into or administered pursuant to this chapter and if, in his or her judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction;

(2) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the director of agriculture under this chapter; and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him or her under agreements entered into pursuant to RCW 15.70.020. [2010 c 8 § 6099; 1961 c 11 § 15.70.040. Prior: 1951 c 169 § 4.]

15.70.050 No liability as to United States. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of agriculture of the state of Washington pursuant to this chapter. [1961 c 11 § 15.70.050. Prior: 1951 c 169 § 5.]

Chapter 15.74 RCW
HARDWOODS COMMISSION

Sections

15.74.005	Legislative purpose.
15.74.010	Commission created.
15.74.020	Commission authority.
15.74.030	Commission management.
15.74.040	Financial requirements.
15.74.050	Obligations, liabilities, and claims.
15.74.060	Assessments—Adjustment for inflation.
15.74.070	Assessments—Failure to pay.

15.74.005 Legislative purpose. The legislature recognizes that the economic base of the state of Washington is directly tied to the development and management of forest industries and that efforts to enhance and promote the recognition and expansion of the hardwoods industry should be coordinated between state and federal agencies, the forest products industry, commissions, institutions of higher education, and other entities. The legislature further recognizes that the development of hardwood forests and hardwood products will require multispecies, sustained-yield management plans for industrial and nonindustrial timber tracts, the development of products and markets for all grades of hardwoods, a stable and predictable tax program for new and existing firms and financial assistance for the attraction and expansion of new and existing hardwood processing facilities. The legislature also recognizes that the welfare of the citizens of the state of Washington require, as a public purpose, a continuing effort toward the full utilization of hardwood forests and the hardwood products industry. [1990 c 142 § 1.]

15.74.010 Commission created. In recognition of the findings and purposes in RCW 15.74.005, there is created the Washington hardwoods commission, which is created solely for the purposes set forth in this chapter. The commission shall be comprised of seven members. All members shall be members of the hardwood industry. All members shall initially be appointed by the governor and shall be appointed to staggered terms. Three members shall be appointed for a two-year term, two members to a three-year term, and two members to a four-year term. The hardwoods commission shall, by January 1, 1991, develop a method of electing board members to replace the appointed members. Each board member shall serve until the election of his or her successor. Five voting members of the commission constitute a quorum for the transaction of any business of the commission. Each member of the commission shall be a resident of the state and over the age of twenty-one. [1990 c 142 § 2.]

15.74.020 Commission authority. The commission shall have the power, duty, and responsibility to assist in the retention, expansion, and attraction of hardwood-related industries by creating a climate for development and support of the industry. The commission shall coordinate efforts to enhance and promote the expansion of the forest industry among state and federal agencies, industry organizations, and institutions of higher education. The commission shall have the power and duty to develop products and markets for various species and grades of hardwoods, and to study and recommend a tax program that will attract new firms and promote stability for existing firms. The commission shall also have as its duty the development of an enhancement and protection program that will reduce waste and respect environmental sensitivity. The commission will develop financial assistance programs from public and private moneys for attraction and expansion of new and existing primary, secondary, and tertiary processing facilities. It is also appropriate that the commission utilize recognized experts in educational institutions, public and private foundations, and agencies of the state, to facilitate research into economic development, hardwood silviculture, woodland management, and the development of new products. The commission will also work cooperatively with the department of natural resources in the development of best management practices for hardwood resources. [1990 c 142 § 3.]

15.74.030 Commission management. The commission shall have the power to elect a chair and such officers as the commission deems necessary and advisable. The commission shall elect a treasurer who shall be responsible for all receipts and disbursements by the commission. The treasurer's faithful discharge of duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its governance, which shall provide for the holding of an annual meeting for the election of officers and the transaction of other business and for such other meetings as the commission may direct. The commission shall do all things reasonably necessary to effect the purposes of this chapter. The commission shall have no legislative power. The commission may employ and discharge managers, secretaries, agents, attorneys, and other employees or staff, and may engage the services of independent contractors, pre-

scribe their duties, and fix their compensation. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1991 c 67 § 1; 1990 c 142 § 4.]

15.74.040 Financial requirements. The commission shall maintain an account with one or more public depositories, and may deposit moneys in the depository and expend moneys for purposes authorized by this chapter in the form of drafts made by the commission. The commission shall keep accurate records of all receipts, disbursements, and other financial transactions in accordance with generally accepted principles of accounting, available for audit by the state auditor. [1990 c 142 § 5.]

15.74.050 Obligations, liabilities, and claims. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principle, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1990 c 142 § 6.]

15.74.060 Assessments—Adjustment for inflation. To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment shall be based on the hardwood processor's production per calendar quarter. The assessment shall be four cents per ton produced.

The commission may develop by rule formulas for converting other units of measure to tons of production for determining the appropriate production per calendar quarter. The assessment shall be calculated based upon calendar quarters. Beginning July 1, 2019, and every July 1st thereafter, the assessment must be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce by September 25th of the year before the assessments are payable. [2018 c 71 § 1; 1991 c 67 § 3; 1990 c 142 § 7.]

Effective date—2018 c 71: "This act takes effect July 1, 2018." [2018 c 71 § 2.]

15.74.070 Assessments—Failure to pay. Any due and payable assessment levied under this chapter in such speci-

fied amount as may be determined by the commission 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 commission when payment is called for by the commission. In the event any person fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1991 c 67 § 2.]

Chapter 15.76 RCW

AGRICULTURAL FAIRS, YOUTH SHOWS, EXHIBITIONS

Sections

15.76.100	Declaration of public interest—Allocation of state funds authorized.
15.76.110	Definitions.
15.76.115	Fair fund—Created—Treasurer's transfer—Purpose.
15.76.120	Categories of fairs.
15.76.140	Eligibility requirements for state allocation.
15.76.150	Allocations from the fair fund.
15.76.160	Purposes for which allocation made—To whom made.
15.76.165	Authorization for capital funding to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities—Contract requirements.
15.76.170	Fairs commission—Creation, terms, compensation, powers and duties.
15.76.180	Rules and regulations.

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

15.76.100 Declaration of public interest—Allocation of state funds authorized. It is hereby declared that it is in the public interest to hold agricultural fairs, including the exhibition of livestock and agricultural produce of all kinds, as well as related arts and manufactures; including products of the farm home and educational contest, displays, and demonstrations designed to train youth and to promote the welfare of farm people and rural economic development. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund and for capital funding when appropriated to the department of agriculture, as provided in this chapter. [2018 c 280 § 1; 2012 c 221 § 1; 1961 c 61 § 1.]

15.76.110 Definitions. (1) "Agricultural fair" means a fair or exhibition which is intended to promote agriculture and support rural economic development by including a balanced variety of exhibits of livestock and agricultural products, as well as related arts and manufactures; including products of the farm home and educational contests, displays, and demonstrations designed to train youth and to promote the welfare of farm people and rural living.

(2) "Department" means the state department of agriculture.

(3) "Director" means the director of agriculture.

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(4) "Commission" means the fairs commission created by this chapter.

(5) "State allocations" means allocations from the state fair fund. [2018 c 280 § 2; 2012 c 221 § 2; 1961 c 61 § 2.]

15.76.115 Fair fund—Created—Treasurer's transfer—Purpose. The fair fund is created in the custody of the state treasury. All moneys received by the department of agriculture for the purposes of this fund and from RCW 67.16.105 shall be deposited into the fund. Each fiscal year, the state treasurer shall transfer into the fair fund from the general fund the sum of two million dollars. Expenditures from the fund may be used only for assisting fairs in the manner provided in this chapter. Only the director of agriculture or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2018 c 280 § 3; 2011 1st sp.s. c 50 § 926; 2011 c 103 § 10; 2010 1st sp.s. c 37 § 912; 2001 2nd sp.s. c 16 § 1; 1998 c 345 § 2.]

Effective dates—2011 1st sp.s. c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011], except for section 951 of this act which takes effect June 30, 2011." [2011 1st sp.s. c 50 § 1802.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

15.76.120 Categories of fairs. The following categories of agricultural fairs held in the state may be eligible for state allocations:

(1) Area fairs, which serve an area larger than one county; have both open and junior participation and an extensive diversification of classes, displays, and exhibits; and are not under county commissioner jurisdiction;

(2) County fairs, organized to serve the interests of single counties; have both open and junior participation but not as extensive diversification of classes, displays, and exhibits as area fairs; and are under county commissioner jurisdiction. An individual county must have no more than one county fair, but the county commissioners of two or more counties, by resolution, may jointly sponsor a county or district fair as limited by RCW 36.37.050;

(3) Community fairs, which serve an area smaller than area or county fairs and have either or both open or junior classes, displays, or exhibits. There may be more than one community fair in a county; and

(4) Youth shows and fairs, which serve three or more counties, have the purpose of educating and training rural youth in matters of rural living, and are approved under the authority of the Washington State University or the office of the superintendent of public instruction. [2018 c 280 § 4; 1993 c 163 § 1; 1991 c 238 § 74; 1961 c 61 § 3.]

15.76.140 Eligibility requirements for state allocation. (1) Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director.

(2) The director may waive the requirement in subsection (1) of this section if:

(a) A county fair reorganizing as an area fair has, through a current or predecessor organization, received an allocation from the fair fund as a county fair for at least two years; or

(b) A fair is not held due to a natural disaster such as a flood or wildfire. [2018 c 280 § 5; 2001 c 157 § 1; 1995 c 374 § 71; 1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

Additional notes found at www.leg.wa.gov

15.76.150 Allocations from the fair fund. (1) Using the department's forms, the board of trustees of any fair or youth show may apply to the department for allocations from the state fair fund.

(2)(a) The director may allocate ninety-five percent of the state fair fund, including its interest income under RCW 43.79A.040, to applicant agricultural fairs, distributed according to merit as measured by a merit rating to be set up by the director. This merit rating must take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums paid, community support, evidence of successful achievement of the aims and purposes of the fair, extent of improvements made to grounds and facilities from year to year, and overall condition and appearance of grounds and facilities.

(b) The department may use up to ten percent of the amount allocated in (a) of this subsection for special assistance to any participating fair or fairs.

(c) The department may use the remaining five percent of money in the state fair fund for expenses incurred in the administration of this chapter, which may include the fair commission expenses approved by the director.

(3) The division and payment of funds authorized in this section shall occur at such times as the director may prescribe. [2018 c 280 § 6; 2002 c 313 § 113; 1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

Additional notes found at www.leg.wa.gov

15.76.160 Purposes for which allocation made—To whom made. Any state allocations made under this chapter shall be made only as a reimbursement in whole or in part for operating expenses incurred. State allocations to fairs under the control of one or more counties must be made to the county treasurer of the county in which the fair is held. State allocations to other fairs or youth shows under RCW 15.76.120 must be made to sponsors of such fairs or shows. [2018 c 280 § 7; 1961 c 61 § 7.]

15.76.165 Authorization for capital funding to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities—Contract requirements. (1) Subject to the availability of amounts appropriated for this specific purpose, the department may provide capital funding to local governments and nonprofit organizations, on a competitive basis, to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public.

(2) The department shall develop and manage appropriate contracts with the selected applicants, monitor project

expenditures and grantee performance, report project and contract information, and exercise due diligence and other contract management responsibilities.

(a) The department shall include provisions in the contracts which require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities must be used for the express purpose of the grant.

(b) If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2012 c 221 § 3; 2005 c 443 § 2; 1973 c 117 § 1; 1969 c 85 § 1.]

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

15.76.170 Fairs commission—Creation, terms, compensation, powers and duties. There is hereby created a fairs commission to consist of the director of agriculture as ex officio member and chair, and seven members appointed by the director to be persons who are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. Appointments are for three-year terms, except for an appointment filling a vacancy, which is for the remainder of the original term.

Appointed members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance with RCW 43.03.050 and 43.03.060 payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair fund set aside for administrative costs under this chapter. The commission shall meet at the call of the chair, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to evaluate fairs to help determine merit under RCW 15.76.150(2), to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time. [2018 c 280 § 8; 2010 c 8 § 6100; 1984 c 287 § 18; 1975-'76 2nd ex.s. c 34 § 21; 1975 1st ex.s. c 7 § 11; 1961 c 61 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.76.180 Rules and regulations. The director shall have the power to adopt such rules and regulations as may be necessary or appropriate to carry out the purposes of this chapter. [1961 c 61 § 9.]

Chapter 15.80 RCW WEIGHMASTERS

Sections

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15.80.660	Collected moneys, civil penalties—Deposit.
15.80.900	Chapter cumulative.
15.80.910	Effective date—1969 ex.s. c 100.

15.80.300 Definitions. The definitions in this section apply throughout this chapter unless the context clearly require[s] otherwise.

(1) "Certified weight" means any signed certified statement or memorandum of weight, measure, or count, issued by a weighmaster or weigher in accordance with the provisions of this chapter or any rule adopted under it.

(2) "Commodity" means anything that may be weighed, measured, or counted in a commercial transaction.

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

(4) "Director" means the director of the department or the director's duly appointed representative.

(5) "Licensed public weighmaster," also referred to as "weighmaster," means any person, licensed under the provisions of this chapter, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based.

(6) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be.

(7) "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of the retail business of the merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities that have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location.

(8) "Thing" means anything used to move, handle, transport, or contain any commodity for which a certified weight, measure, or count is issued when such thing is used to handle, transport, or contain a commodity.

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(9) "Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity is or may be transported or drawn.

(10) "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure, or count. [2017 c 158 § 1; 1969 ex.s. c 100 § 1.]

15.80.410 Director's duty to enforce—Adoption of rules. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW (administrative procedure act), as enacted or hereafter amended, concerning the adoption of rules. [2017 c 158 § 2; 1969 ex.s. c 100 § 12.]

15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions. It shall be a violation of this chapter to transport by highway any hay, straw, or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw, or grain is to be unloaded: PROVIDED, HOWEVER, That this section shall not apply to the following:

(1) The transportation of, or sale of, hay, straw, or grain by the primary producer thereof;

(2) The transportation of hay, straw, or grain by an agriculturalist for use in his or her own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouse operator or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he or she is so licensed;

(4) The transportation of hay, straw, or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;

(5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [2011 c 336 § 416; 1969 ex.s. c 100 § 13.]

15.80.430 Certificates of weight and invoices to be carried with loads. Certificates of weight issued by licensed public weighmasters and invoices for sales by a retail merchant, if the commodity is being hauled by or for such retail merchant, shall be carried with all loads of hay, straw or grain when in transit. [1969 ex.s. c 100 § 14.]

15.80.440 Reweighing—Weighing—Variance from invoiced weight. The director or any peace officer may order the driver of any vehicle previously weighed by a licensed public weighmaster to reweigh the vehicle and load at the nearest scale.

The director or any peace officer may order the driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain to weigh the vehicle and load at the nearest scale. If the weight is found to be less than the amount appearing on the invoice, a copy of which is required

to be carried on the vehicle, the director or peace officer shall report the finding to the consignee and may prosecute such retail merchant in accordance with the provisions of this chapter. [2017 c 158 § 3; 1969 ex.s. c 100 § 15.]

15.80.450 Weighmaster's license—Applications—

Fee. (1) Any person may apply to the director for a weighmaster's license. Such application shall be on a form prescribed by the director and shall include:

(a) The full name of the person applying for such license and, if the applicant is a partnership, association, or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(b) The principal business address of the applicant in this state and elsewhere;

(c) The names and addresses of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(d) The location of each scale subject to the applicant's control and from which certified weights will be issued;

(e) The state unified business identifier number for the operator of the scale; and

(f) Such other information as the director identifies as necessary to carry out the purposes of this chapter and adopts by rule.

(2) Such annual application shall be accompanied by a license fee of eighty dollars for each scale from which certified weights will be issued. [2017 c 158 § 4; 2006 c 358 § 3; 1969 ex.s. c 100 § 16.]

Additional notes found at www.leg.wa.gov

15.80.460 Weighmaster's license—Issuance—Expiration date.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [2010 c 8 § 6102; 1991 c 109 § 7; 1971 ex.s. c 292 § 14; 1969 ex.s. c 100 § 17.]

Additional notes found at www.leg.wa.gov

15.80.470 Weighmaster's license—Renewal date—

Penalty fee. If an application for the annual renewal of any license provided for in this chapter is not filed prior to the current license expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued. The penalty shall not apply if the applicant furnishes a declaration that he or she has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license. [2017 c 158 § 5; 2010 c 8 § 6103; 1991 c 109 § 8; 1969 ex.s. c 100 § 18.]

15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee.

(1) Any weighmaster must file an application with the director for a license for any employee or agent to operate and issue certified

weight tickets from each scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

(a) The name of the weighmaster;

(b) The full name of the employee or agent; and

(c) The scale from which such employee or agent will issue certified weights.

(2) Such annual application shall be accompanied by a license fee of twenty dollars. [2017 c 158 § 6; 2010 c 8 § 6105; 2006 c 358 § 4; 1969 ex.s. c 100 § 20.]

Additional notes found at www.leg.wa.gov

15.80.500 Weigher's license—Issuance—Expiration date.

Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he or she is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [2010 c 8 § 6106; 1991 c 109 § 9; 1969 ex.s. c 100 § 21.]

15.80.510 Duties of weighmaster.

A licensed public weighmaster shall: (1) Keep the scale or scales upon which he or she weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare, and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his or her scale by the director or peace officer, and issue a certificate of the weights thereof. [2017 c 158 § 7; 2010 c 8 § 6107; 1969 ex.s. c 100 § 22.]

15.80.520 Certification of weights—Impression seal—Fee.

(1) Certification of weights must be in accordance with subsection (2)(a) or (b) of this section.

(2)(a) The certification must appear in an appropriate and conspicuous place on each certificate and copies thereof. In addition the weight ticket must bear the name of the weighmaster, the full name of the weigher issuing the ticket, and a seal number assigned to the scale by the department. The seal number must be used only at the scale to which it is assigned.

WEIGHMASTER CERTIFICATE

THIS IS TO CERTIFY that the following described commodity was weighed, measured, or counted by a weighmaster, whose signature is on this certificate, who is a recognized authority of accuracy, as prescribed by chapter 15.80 RCW administered by the Washington state department of agriculture.

(b) Certification must be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal may be procured from the director upon the payment of a fee of sixty dollars or the current cost of the seal to the department, whichever is less, and such fee shall accompany the applicant's application for a weighmaster's license. Any

replacement seal needed may be procured from the director upon payment to the department of the current cost to the department for such replacement. An impression seal must be used only at the scale to which it is assigned, and remains the property of the state and shall be returned to the director upon the termination, suspension, or revocation of the weighmaster's license. [2017 c 158 § 8; 1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

15.80.530 Certified weight ticket—Form—Contents—Evidence. The certified weight ticket shall be of a form approved by the director and shall contain the following information:

- (1) The date of issuance;
- (2) The kind of commodity weighed, measured, or counted;
- (3) The name of the owner, agent, or consignee of the commodity weighed;
- (4) The name of the seller, agent, or consignor;
- (5) The accurate weight, measure, or count of the commodity weighed, measured, or counted; including the entry of the gross, tare, and/or net weight, where applicable;
- (6) The identifying numerals or symbols, if any, of each container separately weighed and the license plate number of each vehicle separately weighed;
- (7) The means by which the commodity was being transported at the time it was weighed, measured, or counted;
- (8) The name of the city or town where such commodity was weighed;
- (9) The complete signature of the weighmaster or weigher who weighed, measured, or counted the commodity; and
- (10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly certified or sealed shall be prima facie evidence of the accuracy of the weights, measures, or count shown, as a certified weight, measure, or count. [2017 c 158 § 9; 1969 ex.s. c 100 § 24.]

15.80.540 Certified weight tickets—Retention of copies—Records. (1) Certified weight tickets shall be delivered to the person receiving the weighed commodity at the time of delivery. The weight ticket must accompany the vehicle that transports such commodity.

(2) A copy must be provided to the seller by the carrier of the weighed commodity.

(3) The weighmaster that provided the certified weight ticket must retain a copy for a period of one year.

