# Washington State Department of Agriculture Statutes 2010

**Excerpted from Titles 15, 16, 17, 19, 20, 22, 43, 69, 70, and 90 RCW**

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# TITLE 15 RCW
## AGRICULTURE AND MARKETING

### Chapters


15.04 General provisions.
15.08 Horticultural pests and diseases.
15.13 Horticultural plants, Christmas trees, and facilities—Inspection and licensing.
15.14 Planting stock.
15.15 Certified seed potatoes.
15.17 Standards of grades and packs.
15.19 Ginseng.
15.24 Washington apple commission.
15.26 Tree fruit research act.
15.28 Soft tree fruits.
15.30 Controlled atmosphere storage of fruits and vegetables.
15.36 Milk and milk products.
15.37 Milk and milk products for animal food.
15.44 Dairy products commission.
15.48 Seed bailment contracts.
15.49 Seeds.
15.51 Brassica seed production.
15.53 Commercial feed.
15.54 Fertilizers, minerals, and limes.
15.58 Washington pesticide control act.
15.60 Apiaries.
15.61 Ladybugs and other beneficial insects.
15.64 Farm marketing.
15.65 Washington state agricultural commodity boards.
15.66 Washington state agricultural commodity commissions.
15.70 Rural rehabilitation.
15.76 Agricultural fairs, youth shows, exhibitions.
15.80 Weighmasters.
15.83 Agricultural marketing and fair practices.
15.85 Aquaculture marketing.
15.86 Organic products.
15.88 Wine commission.
15.89 Washington beer commission.
15.105 From the heart of Washington program.
15.115 Washington grain commission.


**NOTES:**

Agister and trainer liens: Chapter 60.56 RCW.
Agricultural
- labor
  - exempt from unemployment compensation: RCW 50.04.150.
  - exemptions for certain workers from minimum wage act: RCW 49.46.010.
- processing and marketing associations: Chapter 24.34 RCW.
- products, commission merchants, dealers, brokers, etc.: Chapter 20.01 RCW.

Animals
- belonging to another, killing, maiming, or disfiguring: RCW 9A.48.070 through 9A.48.090.
- crimes relating to: Chapter 9.08 RCW.
- fur farming: Chapter 16.72 RCW.
- generally: Title 16 RCW.
- larcenous appropriation of livestock: Chapter 9A.56 RCW, RCW 9A.56.100.

Bureau of statistics: Chapter 43.07 RCW.
Burning permits within fire protection district: RCW 52.12.101.
Commission merchants: Chapter 20.01 RCW.
Cooperative associations: Chapter 23.86 RCW.
Crimes
- brands and marks: Chapter 9.16 RCW.
- relating to animals: Chapter 9.08 RCW.
- relating to fires: Chapter 9A.48 RCW.

Crops
- liens: Chapter 60.11 RCW.
- mortgages: Article 62A.9A RCW.

Dealers in hay or straw, certified vehicle weights required: RCW 20.01.125.
Department of agriculture: Chapters 43.17, 43.23 RCW.
Eggs and egg products: Chapter 69.25 RCW.
Farm labor contractors: Chapter 19.30 RCW.
Farm vehicles, gross weight fees: RCW 46.16.090.
Food, drug, and cosmetic act: Chapter 69.04 RCW.
Food and beverages, worker's permits: Chapter 69.06 RCW.
Fraud in measurement of agricultural products: RCW 9.45.122 through 9.45.126.
Grain
- elevators, warehouses, etc.: Title 22 RCW.
- warehouse insurance: Chapter 22.09 RCW.

Grain and other commodities, standard grades: Chapter 22.09 RCW.
Grain and terminal warehouses, commodity inspection: Chapter 22.09 RCW.
Granges: Chapter 24.28 RCW.
Grazing ranges: RCW 79.10.125, chapter 79.13 RCW.
Honey: Chapter 69.28 RCW.
Insect pests and plant diseases: Chapter 17.24 RCW.
Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.
Liability of agricultural landowners for injuries to recreation users—Limitation: RCW 4.24.210.
Liens
- agister and trainer: Chapter 60.56 RCW.
- chattel, crop liens: Chapter 60.08 RCW.
- crop: Chapter 60.11 RCW.
- orchards and orchard lands: Chapter 60.16 RCW.
- services of sires: Chapter 60.52 RCW.
- warehouseman's: Article 62A.7 RCW.

Mosquito control: Chapter 70.22 RCW.
Motor vehicles
- juvenile agricultural driving permits: RCW 46.20.070.
- lamps on farm tractors, equipment, etc.: RCW 46.37.160.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.
Orchards and orchard lands, liens: Chapter 60.16 RCW.
Pest control compact: Chapter 17.34 RCW.
Pesticide application: Chapter 17.21 RCW.
Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.
Services of sires, lien: Chapter 60.52 RCW.
Soil conservation: Chapter 89.08 RCW.
State international trade fairs: RCW 43.31.800 through 43.31.850.
Swine, garbage feeding: Chapter 16.36 RCW.
Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.
Washington clean air act: Chapter 70.94 RCW.
Weeds
- destruction by cities: RCW 35.21.310.
- generally: Title 17 RCW.

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

# CHAPTER 15.04 RCW
## GENERAL PROVISIONS

### Sections


15.04.010 Definitions.
15.04.090 Lease of unnecessary lands to nonprofit groups—Funds.
15.04.110 Control of predatory birds.
15.04.120 Control of predatory birds—Expenditures and contracts.
15.04.150 Berry harvesting by youthful workers—Legislative finding.
15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions.
15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements.

15.04.300 Guide to state and federal programs of assistance to farm families.

15.04.400 Findings—Department's duty to promote agriculture, protect public health and welfare.

15.04.402 Department to advance private sector, economic well-being of agricultural industry.

15.04.410 Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act.

15.04.415 Information on product country of origin—Findings—Use of placards.

**NOTES:**

Bacon, packaging at retail to reveal quality and leanness, director's duties: RCW 69.04.205 through 69.04.207.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1998 c 345:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1998 c 345 § 14.]

**Effective date—Contingent effective date—1998 c 345:** "(1) Sections 1 through 9, and *16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately

[April 3, 1998].

(2) Sections 10 through 12 of this act take effect July 1, 2001, if the repeal of RCW 67.16.100, 67.16.105, and 67.16.170 under section 9 of this act becomes effective."

[1998 c 345 § 15.]

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

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Construction—Effective dates—Severability—1987 c 452:** See RCW 15.88.900 through 15.88.902.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Effective date—Contingency—1985 c 26:** "This act shall take effect January 1, 1986, if the proposed amendment to Article VIII, of the state Constitution authorizing agricultural commodity assessments for agricultural development or trade promotion and promotional hosting to be deemed a public use for a public purpose is validly submitted to and is approved and ratified by the voters at a general election held in November 1985. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety."

[1985 c 26 § 2.] The proposed constitutional amendment was approved by the voters on November 5, 1985. See Article VIII, section 11 of the state Constitution.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 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.]

**NOTES:**

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 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.]

## RCW 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

**Sections**


15.08.010 Definitions.
15.08.020 Methods of prevention, control and disinfection.
15.08.025 Disinfection of fruit trees—Procedures to be followed.
15.08.030 Duty to disinfect, destroy—Disposal of cuttings.
15.08.040 Authority to enter premises—Interference unlawful.
15.08.050 Condemnation of infected property—Disposal of, unlawful.
15.08.060 Condemnation of infected property—Notice to owner—Division into classes.
15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit.
15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted.
15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs.
15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents.
15.08.110 Sale proceeds—Deficiency—Action to recover.
15.08.120 Record of proceedings—Verified copy as evidence.
15.08.130 Record of premises disinfected—Costs—Lien.
15.08.140 Hearing on costs—Notice—Service.
15.08.150 Payment and release—Order on amount—Priority of lien.
15.08.160 Payment date—Cancellation of lien.
15.08.170 Failure to pay—Conversion into taxes—Use.
15.08.180 Inspection board—Creation—Duties—Powers.
15.08.190 Report of inspection—Nuisance abatement.
15.08.200 Notice of hearing—Service—Adjournments.
15.08.210 Order of abatement.
15.08.220 Appeals—Bond for damages.
15.08.230 Disinfection of public properties.
15.08.240 Dumping infected products, containers, prohibited.
15.08.250 Host-free districts—Director's duties.
15.08.260 Horticultural tax.
15.08.270 Basis for estimating the tax.


**NOTES:**

Pest control compact: Chapter 17.34 RCW.

### RCW 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 producer 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.]

**NOTES:**

**Severability—1981 c 296:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1981 c 296 § 40.]

### RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1981 c 296:** See note following RCW 15.08.010.

**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 purpose of protecting its health and general welfare, presently and in the future."

[1965 c 27 § 1.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.08.060 Condemnation of infected property—Notice to owner—Division into classes.

Said notice of condemnation 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 specified. 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.08.180 Inspection board—Creation—Duties—Powers.

If a horticultural inspector finds premises or property infected, 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 infected 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 infected. 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 § 2849-1e. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

## RCW 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.]

## RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

**NOTES:**

**Severability—1981 c 296:** See note following RCW 15.08.010.

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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 15.13 RCW

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

**Sections**


15.13.250 Definitions.
15.13.260 Enforcement—Rules—Scope.
15.13.262 Application of administrative procedure act.
15.13.265 Enforcement—Access to nursery dealer premises—Inspection.
15.13.270 Nursery dealer licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations.
15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit.
15.13.285 Nursery dealer licenses—Fee surcharge.
15.13.290 Nursery dealer licenses—Additional charge for late renewal.
15.13.300 Nursery dealer licenses—Application—Contents.
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.
15.13.311 Christmas tree grower exemptions—License—Fees.
15.13.312 Christmas tree grower license—Application.
15.13.314 Christmas tree program—Advisory committee.
15.13.315 Grapevine certification and nursery improvement program—Advisory committee.
15.13.320 Fruit tree certification and nursery improvement program—

Advisory committee.
15.13.335 Nursery advisory committee—Members—Terms.
15.13.340 Late fee on delinquent assessments.
15.13.360 Hearings—Subpoenas.
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.
15.13.380 Inspection fees—When due and payable—Arrears.
15.13.390 Unlawful selling, shipment, or transport of horticultural plants or Christmas trees within state, when.
15.13.400 Unlawful shipment or delivery of horticultural plants into state, when—Certificate and inspection requirements—Christmas trees—Rules—Hearing.
15.13.410 Shipments into state to be marked or tagged.
15.13.420 Unlawful acts enumerated.
15.13.425 False advertisements.
15.13.430 Hold order on damaged, infested, or infected horticultural plants or Christmas trees—Selling or moving unlawful.
15.13.440 Order of condemnation—Grounds for issuance.
15.13.445 Order or action of director—Hearing opportunity.
15.13.447 Prohibition on recovery of damages.
15.13.450 Injunction to prevent violations.
15.13.455 Injunction to restrain operation as nursery dealer or Christmas tree grower without valid license—Costs, attorneys' fees, and expenses.
15.13.470 Disposition of moneys collected under chapter—Expenditure.
15.13.477 Compliance agreements.
15.13.480 Cooperative contracts or agreements to further chapter—Agreements to facilitate export.
15.13.490 Compliance with chapter—Violation—Penalties.
15.13.500 Suspension of license—Reissuance.
15.13.920 Chapter cumulative and nonexclusive.
15.13.940 Severability—1971 ex.s. c 33.

**NOTES:**

**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).

## RCW 15.13.250 Definitions. *(Expires July 1, 2014.)*

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 the director's duly authorized representative.

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

(4) "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.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

(9) "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.

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

(11) "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.

(12) "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.

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

(14) "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.

(15) "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.

(16) "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.

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

[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.]

**NOTES:**

**Expiration date—2007 c 335:** "This act expires July 1, 2014."

[2007 c 335 § 19.]

**Severability—1982 c 182:** See RCW 19.02.901.

## RCW 15.13.250 Definitions. *(Effective July 1, 2014.)*

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 the director's duly authorized representative.

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

(4) "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.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

(9) "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.

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

(11) "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.

(12) "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.

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

(14) "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.

(15) "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.

[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.]

**NOTES:**

**Severability—1982 c 182:** See RCW 19.02.901.

## RCW 15.13.260 Enforcement—Rules—Scope. *(Expires July 1, 2014.)*

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.]

NOTES:

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.260 Enforcement—Rules—Scope. *(Effective July 1, 2014.)*

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.]

## RCW 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.]

## RCW 15.13.265 Enforcement—Access to nursery dealer premises—Inspection. *(Expires July 1, 2014.)*

(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 or Christmas tree grower to license revocation.

[2007 c 335 § 3; 2000 c 144 § 4; 1993 c 120 § 7.]

NOTES:

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.265 Enforcement—Access to nursery dealer premises—Inspection. *(Effective July 1, 2014.)*

(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.]

## RCW 15.13.270 Nursery dealer licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. *(Expires July 1, 2014.)*

The provisions of this chapter relating to nursery dealer licensing do not apply to:

(1) Persons making casual or isolated sales that do not exceed one hundred dollars annually;

(2) 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;

(3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales.

All horticultural plants sold under such a permit shall be in compliance with the provisions of this chapter.

[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.]

NOTES:

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.270 Licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. *(Effective July 1, 2014.)*

The provisions of this chapter relating to licensing do not apply to:

(1) Persons making casual or isolated sales that do not exceed one hundred dollars annually;

(2) 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;

(3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales.

All horticultural plants sold under such a permit shall be in compliance with the provisions of this chapter.

[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.]

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

(1) No person shall 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 shall apply through the master license system. The application shall be accompanied by the appropriate fee. The director shall 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 shall 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 shall 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 shall 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 shall be based upon the applicant's estimated gross sales of horticultural plants for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of these products during the preceding licensing year.