(4) The weighmaster must retain such other records as the director shall determine necessary to carry out the purposes of this chapter.

(5) These records shall be made available at all reasonable business hours for inspection by the director. [2017 c 158 § 10; 1969 ex.s. c 100 § 25.]

15.80.550 Weighmaster or weigher to determine weights—Automatic devices. No weighmaster or weigher shall enter a weight value on a certified weight ticket that he or she has not determined and he or she shall not make a weight entry on a weight ticket issued at any other location: PROVIDED, HOWEVER, That if the director determines

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that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he or she may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he or she shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him or her. [2010 c 8 § 6108; 1969 ex.s. c 100 § 26.]

15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices. A licensed public weighmaster shall, in making a weight determination as provided for in this chapter, use a weighing device that conforms to current state legal requirements for commercial devices and is suitable for the weighing of the type and amount of commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for use by the director until such device has been repaired and tested as conforming to the intended use requirements. [2017 c 158 § 11; 1969 ex.s. c 100 § 27.]

15.80.570 Weighing devices—Rated capacity to exceed weight of load. A weighmaster shall not use a weighing device to determine the weight of a load when the weight of such load exceeds the manufacturer's maximum rated capacity for such weighing device. If upon inspection the director declares that the maximum rated capacity of any weighing device is less than the manufacturer's maximum rated capacity, the weighmaster shall not weigh a load that exceeds the director's declared maximum rated capacity for such weighing device. [1969 ex.s. c 100 § 28.]

15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles. No weighmaster shall weigh a vehicle or combination of vehicles to determine the weight of such vehicle or combination of vehicles unless the weighing device has a platform of sufficient size to accommodate such vehicle or combination of vehicles fully and completely as one entire unit. When a combination of vehicles must be broken up into separate units in order to be weighed as prescribed, each separate unit shall be entirely disconnected before weighing and a separate certified weight ticket shall be issued for each separate unit. [1969 ex.s. c 100 § 29.]

15.80.590 Denial, suspension, or revocation of licenses—Hearing. The director is hereby authorized to deny, suspend, or revoke a license in any case in which he or she finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.05 RCW. Such hearings shall be subject to chapter 34.05 RCW (administrative procedure act) concerning adjudicative proceedings.

[2017 c 158 § 12; 2010 c 8 § 6109; 1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

Additional notes found at www.leg.wa.gov

15.80.610 Subpoenas—Oaths. The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his or her defense, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. [2010 c 8 § 6110; 1969 ex.s. c 100 § 32.]

15.80.620 Assuming to act as weighmaster or weigher. It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

(1) Hold himself or herself out, in any manner, as a weighmaster or weigher; or

(2) Issue any ticket as a certified weight ticket. [2010 c 8 § 6111; 1969 ex.s. c 100 § 33.]

15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing. It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure, or count to be determined, or delegate his or her authority to any person not licensed as a weigher, or to pre-seal a weight ticket with his or her official seal before performing the act of weighing. [2010 c 8 § 6112; 1969 ex.s. c 100 § 34.]

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp, or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence, any licensed public weighmaster or weigher in the performance of his or her official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment of not less than thirty days nor more than three hundred sixty-four days in the county jail, or by both such fine and imprisonment. [2017 c 158 § 13; 2011 c 96 § 16; 2010 c 8 § 6113; 1969 ex.s. c 100 § 35.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

15.80.650 Violations—Penalty—Criminal—Civil—Opportunity to request hearing. (1) Except as provided in RCW 15.80.640 or subsection (2) of this section, any person violating any provision of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent same or similar violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(3) The director may assess a civil penalty ranging from one hundred dollars to one thousand dollars per occurrence against any person who knowingly violates any provision under this chapter or rules adopted thereunder. In determin-

ing the amount of any civil penalty, the director shall give due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of any previous violations. The respondent issued a notice of intent to assess a civil penalty must be provided the opportunity to request a hearing as provided under chapter 34.05 RCW to contest the alleged violation and the penalty amount. [2017 c 158 § 14; 2003 c 53 § 109; 1969 ex.s. c 100 § 36.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.80.660 Collected moneys, civil penalties—Deposit. (1) All moneys collected under this chapter shall be placed in the weights and measures account created in RCW 19.94.185.

(2) Civil penalties collected under RCW 15.80.650 must be deposited into the state general fund. [2017 c 158 § 15; 1995 c 355 § 25.]

Additional notes found at www.leg.wa.gov

15.80.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 ex.s. c 100 § 37.]

15.80.910 Effective date—1969 ex.s. c 100. This act shall take effect on July 1, 1969. [1969 ex.s. c 100 § 38.]

Chapter 15.83 RCW AGRICULTURAL MARKETING AND FAIR PRACTICES

Sections

15.83.005	Intent.
15.83.010	Definitions.
15.83.020	Negotiating agents—Association of producers—Accreditation.
15.83.030	Unlawful practices of handlers.
15.83.040	Unlawful practices of association of producers or members.
15.83.050	Violations of chapter—Complaint.
15.83.060	Director's authority—Recordkeeping—Cooperation.
15.83.070	Injury due to unlawful practices—Damages.
15.83.080	Unlawful practices—Civil penalty.
15.83.090	Injunction.
15.83.100	Rules.
15.83.110	Advisory committee.
15.83.900	Short title.

15.83.005 Intent. Agricultural products are produced by many individual farmers and ranchers located throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to the welfare and general economy of the state. It is the purpose of this chapter to establish standards of fair practices required of handlers, producers, and associations of producers, with respect to certain agricultural commodities, to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

It is the intent of the legislature that a workable process be developed through which a fair price and other contract terms can be arrived at through negotiations between processors of agricultural products and an accredited association of producers, and that in developing rules and administering this

chapter the director of agriculture shall recognize this intent. [1989 c 355 § 1.]

15.83.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation 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 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) "Director" means the director of the department of agriculture.

(6) "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.

(7) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date and concluding within thirty days of the normal planting date 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.

(8) "Negotiating unit" means a negotiating unit approved by the director under RCW 15.83.020.

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

(10) "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.

(11) "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.

(12) "Qualified commodity" means agricultural products as defined in subsection (3) of this section. [1989 c 355 § 2.]

15.83.020 Negotiating agents—Association of producers—Accreditation. (1) An association of producers may file an application with the director:

(a) Requesting accreditation to serve as the exclusive negotiating agent on behalf of its producer members who are within a proposed negotiating unit with respect to any qualified commodity;

(b) Describing geographical boundaries of the proposed negotiating unit;

(c) Specifying the number of producers and the quantity of products included within the proposed negotiating unit;

(d) Specifying the number and location of the producers and the quantity of products represented by the association; and

(e) Supplying any other information required by the director.

(2) Within a reasonable time after receiving an application under subsection (1) of this section, the director shall approve or disapprove the application in accordance with this section.

(a) The director shall approve the initial application or renewal if the director determines that:

(i) The association is owned and controlled by producers under the charter documents or bylaws of the association;

(ii) The association has valid and binding contracts with its members empowering the association to sell or negotiate terms of sale of its members' products or to negotiate for compensation for products produced under contract by its members;

(iii) The association represents a sufficient percentage of producers or that its members produce a sufficient percentage of agricultural products to enable it to function as an effective agent for producers in negotiating with a given handler as defined in rules promulgated by the department. In making this finding, the director shall exclude any quantity of the agricultural products contracted by producers with producer-owned and controlled processing cooperatives with its members and any quantity of these products produced by handlers;

(iv) One of the association's functions is to act as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of the products of its members, or for compensation for products produced by its members under contract; and

(v) Accreditation would not be contrary to the policies established in RCW 15.83.005.

(b) If the director does not approve the application under (a) of this subsection, then the association of producers may file an amended application with the director. The director,

within a reasonable time, shall approve the amended application if it meets the requirements set out in (a) of this subsection.

(3) At the discretion of the director, or upon submission of a timely filed petition by an affected handler or an affected association of producers, the association of producers accredited under this section may be required by the director to renew the application for accreditation by providing the information required under subsection (1) of this section. [1989 c 355 § 3.]

15.83.030 Unlawful practices of handlers. It shall be unlawful for any handler to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with an association of producers accredited under RCW 15.83.020 with respect to any qualified commodity: PROVIDED, That the obligation to negotiate does not require either party to agree to a proposal, to make a concession, or to enter into a contract;

(2) To coerce any producer in the exercise of his or her right to contract with, join, refrain from contracting with or joining, belong to an association of producers, or refuse to deal with any producer because of the exercise of that producer's right to contract with, join, or belong to an association or because of that producer's promotion of legislation on behalf of an association of producers;

(3) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of that producer's membership in or contract with an association of producers or because of that producer's promotion of legislation on behalf of an association of producers;

(4) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

(5) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association of producers;

(6) To make knowingly false reports about the finances, management, or activities of associations of producers or handlers; or

(7) To conspire, agree, or arrange with any other person to do, aid, or abet any act made unlawful by this chapter. [1989 c 355 § 4.]

15.83.040 Unlawful practices of association of producers or members. It shall be unlawful for any accredited association of producers or members of such association to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with a handler for any qualified commodity for which the association is accredited under RCW 15.83.020;

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an individual producer, association of producers, or a member of an association;

(3) To knowingly make or circulate false reports about the finances, management, or activities of an association of producers or a handler;

(4) To coerce or intimidate a producer to enter into, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers;

(5) To conspire, agree, or arrange with any other person to do, aid, or abet any practice which is in violation of this chapter; or

(6) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to contract or negotiate with a processor. [1989 c 355 § 5.]

15.83.050 Violations of chapter—Complaint. (1) If any person is charged with violating any provision of this chapter, the director shall investigate the charges. If, upon investigation, the director has reasonable cause to believe that the person charged has violated the provision, the director shall issue and cause to be served upon the person, a complaint stating the charges. A hearing on the charges shall be conducted in accordance with the provisions of chapter 34.05 RCW concerning contested cases.

(2) No complaint may be issued based upon any act occurring more than six months before the filing of the charge with the director. At the discretion of the director, any other person may be allowed to intervene in the proceeding and to present testimony and other evidence.

(3) If upon the preponderance of the evidence taken, the director is of the opinion that any person named in the complaint has engaged in or is engaging in any prohibited practice, the director shall make and enter findings of fact and shall issue and cause to be served on that person, an order requiring that person to cease and desist from the practice and to take affirmative action to further the policies of this chapter. The order may also require the person to make reports from time to time showing the extent of compliance with the order. If, upon the preponderance of the testimony and other evidence, the director determines that the person named in the complaint has not engaged in or is not engaging in any prohibited practice, the director shall make and enter findings of fact and an order dismissing the complaint. [1989 c 355 § 6.]

15.83.060 Director's authority—Recordkeeping—Cooperation. If required to carry out the objectives of this chapter, including the conduct of any investigations or hearing:

(1) The director shall require any person to:

- Establish and maintain records;
- Make reports; and
- Provide other information as may be reasonably required.

(2) Any person subject to the provisions of this chapter shall provide the information, records, and reports reasonably required by the director, or make such material available to the director for inspection and/or copying at reasonable times and places, except that no person shall be required under this section to provide to the director proprietary business or financial records or information. [1989 c 355 § 7.]

15.83.070 Injury due to unlawful practices—Damages. A person injured in his or her business or property by reason of any violation of or conspiracy to violate RCW

15.83.030 or 15.83.040 may sue in a court of competent jurisdiction of the county in which such violation occurred without respect to the amount in controversy, and shall recover damages sustained, including reasonable attorneys' fees and costs of bringing the suit. Any action to enforce any cause of action under this section shall be forever barred unless commenced not later than two years after the cause of action accrues. [1989 c 355 § 8.]

15.83.080 Unlawful practices—Civil penalty. A person who violates RCW 15.83.030 or 15.83.040 may be assessed a civil penalty by the director of not more than five thousand dollars for each offense. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to chapter 34.05 RCW. In determining the amount of the penalty, the director shall consider the size of the business of the person charged, the penalty's affect [effect] on the person's ability to continue in business, and the gravity of the violation. If the director is unable to collect the civil penalty, the director shall refer the collection to the attorney general. [1989 c 355 § 9.]

15.83.090 Injunction. The director or any aggrieved producer, accredited association, or handler may bring an action to enjoin the violation of any provision of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 355 § 10.]

15.83.100 Rules. The director may promulgate such rules in accordance with chapter 34.05 RCW, and orders, as may be necessary to carry out this chapter. [1989 c 355 § 11.]

15.83.110 Advisory committee. The director shall establish an advisory committee consisting of the following persons: Six producers who are producers from names submitted by an association of producers, and six handlers subject to this chapter from names submitted by handlers. The advisory committee shall study and report on all issues related to this chapter. [1989 c 355 § 12.]

15.83.900 Short title. This chapter may be known and cited as the agricultural marketing and fair practices act. [1989 c 355 § 13.]

**Chapter 15.85 RCW
AQUACULTURE MARKETING**

Sections

- 15.85.010 Legislative declaration.
- 15.85.020 Definitions.
- 15.85.030 Department principal agency for aquaculture marketing support.
- 15.85.040 Rules.
- 15.85.050 Program to assist marketing and promotion of aquaculture products.
- 15.85.060 Private sector cultured aquatic products—Identification—Rules.

Aquaculture disease control: Chapter 77.115 RCW.

15.85.010 Legislative declaration. The legislature declares that aquatic farming provides a consistent source of

quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fish and wildlife should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wildstock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching. [1994 c 264 § 4; 1985 c 457 § 1.]

Release and recapture of salmon or steelhead prohibited: RCW 77.12.459.

15.85.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	

Scientific Name	Common Name
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW 77.70.210.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [2003 c 39 § 7; 1989 c 176 § 3; 1985 c 457 § 2.]

15.85.030 Department principal agency for aquaculture marketing support. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry. [1985 c 457 § 3.]

15.85.040 Rules. The department shall adopt rules under chapter 34.05 RCW to implement this chapter. [1985 c 457 § 7.]

15.85.050 Program to assist marketing and promotion of aquaculture products. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. [1989 c 11 § 2; 1985 c 457 § 4.]

Additional notes found at www.leg.wa.gov

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the department of fish and wildlife to administer and enforce Title 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers

or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the director of fish and wildlife to ensure that such rules enable the department of fish and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [2003 c 39 § 8; 1994 c 264 § 5; 1988 c 36 § 6; 1985 c 457 § 5.]

Chapter 15.86 RCW ORGANIC PRODUCTS

Sections

15.86.010	Purpose.
15.86.020	Definitions.
15.86.030	Marketing of organic products—Standards—Restrictions—Evaluations to verify compliance.
15.86.060	Rules—National organic program—Violations—Penalties.
15.86.065	State organic program—Authority of department and director—Rules.
15.86.070	Rules—Certification program—Fees.
15.86.090	Mandatory certification—Exceptions.
15.86.110	Confidentiality of business related information.
15.86.120	Transitional product—Standards—Fees—Evaluations to verify compliance.
15.86.130	Brand name materials list of registered materials—Application for registration—Right to enter premises—Rules—Denial/suspension/revocation of a registration, grounds.
15.86.140	Brand name materials list—Fees.

Kosher food products: Chapter 69.90 RCW.

15.86.010 Purpose. The legislature recognizes a public benefit in:

(1) Establishing standards governing the labeling and advertising of agricultural products and commodities as organic products or transitional products;

(2) Providing certification under the national organic program for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic;"

(3) Providing access for Washington producers, processors, and handlers to domestic and international markets for organic products;

(4) Establishing a state organic program or obtaining federal accreditation as a certifying agent under the national organic program; and

(5) Establishing a brand name materials list for registration of inputs that comply with national, international, or other organic standards. [2010 c 109 § 1; 2002 c 220 § 1; 1992 c 71 § 1; 1985 c 247 § 1.]

15.86.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certification" or "certified" means a determination documented by a certificate of organic operation made by a certifying agent that a production or handling operation is in compliance with the national organic program or with international standards.

(2) "Compost" means the product of a managed process through which microorganisms break down plant and animal

materials into more available forms suitable for application to the soil.

(3) "Crop production aid" means any substance, material, structure, or device that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(4) "Department" means the state department of agriculture.

(5) "Director" means the director of the department of agriculture or the director's designee.

(6) "Fertilizer" means a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(7) "Handler" means any person who sells, distributes, or packs organic or transitional products.

(8) "Label" means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(9) "Labeling" includes all written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

(10) "Livestock production aid" means any substance, material, structure, or device that is used to aid a producer in the production of livestock such as parasiticides, medicines, and feed additives.

(11) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.

(12) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.

(13) "National organic program" means the program administered by the United States department of agriculture pursuant to 7 C.F.R. Part 205, which implements the federal organic food production act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(14) "Organic certifying agent" means any third-party certification organization that is recognized by the director as being one which imposes, for certification, standards consistent with this chapter.

(15) "Organic product" means any agricultural product, in whole or in part, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic and that is produced, handled, and processed in accordance with this chapter.

(16) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that contain biosolids as defined in chapter 70.95J RCW.

(17) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(18) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus, except a virus on or in a living human being or other animal, which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by rule.

(19) "Postharvest material" means any substance, material, structure, or device that is used in the postharvest handling of agricultural products.

(20) "Processing aid" means a substance that is added to a food:

(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;

(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(21) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing of an organic or transitional product.

(22) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(23) "Registrant" means the person registering a material on the brand name materials list under the provisions of this chapter.

(24) "Represent" means to hold out as or to advertise.

(25) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(26) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(27) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide and that is in a package or container separate from the pesticide. "Spray adjuvant" includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. "Spray adjuvant" does not include products that are only intended to mark the location where a pesticide is applied.

(28) "Transitional product" means any agricultural product that meets requirements for organic certification, except that the organic production areas have not been free of prohibited substances for thirty-six months. Use of prohibited

substances must have ceased for at least twelve months prior to the harvest of a transitional product. [2010 c 109 § 2; 2002 c 220 § 2; 1992 c 71 § 2; 1989 c 354 § 32; 1985 c 247 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

15.86.030 Marketing of organic products—Standards—Restrictions—Evaluations to verify compliance.

(1) To be labeled, sold, or represented as an organic product, a product must be produced under standards established in this chapter or rules adopted pursuant to this chapter. A producer, processor, or handler shall not represent, sell, or offer for sale any agricultural product with the representation that the product is organic if the producer, processor, or handler knows, or has reason to know, that the product has not been produced, processed, or handled in accordance with standards established in this chapter or rules adopted pursuant to this chapter.

(2) The department may conduct evaluations in retail establishments to verify compliance with organic labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program. [2010 c 109 § 3; 2002 c 220 § 3; 1992 c 71 § 3; 1989 c 354 § 30; 1985 c 247 § 3.]

Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020: RCW 19.86.023.

Additional notes found at www.leg.wa.gov

15.86.060 Rules—National organic program—Violations—Penalties. (1) The director shall adopt rules, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the adoption of the national organic program and for the proper administration of this chapter.

(2)(a) The director shall issue orders to producers, processors, or handlers whom the director finds are violating RCW 15.86.030 or 15.86.090 or rules adopted pursuant to this chapter, to cease their violations and desist from future violations.

(b) Whenever the director finds that a producer, processor, or handler has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of:

(i) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and

(ii) One thousand dollars. [2010 c 109 § 4; 2002 c 220 § 4; 1992 c 71 § 7; 1985 c 247 § 6.]

15.86.065 State organic program—Authority of department and director—Rules. (1) The department is authorized to take such actions, conduct proceedings, and enter orders as permitted or contemplated for a state organic program or certifying agent under the national organic program.

(2) The director may deny, suspend, or revoke a certification provided for in this chapter if the director determines that an applicant or certified person has violated this chapter or rules adopted pursuant to this chapter.

(3) The program shall not be inconsistent with the requirements of the national organic program.

(4) The department shall adopt rules necessary to implement this section. [2010 c 109 § 5; 2002 c 220 § 7.]

15.86.070 Rules—Certification program—Fees. (1) The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional products.

(2) The rules:

(a) May govern, but are not limited to governing:

(i) The number and scheduling of on-site visits, both announced and unannounced, by certification personnel;

(ii) Recordkeeping requirements; and

(iii) The submission of product samples for chemical analysis; and

(b) Shall include a fee schedule that will provide for the recovery of the full cost of the program.

(3) All fees collected under this chapter shall be deposited in an account within the agricultural local fund. The revenue from such fees shall be used solely for carrying out the provisions of this chapter, and no appropriation is required for disbursement from the fund.

(4) The director may employ such personnel as are necessary to carry out the provisions of this chapter. [2010 c 109 § 6; 2002 c 220 § 5; 1997 c 303 § 4; 1992 c 71 § 10; 1989 c 354 § 34; 1987 c 393 § 12.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

15.86.090 Mandatory certification—Exceptions. (1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or a recognized organic certifying agent.

(2) Subsection (1) of this section shall not apply to:

(a) Final retailers of organic products that do not process organic products; or

(b) Producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers. [2010 c 109 § 7; 2002 c 220 § 6; 1992 c 71 § 8.]

Additional notes found at www.leg.wa.gov

15.86.110 Confidentiality of business related information. (1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter 42.56 RCW.

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying. [2005 c 274 § 218; 1992 c 71 § 11.]

15.86.120 Transitional product—Standards—Fees—Evaluations to verify compliance. (1) To be labeled, sold, or represented as transitional products, agricultural products must comply with transitional product standards specified in this chapter and rules adopted pursuant to this chapter, including no application of substances prohibited under the

national organic program within one year immediately preceding harvest.

(2) A producer, processor, or handler may not represent, sell, or offer for sale any agricultural product as a transitional product if the producer, processor, or handler knows or has reason to know that the product does not comply with transitional product standards specified in this chapter or rules adopted pursuant to this chapter.

(3)(a) The department may set and collect transitional certification fees, including fees for application for transitional certification, renewal of transitional certification, inspections, and sampling. Collected fees are subject to provisions specified in RCW 15.86.070.

(b) The fee for application for transitional certification is fifty dollars per site in addition to any organic certification application fees established under this chapter. The department may increase this fee by rule as necessary to cover costs of provision of services.

(4) The department may conduct evaluations in retail establishments to verify compliance with transitional labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program. [2010 c 109 § 8.]

15.86.130 Brand name materials list of registered materials—Application for registration—Right to enter premises—Rules—Denial/suspension/revocation of a registration, grounds. (1) The department may establish a brand name materials list of registered materials that are approved for use in organic production, processing, or handling in accordance with the national organic program or international standards. Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2)(a) Manufacturers of materials may submit an application to the department for registration of a material on the brand name materials list. Applications must be made on a form designated by the department, and must include:

- (i) The name and address of the manufacturer;
- (ii) The name and address of the manufacturer's representative making the representations in the application;
- (iii) The brand name that the material is sold under;
- (iv) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;
- (v) The complete formula of the material, including the active and inert ingredients;
- (vi) A description of the manufacturing process, including all materials used for the extraction and synthesis of the material, if appropriate;
- (vii) The intended uses of the product;
- (viii) The source or supplier of all ingredients;
- (ix) The required fee for registration or renewal; and
- (x) Any additional information required by rule.

(b) If any change to the information provided in an application occurs at any time after an application is submitted, the registrant must immediately submit corrected information to the department for review. Failure by the registrant to provide

corrections to information provided in the application may result in suspension or revocation of the registration.

(c) By submitting an application for registration on the brand name materials list, the applicant expressly consents to jurisdiction of the state of Washington in all matters related to the registration.

(d) Applications for registration on the brand name materials list are governed by chapter 34.05 RCW.

(3)(a) By applying for registration on the brand name materials list, the registrant expressly grants to the department or other organic certifying agent or inspection agent approved by the national organic program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

- (i) Inspect the portion of the premises where the material, inputs, or ingredients are stored, produced, manufactured, packaged, or labeled;
- (ii) Inspect records related to the sales, storage, production, manufacture, packaging, or labeling of the material, inputs, or ingredients; and
- (iii) Obtain samples of materials, inputs, and ingredients.

(b) Should the registrant refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records or fails to provide samples as provided in this section.

(c) Required inspections may be conducted by department personnel, by an organic certifying agent, or by another inspection agent approved by the national organic program. The department may establish by rule evaluation criteria for review of inspection reports conducted by an organic certifying agent or inspection agent approved by the national organic program.

(4) The director may adopt rules necessary to implement the brand name materials list, including but not limited to:

- (a) Fees related to registration;
- (b) The number and scheduling of inspections, both announced and unannounced;
- (c) Recordkeeping requirements;
- (d) Additional application requirements;
- (e) Labeling of registered materials; and
- (f) Chemical analysis of material samples.

(5)(a) The department may establish a brand name materials list to register materials approved for use under:

- (i) National organic program standards; or
 - (ii) International or additional organic standards.
- (b) The director may review materials registered on the brand name materials list as approved for use under the national organic program for compliance with specific international or additional organic standards as designated by rule. A registered material that complies with a specific international or additional organic standard may also be registered as approved under that standard.

(6) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production or processing by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

(7) The director may deny, suspend, or revoke a registration on the brand name materials list if the director determines that a registrant has:

(a) Failed to meet the registration criteria established in this chapter or rules adopted pursuant to this chapter; or

(b) Violated any other provision of this chapter or rules adopted pursuant to this chapter. [2010 c 109 § 9.]

15.86.140 Brand name materials list—Fees. (1) The department is authorized to set and collect fees for application for registration, renewal of registration, inspections, and sampling for the brand name materials list. Collected fees are subject to provisions specified in RCW 15.86.070. The department may increase by rule fees established in this section as necessary to cover costs of provision of services.

(2)(a) The application fee for registration of a pesticide, spray adjuvant, processing aid, livestock production aid, or postharvest material is:

(i) Five hundred dollars per material for an initial registration; and

(ii) Three hundred dollars per material for renewing a registration.

(b) The application fee for registration of a fertilizer, soil amendment, organic waste-derived material, compost, animal manure, or crop production aid is:

(i) Four hundred dollars per material for an initial registration; and

(ii) Two hundred dollars per material for renewing a registration.

(3)(a) Renewal applications postmarked after October 31st must include, in addition to the renewal fee, a late fee of:

(i) One hundred dollars per material for applications postmarked after October 31st;

(ii) Two hundred dollars per material for applications postmarked after November 30th; and

(iii) Three hundred dollars per material for applications postmarked after December 31st.

(b) Renewal applications received after February 2nd will not be accepted, and applicants must reapply as new applicants.

(4) Inspections and any additional visit that must be arranged must be billed at forty dollars per hour plus travel costs and mileage, charged at the rate established by the office of financial management.

(5) Chemical analysis of material samples, if required for registration or requested by the applicant, must be billed at a rate established by the laboratory services division of the department of agriculture or at cost for analyses performed by another laboratory.

(6) Requests for expedited reviews may be submitted and, if approved, must be billed at forty dollars per hour.

(7) The department may assess compliance with an international or additional organic standard for materials registered on the brand name materials list as approved for use under the national organic program. Requests for additional assessments of materials approved under the national organic program must be billed at a rate of one hundred dollars per product for each standard. [2010 c 109 § 10.]

Chapter 15.88 RCW WINE COMMISSION

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15.88.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy.

(2) The sale in the state and export to other states and abroad of wine made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and have an important stabilizing effect on prices received by agricultural producers. Development of exports of these commodities abroad will contribute favorably to the balance of trade of the United States and of the state. The sale and export are therefore affected with the public interest.

(3) The production of wine grapes in the state is a new and important segment of Washington agriculture which has potential for greater contribution to the economy of the state if it undergoes healthy development.

(4) The general welfare of the people of the state will be served by healthy development of the activities of growing and processing wine grapes, which development will improve the tax bases of local communities in which agricultural land and processing facilities are located, and obviate the need for state and federal funding of local services. The industries are therefore affected with the public interest.

(5) Creation of a commission for the public purpose of administering the revenue of the commission under RCW 66.24.210(3) for the enhancement of production of wine grapes and wine and the marketing of Washington wine will materially advance the industries of growing and processing wine grapes and thereby the interests of the citizens of the state. [1987 c 452 § 1.]

15.88.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Commission" means the Washington wine commission.
- (2) "Director" means the director of agriculture or the director's duly appointed representative.
- (3) "Department" means the department of agriculture.
- (4) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.
- (5) "Grower" means a person who has at least five acres in production of vinifera grapes.
- (6) "Growers' association" means a nonprofit association of Washington producers of vinifera grapes, whether or not incorporated, which the director finds to comprise the interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group of growers of vinifera grapes within the state identified by the director as fairly representing growers of vinifera grapes within the state.
- (7) "Vinifera grapes" means the agricultural product commonly known as VITIS VINIFERA and those hybrid of VITIS VINIFERA which have predominantly the character of VITIS VINIFERA.
- (8) "Producer" means any person or other entity which grows within the state vinifera grapes or any person or other entity licensed under Title 66 RCW to produce within the state wine made predominantly from vinifera grapes.
- (9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes.
- (10) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.
- (11) "Western Washington" means that portion of the state lying west of the Cascade mountain range.
- (12) "Wine" for the purposes of this section shall be as defined in RCW 66.04.010.
- (13) "Wine institute" means a nonprofit association of Washington wine producers, whether or not incorporated, which the director finds to comprise interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group composed of all such producers identified as actively engaged in the production of wine within the state.
- (14) "Handler" means any Washington winery, or processor, juicer, grape broker, agent, or person buying or receiving vinifera grapes to be passed on or exported either as grapes, juice, or wine. [1988 c 257 § 6; 1987 c 452 § 2.]

15.88.025 Regulating wine grapes and wine—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involves the wine industry. In order to develop and promote wine grapes and wine as part of an existing comprehensive scheme to regulate those products the legislature declares:

- (1) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its wine grapes and wine be properly promoted by (a) enabling the wine industry to help themselves in establishing orderly,

fair, sound, efficient, and unhampered marketing of wine grapes and wines they produce; and (b) working to stabilize the wine industry by increasing markets for wine grapes and wine within the state, the nation, and internationally;

- (2) That wine grape growers and wine producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the wine grape growers' and wine producers' ability to compete in local, domestic, and foreign markets;

- (3) That it is in the overriding public interest that support for the wine industry be clearly expressed; that adequate protection be given to agricultural commodities, uses, activities, and operations; and that wine grapes and wine be promoted individually, and as part of a comprehensive industry to:

- (a) Enhance the reputation and image of Washington state's agriculture industry;

- (b) Increase the sale and use of wine grapes and wine in local, domestic, and foreign markets;

- (c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of wine grapes and wine;

- (d) Increase the knowledge of the qualities and value of Washington's wine grapes and wine; and

- (e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of wine grapes and wine;

- (4) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

- (5) That the production and marketing of wine grapes and wine is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the wine grape and wine industry include:

- (a) Organic products act under chapter 15.86 RCW;

- (b) Horticultural pests and diseases under chapter 15.08 RCW;

- (c) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

- (d) Planting stock under chapter 15.14 RCW;

- (e) Washington pesticide control act under chapter 15.58 RCW;

- (f) Food safety and security act under chapter 15.130 RCW;

- (g) Insect pests and plant diseases under chapter 17.24 RCW;

- (h) Wholesale distributors and suppliers of wine and malt beverages under chapter 19.126 RCW;

- (i) Weights and measures under chapter 19.94 RCW;

- (j) Title 66 RCW, alcoholic beverage control;

- (k) Chapter 69.07 RCW, Washington food processing act;

- (l) 27 U.S.C., Secs. 201 through 211, 213 through 219a, and 122A;

- (m) 27 C.F.R., Parts 1, 6, 9, 10, 12, 16, 240, 251, 252; and

(n) Rules under Titles 16 and 314 WAC, and rules adopted under chapter 15.88 RCW. [2018 c 236 § 708; 2011 c 103 § 30; 2002 c 313 § 110.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.88.030 Wine commission created—Composition.

(1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. The commission shall be composed of twelve voting members and one nonvoting member; five voting members shall be growers, five voting members shall be wine producers, one voting member shall be the director, and one voting member shall be a wine distributor licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Washington and at least two members shall be wine producers located in eastern Washington.

(2) The commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes.

(3) Seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. This subsection does not apply to the director. [2003 c 396 § 38; 1997 c 321 § 40; 1988 c 254 § 12; 1987 c 452 § 3.]

Additional notes found at www.leg.wa.gov

15.88.040 Designation of commission members—

Terms. The appointed voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; the wine wholesaler shall be position eleven; and the director shall be position number thirteen. The nonvoting industry member shall be designated position number twelve. The member designated as filling position one shall be a per-

son producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except for position thirteen, the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial nonvoting industry member shall terminate July 1, 1990. [2003 c 396 § 39; 1988 c 254 § 13; 1987 c 452 § 4.]

Additional notes found at www.leg.wa.gov

15.88.050 Appointment of members—Travel

expenses. (1) The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

(2) The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

(3) In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

(4) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2003 c 396 § 40; 2002 c 313 § 111; 1987 c 452 § 5.]

Additional notes found at www.leg.wa.gov

15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees.

Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own

individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1987 c 452 § 6.]

15.88.070 Commission powers and duties. The powers and duties of the commission include:

(1) To elect a chair and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to chapter 43.19 RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of pro-

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ducers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter. [2015 c 225 § 12; 2010 c 8 § 6114; 1987 c 452 § 7.]

15.88.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, 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 on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 42.]

Additional notes found at www.leg.wa.gov

15.88.075 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wine grapes and wine. [2003 c 396 § 43.]

Additional notes found at www.leg.wa.gov

15.88.080 Research, promotional, and educational campaign. The commission shall create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account

the information adduced thereby in the discharge of its duties under this chapter. [1987 c 452 § 8.]

15.88.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign such goals as will serve the needs of producers, which may include, without limitation, efforts to:

- (1) Establish Washington wine as a major factor in markets everywhere;
- (2) Promote Washington wineries as tourist attractions;
- (3) Encourage favorable reporting of Washington wine and wineries in the press throughout the world;
- (4) Establish the state in markets everywhere as a major source of premium wine;
- (5) Encourage favorable legislative and regulatory treatment of Washington wine in markets everywhere;
- (6) Foster economic conditions favorable to investment in the production of vinifera grapes and Washington wine;
- (7) Advance knowledge and practice of production of wine grapes in this state;
- (8) Discover and develop new and improved vines for the reliable and economical production of wine grapes in the state; and
- (9) Advance knowledge and practice of the processing of wine grapes in the state. [1987 c 452 § 9.]

15.88.100 Commission members' votes weighted—Exception. (1) Except as provided in subsection (2) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be twelve votes. The vote of position one shall be equal to the lesser of the following: Six and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsection (1) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [2003 c 396 § 41; 1988 c 254 § 14; 1987 c 452 § 10.]

Additional notes found at www.leg.wa.gov

15.88.120 List of growers of vinifera grapes—Reporting system. (1) The commission shall cause a list to be prepared of all Washington growers from any information available from the department, growers' association, or wine producers. This list shall contain the names and addresses of all persons who grow vinifera grapes for sale or use by wine producers within this state and the amount (by tonnage) of vinifera grapes produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected

and brought up-to-date in accordance with evidence and information available to the commission on or before December 31st of each year. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this chapter, deemed to be the list of all growers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the vinifera grape growers in this state are reporting quantities of vinifera grapes grown and subject to the assessment as provided in RCW 15.88.130. [1988 c 257 § 1.]

15.88.130 Annual assessment on harvested vinifera grapes—Approval by referendum—Rules. (1) Pursuant to approval by referendum in accordance with RCW 15.88.140, commencing on July 1, 1989, there shall be levied, and the commission shall collect, upon all vinifera grapes grown within this state an annual assessment of three dollars per ton of vinifera grapes harvested to be paid by the grower of the grapes.

(2) The commission shall recommend rules to the director prescribing the time, place, and method for payment and collection of this assessment. For such purpose, the commission may recommend that the director, by rule, require the wine producers or handlers within this state to collect the grower assessments from growers whose vinifera grapes they purchase or accept delivery and remit the assessments to the commission, and provide for collecting assessments from growers who ship directly out of state.

(3) After considering any recommendations made under subsection (2) of this section, the director shall adopt rules, in accordance with chapter 34.05 RCW, prescribing the time, place, and method for the payment and collection of the assessment levied under this section and approved under RCW 15.88.140. [1988 c 257 § 2.]

15.88.140 Referendum determining grower participation—Effect. (1) For purposes of determining grower participation in the commission and assessment under RCW 15.88.130, the director shall conduct a referendum among all vinifera grape growers within the state. The requirements of assent or approval of the referendum will be held to be complied with if: (a) At least fifty-one percent by numbers of growers replying in the referendum vote affirmatively or at least fifty-one percent by acreage of those growers replying in the referendum vote affirmatively; and (b) thirty percent of all vinifera grape growers and thirty percent by acreage have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted on or before September 15, 1988.

(2) If the director determines that the requisite assent has been given, the director shall direct the commission to put into force the assessment in RCW 15.88.130.

(3) If the director determines that the requisite assent has not been given, the director shall direct the commission not to levy the assessment provided in RCW 15.88.130. If the requisite assent has not been given, the commission shall not continue to specifically foster the interests of vinifera grape growers. [1988 c 257 § 3.]

15.88.150 Deposit of moneys. The commission shall deposit moneys collected under RCW 15.88.130 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. None of the provisions of RCW 43.01.050 apply to this account or to the moneys received, collected, or expended as provided in RCW 15.88.120 through 15.88.160. [1988 c 257 § 4.]

15.88.160 Assessment constitutes debt—Penalty for nonpayment—Civil action. A due and payable assessment levied in such specified amount as determined by the commission under RCW 15.88.130 constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any such due and payable assessment or other such sum, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [1988 c 257 § 5.]

15.88.170 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 219; 2002 c 313 § 70.]

Additional notes found at www.leg.wa.gov

15.88.180 Funding staff support—Rules—Costs of implementing RCW 15.88.073. (1) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director.

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(2) The costs incurred by the department associated with the implementation of RCW 15.88.073 shall be paid for by the commission. [2003 c 396 § 44; 2002 c 313 § 76.]

Additional notes found at www.leg.wa.gov

15.88.190 Commission must assist legislative gift center—Selection of Washington wines. The commission must assist the legislative gift center in selecting the Washington wines the legislative gift center will sell as provided in RCW 44.73.015. [2009 c 228 § 4.]

Findings—Intent—2009 c 228: See note following RCW 66.12.195.

15.88.900 Construction—1987 c 452. This act shall be liberally construed to effectuate its purposes. [1987 c 452 § 19.]

15.88.901 Effective dates—1987 c 452. (1) Sections 1 through 9 and 11 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

(2) Section 10 of this act shall take effect July 1, 1989. [1987 c 452 § 21.]

Chapter 15.89 RCW

WASHINGTON BEER COMMISSION

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15.89.160	Enforcement.
15.89.170	Prosecution—Enforcement by superior courts.
15.89.900	Construction—2006 c 330.

15.89.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy;

(2) The sale in this state and export to other states and abroad of beer made in this state contribute substantial benefits to the economy of the state and provide a large number of jobs and sizeable tax revenues;

(3) The production of beer in this state is a new and important segment of Washington agriculture that has poten-

tial for greater contribution to the economy of the state if it undergoes continued development; and

(4) The general welfare of the people of this state will be served by continued development of the activities of the production of beer, that will improve the tax bases of local communities where agricultural land and processing facilities are located, and reduce the need for state and federal funding of local services. The industries are therefore affected with the public interest. [2006 c 330 § 1.]

15.89.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beer" means any malt beverage or malt liquor as the terms are defined in chapter 66.04 RCW.

(2) "Commission" means the Washington beer commission.

(3) "Department" means the department of agriculture.

(4) "Director" means the director of the department or the director's duly authorized representative.

(5) "Fiscal year" means the twelve-month period beginning with January 1st of any year and ending December 31st.

(6) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington.

(7) "Referendum" means a vote by producers that is conducted by secret ballot. [2011 c 54 § 1; 2006 c 330 § 2.]