(5) The license expires on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall 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.

[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.]

**NOTES:**

**Severability—1982 c 182:** See RCW 19.02.901.

Master license

expiration date: RCW 19.02.090.

system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 15.13.250(10).

to include additional licenses: RCW 19.02.110.

## RCW 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.]

**NOTES:**

**Effective date—1992 c 23:** "This act shall take effect on July 1, 1992."

[1992 c 23 § 2.]

## RCW 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 master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued.

[2000 c 144 § 8; 1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

**NOTES:**

**Severability—1982 c 182:** See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

## RCW 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.]

**NOTES:**

**Severability—1982 c 182:** See RCW 19.02.901.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: Chapter 19.02 RCW.

## 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 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.]

## RCW 15.13.311 Christmas tree grower exemptions—License—Fees. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.312 Christmas tree grower license—Application. *(Expires July 1, 2014.)*

Application for a Christmas tree grower license shall include:

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.314 Christmas tree program—Advisory committee. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 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.]

## RCW 15.13.320 Fruit tree certification and nursery improvement program—Advisory committee.

An advisory 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.]

## RCW 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.]

## RCW 15.13.340 Late fee on delinquent assessments. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.340 Late fee on delinquent assessments. *(Effective July 1, 2014.)*

(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.]

## RCW 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.]

## RCW 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. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 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, 2014.)*

(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.]

## RCW 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.]

## RCW 15.13.390 Unlawful selling, shipment, or transport of horticultural plants or Christmas trees within state, when. *(Expires July 1, 2014.)*

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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.390 Unlawful selling, shipment, or transport of plants within state, when. *(Effective July 1, 2014.)*

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.]

## RCW 15.13.400 Unlawful shipment or delivery of horticultural plants into state, when—Certificate and inspection requirements—Christmas trees—Rules—Hearing. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements—Rules—Hearing. *(Effective July 1, 2014.)*

(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 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.]

## RCW 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.]

## RCW 15.13.420 Unlawful acts enumerated. *(Expires July 1, 2014.)*

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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

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## RCW 15.13.420 Unlawful acts enumerated. *(Effective July 1, 2014.)*

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.]

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## RCW 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.]

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## RCW 15.13.430 Hold order on damaged, infested, or infected horticultural plants or Christmas trees—Selling or moving unlawful. *(Expires July 1, 2014.)*

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 infected 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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

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## RCW 15.13.430 Hold order on damaged, infested, or infected plants—Selling or moving unlawful. *(Effective July 1, 2014.)*

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.]

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## RCW 15.13.440 Order of condemnation—Grounds for issuance. *(Expires July 1, 2014.)*

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 potbound. 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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

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## RCW 15.13.440 Order of condemnation—Grounds for issuance. *(Effective July 1, 2014.)*

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 potbound. 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.]

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## RCW 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.]

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## RCW 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.]

## RCW 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.]

## RCW 15.13.455 Injunction to restrain operation as nursery dealer or Christmas tree grower without valid license—Costs, attorneys' fees, and expenses. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

## RCW 15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. *(Effective July 1, 2014.)*

(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.]

## RCW 15.13.470 Disposition of moneys collected under chapter—Expenditure. *(Expires July 1, 2014.)*

(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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

**Effective date—1975 1st ex.s. c 257:** "This act is 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 on July 1, 1975."

[1975 1st ex.s. c 257 § 13.]

## RCW 15.13.470 Disposition of moneys collected under chapter—Expenditure. *(Effective July 1, 2014.)*

(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.

(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.]

**NOTES:**

**Effective date—1975 1st ex.s. c 257:** "This act is 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 on July 1, 1975."

[1975 1st ex.s. c 257 § 13.]

## RCW 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.]

## RCW 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.]

### RCW 15.13.490 Compliance with chapter—Violation—Penalties. *(Expires July 1, 2014.)*

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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

### RCW 15.13.490 Compliance with chapter—Violation—Penalties. *(Effective July 1, 2014.)*

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.]

### RCW 15.13.500 Suspension of license—Reissuance. *(Expires July 1, 2014.)*

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.]

**NOTES:**

**Expiration date—2007 c 335:** See note following RCW 15.13.250.

### RCW 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.]

### RCW 15.13.940 Severability—1971 ex.s. c 33.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1971 ex.s. c 33 § 28.]

# 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.
15.14.920 Severability—1961 c 83.


### RCW 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 olericultural 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.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.14.920 Severability—1961 c 83.

If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1961 c 83 § 18.]

# 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. |
| 15.15.900 | Effective date—1997 c 176. |


### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.15.900 Effective date—1997 c 176.

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

[April 23, 1997].

[1997 c 176 § 5.]

# 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.
15.17.230 Fruit and vegetable inspection districts.
15.17.240 Fruit and vegetable inspection account—District subaccounts—Fees—Rules.
15.17.247 District two—Transfer of funds—Control of Rhagoletis pomonella.
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.
15.17.940 Severability—1963 c 122.


**NOTES:**

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

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

### 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.]

### RCW 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) "District manager" means a person representing the director in charge of overall operation of a fruit and vegetable inspection district established under RCW 15.17.230.

(11) "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.

(12) "Fruits and vegetables" means any unprocessed fruits or vegetables.

(13) "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.

(14) "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.

(15) "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.

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

(17) "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.

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

(19) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables.

[1998 c 154 § 2; 1996 c 188 § 1; 1963 c 122 § 2.]

## RCW 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.]

## RCW 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.]

NOTES:

**Expiration date—2004 c 211 § 1:** "Section 1 of this act expires December 31, 2009."

[2007 c 237 § 1; 2005 c 234 § 1; 2004 c 211 § 2.]

**Effective date—2004 c 211:** "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 29, 2004]."

[2004 c 211 § 3.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

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

## RCW 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.]

## RCW 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;

(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.]

## RCW 15.17.230 Fruit and vegetable inspection districts.

For the purpose of this chapter the state shall be divided into not less than two fruit and vegetable inspection districts. The director, by rule, shall establish the boundaries of the districts and may adjust the boundaries for purposes of efficiency and economy.

[2002 c 322 § 1; 1998 c 154 § 15; 1986 c 203 § 2; 1975 1st ex.s. c 7 § 1; 1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

**NOTES:**

**Effective date—2002 c 322:** See note following RCW 15.17.240.

**Severability—1986 c 203:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1986 c 203 § 25.]

## RCW 15.17.240 Fruit and vegetable inspection account—District subaccounts—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.

The director shall establish and maintain an account within the fruit and vegetable inspection account for each district established under RCW 15.17.230.

(2) By August 1, 2004, and by August 1st of each even-numbered year thereafter, the director shall review the balance of each of the district accounts in the fruit and vegetable inspection account at the end of the previous fiscal year. If the balance in the district account exceeds the sum of the following: An amount equal to the total expenditures of the district 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 district account until such time that the district 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 district. 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.

[2002 c 322 § 2; 1998 c 154 § 16; 1975 c 40 § 3; 1963 c 122 § 24.]

**NOTES:**

**Effective date—2002 c 322:** "This act takes effect July 1, 2002. However, the director of the department of agriculture and the state treasurer may take actions before July 1, 2002, to permit the creation of the fruit and vegetable inspection account and the district accounts described in RCW 15.17.240 by July 1, 2002."

[2002 c 322 § 8.]

### RCW 15.17.247 District two—Transfer of funds—Control of Rhagoletis pomonella. *(Expires July 1, 2013.)*

(1) The district manager for district two as defined in WAC 16-390-010 is authorized to transfer one hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of Rhagoletis pomonella in district two. The transfer of money must occur by September 1, 2009. On June 30, 2013, any unexpended portion of the one hundred fifty thousand dollars must be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county.

(2) This section expires July 1, 2013.

[2009 c 208 § 1.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.17.940 Severability—1963 c 122.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1963 c 122 § 33.]

# 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.
15.19.900 Severability—1998 c 154.


### RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## RCW 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.]

## RCW 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.]

## RCW 15.19.110 Remedies.

The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy.

[1998 c 154 § 31.]

## RCW 15.19.900 Severability—1998 c 154.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1998 c 154 § 32.]

# CHAPTER 15.24 RCW
# WASHINGTON APPLE COMMISSION

**(Formerly: Apple advertising 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.
15.24.033 Members—Transition to appointed commission—Appointments by director.
15.24.035 Members—Appointments by director—Advisory ballot.
15.24.040 Members—Nominations to the advisory ballot.
15.24.045 Members—Removal from commission—Process.
15.24.050 Vacancies—Quorum—Compensation—Travel expenses.
15.24.060 Commission records as evidence.
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.
15.24.085 Promotional printing not restricted by public printer laws.
15.24.086 Promotional printing contracts—Contractual conditions of employment.
15.24.090 Decrease or increase in assessments—Grounds—Procedure—Oversight by director.
15.24.100 Assessments levied—Procedure for eliminating assessment.
15.24.110 Collection of assessments—Due prior to shipment—Stamps—Rule-making exemption—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.
15.24.170 Rules and regulations—Filing—Publication.
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.
15.24.800 Financing assistance for commission building.
15.24.802 General obligation bonds to fund commission building.
15.24.804 Bond issuance and sale.
15.24.806 Bond proceeds, etc., to state building construction account.
15.24.808 Expenditure of bond proceeds.
15.24.810 Fund for payment of bond principal and interest.
15.24.812 Certification and payment of bond principal and interest.
15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment.
15.24.816 Bonds constitute legal investments for state and other public funds.
15.24.818 Bonds to be issued only after certification of sufficiency of funds.
15.24.900 Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws.
15.24.910 Liberal construction.
15.24.920 Severability—1967 c 240.
15.24.921 Severability—2004 c 178.


**NOTES:**

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

## RCW 15.24.010 Definitions.

As used in this chapter:

(1) "Commission" means the Washington apple commission;

(2) "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;

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

(4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;

(5) "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;

(6) "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;

(7) "Fresh apples" means all apples other than processing

apples;

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

(9) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

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

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

(12) "Dealer district No. 1" includes the area of the state north of Interstate 90;

(13) "Dealer district No. 2" includes the area of the state south of Interstate 90; and

(14) "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.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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 practical apple producers and four practical 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 producer 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 qualifications of both a producer and a dealer as set forth in this section may serve as either a producer member or a dealer member.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 producer members, and four shall be dealer members. The number of producer 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 as of July 1, 2003, according to the most recent census of acreages published by the United States department of agriculture, agricultural statistics service. The number of producer 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 producer members shall be from district 1, one of which shall be from Okanogan county; district 2 shall never have fewer than two producer members; and district 3 shall never have fewer than one producer 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 1 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.

[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.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.24.033 Members—Transition to appointed commission—Appointments by director.

To accomplish the transition to a commission structure as set forth in RCW 15.24.030, the names of the currently elected commission members shall be forwarded to the director for appointment within thirty days of June 10, 2004, for appointment for the remainder of their current terms. Thereafter, the director shall appoint commission members pursuant to the commission structure set forth in RCW 15.24.030 as the current commission member terms expire. As part of the transition, in order to achieve proper representation of producer members relative to planted acreages, as each current producer position expires the director shall appoint a replacement producer member from the district then most underrepresented until the initial balance of representation is achieved. Notwithstanding other provisions of this chapter, nominations for transitioning positions required

for underrepresented districts shall be made from the district to be represented by the new commission member. Thereafter, reallocations shall be accomplished as provided in RCW 15.24.030.

[2004 c 178 § 4.]

## RCW 15.24.035 Members—Appointments by director—Advisory ballot.

(1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated to the director in accordance with subsection (3) of this section.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the commission shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers for producer positions and to affected dealers for dealer positions and shall be returned to the commission 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 only two candidates are nominated for a position, an advisory vote need 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 director has the discretion to appoint or reject the candidate.

(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 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.

[2008 c 11 § 1; 2004 c 178 § 5.]

## RCW 15.24.040 Members—Nominations to the advisory ballot.

The commission shall call a meeting of apple growers, and meetings of apple dealers in dealer district No. 1 and dealer district No. 2 for the purpose of nominating to the advisory ballot for nomination to the director their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. The meetings shall be held each year and insofar as practicable, the meetings of the growers shall be held at the same time and place as the annual meeting of the Washington state horticultural association, or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same is in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person shall 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 or within the subdivision if the nomination is made from a subdivision.

Nominees to be forwarded to the director for appointment to producer positions on the commission shall be selected by a majority of the votes cast by the apple growers in the respective districts. Each grower who operates a commercial producing apple orchard within the district being represented, whether an individual proprietor, partnership, joint venture, or corporation, is entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he or she is also a member of a partnership or corporation which votes for other apple acreage. Nominees to be forwarded to the director 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.

[2008 c 11 § 2; 2004 c 178 § 6; 2002 c 313 § 117; 1989 c 354 § 56; 1967 c 240 § 25; 1963 c 145 § 4; 1961 c 11 § 15.24.040. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 15.24.060 Commission records as evidence.

Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein.

[1961 c 11 § 15.24.060. Prior: 1937 c 195 § 4, part; RRS § 2874-4, part.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 15.24.073 Rule-making proceedings—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 the proposed rule is subject to a referendum.

[2002 c 313 § 125.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 producers, conditions of the markets, and extent to which public convenience and necessity require research and advertising to be conducted.

[2002 c 313 § 120; 1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.085 Promotional printing not restricted by public printer laws.

The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington apple commission, the Washington state fruit commission, or the Washington state dairy products commission.

[2002 c 313 § 121; 1961 c 11 § 15.24.085. Prior: 1953 c 222 § 1.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.086 Promotional printing contracts—Contractual conditions of employment.

All such printing contracts provided for in this section and RCW 15.24.085 shall be executed and performed under conditions of employment which shall 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 provision of any contract shall be ground for cancellation thereof.