15.89.025 Regulating beer—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involve the beer industry. In order to develop and promote beer as part of an existing comprehensive scheme to regulate those products, the legislature declares that:

(1) It is vital to the continued economic well-being of the citizens of this state and their general welfare that beer produced in Washington state be properly promoted;

(2) It is in the overriding public interest that support for the Washington beer industry be clearly expressed and that beer be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beer;

(c) Increase the knowledge of the qualities and value of Washington's beer; and

(d) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beer;

(3) This chapter is enacted in the exercise of the police powers of this state to protect the health, peace, safety, and general welfare of the people of this state; and

(4) The production and marketing of beer is a highly regulated industry and this chapter and the rules adopted under it are only one aspect of the regulated industry. Other laws applicable to the beer industry include:

(a) The organic products act, chapter 15.86 RCW;

(b) The food safety and security act under chapter 15.130 RCW;

(c) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;

(d) Weights and measures, chapter 19.94 RCW;

(e) Title 66 RCW, alcoholic beverage control;

(f) 21 C.F.R. as it relates to general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(g) Chapter 69.07 RCW, Washington food processing act;

(h) 27 U.S.C. Secs. 201 through 211, 213 through 219a, and 122A;

(i) 27 C.F.R. Parts 1, 6, 9, 10, 12, 16, 240, 251, and 252; and

(j) Rules under Title 314 WAC. [2018 c 236 § 709; 2011 c 103 § 31; 2006 c 330 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.89.030 Washington beer commission created—Composition. (1) Subject to the referendum conducted under RCW 15.89.040, there is created an agricultural commodity commission, to be known as the Washington beer commission. The commission shall be comprised of seven voting members; six members shall be producers and one voting member shall be the director.

(2) Five voting members of the commission constitute a quorum for the transaction of any commission business.

(3) Each producer member shall be a citizen and resident of this state and over the age of twenty-one. Each producer member must be engaged in producing beer, and must, during his or her term of office, derive a substantial portion of income from the production of beer, or have a substantial investment in the production of beer as an owner, lessee, partner, or the manager or executive officer of such a corporation. No more than one board member may be part of the same person as defined by RCW 15.04.010. These qualifications apply throughout each member's term of office but do not apply to the director.

(4) The producer members shall serve three-year terms. Of the initial voting members, two members shall be appointed for a one-year term, two members shall be appointed for a two-year term, and two members shall be appointed for a three-year term. [2006 c 330 § 4.]

15.89.040 Director's duties—Referendum of beer producers. (1) Upon receipt of a petition containing the signatures of five beer producers from a statewide Washington state craft brewing trade association or from other producers to implement this chapter and to determine producer participation in the commission and assessment under this chapter, the director shall:

(a) Conduct a referendum of beer producers. The requirements of assent or approval of the referendum are met if:

(i) At least fifty-one percent by numbers of producers participating in the referendum vote affirmatively; and

(ii) Thirty percent of the producers and thirty percent of the production have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted within sixty days of receipt of the petition; and

(b) Establish a list of beer producers from information provided by the petitioners, by obtaining information on beer producers from applicable producer organizations or associations or other sources identified as maintaining the information. In establishing a current list of beer producers and their individual production, the director shall use the beer producer's name, mailing address, and production by the producer in the preceding fiscal year. Information on each producer shall be mailed to each beer producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of producers after assent in a referendum as provided in this section.

(2) If the director determines that the requisite assent has been given in the referendum conducted under subsection (1) of this section, the director shall:

(a) Within sixty days after assent of the referendum held, appoint the members of the commission; and

(b) Direct the commission to put into force the assessment as provided for in RCW 15.89.110.

(3) If the director determines that the requisite assent has not been given in the referendum conducted under subsection (1) of this section, the director shall take no further action to implement or enforce this chapter.

(4) Upon completion of the referendum conducted under subsection (1) of this section, the department shall tally the results of the vote and provide the results to producers. If a producer disputes the results of a vote, that producer within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount. Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed.

(5) Before conducting the referendum provided for in subsection (1) of this section, the director may require the petitioners to deposit with him or her an amount of money as the director deems necessary to defray the expenses of conducting the referendum. The director shall provide the petitioners an estimate of expenses that may be incurred to conduct a referendum before any service takes place. Petitioners shall deposit funds with the director to pay for expenses incurred by the department. The commission shall reimburse petitioners the amount paid to the department when funds become available. However, if for any reason the referendum process is discontinued, the petitioners shall reimburse the department for expenses incurred by the department up until the time the process is discontinued.

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period. [2011 c 54 § 2; 2006 c 330 § 5.]

15.89.050 Appointment of members—Terms, travel expenses. (1) The director shall appoint the producer members of the commission. In making appointments, no later than ninety days before an expiration of a commission member's term, the director shall call for recommendations for commission member positions, and the director shall take

into consideration recommendations made by a statewide Washington state craft brewing trade association or other producers. In appointing persons to the commission, the director shall seek a balanced representation on the commission that reflects the composition of the beer producers throughout the state on the basis of beer produced and geographic location. Information on beer production by geographic location shall be provided by the commission upon the director's request.

(2) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the commission shall notify the director and the unexpired term shall immediately be filled by appointment by the director.

(3) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2011 c 54 § 3; 2006 c 330 § 6.]

15.89.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity. Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members. The liability of the commission members shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commission members have been and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW. [2006 c 330 § 7.]

15.89.070 Commission powers and duties. The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, 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;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the *liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.19 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the *liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2015 c 225 § 13; 2011 c 103 § 16; 2011 c 60 § 3; 2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

**Reviser's note:* The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.89.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, promotion, and education programs related to beer; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing of beer may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning beer.

(3) The commission, before 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 on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2006 c 330 § 9.]

15.89.075 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by

the director, to speak on behalf of the Washington state government with regard to the marketing and promotion of Washington produced beer. [2006 c 330 § 10.]

15.89.080 Research, promotional, and educational campaign. The commission may create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account this information in the discharge of its duties under this chapter. [2006 c 330 § 11.]

15.89.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign goals that serve the needs of producers. The goals may include efforts to:

- (1) Establish Washington beer as a major factor in markets everywhere;
- (2) Promote Washington breweries as tourist attractions;
- (3) Encourage favorable reporting of Washington beer and breweries in the press throughout the world;
- (4) Establish Washington beer in markets everywhere as a major source of premium beer;
- (5) Encourage favorable legislative and regulatory treatment of Washington beer in markets everywhere;
- (6) Encourage promotion of Washington agriculture related to beer production, specifically hops, malting barley, and wheat grown in the state; and
- (7) Foster economic conditions favorable to investment in the production of Washington beer. [2006 c 330 § 12.]

15.89.100 List of producers of beer—Reporting system. (1) The commission shall prepare a list of all producers from information available from the *liquor control board, the department, or the producers' association. This list must contain the names and addresses of producers within this state and the amount, by barrelage, of beer produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission by December 31st of each year. For the purposes of giving notice and holding referendums, the list updated before the date for issuing notices or ballots is the list of all producers entitled to notice, to assent or dissent, or to vote. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter.

(2) It is the responsibility of producers to ensure that their correct address is filed with the commission. It is also the responsibility of producers to submit production data to the commission as prescribed by this chapter.

(3) The commission shall develop a reporting system to document that the producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110. [2011 c 54 § 4; 2006 c 330 § 13.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

(2018 Ed.)

15.89.110 Annual assessment on beer production—Approval by referendum—Rules. (1) Pursuant to referendum in accordance with RCW 15.89.040, there is levied, and the commission shall collect, upon beer produced by a producer, an annual assessment of ten cents per barrel of beer produced, up to ten thousand barrels per location.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of this assessment and provide for the collection of assessments from producers who ship directly out-of-state.

(3) The commission may reduce the assessment per producer based upon in-kind contributions to the commission. [2011 c 54 § 5; 2006 c 330 § 14.]

15.89.120 Deposit of money. The commission shall deposit money collected under RCW 15.89.110 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. RCW 43.01.050 does not apply to this account or to the money received, collected, or expended as provided in this chapter. [2006 c 330 § 15.]

15.89.130 Assessment constitutes debt—Penalty for nonpayment—Civil action. An assessment levied in an amount determined by the commission under RCW 15.89.110 constitutes a personal debt of every person assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a producer fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay an assessment, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [2006 c 330 § 16.]

15.89.140 Certain records exempt from public disclosure—Exceptions. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement

of the manner of the violation by that person. [2006 c 330 § 17.]

15.89.150 Costs—Funding staff support—Rules. (1) All costs incurred by the department, including the adoption of rules and other actions necessary to carry out this chapter, shall be reimbursed by the commission.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2006 c 330 § 18.]

15.89.160 Enforcement. County and state law enforcement officers, the *liquor control board and its enforcement agents, and employees of the department shall enforce this chapter. [2006 c 330 § 19.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

15.89.170 Prosecution—Enforcement by superior courts. (1) Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The superior courts may enforce this chapter and the rules and regulations of the commission issued hereunder, and may prevent and restrain violations thereof. [2006 c 330 § 20.]

15.89.900 Construction—2006 c 330. This act shall be liberally construed to effectuate its purposes. [2006 c 330 § 21.]

Chapter 15.92 RCW

CENTER FOR SUSTAINING AGRICULTURE AND NATURAL RESOURCES

Sections

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15.92.005 Finding. The legislature finds that public concerns are increasing about the need for significant efforts

to develop sustainable systems in agriculture. The sustainable systems would address many anxieties, including the erosion of agricultural lands, the protection and wise utilization of natural resources, and the safety of food production. Consumers have demonstrated their apprehension in the marketplace by refusing to purchase products whose safety is suspect and consumer confidence is essential for a viable agriculture in Washington. Examples of surface and ground water contamination by pesticides and chemical fertilizers raise concerns about deterioration of environmental quality. Reducing soil erosion would maintain water quality and protect the long-term viability of the soil for agricultural productivity. Both farmers and farm labor are apprehensive about the effects of pesticides on their health and personal safety. Development of sustainable farming systems would strengthen the economic viability of Washington's agricultural production industry.

Public anxieties over the use of chemicals in agriculture have resulted in congress amending the federal insecticide, fungicide and rodenticide act which requires all pesticides and their uses registered before November 1984 to be reregistered, complying with present standards, by the end of 1997. The legislature finds that the pesticide reregistration process and approval requirements could reduce the availability of chemical pesticides for use on minor crops in Washington and may jeopardize the farmers' ability to grow these crops in Washington.

The legislature recognizes that Washington State University supports research and extension programs that can lead to reductions in pesticide use where viable alternatives are both environmentally and economically sound. Yet, the legislature finds that a focused and coordinated program is needed to develop possible alternatives, increase public confidence in the safety of the food system, and educate farmers and natural resource managers on land stewardship.

The legislature further finds that growers, processors, and agribusiness depend upon pesticide laboratories associated with manufacturers, regional universities, state departments of agriculture, and the United States department of agriculture to provide residue data for registering essential pesticides. The registration of uses for minor crops, which include vegetables, fruits, nuts, berries, nursery and greenhouse crops, and reregistration of needed chemicals, are activities of particular concern to ensure crop production. Furthermore, public demands for improved information and education on pesticides and risk assessment efforts justify these efforts.

The legislature further finds that multiple alternatives are needed for pest control, including programs for integrated pest management, genetic resistance to pests, biological control, cultural practices, and the use of appropriate approved chemicals. [1991 c 341 § 1.]

15.92.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including but not limited to, products qualifying as organic products under chapter 15.86 RCW, private sector cultured aquatic products as defined in

RCW 15.85.020, bees and honey, and Christmas trees but not including timber or timber products.

(2) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(3) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological, cultural, and chemical, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(4) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(5) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(6) "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.

(7) "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including, but not limited to, a use for a special local need.

(8) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(9) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(10) "Registration" means use of a pesticide approved by the state department of agriculture.

(11) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life. [2011 c 103 § 32; 1995 c 390 § 4; 1991 c 341 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

15.92.020 Center established. A center for sustaining agriculture and natural resources is established at Washington State University. The center shall provide statewide leadership in research, extension, and resident instruction programs to sustain agriculture and natural resources. [1991 c 341 § 3.]

15.92.030 Primary activities—Cooperative with University of Washington. The center is to work cooperatively with the University of Washington to maximize the use of financial resources in addressing forestry issues. The center's primary activities include but are not limited to:

(1) Research programs which focus on developing possible alternative production and marketing systems through:

- (a) Integrated pest management;
 - (b) Biological pest control;
 - (c) Plant and animal breeding;
 - (d) Conservation strategies; and
 - (e) Understanding the ecological basis of nutrient management;
- (2) Extension programs which focus on:
- (a) On-farm demonstrations and evaluation of alternative production practices;
 - (b) Information dissemination, and education concerning sustainable agriculture and natural resource systems; and
 - (c) Communication and training on sustainable agriculture strategies for consumers, producers, and farm and conservation-related organizations;
- (3) On-farm testing and research to calculate and demonstrate costs and benefits, including economic and environmental benefits and trade-offs, inherent in farming systems and technologies;
- (4) Crop rotation and other natural resource processes such as pest-predator interaction to mitigate weed, disease, and insect problems, thereby reducing soil erosion and environmental impacts;
- (5) Management systems to improve nutrient uptake, health, and resistance to diseases and pests by incorporating the genetic and biological potential of plants and animals into production practices;
- (6) Soil management, including conservation tillage and other practices to minimize soil loss and maintain soil productivity; and
- (7) Animal production systems emphasizing preventive disease practices and mitigation of environmental pollution. [1991 c 341 § 4.]

15.92.040 Administrator. The center is managed by an administrator. The administrator shall hold a joint appointment as an assistant director in the Washington State University agricultural research center and cooperative extension.

(1) A committee shall advise the administrator. The dean of the Washington State University college of agriculture and home economics shall make appointments to the advisory committee so the committee is representative of affected groups, such as the Washington department of social and health services, the Washington department of ecology, the Washington department of agriculture, the chemical and fertilizer industry, food processors, marketing groups, consumer groups, environmental groups, farm labor, and natural resource and agricultural organizations.

(2) Each appointed member shall serve a term of three years, and one-third are appointed every year. The entire committee is appointed the first year: One-third for a term of one year, one-third for a term of two years, and one-third for a term of three years. A member shall continue to serve until a successor is appointed. Vacancies are filled by appointment for the unexpired term. The members of the advisory committee shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the committee as provided in RCW 43.03.050 and 43.03.060.

(3) It is the responsibility of the administrator, in consultation with the advisory committee, to:

(a) Recommend research and extension priorities for the center;

(b) Conduct a competitive grants process to solicit, review, and prioritize research and extension proposals; and

(c) Advise Washington State University on the progress of the development and implementation of research, teaching, and extension programs that sustain agriculture and natural resources of Washington. [1991 c 341 § 5.]

15.92.050 Food and environmental quality laboratory. A food and environmental quality laboratory operated by Washington State University is established in the Tri-Cities area to conduct pesticide residue studies concerning fresh and processed foods, in the environment, and for human and animal safety. The laboratory shall cooperate with public and private laboratories in Washington, Idaho, and Oregon. [1991 c 341 § 6.]

15.92.060 Laboratory responsibilities. The responsibilities of the laboratory shall include:

(1) Evaluating regional requirements for minor crop registration through the federal IR-4 program;

(2) Providing a program for tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses in this state;

(3) Conducting studies on the fate of pesticides on crops and in the environment, including soil, air, and water;

(4) Improving pesticide information and education programs;

(5) Assisting federal and state agencies with questions regarding registration of pesticides which are deemed critical to crop production, consistent with priorities established in RCW 15.92.070; and

(6) Assisting in the registration of biopesticides, pheromones, and other alternative chemical and biological methods. [1995 c 390 § 5; 1991 c 341 § 7.]

15.92.070 Board to advise laboratory. The laboratory is advised by a board appointed by the dean of the Washington State University college of agriculture and home economics. The dean shall cooperate with appropriate officials in Washington, Idaho, and Oregon in selecting board members.

(1) The board shall consist of one representative from each of the following interests: A human toxicologist or a health professional knowledgeable in worker exposure to pesticides, the Washington State University vice-provost for research or research administrator, representatives from the state department of agriculture, the department of ecology, the department of health, the department of labor and industries, privately owned Washington pesticide analytical laboratories, federal regional pesticide laboratories, an Idaho and Oregon laboratory, whether state, university, or private, a chemical and fertilizer industry representative, farm organizations, food processors, marketers, farm labor, environmental organizations, and consumers. Each board member shall serve a three-year term. The members of the board shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the board as provided in RCW 43.03.050 and 43.03.060.

(2) The board is in liaison with the pesticide incident reporting and tracking panel and shall review the chemicals

investigated by the laboratory according to the following criteria:

(a) Chemical uses for which a database exists on environmental fate and acute toxicology, and that appear safer environmentally than pesticides available on the market;

(b) Chemical uses not currently under evaluation by public laboratories in Idaho or Oregon for use on Washington crops;

(c) Chemicals that have lost or may lose their registration and that no reasonably viable alternatives for Washington crops are known; and

(d) Other chemicals vital to Washington agriculture.

(3) The laboratory shall conduct research activities using approved good laboratory practices, namely procedures and recordkeeping required of the national IR-4 minor use pesticide registration program.

(4) The laboratory shall coordinate activities with the national IR-4 program. [2010 1st sp.s. c 7 § 133; 1991 c 341 § 8.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

15.92.080 Annual report—Acceptable risk of human and environmental exposure. The center for sustaining agriculture and natural resources at Washington State University shall prepare and present an annual report to the appropriate legislative committees. The report shall include the center's priorities to find alternatives to the use of agricultural chemicals that pose human and environmental risks. The first report, due no later than November 1, 1992, shall use federal criteria of acceptable risk of human and environmental exposure for establishing such priorities and for conducting responsive research and education programs. For each subsequent year, the report shall detail the center's progress toward meeting the goals identified in the center's plan. [1991 c 341 § 9.]

15.92.090 Commission on pesticide registration—Established—Composition—Duration of membership—Compensation. (1) A commission on pesticide registration is established. The commission shall be composed of twelve voting members appointed by the director as follows:

(a) Eight members from the following segments of the state's agricultural industry as nominated by a statewide private agricultural association or agricultural commodity commission formed under Title 15 RCW: (i) The tree fruit industry; (ii) hop growers; (iii) potato growers; (iv) wheat growers; (v) vegetable and seed growers; (vi) berry growers; (vii) wine grape growers; and (viii) the nursery and landscape industry. Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One member from each of the following: (i) Forest protection industry; (ii) food processors; (iii) agricultural chemical industry; and (iv) professional pesticide applicators. One member shall be appointed for each such segment of the industry and shall be nominated by a statewide, private association of that segment of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

The following shall be ex officio, nonvoting members of the commission: The coordinator of the interregional project number four at Washington State University; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

(2) Each voting member of the commission shall serve a term of three years. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the director during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

(3) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the quorum. [2011 1st sp.s. c 21 § 24; 1999 c 247 § 1; 1995 c 390 § 1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

15.92.095 Commission on pesticide registration—State appropriations—Restrictions on use of state money—Commission approval required. (1) This subsection applies to the use of state appropriations made to or legislatively intended for the commission on pesticide registration and to any other moneys appropriated by the state and received by the commission on pesticide registration:

(a) The moneys may not be expended without the express approval of the commission on pesticide registration;

(b) The moneys may be used for: (i) Evaluations, studies, or investigations approved by the commission on pesticide registration regarding the registration or reregistration of pesticides for minor crops or minor uses or regarding the availability of pesticides for emergency uses. These evaluations, studies, or investigations may be conducted by the food and environmental quality laboratory or may be secured by the commission from other qualified laboratories, researchers, or contractors by contract, which contracts may include, but are not limited to, those purchasing the use of proprietary information; (ii) evaluations, studies, or investigations approved by the commission regarding research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs; (iii) the tracking system described in RCW 15.92.060; and (iv) the support of the commission on pesticide registration and its activities; and

(c) Not less than twenty-five percent of such moneys shall be dedicated to studies or investigations concerning the registration or use of pesticides for crops that are not among

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the top twenty agricultural commodities in production value produced in the state, as determined annually by the Washington agricultural statistics service.