[1994 c 164 § 1; 1973 1st ex.s. c 154 § 20; 1961 c 11 § 15.24.086. Prior: 1953 c 222 § 2.]

**NOTES:**

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

## RCW 15.24.090 Decrease or increase in assessments—Grounds—Procedure—Oversight by director.

If it appears from investigation by the director and the commission that the revenue from the assessment levied on fresh apples 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 necessities of the industry, the extent and probable cost of the required research or other expenditures, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. With the oversight of the director, and subject to the approval by vote of at least two-thirds for increases, or a majority for decreases, of the producers voting; and approval of voting producers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election, the commission shall thereupon decrease or increase the assessment to a sum determined by the commission to be necessary for those purposes. However, if a different rate is determined for any specific variety or for fresh apples sliced or cut for raw consumption, that different rate must be applied to that variety or those sliced or cut apples. A decrease or an increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by at least two-thirds for increases, or a majority for decreases, of the growers voting on it and also be approved by voting growers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election. After the mail ballot, if favorable to the increase or decrease, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase or decrease.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.100 Assessments levied—Procedure for eliminating assessment.

(1) Subject to subsection (2) of this section, there is hereby levied upon all fresh apples grown annually 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, plus such annual decreases or increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.

(2) No sooner than five years from June 10, 2004, a petition may be filed with the commission to reduce the assessment authorized in this section 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.

(a) 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.

(b) Following the public hearings, the question of whether to reduce the assessment authorized in this section 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 an affected grower does not invalidate a referendum.

(c) 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.

(d) 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.

(e) 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 subsection.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.110 Collection of assessments—Due prior to shipment—Stamps—Rule-making exemption—Assessment imposed under RCW 15.26.120.

The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to 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, and for that purpose may require stamps to be known as "Washington apple stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Rule-making procedures conducted under this section are exempt from the provisions of RCW 43.135.055 when adoption of the rule or rules is determined by a referendum vote of the persons taxed under this chapter.

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.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 years, and be subject to inspection at any time upon demand of the commission or its agents.

[2010 c 8 § 6021; 1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.170 Rules and regulations—Filing—Publication.

Rules, regulations, and orders made by the commission shall be filed with the director and published in a legal newspaper in the cities of Wenatchee and Yakima within five days after being made, and shall become effective pursuant to the provisions of RCW 34.05.380.

[2002 c 313 § 127; 1975 1st ex.s. c 7 § 37; 1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

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

## RCW 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.]

## RCW 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 according to the rules adopted by the director.

[2002 c 313 § 72.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.24.800 Financing assistance for commission building.

The legislature hereby finds that, in order to permit the Washington apple commission to accomplish more efficiently its important public purposes, as enumerated in chapter 15.24 RCW, it is necessary for the state to assist in financing a new building for the commission, to be located on Euclid Avenue in Chelan county, and housing commission offices, warehouse space, and a display room. The state's assistance shall augment approximately five hundred thousand dollars in commission funds which will be

applied directly to the payment of the costs of this project. The state's assistance shall be in the amount of eight hundred thousand dollars, or so much thereof as may be required, to be provided from the proceeds from the sale and issuance of general obligation bonds of the state, the principal of and interest on which shall be reimbursed to the state treasury by the commission from revenues derived from the assessments levied pursuant to chapter 15.24 RCW and other sources.

[2002 c 313 § 128; 1987 c 6 § 1.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1987 c 6 § 12.]

## RCW 15.24.802 General obligation bonds to fund commission building.

For the purpose of providing part of the funds necessary for the Washington apple commission to undertake a capital project consisting of the land acquisition for, and the design, construction, furnishing, and equipping of, the building described in RCW 15.24.800, and to pay the administrative costs of such project, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, and other expenses incidental to the administration of such project, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight hundred thousand dollars, or so much thereof as may be required.

[2002 c 313 § 129; 1987 c 6 § 2.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.804 Bond issuance and sale.

The bonds authorized in RCW 15.24.802 shall be issued and sold in accordance with the provisions of chapter 39.42 RCW.

[1987 c 6 § 3.]

**NOTES:**

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.806 Bond proceeds, etc., to state building construction account.

The proceeds from the sale of the bonds authorized in RCW 15.24.802, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the Washington apple commission may direct the state treasurer to deposit therein, shall be deposited in the state building construction account in the state treasury.

[2002 c 313 § 130; 1987 c 6 § 4.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.808 Expenditure of bond proceeds.

Subject to legislative appropriation, all proceeds from the sale of the bonds authorized in RCW 15.24.802 shall be administered and expended by the Washington apple commission exclusively for the purposes specified in RCW 15.24.802.

[2002 c 313 § 131; 1987 c 6 § 5.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.810 Fund for payment of bond principal and interest.

The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized to be issued under RCW 15.24.802. The state finance committee may provide for the creation of one or more separate accounts in such fund to facilitate payment of such principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest on such bonds coming due in accordance with the provisions of the bond proceedings. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, the amount certified by the state finance committee to be due on the payment date.

[1987 c 6 § 6.]

**NOTES:**

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.812 Certification and payment of bond principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the Washington apple commission the principal and interest payments determined under RCW 15.24.810, exclusive of deposit interest credit, attributable to the bonds issued under RCW 15.24.802. On each date on which any interest or principal and interest payment is due, the commission shall cause the amount certified by the state finance committee to be due on such date to be paid out of the commission's general fund to the state treasurer for deposit into the general fund of the state treasury.

[2002 c 313 § 132; 1987 c 6 § 7.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment.

The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 15.24.802, and RCW 15.24.810 and 15.24.812 shall not be deemed to provide an exclusive method for the payment of such principal and interest.

[1987 c 6 § 8.]

**NOTES:**

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.816 Bonds constitute legal investments for state and other public funds.

The bonds authorized by RCW 15.24.802 shall constitute legal investments for all state funds or for funds under state control and all funds of any other public body.

[1987 c 6 § 9.]

**NOTES:**

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 15.24.818 Bonds to be issued only after certification of sufficiency of funds.

The bonds authorized by RCW 15.24.802 shall be issued only after the treasurer of the Washington apple commission has certified that the net proceeds of the bonds, together with all money to be made available by the commission for the purposes described in RCW 15.24.802, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to chapter 15.24 RCW and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to meet the requirements of RCW 15.24.812 during the life of the bonds to be issued.

[2002 c 313 § 133; 1987 c 6 § 10.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1987 c 6:** See note following RCW 15.24.800.

## RCW 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 producer 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 producer 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 products; 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 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 agricultural producer'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 28.30 [28B.30] RCW;

(vii) Department of agriculture, chapter 43.23 RCW;

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

(ix) *Organic food 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 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.

[2002 c 313 § 134; 1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

**NOTES:**

***Reviser's note:** The "organic food products act" was renamed the "organic products act."

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### RCW 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.]

### RCW 15.24.920 Severability—1967 c 240.

See note following RCW 43.23.010.

### RCW 15.24.921 Severability—2004 c 178.

If any section, subsection, sentence, clause, or part of this act is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of this act and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this act was enacted with the intent that if any portion of this act is severed, the remainder of this act is capable of accomplishing its legislative purpose.

[2004 c 178 § 16.]

# CHAPTER 15.26 RCW
## TREE FRUIT RESEARCH ACT

**Sections**


15.26.010 Short title.
15.26.020 Purpose.
15.26.030 Definitions.
15.26.040 Tree fruit research commission created—Membership.
15.26.050 Qualifications of members.
15.26.060 Appointment of members.
15.26.070 Terms of members.
15.26.080 Vacancies.
15.26.090 Quorum.
15.26.100 Compensation—Travel expenses.
15.26.110 Powers of commission.
15.26.120 Assessments levied—Referendum.
15.26.125 Assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW—Washington tree fruit research commission.
15.26.130 List of producers.
15.26.140 Increase in assessments by referendum.
15.26.150 Additional assessments for special projects.
15.26.155 Additional assessment.
15.26.160 Suspension of assessments.
15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit.
15.26.180 Records of persons receiving fruit.
15.26.190 Return of dealers, handlers, and processors—Filing—Contents.
15.26.200 Assessments—When due and payable—Collection.
15.26.210 Assessments—Constitute personal debt.
15.26.220 Assessments—Failure to pay—Collection.
15.26.230 Disposition of moneys collected—Treasurer's bond.
15.26.235 Collection, administration, and dispersal of funds for industry service programs.
15.26.240 Nonliability of state, members, employees.
15.26.250 Collection of assessments for commission by apple commission and state fruit commission.
15.26.260 Legal costs and expenses to be borne by commission.
15.26.265 Funding staff support—Rules.
15.26.270 Copies of commission's proceedings, records, acts as evidence.
15.26.280 Moneys collected retained by commission.
15.26.290 Contracts with public or private agencies to carry out chapter.
15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
15.26.300 Violations—Penalty.
15.26.900 Chapter cumulative.
15.26.910 Severability—1969 c 129.


### RCW 15.26.010 Short title.

This chapter shall be known and cited as the "tree fruit research act."

[1969 c 129 § 1.]

## RCW 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, harvesting, 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 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.]

**NOTES:**

**Reviser's note:** 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).

## RCW 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 *apple advertising 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.

[1969 c 129 § 12.]

**NOTES:**

***Reviser's note:** The "Washington state apple advertising commission" was renamed the "Washington apple commission" by 2002 c 313 § 115.

Collection by the Washington apple commission: RCW 15.24.110.

## RCW 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.]

**NOTES:**

**Effective date—1995 c 109:** "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 shall take effect July 1, 1995."

[1995 c 109 § 3.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 years subject to inspection by duly authorized representatives of the commission.

[2010 c 8 § 6032; 1969 c 129 § 18.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.26.235 Collection, administration, and dispersal of funds for industry service programs.

Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 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 § 212; 2002 c 313 § 67.]

**NOTES:**

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

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

## RCW 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.]

## RCW 15.26.910 Severability—1969 c 129.

If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1969 c 129 § 33.]

# CHAPTER 15.28 RCW
## SOFT TREE FRUITS

**Sections**


15.28.010 Definitions.
15.28.015 Regulating soft tree fruits—Commission created—Existing comprehensive scheme—Applicable laws.
15.28.020 Commission composition—Voting—Quorum.
15.28.023 Director appoints members—Nominations—Advisory vote.
15.28.024 Transition to director appointed commission.
15.28.030 Qualifications of voting members.
15.28.040 Appointment of voting members—Positions.
15.28.050 Terms of office.
15.28.055 Terms of present members.
15.28.060 Nominating meetings—Notice—Appointment—Ballots—Advisory vote—Eligible voters.
15.28.070 Establishment of subdistricts—Rules and regulations.
15.28.080 Vacancies on commission—How filled.
15.28.090 Compensation of members—Travel expenses.
15.28.100 Powers of commission.
15.28.103 Commission's plans, programs, and projects—Director's approval required.
15.28.105 Commission speaks for state—Director's oversight.
15.28.110 Duties of commission.
15.28.120 Copies of records as evidence.
15.28.130 State, personal, nonliability—Obligations limited by collections—Defense to certain civil or criminal actions.
15.28.140 District advisory and state commodity committees.
15.28.150 Committee organization—Duties.
15.28.160 Annual assessment—Exemption—Brined sweet cherries assessable.
15.28.170 Research and advertising—Power to increase assessment.
15.28.175 Promotional printing and literature—Contracts.
15.28.180 Increase of assessment for specific fruit or classification—Procedure.
15.28.190 Deposit of funds—Treasurer's bond.
15.28.200 Use of funds—Contributions.
15.28.210 Records kept—Preservation—Inspection of.
15.28.220 Returns to commission.
15.28.230 Due date of assessments—Delinquent penalty.
15.28.240 Collection rules—Use of "stamps."
15.28.250 Responsibility for payment of assessments—Due upon receipt—Delinquencies—Civil action.
15.28.260 Publications by commission—Subscriptions.
15.28.270 Violations—Penalty.
15.28.280 Venue of actions—Jurisdiction of courts.
15.28.290 Duty to enforce.

15.28.300 Rules and regulations—Filing—Publication.
15.28.305 Rule making—Exemptions.
15.28.310 Authority to agents of commission to inspect.
15.28.315 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
15.28.320 Funding staff support—Rules.
15.28.325 Costs of implementing RCW 15.28.103.
15.28.901 Severability—2004 c 99.
15.28.910 Liberal construction.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 food products act under chapter 15.86 RCW;

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

(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 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.

[2002 c 313 § 103.]

**NOTES:**

***Reviser's note:** The "organic food products act" was renamed the "organic products act."

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Effective date—1967 c 191:** "This act is 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 immediately: PROVIDED, That section 5 of this 1967 amendatory act shall not take effect until July 1, 1968."

[1967 c 191 § 9.]

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

## RCW 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 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Effective date—1967 c 191:** See note following RCW 15.28.020.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 15.28.175 Promotional printing and literature—Contracts.

Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

## RCW 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.]

**NOTES:**

**Findings—1997 c 303:** See note following RCW 43.135.055.

**Effective date—1997 c 303 §§ 1-3:** See note following RCW 43.135.055.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 15.28.901 Severability—2004 c 99.

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

[2004 c 99 § 1.]

**NOTES:**

**Effective date—2004 c 99:** "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 24, 2004]."

[2004 c 99 § 4.]

## RCW 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.
15.30.020 Annual license required—Expiration date.
15.30.030 Application for license, contents—Issuance, prerequisites.
15.30.040 Annual license fee.
15.30.050 Enforcement—Rules authorized, procedure.
15.30.060 Rules—Oxygen content, temperature, and time period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored.
15.30.070 License renewal date—Penalty for late renewal, exception.
15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required.
15.30.090 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act.
15.30.100 Subpoenas—Witnesses and fees.
15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number.
15.30.120 Licensee to make daily determination of air components—Record, form, contents.
15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market.
15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter.
15.30.150 Minimum condition and maturity standards for apples.
15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when.
15.30.170 Inspection, certification may be requested by financially interested person.
15.30.180 Fees for inspection and certification.
15.30.190 Certificate as evidence.
15.30.200 Disposition of fees.
15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import.
15.30.220 Injunctions authorized.
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.
15.30.910 Severability—1961 c 29.


## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.30.040 Annual license fee.

The application for an annual license to engage in the business of operating a controlled 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.30.150 Minimum condition and maturity standards for apples.

Minimum condition and maturity standards 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 15.16 RCW, as enacted or hereafter amended, for the handling of inspection and certification

fees derived for the inspection of any fruits and vegetables.

[1961 c 29 § 20.]

**NOTES:**

***Reviser's note:** Chapter 15.16 RCW was repealed by 1963 c 122. Later enactment, see chapter 15.17 RCW.

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

**NOTES:**

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

### RCW 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.]

### RCW 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.]

### RCW 15.30.910 Severability—1961 c 29.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof, not adjudged invalid or unconstitutional.

[1961 c 29 § 27.]

# CHAPTER 15.36 RCW
## MILK AND MILK PRODUCTS

**(Formerly: Fluid milk)**

**Sections**


15.36.002 Intent.
15.36.012 Definitions.
15.36.021 Milk and milk products—Rule-making authority—Grade A pasteurized and raw milk—Grade C milk and milk products.
15.36.025 Application of chapter 34.05 RCW.
15.36.041 Milk producer's license.
15.36.051 Milk processing plant license—Fee waiver.
15.36.071 Milk hauler's license—Endorsements.
15.36.081 Dairy technician's license—Application—Renewal—Fees.
15.36.091 Dairy technician's license—Records—Inspection of.
15.36.101 Milk wash station license.
15.36.111 Inspection of dairy farms and milk processing plants—Violations—Director's access.
15.36.131 Sale of out-of-state grade A milk and milk products.
15.36.141 Grading of milk and milk products.
15.36.151 Unlawful to sell, offer for sale, or deliver certain products—Diseased animals—Colostrum—Exceptions.
15.36.161 Cows, goats, and other mammals—Animal health requirements.
15.36.171 Grades of milk and milk products that may be sold.
15.36.181 Sale of adulterated or misbranded milk or milk products prohibited—Possession restricted.
15.36.191 Milk or milk product analysis—Report of violative results.
15.36.201 Examination of milk and milk products—Violations—Director's options.
15.36.206 Source of milk and milk products—Seller's disclosure.
15.36.221 Grade A raw milk—Cooling.
15.36.231 Raw milk or milk products—Bottling and capping—Packaging—Labeling.
15.36.241 Capping of milk or milk products.
15.36.261 Butter or cheese—Pasteurization of milk or cream.
15.36.271 "Pasteurized"—Use of word regulated.
15.36.281 Unlawful use of containers—Seizure authorized.
15.36.401 Licenses—Denial, suspension, revocation—Reasons.
15.36.412 Issuance of cease and desist order.
15.36.421 Milk processing plant or producer—License suspension.
15.36.451 Regrading of milk or milk products—Reinstatement of license.
15.36.454 Failure to comply with chapter or rules—Civil penalties.
15.36.455 Violations—Notice, orders, damages.

15.36.457 Authority to assess civil penalty.
15.36.471 Component parts of fluid dairy products—Violations of standards—Civil penalty—Investigation.
15.36.473 Failure to comply with chapter or rules—Criminal penalties.
15.36.475 Laboratory tests—Admission as evidence.
15.36.481 Violations may be enjoined.
15.36.491 Licenses—Money deposited in general fund—Exception.
15.36.511 Unlawful actions.
15.36.525 Sanitary certificates—Rules—Fee for issuance.
15.36.531 Declaration of police power.
15.36.541 Chapter cumulative.
15.36.551 Dairy inspection program—Assessment.
15.36.561 Dairy inspection program—Advisory committee—Purpose—Terms.

## RCW 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.]

## RCW 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 69.04 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.

[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.]

**NOTES:**

**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.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** "Sections 1 through 47, 50 through 53, and 59 through 68 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1995."

[1995 c 374 § 81.]

**Severability—1989 c 354:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1989 c 354 § 89.]

## RCW 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 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.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Repealed definitions constitute rules:** "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as hereinafter 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.36.051 Milk processing plant license—Fee waiver.

A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on June 30 of each year. A milk processing plant may choose to process

(1) grade A milk and milk products, or

(2) other milk products that are not classified grade A.

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 fifty-five dollar annual license fee. 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.

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.

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.

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.

[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.]

**NOTES:**

**Effective date—2005 c 414 §§ 1 and 4:** "Sections 1 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005."

[2005 c 414 § 5.]

## RCW 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.]

**NOTES:**

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 15.36.081 Dairy technician's license—Application—Renewal—Fees.

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.

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.

The initial application for a dairy technician's license must be accompanied by a license fee of ten dollars. The fee for renewal of the license is five dollars. All dairy technicians' licenses shall expire on December 31 of odd-numbered years.

[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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Findings—2006 c 157:** See note following RCW 15.36.012.

**Effective date—1996 c 189:** "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 shall take effect immediately

[March 28, 1996]."

[1996 c 189 § 3.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.36.201 Examination of milk and milk products—Violations—Director's options.

(1) During any consecutive six months at least four samples of raw milk, raw milk for pasteurization, or both, from each dairy farm and raw milk for pasteurization, after receipt by the milk processing plant and prior to pasteurization, heat-treated milk products, and pasteurized milk and milk products from each grade A milk processing plant, for purposes of compliance with the PMO, shall be collected in at least four separate months and examined in an official laboratory: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of an officially designated laboratory.

(2) If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products established in this chapter and rules adopted under this chapter, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the same standard. An additional sample shall be taken after sending of the notice, but not before the lapse of three days. The director may initiate proceedings to degrade or suspend the milk producer's license or milk processing plant license or assess a civil penalty whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the same standard.

[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.]

**NOTES:**

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1981 c 297:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1981 c 297 § 43.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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 69.04 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.

[1999 c 291 § 15; 1994 c 143 § 501.]

## RCW 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.]

**NOTES:**

**Findings—2006 c 157:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.

Upon receipt of a satisfactory application, in case the lowered grade or the license suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall 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.

[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.]

**NOTES:**

**Effective date—1996 c 189:** See note following RCW 15.36.111.

## RCW 15.36.454 Failure to comply with chapter or rules—Civil penalties.

(1) Except as provided in RCW 15.36.471 or subsection (2) or (3) of this section, 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 shall adopt rules establishing civil penalties assessed under RCW 15.36.111(1) and 15.36.201(2). The penalties shall be equitably based on the volume of milk or milk product handled by the producer or milk processor subject to the penalty.

(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 in an amount equal to one-half the value of the sum of the volumes of milk produced on the day prior to and the day of the adulteration. The value of the milk shall be computed using the weighted average price for the federal market order under which the milk is delivered.

(4) 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 and RCW 15.36.471 shall be remitted to the department and deposited into the revolving fund of the Washington state dairy products commission.

[1999 c 291 § 18.]

## RCW 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.]

**NOTES:**

**Findings—2006 c 157:** See note following RCW 15.36.012.

## RCW 15.36.457 Authority to assess civil penalty.

The authority to assess a civil penalty under RCW 15.36.111(1) and 15.36.201(2) shall be used only as consistent with the 1995 grade A pasteurized milk ordinance published by the United States public health service, food and drug administration and adopted by

[the] department in WAC 16-101-700, or any subsequent version as adopted by the department under the authority of RCW 15.36.021(3).

[1999 c 291 § 19.]

## RCW 15.36.471 Component parts of fluid dairy products—Violations of standards—Civil penalty—Investigation.

(1) The director shall adopt rules imposing a civil penalty of not more than ten thousand dollars for violations of the standards for component parts of fluid dairy products which are established under this chapter or adopted pursuant to RCW 69.04.398.

(2) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department.

[1999 c 291 § 20; 1994 c 143 § 511; 1993 c 212 § 3; 1989 c 175 § 49; 1986 c 203 § 19. Formerly RCW 15.36.595.]

**NOTES:**

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 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.]

**NOTES:**

**Findings—2006 c 157:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

## RCW 15.36.491 Licenses—Money deposited in general fund—Exception.

All moneys received for licenses under this chapter shall be deposited in the general fund, except that all moneys received for annual milk processing plant licenses under RCW 15.36.051 shall be deposited in the agricultural local fund established under RCW 43.23.230.

[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.]

**NOTES:**

**Effective date—2005 c 414 §§ 1 and 4:** See note following RCW 15.36.051.

## RCW 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.]

**NOTES:**

**Findings—2006 c 157:** See note following RCW 15.36.012.

## RCW 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 fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund.

[1999 c 291 § 25.]

## RCW 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.]

## RCW 15.36.541 Chapter cumulative.

Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 69.04 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.

[1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266. Formerly RCW 15.32.910.]

## RCW 15.36.551 Dairy inspection program—Assessment. *(Expires June 30, 2015.)*

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. 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, 2015.

[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.]

**NOTES:**

**Effective date—1995 c 15:** "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 shall take effect immediately

[April 12, 1995]."

[1995 c 15 § 2.]

## RCW 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.]

# 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.
15.37.900 Severability—1961 c 285.


## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.37.900 Severability—1961 c 285.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1961 c 285 § 16.]

# CHAPTER 15.44 RCW
## DAIRY PRODUCTS COMMISSION

### Sections


15.44.010 Definitions.
15.44.015 Regulating dairy products—Commission created—Existing comprehensive scheme—Laws applicable.
15.44.020 Commission composition.
15.44.021 Director appoints members—Nominations—Advisory vote.
15.44.022 Transition to director appointed commission.
15.44.023 Associations with same objective—Dual membership—Contracting.
15.44.027 Commission districts and boundaries.
15.44.030 Member qualifications.
15.44.032 Terms—Vacancies.
15.44.033 Nomination and appointment procedure.
15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists.
15.44.038 Quorum—Compensation—Travel expenses.
15.44.040 Copies of records as evidence.
15.44.050 Manager—Secretary-treasurer—Treasurer's bond.
15.44.055 Members—Removal from commission—Process.
15.44.060 Powers and duties.
15.44.061 Commission's plans, programs, and projects—Director's approval required.
15.44.062 Commission speaks for state—Director's oversight.
15.44.063 Reimbursement for costs.
15.44.065 Commission may establish foundations.
15.44.070 Rules or orders to be filed and published—Rule-making exemptions.
15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum.
15.44.085 Assessments on class I or class II milk.
15.44.087 Class I and class II milk defined.
15.44.090 Collection of assessments—Lien.
15.44.100 Records of dealers, shippers—Preservation—Inspection.
15.44.110 Reports of dealers and shippers to commission—Subpoenas.
15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure.
15.44.133 Promotional hosting expenditures—Rules.
15.44.135 Promotional printing and literature—Contracts.
15.44.140 Authority to inspect premises and records—Subpoenas.
15.44.150 Action against commission enforced as if a corporation—Liability—Limitations.
15.44.160 Enforcement of chapter.
15.44.170 Penalty.
15.44.180 Jurisdiction of courts.
15.44.185 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
15.44.190 Funding staff support—Rules.
15.44.195 Costs of implementing RCW 15.44.061.
15.44.901 Severability—2004 c 99.
15.44.910 Liberal construction.


**NOTES:**

General obligation bonds: Chapter 43.99I RCW.

### RCW 15.44.010 Definitions.

As used in this chapter:

"Commission" means the Washington state dairy products commission;

To "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;

"Handler" means one who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution;

"Dealer" means one who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"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;

"Processor" means a person who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom;

"Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

"Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers;

"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.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1979 ex.s. c 238:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1979 ex.s. c 238 § 27.]

### RCW 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 food products act under chapter 15.86 RCW and rules;

(f) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, milk processing, food labeling, food standards, and food additives;

(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.

[2002 c 313 § 87.]

**NOTES:**

***Reviser's note:** The "organic food products act" was renamed the "organic products act."

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.44.020 Commission composition.

The dairy products commission shall be composed of not more than nine members. There shall be one member from each district who shall be a practical producer of dairy products and one member shall be a dealer. The director of agriculture 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.

[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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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.

(3) The director shall cause an advisory vote to be held for the producer member positions. Advisory ballots shall be mailed to all affected producers in the district 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. 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 director has the discretion to appoint or reject the candidate.

(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 any candidate for the position or may reject all candidates and request a new advisory vote with nominees selected by the commission or, if the commission desires, by the director.

[2008 c 12 § 2; 2003 c 396 § 25.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 15.44.022 Transition to director appointed commission.

To accomplish the transition to a commission structure where the director appoints the 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 15.44.021 as the current commission member terms expire.

[2003 c 396 § 28.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.44.027 Commission districts and boundaries.

The commission shall delete, combine, revise, amend, or modify in any manner commission districts and boundaries by regulation as required and in accordance with the intent and provisions of this section. Commission districts established by statute prior to September 8, 1975 shall remain in effect until superseded by such regulations.

The boundaries of the commission districts shall be maintained in a manner that assures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members.

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 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 said commission districts to carry out the proper reapportionment of producer representation on the commission: PROVIDED, That the requirement of this section for reasonable equal representation of each producer on the commission need 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: PROVIDED FURTHER, That the area east of the crest of the Cascade mountains shall comprise not less than two commission districts.

The commission may in carrying out this reapportionment directive reduce the number of districts presently provided by prior law, whenever it is in the best interest of the producers and if such change would maintain reasonable apportionment for each historical production or marketing area: PROVIDED, That each elected commission member whose district may be consolidated with another district shall be allowed to serve out his or her term of office.