(2) The commission on pesticide registration shall establish priorities to guide it in approving the use of moneys for evaluations, studies, and investigations under this section. Each biennium, the commission shall prepare a contingency plan for providing funding for laboratory studies or investigations that are necessary to pesticide registrations or related processes that will address emergency conditions for agricultural crops that are not generally predicted at the beginning of the biennium. [1999 c 247 § 2; 1995 c 390 § 2.]

15.92.100 Commission on pesticide registration—Duties. The commission on pesticide registration shall:

(1) Provide guidance to the food and environmental quality laboratory established in RCW 15.92.050 regarding the laboratory's studies, investigations, and evaluations concerning the registration of pesticides for use in this state for minor crops and minor uses and concerning the availability of pesticides for emergency uses;

(2) Encourage agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides and research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs for minor crops and minor uses that would benefit the organizations;

(3) Provide guidance to the laboratory regarding a program for: Tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses; providing this information to organizations of agricultural producers; and maintaining close contact between the laboratory, the department of agriculture, and organizations of agricultural producers regarding the need for research to support the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses;

(4) Ensure that the activities of the commission and the laboratory are coordinated with the activities of other laboratories in the Pacific Northwest, the United States department of agriculture, and the United States environmental protection agency to maximize the effectiveness of regional efforts to assist in the registration of pesticides for minor crops and minor uses and in providing for the availability of pesticides for emergency uses for the region and the state; and

(5) Ensure that prior to approving any residue study that there is written confirmation of registrant support and willingness or ability to add the given minor crop to its label including any restrictions or guidelines the registrant intends to impose. [1999 c 247 § 3; 1995 c 390 § 3.]

15.92.105 Commission on pesticide registration—Report on activities—Review by legislature. By December 15, 2002, the commission shall file with the legislature a report on the activities supported by the commission for the period beginning on July 23, 1995, and ending on December 1, 2002. The report shall include an identification of: The priorities that have been set by the commission; the state appropriations made to Washington State University that have been within the jurisdiction of the commission; the evaluations, studies, and investigations funded in whole or in part

by such moneys and the registrations and uses of pesticides made possible in large part by those evaluations, studies, and investigations; the matching moneys, in-kind services, and materials provided by agricultural organizations for those evaluations, studies, and investigations; and the program or programs for tracking pesticide availability provided by the laboratory under the guidance of the commission and the means used for providing this information to organizations of agricultural producers.

During the regular session of the legislature in the year 2003, the appropriate committees of the house of representatives and senate shall evaluate the effectiveness of the commission in fulfilling its statutory responsibilities. [1995 c 390 § 6.]

15.92.110 Commission on pesticide registration—Receipt of gifts, grants, and endowments. The commission on pesticide registration, and Washington State University on behalf of the commission, may receive such gifts, grants, and endowments from public or private sources as may be used from time to time, in trust or otherwise, for the use and benefit of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1995 c 390 § 7.]

Chapter 15.100 RCW

FOREST PRODUCTS COMMISSION

Sections

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15.100.010 Finding. The legislature finds that the creation of a forest products commission would assist in expanding the state's economy, because:

(1) Marketing is a dynamic and changing part of the Washington forest products industry and a vital element in expanding the state economy;

(2) The sale in the state and export to other states and abroad of forest products made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and are key components of the health of many local communities because

many secondary businesses are largely dependent on the health of the forest products industry; and

(3) Forest products are made from a renewable resource and are more environmentally sound than many alternative products. [2001 c 314 § 1.]

15.100.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the forest products commission.

(2) "Department" means the department of agriculture.

(3) "Director" means the director of the department of agriculture or the director's authorized representative.

(4) "Forest products" or "timber" means trees of any species maintained for eventual harvest whether planted or of natural growth, standing or down, on privately or publicly owned land, and also includes wood products related thereto, but does not include Christmas trees or other trees on which the timber excise tax provided under chapter 84.33 RCW is not imposed.

(5) "Person" includes any individual, corporation, firm, partnership, trust, association, or any other organization of individuals.

(6) "Producer" means any person who harvests timber in Washington state and pays the timber excise tax imposed under chapter 84.33 RCW on at least two million board feet in a calendar year or in four consecutive calendar quarters.

(7) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(8) "Western Washington" means that portion of the state lying west of the Cascade mountain range. [2001 c 314 § 2.]

15.100.030 Washington forest products commission—Created—Membership—Quorum—Terms. (1)(a) There is created a commodity commission to be known and designated as the Washington forest products commission. The commission is composed of nine voting members. The commission may, in its sole discretion, add or remove non-voting ex officio members to the commission. Of the members, six shall be from western Washington, and three shall be from eastern Washington. After the initial election of commission members, however, if a position cannot be filled by a member from eastern Washington within sixty days from the date on which nominations may first be received because of a lack of candidates, the position may be filled by a member from western Washington. Under no circumstances will there be less than two board members from eastern Washington. If a position was filled by a member from western Washington because of a lack of candidates from eastern Washington, and districts are not used for the nomination and election of members, then a person from eastern Washington must fill the next available vacancy or open position at the next election to bring the number of representatives from eastern Washington up to three members. All members shall be elected by the entire group of producers unless the commission creates districts for the members as authorized in RCW 15.100.050. If districts are used for the nomination and election of commission members, and it does not appear that one of the positions from eastern Washington will be filled because of a lack of

candidates, then a commission member who resides in western Washington must be elected by the entire group of producers as an at large member. The position of the western Washington member who is elected as an at large member shall be filled by a member from eastern Washington at the expiration of the term of the at large member. If districts are not used for the nomination and election of members, the commission shall strive to achieve representation on the commission from the different geographic regions of the state.

(b) Of the six members from western Washington, three members must have annual harvests of more than seventy-five million board feet, and three members must have annual harvests between two million board feet and seventy-five million board feet.

(c) Of the two members from eastern Washington, one member must have an annual harvest greater than forty million board feet, and one member must have an annual harvest between two million board feet and forty million board feet. If there is a third member from eastern Washington, the only harvest requirement is that the member have an annual harvest of at least two million board feet.

(2) The members must be citizens and residents of this state, and over the age of twenty-one years. Each member must currently, and for the five years last preceding his or her election, be actually engaged in producing forest products within the state of Washington, either individually or as an officer of a corporation, firm, partnership, trust, association, or business organization at the level of production required to qualify as a producer. Each member must also derive a substantial amount of his or her income from the production of forest products. The qualifications set forth in this section apply throughout each member's term of office.

(3) No more than one member of the commission may be employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, trust, association, or business organization.

(4) Five voting members of the commission constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

(5) The regular term of office of the members is four years from November 1st following their election and until their successors are elected and qualified. However, the first terms of the members elected in the initial November 1st election is as follows: Positions one, four, and seven terminate on November 1st, two years after the initial election is held; positions two, five, and eight terminate on November 1st, three years after the initial election is held; and positions three, six, and nine terminate on November 1st, four years after the initial election is held. [2002 c 251 § 2; 2001 c 314 § 3.]

15.100.040 Initial meeting—Nominations for initial election of members—Subsequent efforts when approval not given. (1) The director shall call the initial meeting of producers of forest products for the purpose of nominating their respective members of the commission after receiving notice from an association representing producers of forest products that substantial interest exists in forming a forest products commission. Public notice of the meeting shall be given by the director in the manner the director determines is appropriate. A producer may on his or her own motion file his

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or her name with the director for the purpose of receiving notice of the meeting. The nonreceipt of the notice by any interested person does not invalidate the proceedings.

(2) Prior to the nomination of commission members, the department of revenue shall provide the director with a list of all qualified producers within the state based upon tax records of the department.

(3) For the initial election of commission members, any qualified producer may be nominated orally for a commissioner position at the meeting convened by the director. Nominations may also be made within five days prior to the meeting by a written petition filed with the department, signed by at least five producers who reside in the state. If the director determines that one of the positions from eastern Washington will go unfilled because of a lack of candidates, the director shall announce that this position shall be filled by a member from western Washington. If the position designated for eastern Washington is filled by a member from western Washington because of a lack of candidates from eastern Washington, this position shall be designated as position number seven by the director for purposes of RCW 15.100.030(5). Under no circumstances will there be less than two board members from eastern Washington.

(4) The initial members of the commission shall be elected by secret mail ballot under the supervision of the director at the same time the referendum is submitted under RCW 15.100.120 calling for the creation of the commission and the imposition of the initial assessment. 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 the position receiving the largest number of votes.

(5) If the director determines under RCW 15.100.120(3) that the requisite approval for the establishment of a commission has not been given, any subsequent efforts to create a commission must follow the procedures established under this chapter for the initial nomination and election of members. [2002 c 251 § 3; 2001 c 314 § 4.]

15.100.043 Costs of proceeding to form a commission—Reimbursement. The association responsible for giving the director notice under RCW 15.100.040 that substantial interest exists in forming a forest products commission shall reimburse the department for its costs associated with conducting a proceeding to initiate a commission under RCW 15.100.040 and 15.100.120. If the necessary approval is received for the creation of a commission, the commission shall reimburse the association for the costs paid to the department when funds become available. [2002 c 251 § 4.]

15.100.050 After initial election of members—Rules—Annual meetings—Public notice. (1) After the initial election of commission members, the commission shall establish rules for electing commission members, including the method used for notification, nominating, and voting. The commission may create commission districts and boundaries, and may also establish a weighted voting procedure for election of commission members. The commission shall hold its annual meeting during the month of October each year for the purpose of nominating commission members and the transaction of other business. Public notice of the meeting shall be

given by the commission in the manner it determines is appropriate. A producer may on his or her own motion file his or her name with the commission for the purpose of receiving notice of the meeting. The nonreceipt of the notice by any interested person does not invalidate the proceedings.

(2) Prior to the nomination of commission members, the department of revenue shall provide the commission with a list of all qualified producers within the state based upon tax records of the department. [2001 c 314 § 5.]

15.100.060 Vacancies—Compensation. (1) In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, the position until the next annual meeting shall be filled by vote of the remaining members of the commission. At the annual meeting a commissioner shall be elected to fill the balance of the unexpired term.

(2) Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when on official commission business. [2001 c 314 § 6.]

15.100.070 Obligations of commission—Limitations on liabilities or claims—State—Individual capacity. Obligations incurred by the commission and liabilities or claims against the commission may be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, may not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. A person or employee may not be held responsible individually for any act or omission of any other members of the commission. [2001 c 314 § 7.]

15.100.080 Powers and duties of commission. The powers and duties of the commission include:

(1) To elect a chair and such officers as the commission deems advisable. The commission shall adopt rules for its own governance, which provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To adopt any rules necessary to carry out the purposes of this chapter, in conformance with chapter 34.05 RCW;

(3) To administer and do all things reasonably necessary to carry out the purposes of this chapter;

(4) At the pleasure of the commission, to employ a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission;

(5) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(6) To engage directly or indirectly in the promotion of Washington forest products and managed forests, and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of forest products, or of research related to such marketing, advertising, or sale of forest products, or of research related to managed forests;

(7) To enforce the provisions of this chapter, including investigating and prosecuting violations of this chapter;

(8) To acquire and transfer personal and real property, establish offices, incur expense, and enter into contracts. Contracts for creation and printing of promotional literature are not subject to chapter 43.19 RCW, but such contracts may be canceled by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(9) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(10) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(11) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(12) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission, or other entity for the purpose of promoting the general welfare of the forest products industry and particularly for the purpose of assisting in the sale and distribution of Washington forest products in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington forest products in domestic or foreign commerce, and employing and paying for vendors of professional services of all kinds;

(13) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(14) To propose assessment levels for producers subject to referendum approval under RCW 15.100.110; and

(15) To participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation, production, manufacture, distribution, sale, or use of forest products. [2015 c 225 § 14; 2010 c 8 § 6115; 2001 c 314 § 8.]

15.100.090 Research, promotional, and educational campaigns. The commission shall create, provide for, and conduct a research, promotional, and educational campaign as sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information obtained in the discharge of its duties under this chapter. [2001 c 314 § 9.]

15.100.100 List of all Washington producers—Confidential—Reporting system for assessment purposes. (1) The commission shall cause a list to be prepared of all Washington producers of forest products from any information available from the commission, producers' association, or producers, including tax records from the department of revenue. This list shall contain the names and addresses of all persons who produce forest products within this state, the amount of forest products produced during the period designated by the commission, and the assessment amount for each member. The list is considered confidential and may be reviewed only by the employees of the commission, except for information that may be disclosed to the public and commission members under subsection (4) of this section. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission on or before December 31st of each year, or as soon thereafter as possible. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this chapter, the list of all producers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the producers of forest products in this state are reporting quantities of forest products produced and subject to the assessment as provided in RCW 15.100.110.

(3) The department of revenue may charge the commission for the reasonable costs of providing reports of harvest activity on a quarterly basis.

(4) Any taxpayer information received by the commission from the department of revenue may only be used for the limited purposes of establishing lists of producers necessary to determine eligibility for voting, eligibility for serving as a commission member, the amount of assessments owed, or other necessary purposes as established by law. Any return or tax information received from the department of revenue may be reviewed only by the employees of the commission. Employees may disclose to the public and commission members a list of commission members, groupings of at least three commission members by the amount of forest products harvested over any time period designated by the commission of at least one quarter, and the members who are eligible for the various positions on the commission. [2001 c 314 § 10.]

15.100.110 Assessment for permanent funding of commission—Adjustments—Referendum. (1) To provide for permanent funding of the forest products commission, an assessment shall be levied by the commission on producers of each species of forest products. The initial rate of assess-

ment that shall be submitted for approval by referendum pursuant to RCW 15.100.120 is fifty-seven cents per thousand board feet. The initial assessment is not effective until approved by a majority of producers as required by RCW 15.100.120.

(2) After the initial assessment rate is approved, the commission may adjust the amount of the assessment within a range of forty-five cents up to ninety cents per thousand board feet. The commission shall submit any proposed increase in the assessment to producers pursuant to the referendum process established in this section, and shall supply all known producers with a ballot for the referendum. The commission shall establish the assessment for the marketing year by January 1st of each year, or as soon thereafter as possible. Assessments may only be used for the purposes and objects of this chapter.

(3) The forest products commission may raise the assessment on forest products in excess of the fiscal growth factor under chapter 43.135 RCW. The assessment limits established by this section are solely to provide prior legislative authority for the purposes of RCW 43.135.055 and are not a limit on the authority of the forest products commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under this section must be made with the procedural requirements established by this chapter for altering such assessments.

(4) The requirement for approval of an assessment is met if: (a) At least fifty-one percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least sixty-one percent of the volume of the producers replying in the referendum; or (b) sixty-five percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least fifty-one percent of the volume of the producers replying in the referendum. An assessment shall only be approved if at least forty percent of the eligible producers participate in the vote. [2001 c 314 § 11.]

15.100.120 Establishment of commission and initial assessment—Statewide referendum among producers.

(1) For purposes of determining producer participation in the commission, the initial election of commissioners, and for imposition of the original assessment specified in RCW 15.100.110, the director shall conduct a referendum among all producers of forest products within the state.

(2) The requirement for approval of the assessment and creation of the commission is met if: (a) At least fifty-one percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least sixty-one percent of the volume of the producers replying in the referendum; or (b) sixty-five percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least fifty-one percent of the volume of the producers replying in the referendum. The referendum shall only be approved if at least forty percent of the eligible producers participate in the vote.

(3) If the director determines that the requisite approval has been given, the director shall declare the establishment of the commission and direct it to put into force the assessment authorized in RCW 15.100.110. If the director finds that the

requisite approval has not been given, then this chapter is not operative. [2001 c 314 § 12.]

15.100.130 Deposit of moneys collected—Appropriation not required. The commission shall deposit moneys collected under RCW 15.100.110 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. RCW 43.01.050 does not apply to this account or to the moneys received, collected, or expended under this chapter. [2001 c 314 § 13.]

15.100.140 Assessment—Personal debt—Payable when called—Failure to pay—Civil action. A due and payable assessment levied in the amount determined by the commission under RCW 15.100.110 constitutes a personal debt of every person so assessed, or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any due and payable assessment or other such sum, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [2001 c 314 § 14.]

15.100.150 Enforcement of chapter. All county and state law enforcement officers shall assist in the enforcement of this chapter. [2001 c 314 § 15.]

15.100.160 Superior courts—Jurisdiction. The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission, and to prevent and restrain violations thereof. [2001 c 314 § 16.]

15.100.900 Construction. This chapter shall be liberally construed to effectuate its purposes. [2001 c 314 § 17.]

Chapter 15.105 RCW

FROM THE HEART OF WASHINGTON PROGRAM

Sections

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15.105.060	Gifts, grants, or endowments.
15.105.901	Effective date—2004 c 26.

15.105.005 Findings. The legislature finds that the support of Washington's agriculture industry and its family farms by the citizens of the state of Washington is beneficial to the economy of the state. The legislature also finds that Washing-

ton farmers produce a variety of wholesome, quality products and are good stewards of the land.

The legislature also finds that the from the heart of Washington program, developed by the Washington state department of agriculture with one-time federal grant moneys, is a valuable tool to convey important messages about Washington agriculture and to encourage Washington citizens to buy Washington-grown and Washington-processed food and agricultural products. With the exhaustion of the one-time federal grant funding, the legislature finds that the program would benefit from a new governance structure that will allow the necessary operational flexibility to enable the program to expand and to encourage private investment in the program, and that the continuance of the program as a private, nonprofit corporation is the best method to achieve these goals.

The legislature further finds that the continuation of the from the heart of Washington program will provide both direct and indirect economic benefits to the people of the state of Washington. [2004 c 26 § 1.]

15.105.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "From the heart of Washington" or "program" means that program created by the department to encourage Washington citizens to purchase Washington food and agricultural products and to promote the value of agriculture and family farms to Washington state.

(2) "Successor organization" means a private, nonprofit corporation created specifically to assume responsibility for carrying out the from the heart of Washington program that is now part of the department. The private, nonprofit corporation must qualify as a tax-exempt, nonprofit corporation under section 501(c) of the federal internal revenue code; the majority of members on its board of directors must be from Washington commodity commissions, nonprofit associations organized for the promotion of Washington agricultural products, and other agricultural industry groups; and the corporation must carry forward with the work of the current program.

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

(4) "Director" means the director of the Washington state department of agriculture.

(5) "Fiscal agent" means the Washington state fruit commission, as a contractor of the department. [2004 c 26 § 2.]

15.105.020 Establishing a private, nonprofit corporation—Duties of successor organization—Debts and other liabilities.

(1) The department may cooperate with other agencies, boards, commissions, and associations in the state of Washington to establish a private, nonprofit corporation for the purpose of carrying out the program. The nonprofit corporation must be organized under chapter 24.03 RCW and has the powers granted under that chapter. However, this chapter does not prohibit the department or other agencies, boards, commissions, and associations from separately continuing to promote Washington products under their existing authorities.

(2) The department may contract with the successor organization to carry out the program. The contract must

require the successor organization to aggressively seek to fund its continued operation from nonstate funding sources.

(3) The successor organization must report to the department each January 1st on the amounts it has secured from both nonstate and state funding sources, its operations, and its programs.

(4) Debts and other liabilities of the successor organization are successor organization debts and liabilities only and may be satisfied only from the resources of the successor organization. The state of Washington is not liable for the debts or liabilities of the successor organization. [2004 c 26 § 3.]

15.105.030 Actions by department to establish a successor organization. In order to accomplish the establishment of a successor organization, the department and its fiscal agent may take all necessary and proper steps, including:

(1) Transferring any equipment, software, database, other assets except the logo of the program, or contracts for services to the successor organization under appropriate terms and conditions, including reasonable compensation deemed appropriate by the department. The department shall retain the right to repossess any property transferred to the successor organization in the event that the successor organization dissolves, becomes bankrupt, insolvent, or is otherwise unable to carry out the program, or if the successor organization fails to comply with any contract with the department. In the event that the department exercises its right to repossess under this section, any property returned to the department becomes the property of the state and is administered by the department;

(2) Unless otherwise provided by agreement, assigning any contracts and other duties and responsibilities to the successor organization related to the program; and

(3) Providing necessary support services to the successor organization under contract for up to a two-year period after the effective date of a contract between a successor organization and the department for the delivery of program services. The successor organization shall provide full reimbursement for all costs of services contracted for under this subsection. [2004 c 26 § 4.]