If the commission fails to carry out its directive as set forth herein for equal representation of each producer on the commission the director of agriculture 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 of agriculture 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.

[2010 c 8 § 6057; 1975 1st ex.s. c 136 § 7.]

## RCW 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 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.

[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.]

## RCW 15.44.032 Terms—Vacancies.

The regular term of office of each producer member of the commission shall be three years. Commission members shall be first nominated and elected in 1966 in the manner set forth in RCW 15.44.033 and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1966 shall be as follows:

(1) District I and II on July 1, 1967;

(2) District III and IV on July 1, 1968; and

(3) District V, VI and VII on July 1, 1969.

The respective terms shall end on July 1st of each third year thereafter. Any vacancies that occur on the commission shall be filled by appointment by the director from a list of candidates forwarded to the director by the commission. If only one name is forwarded, the director has the discretion to appoint or reject the candidate and, if 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.

The term of office of the first dealer appointed by the director shall expire July 1, 1977. 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 appointments set forth herein, may consider lists of nominees supplied by dealers or producers also acting as dealers.

[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.]

## RCW 15.44.033 Nomination and appointment procedure.

Producer members of the commission shall be nominated by producers within the district that such producer members represent in the year in which a commission member's term shall expire.

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 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 commission vacancy will occur. The nomination form shall provide for the name of the producer being nominated and the names of five producers nominating such nominee. The producers nominating such nominee shall affix their signatures to such form and shall further attest that the said 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.

All nominations as provided for herein 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 election ballot.

Advisory vote ballots for electing nominees to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts where advisory elections 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.

The director shall determine whether the persons nominated possess the qualifications required by statute for the position.

[2003 c 396 § 26; 1995 c 374 § 59; 1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Severability—1967 c 240:** See note following RCW 43.23.010.

## RCW 15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists.

(1) The commission shall prior to each advisory election, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district for which the advisory election 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 election.

(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 director 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.

[2003 c 396 § 27; 2002 c 313 § 90; 1965 ex.s. c 44 § 7.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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 provisions of this chapter for filling vacancies.

[2008 c 12 § 5.]

## RCW 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; and

(16) Work cooperatively with nonprofit and other organizations to carry out the purposes of this chapter.

[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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.

(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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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;

(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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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.]

**NOTES:**

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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.]

**NOTES:**

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.44.135 Promotional printing and literature—Contracts.

Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

### RCW 15.44.901 Severability—2004 c 99.

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

[2004 c 99 § 2.]

**NOTES:**

**Effective date—2004 c 99:** See note following RCW 15.28.901.

### RCW 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.


**NOTES:**

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Liens, crop: Chapter 60.11 RCW.

### 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.]

**NOTES:**

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

### RCW 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 create a security interest under the terms of the Uniform Commercial Code, *chapter 62A.9 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.

[1967 c 114 § 15.]

**NOTES:**

***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.

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

### RCW 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.]

**NOTES:**

***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.

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

# CHAPTER 15.49 RCW
## SEEDS

**(Formerly: Washington state seed act)**

**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—Arbitration prerequisite to legal action.
15.49.081 Arbitration—Filing fee—Rules.
15.49.091 Arbitration—Procedure.
15.49.101 Investigation of complaint by arbitration committee.
15.49.111 Arbitration committee—Creation—Generally.
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.
15.49.920 Effective date—1969 c 63.
15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal.
15.49.940 Short title.
15.49.950 Severability—1969 c 63.

## RCW 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 law in order to attain consistency with other states.

[1989 c 354 § 70.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** "Sections 70 through 81 and 84 through 86 of this act shall take effect January 1, 1990."

[1989 c 354 § 88.]

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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, forage, cereal, 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) "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.

(6) "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.

(7) "Dealer" means any person who distributes.

(8) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(9) "Director" means the director of the department of agriculture.

(10) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(11) "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.

(12) 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.

(13) "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.

(14) "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.

(15) "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 shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "Lot number" shall 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.

(21) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(22) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(23) "Official sample" means any sample of seed taken and designated as official by the department.

(24) "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.

(25) "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.

(26) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(27) "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.

(28) "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.

(29) "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.

(30) "Retail" means to distribute to the ultimate consumer.

(31) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(32) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(33) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(34) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(35) "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.

(36) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(37) "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.

(38) "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.

(39) "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.

(40) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(41) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process.

[1989 c 354 § 73.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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;

(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures.

[1989 c 354 § 71.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 substitute 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.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.061 Exceptions.

(1) 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.

(2) 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.

[1989 c 354 § 76.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.071 Damages—Arbitration 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 provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04A RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court.

[2005 c 433 § 36; 1989 c 354 § 77.]

**NOTES:**

**Application—Captions not law—Savings—Effective date—2005 c 433:** See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.081 Arbitration—Filing fee—Rules.

The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee.

[1989 c 354 § 78.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.091 Arbitration—Procedure.

(1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee.

[1989 c 354 § 79.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.101 Investigation of complaint by arbitration committee.

(1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chair may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties.

[2010 c 8 § 6062; 1989 c 354 § 80.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 15.49.111 Arbitration committee—Creation—Generally.

(1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make

appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chair may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chair to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary.

[2010 c 8 § 6063; 1989 c 354 § 81.]

**NOTES:**

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

**Severability—1979 c 154:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1979 c 154 § 27.]

## RCW 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.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

## RCW 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.

(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. 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.

[1981 c 297 § 14; 1969 c 63 § 37.]

NOTES:

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 15.49.380 Dealer's license to distribute seeds.

(1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: PROVIDED, That no license shall be 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: PROVIDED FURTHER, That a license shall not be 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 shall cost twenty-five dollars, shall be issued through the master license system, shall bear the date of issue, shall expire on the master license expiration date and shall be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be through the master license system and shall 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.

[2010 c 8 § 6064; 1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

NOTES:

**Severability—1982 c 182:** See RCW 19.02.901.

**Severability—1981 c 297:** See note following RCW 15.36.201.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

## RCW 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 master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued.

[1982 c 182 § 25; 1969 c 63 § 39.]

NOTES:

**Severability—1982 c 182:** See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

## RCW 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.]

## RCW 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.]

NOTES:

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

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

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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.]

## RCW 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.]

## RCW 15.49.920 Effective date—1969 c 63.

The effective date of this 1969 act is July 1, 1969.

[1969 c 63 § 51.]

## RCW 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.]

## RCW 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.]

## RCW 15.49.950 Severability—1969 c 63.

If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

[1969 c 63 § 55.]

# 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.
15.51.900 Effective date—2007 c 181.
15.51.901 Captions not law—2007 c 181.


### 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.51.900 Effective date—2007 c 181.

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 [April 21, 2007].

[2007 c 181 § 11.]

### RCW 15.51.901 Captions not law—2007 c 181.

Captions used in this act are not any part of the law.

[2007 c 181 § 8.]

# CHAPTER 15.53 RCW
## COMMERCIAL FEED

**Sections**


15.53.901 Definitions.

15.53.9012 Administration and administrative rules.

15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for noncompliance—Violation—Penalty—Rules.

15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty.

15.53.9015 Responsible buyer status—Application—Removal—List.

15.53.9016 Labeling—Required information—Recordkeeping—Rules.

15.53.9018 Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality.

15.53.902 Adulteration—Definition—Unlawful to distribute.

15.53.9022 Misbranding—Definition—Unlawful to distribute.

15.53.9024 Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized.

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure.

15.53.904 Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions.

15.53.9042 Department to publish distribution information, production data, and analyses comparison.

15.53.9044 Disposition of moneys.

15.53.9046 Cooperation with other entities.

15.53.9048 Chapter is cumulative.

15.53.9054 Severability—1965 ex.s. c 31.

15.53.9056 Short title.


### RCW 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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 speciality 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.]

NOTES:

**Effective date—2005 c 18 § 4:** "Section 4 of this act takes effect July 1, 2006."

[2005 c 18 § 12.]

**Effective date—2005 c 18 § 3:** "Section 3 of 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 July 1, 2005."

[2005 c 18 § 11.]

**Expiration date—2005 c 18 § 3:** "Section 3 of this act expires July 1, 2006."

[2005 c 18 § 13.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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.]

## RCW 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 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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.]

**NOTES:**

**Effective date—2006 c 209:** See RCW 42.56.903.

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Effective date—1981 c 297 § 17:** "Section 17 of this act is 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 June 30, 1981."

[1981 c 297 § 44.]

**Severability—1981 c 297:** See note following RCW 15.36.201.

**Effective date—1979 c 91:** "This act shall take effect on January 1, 1980."

[1979 c 91 § 2.]

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

**Severability—1967 c 240:** See note following RCW 43.23.010.

## RCW 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 706 of the federal food, drug, and cosmetic act; 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 viable, 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.

[2005 c 40 § 1; 1995 c 374 § 39; 1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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 promptness. 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

Prosecutions, official analysis as evidence: RCW 15.53.904.

## RCW 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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.]

NOTES:

Analysis of official sample as evidence: RCW 15.53.9024.

### RCW 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.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

### RCW 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.]

NOTES:

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

### RCW 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.]

### RCW 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.]

### RCW 15.53.9054 Severability—1965 ex.s. c 31.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

[1965 ex.s. c 31 § 27.]

### RCW 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**


15.54.265 Intent—1998 c 36.
15.54.270 Definitions.
15.54.275 Bulk fertilizer distribution license.
15.54.325 Commercial fertilizer registration—Required for distribution—Application—Fees.
15.54.330 Commercial fertilizer registration—Application review—Labels and guarantees.
15.54.340 Labeling requirements.
15.54.350 Inspection fees.
15.54.362 Reports—Inspection fees—Late fees—Confidentiality—Penalty—Exception.
15.54.370 Official samples—Inspection, analysis, testing—Right of entry.
15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties.
15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments.
15.54.400 Restrictions on sale—Minimum percentages.
15.54.412 Misbranding.
15.54.414 Adulteration.
15.54.420 Unlawful acts.
15.54.430 Publication of distribution information, analyses results.
15.54.433 Fertilizer database—Public availability—Biennial report to legislature.
15.54.436 Cancellation of license to distribute or of registration—Refusal to register if fraudulent or deceptive practices used—Opportunity for hearing.
15.54.440 "Stop sale," "stop use," or "withdrawal from distribution" order, when issued—Release—Associated costs.
15.54.450 Noncompliance—Seizure—Disposition—Associated costs.
15.54.460 Damages from administrative action, stop sales or seizures.
15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions.
15.54.474 Penalty—Failure to comply with chapter or rule.
15.54.480 Disposition of moneys.
15.54.490 Cooperation with other entities.
15.54.800 Enforcement of chapter—Adoption of rules.
15.54.820 Department of ecology—Waste-derived or micronutrient fertilizer—Standards—Written decision—Appeal of decision.
15.54.910 Prior liability preserved.
15.54.930 Effective date—1967 ex.s. c 22.
15.54.940 Continuation of rules adopted pursuant to repealed sections.
15.54.950 Short title.
15.54.960 Severability—1967 ex.s. c 22.


NOTES:

Crop liens: Chapter 60.11 RCW.

## 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.]

**NOTES:**

**Short title—1998 c 36:** "This act may be known and cited as the fertilizer regulation act."

[1998 c 36 § 24.]

## RCW 15.54.270 Definitions.

Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates 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 ($P_2O_5$) | . . . | percent |
| Soluble potash ($K_2O$) | . . . | 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 ($CaSO_4.2H_2O$) 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) "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.

(34) "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.

[1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

**NOTES:**

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—1987 c 45:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections."

[1987 c 45 § 32.]

**Severability—1987 c 45:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1987 c 45 § 33.]

**Effective date—1967 ex.s. c 22:** See RCW 15.54.930.

## RCW 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 shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of twenty-five dollars per location. The license shall expire on the master license expiration date.

(2) An application for license shall 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 shall 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 master license expiration date, a delinquency fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall 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.

[1998 c 36 § 3; 1993 c 183 § 2.]

**NOTES:**

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

NOTES:

**Effective date—1999 c 383:** "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 July 1, 1999."

[1999 c 383 § 5.]

**Effective date—1999 c 382:** "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 July 1, 1999."

[1999 c 382 § 2.]

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

NOTES:

**Effective date—1999 c 383:** See note following RCW 15.54.325.

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

NOTES:

**Effective date—2003 c 15 § 1:** "Section 1 of this act takes effect January 1, 2004."

[2003 c 15 § 2.]

**Effective date—1999 c 381:** "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 July 1, 1999."

[1999 c 381 § 2.]

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

**Severability—1981 c 297:** See note following RCW 15.36.201.

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Effective date—1999 c 383:** See note following RCW 15.54.325.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Effective date—1999 c 383:** See note following RCW 15.54.325.

## RCW 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.]

## RCW 15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions.

(1) 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.

[1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Effective date—1975 1st ex.s. c 257:** See note following RCW 15.13.470.

## RCW 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.]

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

NOTES:

**Short title—1998 c 36:** See note following RCW 15.54.265.

## RCW 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.]

## RCW 15.54.930 Effective date—1967 ex.s. c 22.

The effective date of this act is July 1, 1967.

[1967 ex.s. c 22 § 40.]

## RCW 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.]

NOTES:

**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.]

## RCW 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.]

## RCW 15.54.960 Severability—1967 ex.s. c 22.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

[1967 ex.s. c 22 § 44.]

# CHAPTER 15.58 RCW
# WASHINGTON PESTICIDE CONTROL ACT

## Sections


15.58.010 Short title.
15.58.020 Declaration of public interest.
15.58.030 Definitions.
15.58.040 Director's authority—Rules.
15.58.045 Disposal of unusable pesticides—Rules.
15.58.050 Registration of pesticides—Generally.
15.58.060 Statement for registration—Contents.
15.58.065 Protection of privileged or confidential information.
15.58.070 Pesticide annual registration fee—Expiration of registrations—Deposit in agricultural local fund.
15.58.080 Additional fee for late registration renewal.
15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180.
15.58.100 Criterion for registering.
15.58.110 Refusing or canceling registration—Procedure.
15.58.120 Suspension of registration when hazard to public health.
15.58.130 "Misbranded" as applicable to pesticides, devices, or spray adjuvants.
15.58.140 "Adulterated" as applicable to pesticides.
15.58.150 Unlawful practices.
15.58.160 Violations of chapter—"Stop sale, use or removal" order.
15.58.170 "Stop sale, use or removal" order—Adjudication.
15.58.180 Pesticide dealer license—Generally.
15.58.200 Pesticide dealer manager—License qualifications.
15.58.205 Structural pest inspector licenses—Required—Exemptions.
15.58.206 Structural pest inspector licenses—Exemption—Home inspectors.
15.58.207 Structural pest inspector licenses—Examination.
15.58.210 Pest control consultant licenses—Required—Exemptions.
15.58.220 Public pest control consultant license.
15.58.230 Consultant's license—Requirements.
15.58.233 Renewal of licenses—Recertification standards.
15.58.235 Renewal of licenses—Delinquency.
15.58.240 Classification of licenses.
15.58.250 Recordkeeping requirements.
15.58.260 Civil penalties and/or denial, suspension, or revocation of license, registration or permit.
15.58.270 Subpoenas—Witness fees.
15.58.280 Sampling and examination of pesticides or devices—Procedure when criminal proceedings contemplated.
15.58.290 Minor violations, warning notice in writing.
15.58.300 Persons exempted from certain penalties under RCW 15.58.150.
15.58.310 Pesticides for foreign export not in violation of chapter.
15.58.320 Certain pharmacists exempted from licensing provisions.
15.58.330 Violation of chapter—Misdemeanor.
15.58.335 Civil penalty.
15.58.340 Injunction.
15.58.345 Damages—Civil action not precluded.
15.58.350 Persons charged with enforcement barred from interest in pesticides, devices.
15.58.360 No recovery of damages when probable cause.
15.58.370 Results of analyses to be published.
15.58.380 Board to advise director.
15.58.400 Cooperation and agreements with other agencies.
15.58.405 Emergency situations—Special local needs—Experimental use permits.
15.58.411 Use of license fees—Deposit of money collected for civil penalties.
15.58.420 Report to legislature.
15.58.445 Wood destroying organism inspections—License required.
15.58.450 Wood destroying organism inspection report—Unique inspection control number required.

15.58.460 Structural pest inspector—Evidence of financial responsibility required—Exemptions.
15.58.465 Structural pest inspector—Forms of evidence of financial responsibility—Amount—Terms.
15.58.470 Structural pest inspector—Failure to meet financial responsibility requirements.
15.58.900 Effective date—1971 ex.s. c 190.
15.58.901 Effective date—2000 c 96.
15.58.910 Continuation of rules adopted pursuant to repealed sections.
15.58.920 Existing liabilities not affected.
15.58.940 Severability—1971 ex.s. c 190.
15.58.941 Severability—1979 c 146.
15.58.942 Severability—1989 c 380.
15.58.943 Effective date—2003 c 212.

## RCW 15.58.010 Short title.

This chapter may be known and cited as the Washington Pesticide Control Act.

[1971 ex.s. c 190 § 1.]

## RCW 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.]

## RCW 15.58.030 Definitions.

As used in this chapter the words and phrases defined in this section shall have the meanings indicated 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) "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.

(5) "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.

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

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "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.

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

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "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.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "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 shall 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.

(19) "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.

(20) "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.

(21) "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.

(22) "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.

(23) "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.

(24) "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.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(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 advisory board" means the *pesticide advisory board as provided for in the Washington pesticide application act.

(33) "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.

(34) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(35) "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 shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(36) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(37) "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.

(38) "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.

(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) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(42) "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.

(43) "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.

(44) "Weed" means any plant which grows where not wanted.

(45) "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).

(46) "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.

[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.]

NOTES:

***Reviser's note:** The "pesticide advisory board" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

**Effective date—2004 c 100:** See note following RCW 17.21.020.

**Severability—1982 c 182:** See RCW 19.02.901.

## RCW 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.]

## RCW 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.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

NOTES:

**Effective date—Expiration date—2002 c 274:** "(1) Sections 1, 2, and 4 of this act take effect January 1, 2003.

(2) Section 2 of this act expires January 1, 2004."

[2002 c 274 § 5.]

## RCW 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.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## RCW 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.]

## RCW 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.]

NOTES:

**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.

**Effective date—2002 c 274 § 3:** "Section 3 of this act takes effect January 1, 2004."

[2002 c 274 § 6.]

**Effective date—Expiration date—2002 c 274:** See note following RCW 15.58.070.

**Effective date—1997 c 242:** "Sections 2, 4 through 7, 11 through 15, 17, and 22 of this act take effect January 1, 1998."

[1997 c 242 § 23.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

**Effective date—1994 c 46:** "Sections 1 through 20, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]."

[1994 c 46 § 28.]

## RCW 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.]

NOTES:

**Effective date—Expiration date—2002 c 274:** See note following RCW 15.58.050.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 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.]

## RCW 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.]

## RCW 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 corrections 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have 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.

[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.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 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.]

## RCW 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.]

## RCW 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 master 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 master license 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 applicant, 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.

[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.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1982 c 182:** See RCW 19.02.901.

Master license system: Chapter 19.02 RCW.

## RCW 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.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

NOTES:

**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.

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

## RCW 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.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 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.]

## RCW 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 may waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency-approved government agency plan.

[2003 c 212 § 7; 2000 c 96 § 7; 1997 c 242 § 10.]

## RCW 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 master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall 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 shall be assessed and added to the original fee, and shall be paid by the applicant before the renewal license is issued: PROVIDED, That such penalty shall 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.

[1989 c 380 § 19.]

## RCW 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 required to carry out the responsibilities of the licensee.

[1989 c 380 § 20; 1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

**NOTES:**

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 analysis 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.58.370 Results of analyses to be published.

The department shall publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: PROVIDED, That individual distribution information shall not be a public record.
[1971 ex.s. c 190 § 37.]

## RCW 15.58.380 Board to advise director.

The *pesticide advisory board shall advise the director on any or all problems relating to the formulation, distribution, storage, transportation, disposal, and use of pesticides in the state.
[1971 ex.s. c 190 § 38.]
NOTES:
***Reviser's note:** The "pesticide advisory board" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

## RCW 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.]

## RCW 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.]

## RCW 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.]
NOTES:
**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68**: See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

### RCW 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.]

### RCW 15.58.900 Effective date—1971 ex.s. c 190.

The effective date of this act is July 1, 1971: PROVIDED, That the effective date of sections 21, 22 and 23 is March 1, 1973.

[1971 ex.s. c 190 § 42.]

### RCW 15.58.901 Effective date—2000 c 96.

This act takes effect July 1, 2000.

[2000 c 96 § 10.]

### RCW 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.]

### RCW 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.]

### RCW 15.58.940 Severability—1971 ex.s. c 190.

If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1971 ex.s. c 190 § 46.]

### RCW 15.58.941 Severability—1979 c 146.

If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1979 c 146 § 7.]

### RCW 15.58.942 Severability—1989 c 380.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 380 § 88.]

### RCW 15.58.943 Effective date—2003 c 212.

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 July 1, 2003.

[2003 c 212 § 12.]

# 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.
15.60.900 Severability—1977 ex.s. c 362.
15.60.901 Effective date—2000 c 100.


**NOTES:**

Honey, standards and marketing: Chapter 69.28 RCW.

Honey bee commission: Chapter 15.62 RCW.

### 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.]

## RCW 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.]

NOTES:

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 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.]

## RCW 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.]

NOTES:

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 15.60.040 Money collected under chapter—Placement—Disbursement.

All money collected under this chapter 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.]

NOTES:

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 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.]

NOTES:

**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.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 *RCW 15.60.180, 15.60.190, and 15.60.210.

[1993 c 89 § 18; 1989 c 354 § 65. Formerly RCW 15.60.180.]

NOTES:

***Reviser's note:** RCW 15.60.180, 15.60.190, and 15.60.210 were recodified as RCW 15.60.065, 15.60.075, and 15.60.085, respectively, pursuant to 2000 c 100 § 7, effective June 30, 2001.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 15.60.180. 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.

[1989 c 354 § 68. Formerly RCW 15.60.210.]

NOTES:

***Reviser's note:** RCW 15.60.180 was recodified as RCW 15.60.065 pursuant to 2000 c 100 § 7, effective June 30, 2001.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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 15.60.190, 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.

[1993 c 89 § 20. Formerly RCW 15.60.220.]

NOTES:

***Reviser's note:** RCW 15.60.190 was recodified as RCW 15.60.075 pursuant to 2000 c 100 § 7, effective June 30, 2001.

## RCW 15.60.900 Severability—1977 ex.s. c 362.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1977 ex.s. c 362 § 11.]

## RCW 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.

15.61.900 Severability—1963 c 232.


## RCW 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.

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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

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

## RCW 15.61.900 Severability—1963 c 232.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1963 c 232 § 15.]

# 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.


## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Severability—2007 c 522:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[2007 c 522 § 1801.]

**Effective date—2007 c 522:** "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 [May 15, 2007]."

[2007 c 522 § 1802.]

**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.]

## RCW 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 general administration, 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 43.19.1905, 43.19.1906, 28A.335.190, and 28A.235.170, "Washington grown" means grown and packed or processed in Washington.

[2008 c 215 § 2.]

**NOTES:**

**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

**(Formerly: Washington state agricultural enabling act of 1961—Commodity boards)**

## Sections


15.65.010 Short title.

15.65.020 Definitions.

15.65.028 Regulating agricultural commodities—Existing comprehensive scheme.

15.65.033 Regulating agricultural commodities—Laws applicable.

15.65.040 Establishing a commodity board—Marketing order—Purposes.

15.65.043 Board may establish foundation.

15.65.047 Director's duties and responsibilities—Amendments to marketing orders or agreements without a referendum—Rules.

15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, notice, grounds for amendments.

15.65.060 Form, filing of marketing agreement, order, amendment, and other proceedings.

15.65.070 Notice of hearing on proposal—Publication—Contents.

15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses.

15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies.
15.65.110 Filing objections to recommended decision—Final decision—Waiver.
15.65.120 Contents and scope of recommended and final decision—Delivery of copies.
15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective.
15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing.
15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers.
15.65.160 Ascertainment of required assent percentages.
15.65.170 Issuance or amendment of marketing order—Assent—Rules.
15.65.175 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums.
15.65.180 Suspension of marketing agreement or order upon advice of commodity board—Certain prerequisites waived.
15.65.183 Termination of marketing order or agreement—Petition—Procedure.
15.65.185 Referendum prior to termination of a marketing order or agreement—Procedure—Exceptions.
15.65.190 Termination of agreement or order on assent of producers—Procedure.
15.65.193 When marketing order or agreement is terminated—Duties of affected commodity board.
15.65.200 Lists of affected parties—Information used to establish lists—Purpose and use.
15.65.203 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
15.65.205 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes.
15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel.
15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes.
15.65.230 Qualifications of members of commodity boards.
15.65.235 Producer-handlers as producers for membership purposes—Exception.
15.65.240 Terms of members of commodity boards—Elections or appointment.
15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes.
15.65.250 Nominations for election to commodity board—When only one nominee.
15.65.260 Election of members of commodity board—Procedure.
15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members and employees.
15.65.280 Powers and duties of commodity board—Reservation of power to director.
15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized.
15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards.
15.65.287 Commission's plans, programs, and projects—Director's approval required.
15.65.289 Commission speaks for state—Director's oversight.
15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc.
15.65.295 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists.
15.65.300 Agreement or order to contain detailed statement of powers and purposes.
15.65.305 Promotional hosting expenditures—Rules.
15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order.
15.65.320 Agreement and order provisions for research.
15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules.
15.65.340 Agreement and order provisions prohibiting or regulating certain practices.
15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area."
15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc.
15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing.
15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals.
15.65.380 Additional agreement or order provisions.
15.65.390 Annual assessment—Limitation generally.
15.65.400 Rate of assessment.
15.65.410 Time, place, method for payment and collection of assessments.
15.65.420 Use of moneys collected—Departmental expenses.
15.65.430 Refunds of moneys received or collected.
15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect.
15.65.450 Deposit to defray department's expenses—Circumstances requiring reimbursement.
15.65.470 Depositaries for revolving fund—Deposits.
15.65.480 Separate accounts for each agreement or order—Disbursements.
15.65.490 Records of financial transactions to be kept by director—Audits.
15.65.500 Bonds of administrator, board, employee.
15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures.
15.65.520 Criminal acts and penalties.
15.65.530 Civil liability—Use of moneys recovered.
15.65.540 Jurisdiction of superior courts—Who may bring action.
15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director.
15.65.560 Remedies additional.
15.65.570 Proceedings subject to administrative procedure act—Exemptions.
15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board.
15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity.
15.65.600 Public interest to be protected—Establishment of prices prohibited.
15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter.
15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables.
15.65.640 Chapter not to apply to green pea grower or processor.
15.65.650 Hop commodity board—Powers.
15.65.670 Costs of implementing RCW 15.65.287.
15.65.900 Savings—1961 c 256.
15.65.910 Severability—1961 c 256.

**NOTES:**

Agricultural processing and marketing associations: Chapter 24.34 RCW.