15.105.040 Board of directors of the successor organization—State membership. (1) The department shall designate one or more persons to serve in the capacity of a member of the board of directors of the successor organization. The state is not liable under any circumstances for the acts of the successor organization, any member of its board of directors, or its employees.

(2) The department may pay an annual membership fee to the successor organization not to exceed the value of services received. [2004 c 26 § 5.]

15.105.050 Program logo. The logo of the program is the property of the department. The department may license the use of the logo to the successor organization and others, as it deems appropriate. The department retains the right to cancel any license to use the logo. [2004 c 26 § 6.]

15.105.060 Gifts, grants, or endowments. The department may receive gifts, grants, or endowments from private

or public sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program. The department may spend or contract with the successor organization to spend the gifts, grants, or endowments or income from the private or public sources according to their terms. [2004 c 26 § 7.]

15.105.901 Effective date—2004 c 26. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 2004]. [2004 c 26 § 10.]

Chapter 15.115 RCW

WASHINGTON GRAIN COMMISSION

Sections

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15.115.010 Legislative declaration. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of wheat and barley produced in Washington is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that wheat and barley produced in Washington are properly promoted by:

(a) Enabling wheat producers and barley producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the grains they produce; and

(b) Working towards stabilizing the agricultural industries by increasing consumption of wheat and barley within the state, the nation, and internationally;

(2) That the wheat and barley industries operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and that includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wheat and barley industries be clearly expressed, that adequate protection be given to the industries and their activities and operations, and that wheat and barley be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's wheat and barley;

(b) Increase the sale and use of Washington state's wheat and barley in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's wheat and barley;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's wheat and barley and wheat and barley products;

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of wheat and barley produced in Washington state;

(4) That the commission is established primarily for the benefit of the people of the state of Washington and its economy. By enacting this chapter, the legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wheat and barley production in Washington and issues related to the wheat and barley industry in Washington; and

(5) That this chapter is enacted in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2009 c 33 § 1.]

15.115.020 Regulations and restraints applicable to the wheat and barley industries. The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

(1) Chapter 15.04 RCW, Washington agriculture general provisions;

(2) Chapter 15.08 RCW, horticultural pests and diseases;

(3) Chapter 15.14 RCW, planting stock;

(4) Chapter 15.49 RCW, seeds;

(5) Chapter 15.54 RCW, fertilizers, minerals, and limes;

(6) Chapter 15.58 RCW, Washington pesticide control act;

(7) Chapter 15.64 RCW, farm marketing;

(8) Chapter 15.83 RCW, agricultural marketing and fair practices;

(9) Chapter 15.86 RCW, organic products;

(10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;

(11) Chapter 17.24 RCW, insect pests and plant diseases;

(12) Chapter 19.94 RCW, weights and measures;

(13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;

(14) Chapter 22.09 RCW, agricultural commodities;

(15) Chapter 43.23 RCW, department of agriculture;

(16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;

(18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act; and

(19) 7 U.S.C., Sec. 1621, agricultural marketing act. [2011 c 103 § 33; 2009 c 33 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.115.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affected area" means the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(2) "Affected producer" means any producer who is subject to this chapter.

(3) "Assessment" means the monetary amount established by the commission in accordance with this chapter.

(4) "Commercial channels" means the sale of wheat or barley for use as food, feed, seed, or any industrial or chemical use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(5) "Commercial quantities" means five hundred or more bushels of wheat or twenty tons of barley produced for market in any calendar year by any producer.

(6) "Commission" means the Washington grain commission.

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

(8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act concerning some matter under this chapter.

(9) "Grain" or "grains" means wheat and barley and includes all kinds and varieties of wheat and barley grown in the state of Washington.

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, mar-

keting, or distributing of wheat or barley that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(11) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

(12) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(13) "Marketing year" means the twelve-month period beginning June 1st of any year and ending on May 31st of the subsequent year. "Fiscal year" means the twelve-month period beginning July 1st of any year and ending on June 30th of the subsequent year.

(14) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(15) "Person" includes 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.

(16) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, wheat or barley grown in the designated affected area of the state of Washington, and who has been so engaged in at least one of the past three years. "Producer" includes a person who contracts to produce or grow wheat or barley on behalf of a person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase. "To produce" means to act as a producer.

(17) "Promotional hosting" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of wheat or barley or processed wheat or barley products.

(18) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(19) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(20) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position. [2009 c 33 § 3.]

15.115.040 Washington grain commission—Created—Members—Term of office. (1) There is hereby created the Washington grain commission. The commission is composed of five wheat producer members, two barley producer members, two members representing the wheat industry, one member representing the barley industry, and the director or his or her appointee. All members, including the director or his or her appointee, are full voting members of the commission.

(2)(a) Each wheat producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of

wheat in the district in and for which he or she is nominated and appointed. A wheat producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of wheat producer members, the affected area is divided into districts as follows:

(i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties;

(ii) District II: Whitman county;

(iii) District III: Asotin, Columbia, Garfield, and Walla Walla counties;

(iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan counties; and

(v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima counties.

(c) The wheat producers in each district are entitled to elect one wheat producer member of the commission.

(3)(a) Each barley producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of barley in the district in and for which he or she is nominated and appointed. A barley producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of barley producer members, the affected area is divided into districts as follows:

(i) District VI: Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and Yakima counties; and

(ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

(c) The barley producers in each district are entitled to elect one barley producer member of the commission.

(4) An industry member of the commission need not be a resident of Washington state, but must be involved with the handling, marketing, transportation, processing of, or research regarding wheat or barley produced in Washington state. An industry representative member must continue to satisfy these qualifications during his or her term of office.

(5)(a) The regular term of office of each producer member of the commission is three years from January 1st following his or her first appointment by the director and continues until a successor is appointed. The term of office for producer positions representing districts I, IV, and VII is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for producer positions representing districts II, III, V, and VI is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(b) The regular term of office of each industry representative member of the commission is three years from January 1st following his or her appointment by the director and until a successor is appointed. The term of office for the barley industry representative position is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 1) is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 2) is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(c) The director, or his or her appointee, is a permanent member of the commission. [2009 c 33 § 4.]

15.115.050 Initial appointments to the Washington grain commission—Expiration of interim terms. (1) The Washington grain commission replaces the Washington wheat commission and the Washington barley commission. To accomplish this transition, the initial appointments to the Washington grain commission are as follows:

(a) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat producer members who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, wheat producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(b) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the names of two currently appointed producer members, one who resides in and is a barley producer in district VI and one who resides in and is a barley producer in district VII who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, barley producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(c) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat industry representative members who shall be appointed to the interim terms specified in subsection (3) of this section. Thereafter the director shall appoint wheat industry representative members under RCW 15.115.070 and 15.115.080.

(d) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the name of one of the currently appointed barley industry representative members who shall be appointed to the interim term specified in subsection (3) of this section. Thereafter the director shall appoint the barley industry representative member under RCW 15.115.070 and 15.115.080.

(2) Interim terms for producer members expire as follows:

(a) Districts I, IV, and VII: December 31, 2010; and

(b) Districts II, III, V, and VI: December 31, 2011.

(3) Interim terms for industry representative members expire as follows:

(a) Barley industry representative: December 31, 2010;

(b) Wheat industry representative (position 1): December 31, 2010; and

(c) Wheat industry representative (position 2): December 31, 2011.

(4) The initial appointments under this section must be made within sixty days of July 26, 2009. [2009 c 33 § 5.]

15.115.060 Producer members of the commission—Appointment—Nomination—Advisory ballot and advisory vote. (1) The director shall appoint the producer members of the commission.

(2) Candidates for producer positions on the commission must be nominated to the director in accordance with this section.

(3)(a) The director shall mail nominating petitions for producer members not earlier than September 17th and not

later than October 2nd in each district in which an open producer position will occur at the end of the year. Each nominating petition must be signed by the candidate and by at least five affected producers of the district from which the nominated candidate would be appointed.

(b) Signed nominating petitions must be filed with the director. A nominating petition is filed when it is postmarked by the deadline.

(c) The director shall determine the final date for filing nominating petitions and shall display that final date on the face of each nominating petition mailed under this subsection. The final date may not be earlier than October 8th and not later than October 13th in each district in which an open producer position will occur at the end of the year.

(4)(a) The director shall prepare an advisory ballot for each district in which an open producer position will occur. All candidates from a district who have been nominated as a producer member in accordance with subsection (3) of this section shall have their names placed on the advisory ballot for that district.

(b) The director shall mail advisory ballots to all affected producers in each district in which an open producer position will occur. Advisory ballots must be mailed not earlier than October 18th and not later than November 2nd in each district in which an open producer position will occur at the end of the year.

(c) Only those completed advisory ballots may be counted that are sent to the director and postmarked not later than November 25th in each district in which an open producer position will occur at the end of the year. Each advisory ballot must display the following language on its face: "Each completed advisory ballot must be postmarked not later than November 25, [insert year] to be counted."

(d) Each affected producer is entitled to one vote.

(e) The advisory vote must be conducted in a manner so that it is a secret ballot.

(5)(a) If two or more candidates for a position are named in valid petitions, an advisory vote must be held. If only one candidate for a position is named in valid petitions, an advisory vote need not be held, and the director may appoint that candidate or request an additional candidate from the commission for appointment consideration. If a candidate for a position is not named in any valid petition, the commission shall submit a candidate for the director's appointment consideration. Not more than one commission member may be part of the same person under this chapter.

(b) The director may request of any candidate whose name is forwarded to the director for potential appointment that the candidate submit a letter stating why he or she wishes to be appointed to the commission.

(c) If two or more candidates receive votes in an advisory vote, the director may select either of the two candidates receiving the most votes for the position or may reject both candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. If no candidate has been nominated in a petition under subsection (3) of this section, the director shall make an appointment to the position as provided in RCW 15.115.080.

(6) Except for good cause shown, appointments under this section must be made no later than fifteen days before the

commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 6.]

15.115.070 Industry representative member of the commission—Appointment. (1) The director shall appoint the industry representative members of the commission.

(2) Not later than November 1st preceding the expiration of an industry representative member's term of office, the commission shall, by majority vote of a quorum of the commission, select a qualified candidate for the industry representative position and forward the name of the candidate to the director.

(3) The director may select the candidate for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director.

(4) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 7.]

15.115.080 Vacancy on the commission. In the event of a vacancy on the commission, the remaining members shall recommend to the director the name of a person qualified for appointment to the vacant position. The director may appoint that person for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director. [2009 c 33 § 8.]

15.115.090 Removal of a commission member. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, a majority of a quorum of the commission may recommend in writing to the director that the commission member be removed from his or her position on the commission. Upon receiving this recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position is then vacant and must be filled as set forth in this chapter. [2009 c 33 § 9.]

15.115.100 Membership in associations with similar objectives—Contracting with such associations. (1) Any member of the commission also may be a member or officer of an association which has similar objectives for which the agricultural commission was formed.

(2) An agricultural commission also may contract with such an association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into, and provided that any members with potential conflicts of interest comply with applicable provisions in chapter 42.52 RCW. [2009 c 33 § 10.]

15.115.110 Meetings—Proposed budget—Notice—Voting requirements. (1) The commission shall hold regu-

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lar meetings, at least quarterly, with the time, date, and place to be determined prior to the new calendar year and published in the state register as required in RCW 42.30.075.

(2) The commission may call special meetings as provided for in RCW 42.30.080.

(3) The commission shall hold an annual meeting. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be given by the commission at least ten days prior to the meeting through the regular news media.

(4) Any action taken by the commission requires the majority vote of the members present, provided a quorum is present.

(5) All commission meetings are open and public and must be conducted in accordance with chapter 42.30 RCW. [2009 c 33 § 11.]

15.115.120 Quorum requirements—Compensation—Travel expenses. (1) A majority of the voting members constitute a quorum for the transaction of all business and for carrying out the duties of the commission.

(2) A member of the commission shall not receive any salary or other compensation from the commission, except that each member of the commission is compensated in accordance with RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060. Employees of the commission also may be reimbursed subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060 when on official commission business. [2009 c 33 § 12.]

15.115.130 Transfer of powers, duties, assets, etc., to the Washington grain commission. (1) The Washington grain commission is the successor in interest to the Washington wheat commission and the Washington barley commission and is vested with all powers and duties transferred to it under this chapter and other such powers and duties as may be authorized by law.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Washington wheat commission or Washington barley commission must be delivered to the custody of the Washington grain commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property owned or employed by the Washington wheat commission or Washington barley commission must be delivered to the Washington grain commission. The Washington grain commission shall ensure the timely transfers of all legal titles, registrations, and licenses made necessary by this subsection. All funds, accounts, investments, credits, or other assets held by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission. All debts, liabilities, and obligations owed by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission.

(3) All employees of the Washington wheat commission or Washington barley commission are transferred to the Washington grain commission.

(4) Beginning with the final initial appointment made under RCW 15.115.050, the interim commissioners shall submit timely reports to the director summarizing the progress made in completing the actions required under this section and any other actions necessary to complete the transition provided for in this chapter.

(5) When the interim commissioners have completed the actions required under this section and any other actions necessary to complete the transition provided for in this chapter, they shall so certify in writing to the director. The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the director has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley.

(6) All actions required under this section must be completed by the interim commissioners no later than one hundred twenty days after the final initial appointment is made under RCW 15.115.050.

(7) RCW 15.66.157 and 15.66.160 do not apply to the Washington wheat commission and the Washington barley commission. [2009 c 33 § 13.]

15.115.140 Powers and duties. (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation

and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with *chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) 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 and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(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 wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 17; 2011 c 60 § 4; 2009 c 33 § 14.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 4 and by 2011 c 103 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.115.150 Director's duties. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

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(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of wheat and barley; and

(b) The establishment and effectuation of market research projects, market development projects, or both, to the end that the marketing and utilization of wheat and barley may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning any agricultural commodity.

(3) The commission, 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 on a fiscal period basis.

(4) The director shall review and make a determination of all submissions described in this section in a timely manner. [2009 c 33 § 15.]

15.115.160 Rule-making proceedings. (1) Except as provided in subsection (2) of this section, all rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and 43.135.055 and chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum.

(3) Rules, regulations, and orders made by the commission must be filed with the director and become effective as provided in RCW 34.05.380. [2009 c 33 § 16.]

15.115.170 Liquor produced from wheat or barley. (1) The commission may receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in subsection (2) of this section.

(2) The commission may engage directly or indirectly in the promotion of liquor produced from wheat or barley grown in Washington including, without limitation, the acquisition in any lawful manner and the dissemination without charge of the liquor. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer under Title 66 RCW. This dissemination without charge may be solely for agricultural development or trade promotion, and not for fund-raising purposes under RCW 15.115.140(2)(u). Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, or promotion of wheat or barley grown in Washington, or research related to that marketing, advertising, or promotion.

(3) The commission shall adopt rules governing promotional hosting expenditures by its employees, agents, or commission members under RCW 15.04.200. [2009 c 33 § 17.]

15.115.180 Promotional printing and literature—Contracts. (1) The restrictive provisions of chapter 43.19 RCW do not apply to promotional printing and literature for the commission.

(2) All promotional printing contracts entered into by the commission must be executed and performed under conditions of employment that substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such a provision of any contract is grounds for cancellation of the contract. [2015 c 225 § 15; 2009 c 33 § 19.]

15.115.190 Handling, accounting, and disbursement of moneys. (1) All money received by the commission from the assessment levied under this chapter and all moneys transferred to the commission under RCW 15.115.130(2) must be deposited in the banks designated by the commission and disbursed by order of the commission. RCW 43.01.050 does not apply to money collected under this chapter.

(2) The commission shall adopt rules or establish policies as it determines necessary to ensure proper accounting and disbursement of moneys received and held by the commission. [2009 c 33 § 20.]

15.115.200 Bond requirements. Unless covered by a blanket bond covering officials or employees of the state of Washington, every administrator, employee, or other person occupying a position of trust for the commission and every commission member actually handling or drawing upon funds shall give a bond in the penal amount as may be required by the commission, the premium for which bond or bonds must be paid by the commission. [2009 c 33 § 21.]

15.115.210 Limitation of liability. (1) Obligations incurred by the commission and any other liabilities or claims against the commission are enforceable only against the assets of the commission and, except to the extent of those assets, liability for the debts or actions of the commission does not exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity.

(2) Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. A person or employee may not be held individually responsible for any act or omission of any other commission members. The liability of the commission members is several and not joint, and a member is not liable for the default of any other member. This subsection confirms that commission members have been and continue to be state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

(3) In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of

the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2009 c 33 § 22.]

15.115.220 Copies of proceedings, records, and acts of the commission admissible in court as prima facie evidence of the truth of the statements contained therein. Copies of the proceedings, records, and acts of the commission, when certified by the chair, are admissible in any court as prima facie evidence of the truth of the statements contained therein. [2009 c 33 § 23.]

15.115.230 Application of RCW 42.56.380—Use of commercial information and records. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2009 c 33 § 24.]

15.115.240 Commission shall reimburse department for certain costs—Funding of staff support. (1) The commission shall reimburse the department for all costs incurred by the department for actions necessary to carry out this chapter, including the adoption of rules, facilitating or conducting nominations or advisory votes, and the review and approval required under RCW 15.115.150.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2009 c 33 § 25.]

15.115.250 Preparation of lists of producers and handlers of wheat and barley. (1) The commission shall prepare a list of all producers of wheat and a list of all producers of barley, which must include for each producer his or her name and address and the amount, by unit, of wheat or barley produced during the past three years.

(2) The commission shall prepare a list of all persons who handle wheat and all persons who handle barley, which must include for each handler his or her name and address and the amount, by unit, of wheat or barley handled during the past three years.

(3) It is the responsibility of each producer or handler to ensure that his or her correct address is filed with the commodity commission and to submit production data and handling data to the commission as prescribed in this chapter.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commission. The lists must be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) For all purposes of giving notice, conducting advisory votes, and holding referenda, the applicable list corrected up to the day preceding the date the list is certified by the commission is the list of all affected producers entitled to notice or to vote. Inadvertent failure to notify an affected producer does not invalidate a proceeding conducted under this chapter.

(6) At the director's request when conducting a referendum for the commission, the commission shall provide the director a certified list of affected producers from the commission records. The list must include all information required by the director to conduct a referendum under this chapter, must be used to determine assent as provided in this chapter, and must be kept in the rule-making file by the director. [2009 c 33 § 26.]

15.115.260 Annual assessments—Adjustments—Referendum—Temporary reduction—Limit on annual assessment. (1)(a) The initial annual assessments are the amounts most recently approved by referendum by wheat producers and barley producers and effective at the time the grain commission is established:

(i) The initial annual assessment on wheat is three-fourths of one percent of the net receipts at the first point of sale;

(ii) The initial annual assessment on barley is one percent of the net receipts at the first point of sale.

(b) The initial annual assessments established in this subsection are effective unless and until changed pursuant to the procedure in subsection (2) of this section.

(2)(a) If the commission determines, based on information available to it, that the revenue from the assessment levied on wheat or barley under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the needs of the industry, the extent and probable cost of the commission activities identified as necessary to address the needs of the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue from the proposed assessment levied. The resolution must be submitted to the director for review and approval.

(b) If the director objects to the proposed new assessment rate, the director shall explain the reasons for the objection to the commission in writing. The commission may adopt a revised resolution and submit it to the director for review and approval.

(c) Upon receiving the director's approval and with the director's oversight, the commission may conduct a referendum to determine whether affected producers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commis-

sion. Only wheat producers may vote on a proposed new assessment rate on wheat, and only barley producers may vote on a proposed new assessment rate on barley.