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

## RCW 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.]

## RCW 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 food 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 sub-types 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.

[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.]

**NOTES:**

**Reviser's note:** *(1) The term "organic food products" was changed to "organic products" by 2010 c 109 § 2.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective dates—2002 c 313:** "This act takes effect July 1, 2002, except for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 2002]."

[2002 c 313 § 139.]

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 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 food products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

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 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

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.

[2002 c 313 § 3.]

NOTES:

***Reviser's note:** The term "organic food products" was changed to "organic products" by 2010 c 109 § 2.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 15.65.110 Filing objections to recommended decision—Final decision—Waiver.

After the issuance of a recommended 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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 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.]

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 indebtedness, 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.]

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 or *RCW 15.65.245 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 he or she wishes to be appointed to the board. The director may select either person for the position.

[2002 c 313 § 24.]

NOTES:

***Reviser's note:** RCW 15.65.245 was repealed by 2003 c 396 § 37.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 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 run-off 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 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 any and 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 42.17.190, 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.

[2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

NOTES:

***Reviser's note:** RCW 42.17.190 was recodified as RCW 42.17A.635 by 2010 c 204 § 1102, effective January 1, 2012.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards.

The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for any commodity board.

[1972 ex.s. c 112 § 2.]

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

## RCW 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 production 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 disparage the quality, value, sale or use of any other agricultural commodity.

[1961 c 256 § 31.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 commodity or product thereof produced in any production area of the United States.

[1961 c 256 § 37.]

## RCW 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(30) 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.

[2002 c 313 § 32; 1988 c 54 § 1.]

NOTES:

***Reviser's note:** RCW 15.58.030 was amended by 2003 c 212 § 1, changing subsection (30) to subsection (31).

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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 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.]

## RCW 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.]

## RCW 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 paying 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 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.]

## RCW 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 *15.65.080, 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.

[1989 c 354 § 29; 1961 c 256 § 51.]

NOTES:

***Reviser's note:** RCW 15.65.080 was repealed by 2002 c 313 § 37.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

## RCW 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.]

## RCW 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 an 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.]

## RCW 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 *15.65.080, 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings.

[2010 c 8 § 6091; 1961 c 256 § 55.]

NOTES:

***Reviser's note:** RCW 15.65.080 was repealed by 2002 c 313 § 37.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

**NOTES:**

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

**NOTES:**

**Reviser's note:** The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.

## RCW 15.65.910 Severability—1961 c 256.

If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional.

[1961 c 256 § 66.]

# CHAPTER 15.66 RCW

## WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS

**(Formerly: Washington agricultural enabling act of 1955—Commodity commissions)**

### Sections


15.66.010 Definitions.

15.66.015 Regulating agricultural commodities—Existing comprehensive scheme.

15.66.017 Regulating agricultural commodities—Laws applicable.

15.66.023 Commission may establish foundation.

15.66.030 Marketing orders authorized—Purposes.

15.66.040 Prerequisites to marketing orders—Director's duties.

15.66.050 Petition for marketing order—Deposit to defray department's expenses—Circumstances requiring reimbursement.

15.66.053 Proceedings subject to administrative procedure act—Exemptions.

15.66.055 Director's duties and responsibilities—Rules.

15.66.060 Lists of affected parties—Notice—Use of lists.

15.66.070 Petitions for marketing orders—Public hearing—Legal notice.

15.66.080 Findings, conclusions, and recommended decision of the director—Notification—Final decision.

15.66.090 After final decision—Assent of affected parties determined by referendum.

15.66.093 Suspension of marketing order upon request of commodity commission.

15.66.097 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums.

15.66.100 Contents of marketing order.

15.66.105 Certain records exempt from public disclosure—Exemptions—Actions not prohibited by chapter.

15.66.110 Commodity commission—Composition—Terms.

15.66.113 When director appoints majority of the commission—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes.

15.66.120 Commodity commission—Nominations—Elections—Vacancies.

15.66.123 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes.

15.66.130 Commodity commission—Meetings—Quorum—Compensation—Travel expenses for members and employees.

15.66.140 Commodity commission—Powers and duties.

15.66.141 Commission's plans, programs, and projects—Director's approval required.

15.66.142 Commission speaks for state—Director's oversight.

15.66.143 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists.

15.66.145 Members may belong to association with same objectives—Contracts with associations authorized.

15.66.150 Annual assessments—Rate—Collection.

15.66.153 Promotional hosting expenditures—Rules.

15.66.157 When commodity commission is terminated—Duties of affected commodity commission.

15.66.160 Annual assessments—Disposition of revenue.

15.66.170 Annual assessments—Payments—Civil action to enforce.

15.66.180 Expenditure of funds collected.

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

15.66.190 Official bonds required.

15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling.

15.66.210 Unlawful acts—Penalties—Injunctions—Investigations.

15.66.220 Compliance with chapter a defense in any action.

15.66.230 Liability of commission, state, etc.

15.66.240 Marketing agreements.

15.66.245 Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals.

15.66.250 Price fixing and product limiting prohibited.

15.66.260 Costs of conducting nominations and elections—Reimbursement.

15.66.263 Costs of implementing RCW 15.66.141.

15.66.270 Exempt commissions—Marketing agreements and orders.
15.66.275 Applicability of chapter to state agencies or other governmental units.
15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions.
15.66.900 Short title.
15.66.901 Severability—2004 c 99.

**NOTES:**

Agricultural processing and marketing associations: Chapter 24.34 RCW.

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

## RCW 15.66.010 Definitions.

For the purposes of this chapter:

(1) "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.

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

(3) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(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, vegetable, and/or animal product, including, but not limited to, products qualifying as *organic food 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.

(5) "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.

(6) "Affected producer" means any producer who is subject to a marketing order.

(7) "Affected commodity" means the agricultural commodity that is specified in the marketing order.

(8) "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.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "Affected handler" means any handler of an affected commodity.

(15) "Affected parties" means any producer, affected producer, handler, or commodity commission member.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "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.

(22) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(23) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(24) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(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.

[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.]

NOTES:

***Reviser's note:** The term "organic food products" was changed to "organic products" by 2010 c 109 § 2.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**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.

## RCW 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, 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 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 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 food products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

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 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

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.

[2002 c 313 § 41.]

NOTES:

***Reviser's note:** The term "organic food products" was changed to "organic products" by 2010 c 109 § 2.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** "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 [May 20, 2003]."

[2003 c 396 § 45.]

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 than one-third of the terms will commence as nearly as practicable each year. 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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 or *RCW 15.66.115 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.

[2002 c 313 § 52.]

NOTES:

*Reviser's note: RCW 15.66.115 was repealed by 2003 c 396 § 7.

Effective dates—2002 c 313: See note following RCW 15.65.020.

## RCW 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 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.]

NOTES:

Effective dates—2002 c 313: See note following RCW 15.65.020.

## RCW 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, 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.]

NOTES:

Effective dates—2002 c 313: See note following RCW 15.65.020.

## RCW 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.]

NOTES:

Effective dates—2002 c 313: See note following RCW 15.65.020.

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

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

## RCW 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 42.17.190, 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.

[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.]

NOTES:

***Reviser's note:** RCW 42.17.190 was recodified as RCW 42.17A.635 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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 submit 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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. 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 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 bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him 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 warehousemen 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.

[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.]

NOTES:

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 15.66.153 Promotional hosting expenditures—Rules.

Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by commodity commission employees, agents, or commission members under RCW 15.04.200.

[2002 c 313 § 59.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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 depositary. 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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(30) 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.

[2002 c 313 § 63; 1988 c 54 § 2.]

NOTES:

***Reviser's note:** RCW 15.58.030 was amended by 2003 c 212 § 1, changing subsection (30) to subsection (31).

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

## RCW 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.]

## RCW 15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions.

The restrictive provisions of chapter 43.78 RCW as now or hereafter amended shall not apply to promotional printing and literature for any commission formed under this chapter.

[1972 ex.s. c 112 § 5.]

## RCW 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.]

## RCW 15.66.901 Severability—2004 c 99.

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

[2004 c 99 § 3.]

NOTES:

**Effective date—2004 c 99:** See note following RCW 15.28.901.

# 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.


## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 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.]

### RCW 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 15.76 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—Jurisdiction and organization.
15.76.130 Application for state allocation—Purposes—Form.
15.76.140 Eligibility requirements for state allocation.
15.76.150 Allocations from the fair fund—Considerations.
15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.
15.76.165 Application of counties for capital improvement and maintenance assistance.
15.76.170 Fairs commission—Creation, terms, compensation, powers and duties.
15.76.180 Rules and regulations.


**NOTES:**

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

### RCW 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 living. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund as provided in this chapter.

[1961 c 61 § 1.]

### RCW 15.76.110 Definitions.

"Director" shall mean the director of agriculture. "Commission" shall mean the fairs commission created by this chapter. "State allocations" shall mean allocations from the state fair fund.

[1961 c 61 § 2.]

### RCW 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(4) shall be deposited into the fund. At the beginning of fiscal year 2002 and each fiscal year thereafter, the state treasurer shall transfer into the fair fund from the general fund the sum of two million dollars, except for fiscal year 2011 the state treasurer shall transfer into the fair fund from the general fund the sum of one million one hundred three thousand 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.

[2010 1st sp.s. c 37 § 912; 2001 2nd sp.s. c 16 § 1; 1998 c 345 § 2.]

**NOTES:**

***Reviser's note:** RCW 67.16.105 was amended by 2010 c 39 § 1, changing subsection (4) to subsection (7).

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**Severability—Effective date—Contingent effective date—1998 c 345:** See notes following RCW 15.04.090.

### RCW 15.76.120 Categories of fairs—Jurisdiction and organization.

For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: PROVIDED, HOWEVER, That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University or the office of the superintendent of public instruction, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living.

[1993 c 163 § 1; 1991 c 238 § 74; 1961 c 61 § 3.]

NOTES:

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

## RCW 15.76.130 Application for state allocation—Purposes—Form.

For the purpose of encouraging agricultural fairs and training rural youth, the board of trustees of any fair or youth show may apply to the director of agriculture for state allocations as hereinafter set forth. Such application shall be in such form as the director may prescribe.

[1961 c 61 § 4.]

## RCW 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) Beginning January 1, 1994, the director may waive this requirement for an agricultural fair that through itself or its predecessor sponsoring organization has successfully operated at least two years as a county fair and that reorganizes as an area fair.

[2001 c 157 § 1; 1995 c 374 § 71; 1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

NOTES:

**Effective date—2001 c 157:** "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 [May 2, 2001]."

[2001 c 157 § 2.]

## RCW 15.76.150 Allocations from the fair fund—Considerations.

The director shall have the authority to make allocations from the state fair fund, including interest income under RCW 43.79A.040, exclusively as follows: Eighty-five percent to participating agricultural fairs, distributed according to the merit of such fairs measured by a merit rating to be set up by the director. This merit rating shall take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums and prizes 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. The remaining fifteen percent of money in the state fair fund may be used for special assistance to any participating fair or fairs and for administrative expenses incurred in the administration of this chapter only, including expenses incurred by the fair commission as may be approved by the director: PROVIDED, That not more than five percent of the state fair fund may be used for such expenses.

The division and payment of funds authorized in this section shall occur at such times as the director may prescribe.

[2002 c 313 § 113; 1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.

Any state allocations made under this chapter to fairs or youth shows, other than fairs or youth shows operated by or for and under the control of one or more counties or other agencies, as defined in subsection (4) of RCW 15.76.120, shall be made only as a reimbursement in whole or in part for the payment of premiums and prizes awarded to participants in such fairs or youth shows. State allocations to fairs under the control of one or more counties shall be made to the county treasurer of the county in which the fair is held. State allocations to other publicly sponsored fairs or youth shows shall be made to such sponsor. The board of trustees of any private fair or youth show, as part of its application for any allocation under this chapter, and as a condition of such allocation, shall submit to the director a list of premiums and prizes awarded to participants in its last preceding fair or youth show. Such list shall contain the names of all premium and prize winners, a description of each prize or premium, including its amount or value, and the total values of all such awards. The list shall be in such form and contain such further information as the director may require, and shall be verified as to its accuracy by the oath of the president of the fair or youth show, together with that of the secretary or manager, subscribed thereon.

[1961 c 61 § 7.]

## RCW 15.76.165 Application of counties for capital improvement and maintenance assistance.

Any county which owns or leases property from another governmental agency and provides such property for area or county and district agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto.

[2005 c 443 § 2; 1973 c 117 § 1; 1969 c 85 § 1.]

NOTES:

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

## RCW 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. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

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 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.

[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.]

NOTES:

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 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


15.80.300 Definitions—Application.
15.80.310 "Department."
15.80.320 "Director."
15.80.330 "Person."
15.80.340 "Licensed public weighmaster."
15.80.350 "Weigher."
15.80.360 "Vehicle."
15.80.370 "Certified weight."
15.80.380 "Commodity."
15.80.390 "Thing."
15.80.400 "Retail merchant."
15.80.410 Director's duty to enforce—Adoption of rules.
15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions.
15.80.430 Certificates of weight and invoices to be carried with loads.
15.80.440 Reweighing—Weighing—Variance from invoiced weight.
15.80.450 Weighmaster's license—Applications—Fee—Bond.
15.80.460 Weighmaster's license—Issuance—Expiration date.
15.80.470 Weighmaster's license—Renewal date—Penalty fee.
15.80.480 Surety bond.
15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee.
15.80.500 Weigher's license—Issuance—Expiration date.
15.80.510 Duties of weighmaster.
15.80.520 Certification of weights—Impression seal—Fee—Annual renewal.
15.80.530 Certified weight ticket—Form—Contents—Evidence.
15.80.540 Copies of weight tickets.
15.80.550 Weighmaster or weigher to determine weights—Automatic devices.
15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices.
15.80.570 Weighing devices—Rated capacity to exceed weight of load.
15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles.
15.80.590 Denial, suspension, or revocation of licenses—Hearing.
15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location.
15.80.610 Subpoenas—Oaths.
15.80.620 Assuming to act as weighmaster or weigher.
15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing.
15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty.
15.80.650 Violations—Penalty.
15.80.660 Collected moneys—Deposit.
15.80.900 Chapter cumulative.
15.80.910 Effective date—1969 ex.s. c 100.
15.80.920 Severability—1969 ex.s. c 100.