(i) The producers have assented to the new rate if more than fifty percent by number and more than fifty percent by volume of those replying assent. The determination by volume is made on the basis of volume as determined in the list of affected producers created under RCW 15.115.250.

(ii) Results of the referendum must be communicated via the news media.

(iii) If the requisite assent is given, the commission shall adopt the new rate at its next meeting. The new rate must be adopted by rule in accordance with chapter 34.05 RCW, except as provided in RCW 15.115.160.

(3)(a) Notwithstanding the provisions in subsection (2) of this section, the commission may, by majority vote of a quorum of its members, adopt a finding that its current revenue substantially exceeds that needed to support the current needs of the industry and the current cost of commission activities and order a temporary reduction in the annual assessments below the rate currently authorized under subsection (1) of this section.

(b) With the director's approval, such a reduction commences on July 1st following the commission's action and expires automatically on June 30th of the subsequent year unless extended by a new action of the commission under this subsection.

(c) Any action taken under this subsection must be communicated to affected producers via the news media and any other means it deems effective.

(4) The annual assessment authorized in this chapter may not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of wheat or barley during the year to which the assessment applies. [2009 c 33 § 27.]

15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue. (1) The collection of the assessment made and levied by the commission must be paid by the producer upon all commercial quantities of wheat and all commercial quantities of barley sold, processed, stored, or delivered for sale, processing, or storage by the producer. However, an assessment may not be levied or collected on wheat or barley grown and used by the producer for feed, seed, or personal consumption.

(2) Handlers including warehouse operators, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a

monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment, the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley. [2011 c 336 § 417; 2009 c 33 § 28.]

15.115.280 Use of moneys received by the commission under this chapter. (1) All moneys collected or otherwise received by the commission under this chapter must be used solely by and for the commission and may not be used for any other commission or the department, except as otherwise provided in this chapter. These moneys must be deposited in accounts in the name of the commission in any bank which is a state depository. All expenses and disbursements incurred and made under this chapter must be paid from moneys collected and received under this chapter without the necessity of a specific legislative appropriation, and all moneys deposited for the account of any order must be paid from the account by check or voucher in the form and in the manner and upon the signature of the person as may be prescribed by the commission. RCW 43.01.050 is not applicable to such an account or any moneys so received, collected, or expended.

(2) The commission shall ensure that the expenditure of assessments collected from wheat producers and moneys transferred from the wheat commission under RCW 15.115.130(2) are used for purposes related to the wheat industry and that the expenditure of assessments collected from barley producers and moneys transferred from the barley commission under RCW 15.115.130(2) are used for purposes related to the barley industry. However, this section does not prevent assessments from wheat, assessments from barley, and moneys transferred from the wheat commission or barley commission under RCW 15.115.130(2) to be combined or used together for activities, projects, and other endeavors that benefit both the wheat and barley industries. [2009 c 33 § 29.]

15.115.290 Investment of funds of the commission.

(1) Any funds of the commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded those accounts by the federal deposit insurance corporation.

(2) This section applies to all funds which may be lawfully so invested, which in the judgment of the commission are not required for immediate expenditure. The authority granted by this section is not exclusive and is cumulative and in addition to other authority provided by law for the investment of the funds including, but not limited to, authority

granted under chapters 39.58, 39.59, and 43.84 RCW. [2009 c 33 § 30.]

15.115.300 Proof of eligibility to vote or hold a position on the commission—Records—Inspection by commission—Confidentiality of information—Limitation of section. (1) To prove eligibility to vote or hold a position on the commission, each producer must show records of sales of commercial quantities of wheat or barley sold within the past three years if requested by the commission.

(2) Each handler shall keep a complete and accurate record of all wheat and barley handled.

(3) Handlers' records must be in the form and contain the information as the commission may by rule prescribe, must be preserved for a period of three years, and are subject to inspection at any time upon demand of the commission or its agents.

(4) The commission through its agents may enter and inspect the premises and records of any handler of wheat or barley for the purpose of enforcing this chapter. The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind from any handler and from any person having, either directly or indirectly, actual or legal control of or over the premises, books, records, documents, or other writings, for the purpose of enforcing this chapter or rules adopted under this chapter.

(5) All information furnished to or acquired by the commission or by an agent of the commission under this section must be kept confidential by all officers, employees, and agents of the commission, except as may be necessary in a suit or other legal proceeding brought by, on behalf of, or against the commission or its employees or agents involving the enforcement of this chapter or rules adopted under this chapter.

(6) This section does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this chapter, which statements do not identify the information furnished by any person; or

(b) The publication by the commission or the director of the name of any person violating this chapter or rules adopted under this chapter, together with a statement of the particular provisions and the manner of the violation. [2009 c 33 § 31.]

15.115.310 Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction. (1) It is a misdemeanor for any person willfully to:

(a) Violate or aid in the violation of this chapter or rules adopted under this chapter;

(b) Submit a false or fraudulent report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter; or

(c) Fail or refuse to submit a report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter.

(2) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director or the commission is entitled to an injunction in a court of competent jurisdiction to prevent further violation and to a decree of specific performance, and to a temporary restraining order and injunction pending litigation.

(3) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director, the commission, or any affected producer on joining the commission may refer the violation to the prosecutor in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(4) The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission issued under this chapter, and to prevent and restrain violations of this chapter. [2009 c 33 § 32.]

Chapter 15.120 RCW

INDUSTRIAL HEMP RESEARCH PROGRAM

Sections

15.120.005	Intent.
15.120.010	Definitions.
15.120.020	Industrial hemp—Agricultural product—Exclusively as part of industrial hemp research program.
15.120.030	Rule-making authority.
15.120.035	Rule-making authority—Monetary penalties, license suspension or forfeiture, other sanctions—Rules to be consistent with section 7606 of federal agricultural act of 2014.
15.120.040	Industrial hemp research program—Established—Licensure—Seed certification program—Permission/waiver from appropriate federal entity.
15.120.050	Application form—Fee—Licensure—Renewal—Record of license forwarded to county sheriff—Public disclosure exemption.
15.120.060	Sales and transfers of industrial hemp produced for processing—Department and state liquor and cannabis board to study feasibility and practicality of implementing legislatively authorized regulatory framework.

15.120.005 Intent. The legislature intends to authorize the growing of industrial hemp as a legal, agricultural activity in this state as part of an agricultural pilot program in conformance with the agricultural act of 2014, 128 Stat. 912 § 7606, P.L. 113-79 (Feb. 7, 2014). [2016 sp.s. c 11 § 1.]

15.120.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Grower" means any person licensed to grow industrial hemp under this chapter.

(3) "Industrial hemp" means all parts and varieties of the genera Cannabis, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera Cannabis that meet the definition of "marijuana" as defined in RCW 69.50.101.

(4) "Industrial hemp research program" means an agricultural pilot program to study the growth, cultivation, or marketing of industrial hemp supervised by the department.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, government entity, or other business entity.

(6) "THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera Cannabis. [2016 sp.s. c 11 § 2.]

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15.120.020 Industrial hemp—Agricultural product—Exclusively as part of industrial hemp research program. Except as otherwise provided in this chapter, industrial hemp is an agricultural product that may be grown, produced, possessed, processed, and exchanged in the state solely and exclusively as part of an industrial hemp research program supervised by the department. Processing any part of industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans is prohibited. [2016 sp.s. c 11 § 3.]

15.120.030 Rule-making authority. (1) The department shall adopt rules pursuant to this chapter and chapter 34.05 RCW as necessary to license persons to grow hemp under an industrial hemp research program. The rules must include, but are not limited to:

(a) Fee amounts for license application, issuance, and renewal;

(b) Testing criteria and protocols for testing compliance with THC levels; and

(c) Grower qualifications. Grower qualifications include, at a minimum, that a person with a prior felony drug conviction within ten years of applying for a license not be eligible for the license. The department shall adopt by rule the persons in associations, corporations, and other business entities to be qualified under this felony drug conviction limitation.

(2) The department may adopt rules for administration of an industrial hemp research program, including the goals of the program.

(3) The department may adopt rules for administration of an industrial hemp seed certification program pursuant to chapter 15.49 RCW.

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2016 sp.s. c 11 § 4.]

15.120.035 Rule-making authority—Monetary penalties, license suspension or forfeiture, other sanctions—Rules to be consistent with section 7606 of federal agricultural act of 2014. The department is granted the rule-making authority necessary to implement and enforce the provisions of this chapter. This includes the authority to impose monetary penalties, license suspension or forfeiture, or other sanctions for violations of statutory and regulatory requirements. The rules adopted by the department must be consistent with section 7606 of the federal agricultural act of 2014 (128 Stat. 649, 912; 7 U.S.C. Sec. 5940). [2017 c 317 § 10.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.120.040 Industrial hemp research program—Established—Licensure—Seed certification program—Permission/waiver from appropriate federal entity. (1) The department shall establish an industrial hemp research program in which persons grow or cultivate industrial hemp for researching the feasibility and desirability of industrial hemp production in Washington. The department shall supervise the program through licensure and seed certification, but may not fund growing operations. The department may enter

into interagency agreements with other public entities in connection with the program.

(2) The department shall establish a licensure program to allow persons to grow industrial hemp in the state as part of the industrial hemp research program.

(3) The department shall establish an industrial hemp seed certification program in support of the industrial hemp research program. The department's authority to implement this program incorporates the department's authority related to seed certification, inspection, fee setting, and enforcement under chapter 15.49 RCW.

(4) The programs under this chapter are subject to a grant of necessary permissions, waivers, or other form of valid legal status by the United States drug enforcement administration or other appropriate federal agency pursuant to applicable federal laws relating to industrial hemp.

(5) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2016 sp.s. c 11 § 5.]

15.120.050 Application form—Fee—Licensure—Renewal—Record of license forwarded to county sheriff—Public disclosure exemption. (1) Any person seeking to grow industrial hemp as part of the industrial hemp research program shall apply to the department on a form provided by the department. At a minimum, the application form must include:

(a) The name and mailing address of the applicant, including the business address of any corporate applicant and the applicant's registered agent and the agent's address;

(b) The legal description and global positioning coordinates sufficient to locate the proposed industrial hemp production fields;

(c) A signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor;

(d) Written consent allowing the department, if a license is ultimately issued to the applicant, to enter onto the industrial hemp production fields to conduct physical inspections of industrial hemp planted and grown by the applicant, and to ensure compliance with the requirements of this chapter;

(e) Any other information required by the department; and

(f) The payment of a nonrefundable application fee, in an amount set by the department.

(2) The department may approve licenses only for those selected growers whose demonstration plots will advance the goals of the department's industrial hemp research program. The location, and the total number and acreage, of all demonstration plots to be grown by license holders must be determined at the discretion of the department.

(3) The department may use failure to comply with the law and with the conditions of the license issued by the department as grounds for revocation, suspension, or denial of future applications.

(4) Each license is valid for a period of one year from the date of issuance and may be renewed in successive years. Each annual renewal requires the payment of a license renewal fee.

(5) All moneys collected under this chapter must be deposited in an account within the agricultural local fund and used solely for carrying out this chapter. No appropriation is

required for disbursement of moneys from the account by the director.

(6) A record of each license issued by the department under this section must be immediately forwarded to the sheriff of each county where the industrial hemp is licensed to be planted, grown, and/or harvested.

(7) All records, data, and information filed in support of a license application are exempt from disclosure under chapter 42.56 RCW, the public records act.

(8) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2016 sp.s. c 11 § 6.]

15.120.060 Sales and transfers of industrial hemp produced for processing—Department and state liquor and cannabis board to study feasibility and practicality of implementing legislatively authorized regulatory framework. The department and the state liquor and cannabis board must collaboratively study the feasibility and practicality of implementing a legislatively authorized regulatory framework allowing industrial hemp produced in accordance with the requirements of this chapter to be sold or transferred to marijuana processors, licensed under chapter 69.50 RCW, for processing into industrial hemp or marijuana products to be sold at retail for human consumption. [2017 c 317 § 9.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Chapter 15.125 RCW

MARIJUANA AND MARIJUANA PRODUCTS

Sections

15.125.010	Definitions.
15.125.020	Rule-making authority.
15.125.030	Marijuana and marijuana products—Production and processing.
15.125.040	Licensee facilities—Department may inspect—Certification—Fines—Enforcement actions.
15.125.050	Marijuana producer, processor, and retailer information—Exemption from public inspection and copying.
15.125.060	Deposit of fees into account within agricultural local fund—Revenue from fees—Appropriation not required for disbursement.

15.125.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state liquor and cannabis board.

(2) "Licensee facilities" means any premises regulated by the board for producing, processing, or retailing marijuana or marijuana products.

(3) "Marijuana" has the meaning provided in RCW 69.50.101.

(4) "Marijuana processor" has the meaning provided in RCW 69.50.101.

(5) "Marijuana producer" has the meaning provided in RCW 69.50.101.

(6) "Marijuana products" has the meaning provided in RCW 69.50.101.

(7) "Marijuana retailer" has the meaning provided in RCW 69.50.101.

(8) "Person" means any natural person, firm, partnership, association, private or public corporation, governmental entity, or other business entity. [2017 c 317 § 18.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.020 Rule-making authority. (1) The department may adopt rules establishing:

(a) Standards for marijuana and marijuana products produced and processed in a manner consistent with, to the extent practicable, 7 C.F.R. Part 205;

(b) A self-sustaining program for certifying marijuana producers and marijuana processors as meeting the standards established under (a) of this subsection; and

(c) Other rules as necessary for administration of this chapter.

(2) To the extent practicable, the program must be consistent with the program established by the director under chapter 15.86 RCW.

(3) The rules must include a fee schedule that will provide for the recovery of the full cost of the program including, but not limited to, application processing, inspections, sampling and testing, notifications, public awareness programs, and enforcement. [2017 c 317 § 19.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.030 Marijuana and marijuana products—Production and processing. (1) No marijuana or marijuana product may be labeled, sold, or represented as produced or processed under the standards established under this chapter unless produced or processed by a person certified by the department under the program established under this chapter.

(2) No person may represent, sell, or offer for sale any marijuana or marijuana products as produced or processed under standards adopted under this chapter if the person knows, or has reason to know, that the marijuana or marijuana product has not been produced or processed in conformance with the standards established under this chapter.

(3) No person may represent, sell, or offer for sale any marijuana or marijuana products as "organic products" as that term has meaning under chapter 15.86 RCW. [2017 c 317 § 20.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.040 Licensee facilities—Department may inspect—Certification—Fines—Enforcement actions. (1) The department may inspect licensee facilities to verify compliance with this chapter and rules adopted under it.

(2) The department may deny, suspend, or revoke a certification provided for in this chapter if the department determines that an applicant or certified person has violated this chapter or rules adopted under it.

(3) The department may impose on and collect from any person who has violated this chapter or rules adopted under it a civil fine not exceeding the total of:

(a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions for the violation; and

(b) One thousand dollars.

(4) The board may take enforcement actions against a marijuana producer, marijuana processor, or marijuana retailer license issued by the board, including suspension or revocation of the license, when a licensee continues to violate

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this chapter after revocation of its certification or, if uncertified, receiving written notice from the department of certification requirements.

(5) The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy at law. [2017 c 317 § 21.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.050 Marijuana producer, processor, and retailer information—Exemption from public inspection and copying. Information about marijuana producers, marijuana processors, and marijuana retailers otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department. [2017 c 317 § 22.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.060 Deposit of fees into account within agricultural local fund—Revenue from fees—Appropriation not required for disbursement. All fees collected under this chapter must be deposited in an account within the agricultural local fund. The revenue from the fees must be used solely for carrying out the provisions of this chapter, and no appropriation is required for disbursement from the fund. [2017 c 317 § 23.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

**Chapter 15.130 RCW
FOOD SAFETY AND SECURITY ACT**

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MISCELLANEOUS PROVISIONS

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15.130.010 Intent. The purpose of this chapter is to protect the public from adulteration, misbranding, and false advertisement of food in intrastate commerce. The intent is to promote uniformity with federal law, governmental transparency, and regulatory fairness. [2018 c 236 § 1.]

GENERAL PROVISIONS

15.130.100 Federal law reference. (1) All references to a federal statute in this chapter mean the statute and its implementing regulations existing on June 7, 2018, or the date of such subsequent version as the department may adopt by rule.

(2) Where the referenced federal statute refers to the "secretary," the meaning for the purpose of this chapter is "secretary" or "director."

(3) A reference to a federal statute excludes any matters in the federal statute that are inapplicable to state jurisdiction. [2018 c 236 § 101.]

15.130.110 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advertisement" means all representations, other than by labeling, that directly or indirectly induce, or are likely to induce, the purchase of food.

(2) "Carrier" means a person who undertakes the professional conveyance of food.

(3) "Color additive" means the same as "color additive" in 21 U.S.C. Sec. 321.

(4) "Direct seller" means an entity that: (a) Receives pre-packaged food from a food processor licensed or inspected, or both, by a state or federal regulatory agency or the department; (b) delivers the food directly to consumers who placed and paid for an order on the entity's web site; (c) delivers food without opening the packaging and without dividing it into smaller packages; (d) provides no interim storage; and (e) delivers the food by means of vehicles equipped with either refrigeration or freezer units, or both. A direct seller is not a "carrier" under this chapter.

(5) "Food" means the same as "food" in 21 U.S.C. Sec. 321 and includes any article used for food or drink by humans or other animals.

(6) "Food additive" means the same as "food additive" in 21 U.S.C. Sec. 321.

(7) "Food facility" means any part of an operation, factory, establishment, or vehicle engaged in the sale, processing, storage, transport, or holding of food in intrastate commerce. A food facility includes, but is not limited to, grounds, premises, buildings, room, area, facilities, vehicles, appurtenances, and equipment.

(8) "Fish" means fresh or saltwater finfish and other forms of aquatic animal life intended for human consumption other than mollusks, birds, and mammals.

(9) "Intrastate commerce" means all commerce, including but not limited to the operation of any business or service establishment; and the manufacturing or processing of articles intended for sale, held for sale, sold, stored, transported, handled, or distributed in Washington state.

(10) "Label," "labeling" means the same as "label" and "labeling" in 21 U.S.C. Sec. 321.

(11) "Perishable packaged food" means all food intended for human consumption that is canned, bottled, or packaged at a time other than at the point of retail sale, has a risk of spoilage within thirty days, and is determined by the department in rule to be perishable. The term does not include raw agricultural commodities, alcoholic beverages, frozen foods, fresh meat, fresh poultry, fresh fish, and fresh shellfish.

(12) "Pesticide chemical" means any substance defined as a pesticide in chapter 15.58 RCW or recognized as a pesticide chemical under 21 U.S.C. Sec. 346.

(13) "Process," "processing" means manufacturing, processing, packing, canning, bottling, or any other production, preparation, or putting up.

(14) "Pull date" means the latest date a perishable packaged food may be offered for sale to the public.

(15) "Raw agricultural commodity" means the same as "raw agricultural commodity" in 21 U.S.C. Sec. 321.

(16) "Sale," "sell," "selling" means all parts of transactions concerning food including, but not limited to, advertising, offering, acceptance, dispensing, giving, delivering, serving, bartering, trading, or other supplying, holding for sale, and preparing for sale.

(17) "Shelf life" means the length of time a perishable packaged food retains its safe consumption quality if stored under proper temperature conditions.

(18) "Shellfish" means all crustaceans and mollusks intended for human consumption.

(19) "Storage" and "store" means holding, storing, or any other possessing. [2018 c 236 § 102.]

15.130.120 Department's general powers. (1) The department must do all acts and things necessary to carry out and enforce the provisions of this chapter.

(2) The department must adopt rules as necessary to implement the purpose and provisions of this chapter.

(a) To the extent feasible, the rules must promote uniformity with the federal food, drug, and cosmetic act, as amended, 21 U.S.C. Sec. 301 et seq., and regulations adopted under it.

(b) To promote such uniformity, the department may conduct expedited rule making under chapter 34.05 RCW to adopt a subsequent version of a federal statute or regulation referenced in this chapter and adopt amendments to federal regulations that the department has previously adopted as rule.

(3) In accordance with subsection (2) of this section, the department may establish by rule:

(a) Standards for food including, but not limited to, identity, quality, and fill;

(b) Tolerance standards for any substance, including pesticides, color additives, and food additives used in or on food, but potentially harmful to humans or animals; and

(c) Uniform standards for pull date labeling and storage conditions for perishable packaged foods.

(4) The department must investigate violations or possible violations of this chapter or the rules adopted under it.

(5) The department may cooperate with and enter into agreements with other state, federal, or local governmental agencies in carrying out the purpose and provisions of this chapter.

(6) The department may notify the public about food safety issues and enforcement actions under this chapter.

(7) Rules that the department adopted under the authority of chapter 69.04 RCW remain effective until June 30, 2022, or until the department repeals or amends the rules, whichever is first. [2018 c 236 § 103.]

15.130.130 Administrative procedure act. Chapter 34.05 RCW governs the administration of this chapter including but not limited to rule making, assessment of civil penalties, orders, emergency actions, and license suspension, revocation, or denial. [2018 c 236 § 104.]

15.130.140 Exemptions. (1) Food in transit from one processing facility to another processing facility to complete its preparation for sale is exempt from the labeling requirements of this chapter, but is otherwise subject to all applicable provisions of this chapter.

(2) This chapter is not applicable to kosher food to the extent necessary to produce kosher food products as defined in RCW 69.90.010. [2018 c 236 § 105.]

GENERAL QUALITY STANDARDS AND REQUIREMENTS

15.130.200 Adulterated food prohibited. (1) A person may not:

(a) Cause or intend to cause adulteration of food in intrastate commerce;

(b) Sell, process, or store adulterated food in intrastate commerce; or

(c) Receive for the purpose of sale in intrastate commerce food known to be adulterated.

(2) Food is adulterated if it is adulterated within the meaning of 21 U.S.C. Sec. 342, or is adulterated in accordance with department rules. [2018 c 236 § 201.]

15.130.210 Misbranded food prohibited. (1) A person may not:

(a) Cause or intend to cause misbranded food in intrastate commerce;

(b) Sell, process, or store misbranded food in intrastate commerce; or

(c) Receive for the purpose of sale in intrastate commerce food known to be misbranded.

(2) Food is misbranded if it is misbranded within the meaning of 21 U.S.C. Sec. 321(n) or 21 U.S.C. Sec. 343, falsely represents its place or origin, or is not labeled and packaged in accordance with department rules. [2018 c 236 § 202.]

15.130.220 False advertisement prohibited. (1) A person may not disseminate false advertising with respect to food within the state, in any manner or by any means or through any medium.

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(2) An advertisement of a food is false if it is false or misleading in any particular or if it is false or misleading within the meaning of 21 U.S.C. Sec. 321(n). [2018 c 236 § 203.]

15.130.230 Alteration prohibited. A person may not change, mutilate, destroy, obliterate, or remove any part of food labeling, or do any other act that results in a food being adulterated or misbranded after shipment in intrastate commerce and while the food is held for sale. [2018 c 236 § 204.]

15.130.240 False warranty or guarantee prohibited. A person may not knowingly or intentionally give a false guarantee or falsely warrant that food complies with this chapter. [2018 c 236 § 205.]

SPECIAL QUALITY OR LABELING REQUIREMENTS

15.130.300 Perishable packaged food—Pull dates. (1) All perishable packaged foods in intrastate commerce with a projected shelf life of thirty days or less must state a pull date on the package.

(2) The pull date must be stated by month and day and be in a style and format that is readily decipherable by consumers.

(3) A person may not offer perishable packaged food for sale after the pull date, except that if clearly identified as past the pull date, packaged perishable food with an expired pull date may be sold if still wholesome and without danger to health.

(4) A person may not rewrap or repackage perishable packaged food with the intention of providing a pull date different from the original.

(5) The department may exclude the monthly requirement from the pull date for perishable packaged food with a shelf life of seven days or less.

(6) The department must consult with the secretary of the department of health when appropriate in adopting rules to establish uniform standards for pull date labeling and optimum storage conditions for perishable packaged food. [2018 c 236 § 301.]

15.130.310 Popcorn sold in theaters or commercial food establishments. (1) Theaters and other commercial food establishments that prepare and sell popcorn for human consumption must post a sign in a conspicuous location identifying whether butter or butter-like flavoring added to or attributed to the popcorn offered for sale is butter or some other product. If another product, the sign must also disclose the ingredients of the product.

(2) Popcorn sold or offered for sale in violation of this section and rules adopted by the department prescribing the size and content of the sign is misbranded for the purposes of this chapter.

(3) This provision does not apply to prepackaged popcorn labeled in compliance with applicable law.

(4) "Butter," as used in this section, means the food product usually known as butter and made exclusively from milk or cream, or both with or without common salt, and with or without additional coloring matter, and containing not less

than eighty percent by weight of milkfat, all tolerance having been allowed for. [2018 c 236 § 302.]

LICENSES

15.130.400 General license administration. (1)

Unless otherwise provided, the provisions in this section apply to a license or certificate issued under this chapter.

(2) Applicants for a new or renewal license issued by the department must submit applications on forms prescribed by the department.

(3) The license fee must accompany any application submittal.

(4) The department must adopt rules for an annual license and renewal fee to defray the costs of administering a licensing program, including inspections.

(5) The department must issue a license to the applicant if the application is complete and the applicant's food facility complies with this chapter, including the rules adopted under it. [2018 c 236 § 401.]

15.130.410 Direct seller license. (1) A person may not operate as a direct seller without a license issued by the department.

(2) A licensed direct seller must transport food under conditions that protect food against physical, chemical, and microbial contamination, as well as against deterioration of the food and its container. This includes, but is not limited to, the separation of raw materials in a manner to avoid cross-contamination of other food and ensure that raw materials that inherently contain pathogenic and spoilage microorganisms, soil, or other foreign material, do not come into direct contact with other food.

(3) In the event of a food recall or when required by the department or a federal, state, or local health authority in response to a foodborne illness outbreak, a licensed direct seller must use its client listserv to notify its customers of the recall and other relevant information.

(4) A direct seller license must comply with the definition of a direct seller in this chapter and:

(a) Provide the department with a list of all leased, rented, or owned vehicles, other than vehicles that are rented for fewer than forty-five days, used by the applicant's business to deliver food;

(b) Maintain all records of vehicles rented for fewer than forty-five days for at least twelve months following the termination of the rental period; and

(c) Maintain food temperature logs or use a device to monitor the temperature of the packages in real time for all food while in transport.

(5) The department shall pay all moneys received under this section into the food processing inspection account created in RCW 69.07.120. The department must use such funds solely to carry out the provisions of this section.

(6) In the implementation of this section, the department must:

(a) Conduct inspections of vehicles, food handling areas, refrigeration equipment, and product packaging used by a licensed direct seller;

(b) Conduct audits of temperature logs and other food handling records as appropriate;

(c) Investigate complaints against a licensed direct seller for the failure to maintain food safety; and

(d) Adopt rules, in consultation with the department of health and local health jurisdictions, necessary to administer and enforce the program consistent with federal regulations.

(7) Direct sellers that have a license from the department under this section are exempt from the permitting requirements of food service rules adopted by the state board of health and local health jurisdictions. [2018 c 236 § 402.]

15.130.420 Inspections. (1) Any person authorized by the department to operate a food facility must provide the department access for inspection to any part, portion, or area of the food facility or its records subject to the authorization.

(2) When possible, the department must make any such inspection during regular business hours or during a working shift of the food facility, except that the department may inspect such food facility at any time upon information of conditions that constitute immediate danger to public health. [2018 c 236 § 403.]

15.130.430 License denial, suspension, or revocation—Penalties. (1) The department may deny, suspend, or revoke a license issued by the department upon determining that an applicant or licensee has:

(a) Refused, neglected, or failed to comply with the provisions of this chapter or the rules adopted under it, or a lawful order of the department;

(b) Refused, neglected, or failed to keep and maintain required records or to make such records available when requested; and

(c) Refused the department access to a portion or area of the food facility for the purpose of carrying out the purposes of this chapter.

(2) In addition to or instead of suspending or revoking a license, the department may impose and collect a civil monetary penalty as provided in RCW 15.130.550 for a licensee's violations of this chapter or the rules adopted under it. [2018 c 236 § 404.]

INVESTIGATION, ENFORCEMENT, AND EMERGENCY AUTHORITY

15.130.500 Investigation. (1) At reasonable times, the department may enter any food facility to inspect such food facility and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements and take samples for compliance with this chapter and the rules adopted under it.

(2) The department may take product or ingredient samples of food at food facilities or in intrastate commerce upon payment of the market price, if requested. The department must allow the owner of the food or any person named on the label of the food to conduct independent sampling.

(3) To enforce this chapter, the department may inspect the pertinent records of any state agency.

(4) When the department presents a written request specifying the food under investigation, carriers engaged in intrastate commerce and persons receiving or holding food in intrastate commerce must permit the department reasonable access to and allow the department to copy all records show-

ing the movement or holding in intrastate commerce of food, its quantity, shipper, and consignee. Evidence obtained under this section may not be used in a criminal prosecution of the person who provides access to records under this section.

(5) An owner or other person in control of a food facility or food in intrastate commerce may not refuse to allow the department's investigation under this chapter, if the department has probable cause to conduct the investigation. [2018 c 236 § 501.]

15.130.510 Injunction. (1) Regardless of the existence of other remedies at law, the department may bring an action to enjoin the violation of this chapter or the rules adopted under it in the superior court of Thurston county or in a court of competent jurisdiction.

(2) When the injunction concerns dissemination of false advertisement and the court determines that the injunction would delay the regular distribution of a printed issue of a newspaper, magazine, periodical, or other print publication, the court must exclude the issue from the scope of the injunction. [2018 c 236 § 502.]

15.130.520 Embargo. (1) If the department has probable cause to believe that a food that violates a provision of this chapter and stopping its movement in intrastate commerce is necessary to protect public health, the department may initiate an embargo prohibiting transportation, distribution, or sale of the food.

(2) The department must provide an opportunity for an emergency adjudicative proceeding under chapter 34.05 RCW within twenty days of initiating the embargo action and provide notice to other governmental authorities having jurisdiction.

(3) The department must initiate the embargo action by (a) posting or affixing an embargo order on or at the location of the food or (b) delivering an embargo order to the party in control of the food. The order must specify the food under embargo, set forth the department's intent for disposition of the food, give notice of emergency hearing rights, and otherwise comply with the requirements for an emergency adjudicative proceeding under chapter 34.05 RCW. Disposition of the food may include, but is not limited to, destruction or correction or cure of the violation.

(4) A person may not transport, distribute, or sell food subject to an embargo order without the department's written approval.

(5) A person may not remove, mutilate, or destroy an embargo order without the department's written approval.

(6) The department must immediately withdraw or remove an embargo order upon discovery that the food does not violate any provision of this chapter.

(7) A court shall not allow recovery of damages in an embargo action if the court finds that there was probable cause for such action. [2018 c 236 § 503.]

15.130.530 Condemnation. Consistent with constitutional requirements, the department may take condemnation action against food, which may include ordering destruction of the food, if the department has probable cause to believe that immediate containment or destruction of the food is necessary to protect public health. A court shall not allow recovery

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of damages in a condemnation action if the court finds that there was probable cause for such action. [2018 c 236 § 504.]

15.130.540 Temporary emergency rules. (1) If a class of food manufactured, processed, or packed in a locality is possibly contaminated with microorganisms injurious to health and the extent of injury cannot be determined once the food has entered into intrastate commerce, the department may adopt emergency rules for the manufacture, processing, or packing of that class of food in that locality. The rules must include the conditions necessary to protect public health and provide for the department to issue temporary permits during the emergency period.

(2) A person may not manufacture, process, or pack the class of food subject to the emergency unless holding a temporary permit under the emergency rules and complying with the conditions of the permit.

(3) To the extent practicable, such emergency rules must conform to federal emergency regulations, if any, addressing the same subject.

(4) A person may not introduce or deliver in intrastate commerce food that violates the requirements of this provision.

(5) A person may not falsely represent that food subject to temporary emergency rule complies with those rules through the use of a mark stamp, tag, label, or other counterfeit or false identification device.

(6) The department may immediately suspend a temporary emergency permit when its holder violates the conditions of the permit. [2018 c 236 § 505.]

15.130.550 Civil monetary penalty. (1) The department may impose upon and collect a civil penalty from a person violating this chapter or the rules adopted under it.

(2) The civil penalty must not exceed one thousand dollars per violation per day, except the civil penalty for a violation of pull date requirements in RCW 15.130.300 must not exceed five hundred dollars.

(3) Each violation of this section is a separate and distinct offense. [2018 c 236 § 506.]

15.130.560 Criminal penalties. (1) A person who knowingly violates RCW 15.130.200 through 15.130.240, 15.130.500, 15.130.520, or 15.130.540 is guilty of a misdemeanor subject to a penalty of not more than two hundred dollars.

(2) A person who knowingly violates RCW 15.130.200 through 15.130.240, 15.130.500, 15.130.520, or 15.130.540 following a first offense under subsection (1) of this section is guilty of a misdemeanor subject to a penalty of imprisonment for not more than thirty days or a fine of not more than five hundred dollars, or both.

(3) A person who knowingly violates RCW 15.130.200 through 15.130.240, 15.130.500, 15.130.520, or 15.130.540 with intent to defraud or mislead is guilty of a misdemeanor subject to a penalty of imprisonment for not more than ninety days or a fine of not more than one thousand dollars, or both.

(4) Before reporting a violation for criminal prosecution, the department must provide the affected person with notice

and opportunity to present oral or written comment to the department. [2018 c 236 § 507.]

15.130.570 Avoidance of penalty. (1) A person who receives, holds, or sells adulterated or misbranded food is not subject to civil monetary or criminal penalties under this chapter if the person:

(a) Establishes that receipt or sale of the food was in good faith;

(b) Furnishes the identity of the entity from whom the food was received; and

(c) Provides copies of all documents pertaining to the receipt and distribution of the food.

(2) If food is found to be adulterated or misbranded, a person who has given guarantee or warranty that the food complies with this chapter is not subject to civil monetary or criminal penalties under this chapter if the person:

(a) Establishes that the guarantee or warranty was in good faith and in reliance on the guarantee or warranty by another entity;

(b) Furnishes the identity of the entity providing the guarantee or warranty under (a) of this subsection; and

(c) Provides copies of all documents pertaining to the receipt and distribution of the food.

(3) No publisher, broadcaster, or other disseminator of advertisement prepared by others is subject to civil or criminal penalties if the person establishes that receipt of the advertisement was in good faith and the person furnishes the identity of the entity that caused or created a false advertisement. [2018 c 236 § 508.]

15.130.580 Proceedings. (1) The department may refer a violation of this chapter or the rules adopted under it to a state, county, or city attorney, who may initiate proceedings as appropriate and prosecute the matter as prescribed by law.

(2) This chapter does not require the department to refer minor violations of this chapter for legal proceedings if public interest is adequately served in the circumstances by written notice or warning. [2018 c 236 § 509.]

MISCELLANEOUS PROVISIONS

15.130.900 Short title. This chapter may be known and cited as the food safety and security act. [2018 c 236 § 901.]

15.130.901 Construction. This chapter and the rules adopted under it must be construed to promote uniformity with federal acts and regulations relating to adulteration, misbranding, and false advertising of food. [2018 c 236 § 902.]

Chapter 15.135 RCW

PRODUCE SAFETY RULE IMPLEMENTATION

Sections

15.135.010	Intent.
15.135.020	Federal law reference.
15.135.030	Definitions.
15.135.040	Federal cooperation program.
15.135.050	Voluntary compliance program.
15.135.060	Compliance verification activities.
15.135.070	Department's existing authority.
15.135.080	Rule making.
15.135.090	Disposition of funds.

15.135.100	Certain records not subject to public disclosure.
15.135.900	Short title.

15.135.010 Intent. The purpose of this chapter is to assist Washington produce farmers in implementation of the produce safety rule adopted by the United States food and drug administration pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., as amended by the federal food safety modernization act (P.L. 111-353). [2018 c 106 § 1.]

15.135.020 Federal law reference. A reference to a federal statute in this chapter means the statute and its implementing regulations existing on June 7, 2018, or as updated by the department by rule. [2018 c 106 § 2.]

15.135.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Farm" means the same as "farm" in 21 C.F.R. Sec. 112.

(2) "Produce" means the same as "produce" in 21 C.F.R. Sec. 112.

(3) "Produce safety rule" means the standards for the growing, harvesting, packing, and holding of produce for human consumption adopted by the United States food and drug administration as a final rule on November 27, 2015 (80 Federal Register 74353 et seq.) and codified in 21 C.F.R. Parts 11, 16, and 112. [2018 c 106 § 3.]

15.135.040 Federal cooperation program. The department may take actions necessary to cooperate in implementation of the produce safety rule including, but not limited to, entering into cooperative agreements with the United States food and drug administration, conducting the compliance verification activities under RCW 15.135.060, enforcing regulatory compliance, and accepting federal funding to carry out such activities. The department may cooperate with the United States food and drug administration in implementation of the produce safety rule only to the extent that the department receives federal funding for such activities. [2018 c 106 § 4.]

15.135.050 Voluntary compliance program. (1) The department may establish a voluntary program for farms exempt or partially exempt from the produce safety rule to verify that such farms comply with the rule. This includes, but is not limited to, conducting the compliance verification activities under RCW 15.135.060.

(2) Farms participating in the voluntary compliance program must bear the cost of the program. The director must periodically adopt, by rule, fees of no more than is necessary to defray costs of compliance verification activities and program administration. [2018 c 106 § 5.]

15.135.060 Compliance verification activities. The department may take the following actions to verify produce farm compliance with the produce safety rule.

(1) Maintain a database of produce farms that are covered by the produce safety rule, exempt from the rule, or eligible for a qualified exemption;

(2) In compliance with law and at reasonable times, enter produce farms solely for the purpose of this chapter to:

(a) Sample and test water for microbial water quality criteria;

(b) Inspect and sample biological soil amendments, storage areas, and fields for compliance with microbial criteria;

(c) Inspect application of biological soil amendments to evaluate contact or potential contact with produce;

(d) Inspect for the presence and management of domesticated and wild animals; and

(e) Inspect equipment, tools, and buildings for adequate sanitation; and

(3) Require and receive records and data submitted by produce farms to verify compliance with the produce safety rule. [2018 c 106 § 6.]

15.135.070 Department's existing authority. This chapter does not alter or impair the department's authority for regulating food in intrastate commerce under chapter 15.130 RCW. The department may use its authority for regulating food in intrastate commerce under chapter 15.130 RCW to carry out and enforce the provisions of this chapter. For the purposes of this chapter, farms subject to the produce safety rule are engaged in intrastate commerce of food. [2018 c 106 § 7.]

15.135.080 Rule making. (1) The department must adopt rules as necessary to implement the purpose and provisions of this chapter.

(2) By rule, the director may adopt a subsequent version of a federal statute or regulation referenced in this chapter. [2018 c 106 § 8.]

15.135.090 Disposition of funds. A produce safety account is hereby established in the agricultural local fund established in RCW 43.23.230. All moneys received under this chapter must be paid into the produce safety account and used solely to carry out the produce safety programs. [2018 c 106 § 9.]

15.135.100 Certain records not subject to public disclosure. (1) Any information or record obtained directly from the federal government or from others under a contract with the federal government is exempt from public inspection and copying under chapter 42.56 RCW if the information or record is exempt from disclosure under federal law including, but not limited to, the federal freedom of information act.

(2) Any portion of a record obtained by the department pursuant to this chapter is exempt from public inspection and copying under chapter 42.56 RCW if it is personal financial information, proprietary data, or trade secrets and the person submitting the record to the department has designated the information as personal financial information, proprietary data, or trade secrets. [2018 c 106 § 10.]

15.135.900 Short title. This chapter may be known and cited as the produce safety rule implementation act. [2018 c 106 § 12.]