## RCW 15.80.300 Definitions—Application.

Terms used in this chapter shall have the meaning given to them in RCW 15.80.310 through 15.80.400 unless the context where used shall clearly indicate to the contrary.

[1969 ex.s. c 100 § 1.]

## RCW 15.80.310 "Department."

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

[1969 ex.s. c 100 § 2.]

## RCW 15.80.320 "Director."

"Director" means the director of the department or his or her duly appointed representative.

[2010 c 8 § 6101; 1969 ex.s. c 100 § 3.]

## RCW 15.80.330 "Person."

"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.

[1969 ex.s. c 100 § 4.]

## RCW 15.80.340 "Licensed public weighmaster."

"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.

[1969 ex.s. c 100 § 5.]

## RCW 15.80.350 "Weigher."

"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.

[1969 ex.s. c 100 § 6.]

## RCW 15.80.360 "Vehicle."

"Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity, is or may be transported or drawn.

[1969 ex.s. c 100 § 7.]

## RCW 15.80.370 "Certified weight."

"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 regulation adopted thereunder.

[1969 ex.s. c 100 § 8.]

## RCW 15.80.380 "Commodity."

"Commodity" means anything that may be weighed, measured or counted in a commercial transaction.

[1969 ex.s. c 100 § 9.]

## RCW 15.80.390 "Thing."

"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.

[1969 ex.s. c 100 § 10.]

## RCW 15.80.400 "Retail merchant."

"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 said merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location.

[1969 ex.s. c 100 § 11.]

## RCW 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 purpose. 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.

[1969 ex.s. c 100 § 12.]

## RCW 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 own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouseman 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 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.

[1969 ex.s. c 100 § 13.]

## RCW 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.]

## RCW 15.80.440 Reweighing—Weighing—Variance from invoiced weight.

The driver of any vehicle previously weighed by a licensed public weighmaster may be required to reweigh the vehicle and load at the nearest scale.

The driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain may be required to weigh the vehicle and load at the nearest scale, and 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 shall report the finding to the consignee and may cause such retail merchant to be prosecuted in accordance with the provisions of this chapter.

[1969 ex.s. c 100 § 15.]

## RCW 15.80.450 Weighmaster's license—Applications—Fee—Bond.

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:

(1) 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;

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

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

(4) The location of any scale or scales subject to the applicant's control and from which certified weights will be issued; and

(5) Such other information as the director feels necessary to carry out the purposes of this chapter.

Such annual application shall be accompanied by a license fee of fifty dollars for each scale from which certified weights will be issued and a bond as provided for in RCW 15.80.480.

[2006 c 358 § 3; 1969 ex.s. c 100 § 16.]

NOTES:

**Effective dates—2006 c 358:** See note following RCW 19.94.175.

## RCW 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.]

NOTES:

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

## RCW 15.80.470 Weighmaster's license—Renewal date—Penalty fee.

If an application for renewal of any license provided for in this chapter is not filed prior to the 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 an affidavit that he or she has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license.

[2010 c 8 § 6103; 1991 c 109 § 8; 1969 ex.s. c 100 § 18.]

## RCW 15.80.480 Surety bond.

Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself or herself of the services and certifications issued by a weighmaster, or weigher subject to his or her control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license.

[2010 c 8 § 6104; 1969 ex.s. c 100 § 19.]

## RCW 15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee.

Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a 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:

(1) Name of the weighmaster;

(2) The full name of the employee or agent and his or her resident address;

(3) The position held by such person with the weighmaster;

(4) The scale or scales from which such employee or agent will issue certified weights; and

(5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of ten dollars.

[2010 c 8 § 6105; 2006 c 358 § 4; 1969 ex.s. c 100 § 20.]

NOTES:

**Effective dates—2006 c 358:** See note following RCW 19.94.175.

## RCW 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.]

## RCW 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 an inspector authorized by the director, and issue a certificate of the weights thereof.

[2010 c 8 § 6107; 1969 ex.s. c 100 § 22.]

## RCW 15.80.520 Certification of weights—Impression seal—Fee—Annual renewal.

Certification of weights shall 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 shall be procured from the director upon the payment of a fee of five dollars, and such fee shall accompany the applicant's application for a weighmaster's license. The seal shall be retained by the weighmaster upon payment of an annual renewal fee of five dollars, and the fee shall accompany the annual renewal application for a weighmaster's license. Any replacement seal needed shall be procured from the director upon payment to the department of the cost for such replacement. An impression seal shall be used only at the scale to which it is assigned, and remains the property of the state and shall be returned forthwith to the director upon the termination, suspension, or revocation of the weighmaster's license.

[1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

## RCW 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 owner, agent, or consignee of the commodity weighed;

(4) The name of 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 motor vehicle license 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 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 signed and sealed shall be prima facie evidence of the accuracy of the weights, measures or count shown, as a certified weight, measure or count.

[1969 ex.s. c 100 § 24.]

## RCW 15.80.540 Copies of weight tickets.

Certified weight tickets shall be made in triplicate, one copy to be delivered to the person receiving the weighed commodity at the time of delivery, which copy shall accompany the vehicle that transports such commodity, one copy to be forwarded to the seller by the carrier of the weighed commodity, and one copy to be retained by the weighmaster that weighed the vehicle transporting such commodity. The copy retained by the weighmaster shall be kept at least for a period of one year, and such copies and such other records as the director shall determine necessary to carry out the purposes of this chapter shall be made available at all reasonable business hours for inspection by the director.

[1969 ex.s. c 100 § 25.]

## RCW 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 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.]

## RCW 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 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 repair or use by the director until such device has been repaired.

[1969 ex.s. c 100 § 27.]

## RCW 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.]

## RCW 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.]

## RCW 15.80.590 Denial, suspension, or revocation of licenses—Hearing.

The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, 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. Such hearings shall be subject to chapter 34.05 RCW (administrative procedure act) concerning adjudicative proceedings.

[2010 c 8 § 6109; 1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

NOTES:

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location.

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, as enacted or hereafter amended. Such hearings shall be held in the county where the licensee resides.

[1969 ex.s. c 100 § 31.]

## RCW 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.]

## RCW 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.]

## RCW 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 preseal a eight ticket with his or her official seal before performing the act of weighing.

[2010 c 8 § 6112; 1969 ex.s. c 100 § 34.]

## RCW 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 one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year in the county jail, or by both such fine and imprisonment.

[2010 c 8 § 6113; 1969 ex.s. c 100 § 35.]

## RCW 15.80.650 Violations—Penalty.

(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 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 § 109; 1969 ex.s. c 100 § 36.]

NOTES:

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

## RCW 15.80.660 Collected moneys—Deposit.

All moneys collected under this chapter shall be placed in the weights and measures account created in RCW 19.94.185.

[1995 c 355 § 25.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 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.]

## RCW 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.]

## RCW 15.80.920 Severability—1969 ex.s. c 100.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional.

[1969 ex.s. c 100 § 39.]

# 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.
15.83.905 Severability—1989 c 355.


## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

### RCW 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:

(a) Establish and maintain records;

(b) Make reports; and

(c) 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.83.900 Short title.

This chapter may be known and cited as the agricultural marketing and fair practices act.

[1989 c 355 § 13.]

### RCW 15.83.905 Severability—1989 c 355.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 355 § 14.]

# 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.


**NOTES:**

Aquaculture disease control: Chapter 77.115 RCW.

### 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.]

NOTES:

Release and recapture of salmon or steelhead prohibited: RCW 77.12.459.

## RCW 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 | |
| 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.]

## RCW 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.]

## RCW 15.85.040 Rules.

The department shall adopt rules under chapter 34.05 RCW to implement this chapter.

[1985 c 457 § 7.]

## RCW 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.]

NOTES:

**Severability—1989 c 11:** See note following RCW 9A.56.220.

## RCW 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.


**NOTES:**

Kosher food products: Chapter 69.90 RCW.

### 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.]

### RCW 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.]

NOTES:

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

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

NOTES:

**Effective date—1989 c 354 § 30:** "Section 30 of this act shall take effect on January 1, 1991."

[1989 c 354 § 87.]

**Severability—1989 c 354:** See note following RCW 15.36.012.

Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020: RCW 19.86.023.

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

**Findings—1997 c 303:** See note following RCW 43.135.055.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 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.]

NOTES:

**Captions not law—1992 c 71:** "Captions as used in sections 6, 8, 9, and 13 of this act do not constitute part of the law."

[1992 c 71 § 13.]

## RCW 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.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## RCW 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.]

## RCW 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.]

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## RCW 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

**Sections**


15.88.010 Legislative declaration.
15.88.020 Definitions.
15.88.025 Regulating wine grapes and wine—Existing comprehensive scheme—Applicable laws.
15.88.030 Wine commission created—Composition.
15.88.040 Designation of commission members—Terms.
15.88.050 Appointment of members—Travel expenses.
15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees.
15.88.070 Commission powers and duties.
15.88.073 Commission's plans, programs, and projects—Director's approval required.
15.88.075 Commission speaks for state—Director's oversight.
15.88.080 Research, promotional, and educational campaign.
15.88.090 Campaign goals.
15.88.100 Commission members' votes weighted—Exception.
15.88.110 Assessments on wine producers and growers to fund commission.
15.88.120 List of growers of vinifera grapes—Reporting system.
15.88.130 Annual assessment on harvested vinifera grapes—Approval by referendum—Rules.
15.88.140 Referendum determining grower participation—Effect.
15.88.150 Deposit of moneys.
15.88.160 Assessment constitutes debt—Penalty for nonpayment—Civil action.
15.88.170 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
15.88.180 Funding staff support—Rules—Costs of implementing RCW 15.88.073.
15.88.190 Commission must assist legislative gift center—Selection of Washington wines.
15.88.900 Construction—1987 c 452.
15.88.901 Effective dates—1987 c 452.
15.88.902 Severability—1987 c 452.


### RCW 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.]

### RCW 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.]

## RCW 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 food products act under chapter 15.86 RCW;

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

(c) Horticultural plants 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) Insect pests and plant diseases under chapter 17.24 RCW;

(g) Wholesale distributors and suppliers of wine and malt beverages under chapter 19.126 RCW;

(h) Weights and measures under chapter 19.94 RCW;

(i) Title 66 RCW, alcoholic beverage control;

(j) Title 69 RCW, food, drugs, cosmetics, and poisons

including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(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.

[2002 c 313 § 110.]

NOTES:

*Reviser's note: The "organic food products act" was renamed the "organic products act."

Effective dates—2002 c 313: See note following RCW 15.65.020.

## RCW 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.]

NOTES:

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective date—1997 c 321: See note following RCW 66.24.010.

## RCW 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 person 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.]

NOTES:

Effective date—2003 c 396: See note following RCW 15.66.030.

## RCW 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.]

NOTES:

Effective date—2003 c 396: See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

## RCW 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 43.78 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 producers 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.

[2010 c 8 § 6114; 1987 c 452 § 7.]

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 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.]

## RCW 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.]

## RCW 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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective date—1988 c 254 § 14:** "Section 14 of this act shall take effect July 1, 1989."

[1988 c 254 § 15.]

## RCW 15.88.110 Assessments on wine producers and growers to fund commission.

See RCW 66.24.215.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 depositary. 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.]

## RCW 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.]

## RCW 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.]

**NOTES:**

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.

(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.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 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.]

NOTES:

**Findings—Intent—2009 c 228:** See note following RCW 66.12.195.

## RCW 15.88.900 Construction—1987 c 452.

This act shall be liberally construed to effectuate its purposes.

[1987 c 452 § 19.]

## RCW 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.]

## RCW 15.88.902 Severability—1987 c 452.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1987 c 452 § 20.]

# CHAPTER 15.89 RCW
# WASHINGTON BEER COMMISSION

## Sections


15.89.010 Legislative declaration.
15.89.020 Definitions.
15.89.025 Regulating beer—Existing comprehensive scheme—Applicable laws.
15.89.030 Washington beer commission created—Composition.
15.89.040 Director's duties—Referendum of beer producers.
15.89.050 Appointment of members—Terms, travel expenses.
15.89.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees.
15.89.070 Commission powers and duties.
15.89.073 Commission's plans, programs, and projects—Director's approval required.
15.89.075 Commission speaks for state—Director's oversight.
15.89.080 Research, promotional, and educational campaign.
15.89.090 Campaign goals.
15.89.100 List of producers of beer—Reporting system.
15.89.110 Annual assessment on beer production—Approval by referendum—Rules.
15.89.120 Deposit of money.
15.89.130 Assessment constitutes debt—Penalty for nonpayment—Civil action.
15.89.140 Certain records exempt from public disclosure—Exceptions.
15.89.150 Costs—Funding staff support—Rules.
15.89.160 Enforcement.
15.89.170 Prosecution—Enforcement by superior courts.
15.89.900 Construction—2006 c 330.
15.89.901 Severability—2006 c 330.


## RCW 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 potential 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.]

## RCW 15.89.020 Definitions.

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

(1) "Affected producer" means any producer who is subject to this chapter.

(2) "Beer" means any malt beverage or malt liquor as the terms are defined in chapter 66.04 RCW.

(3) "Commission" means the Washington beer commission.

(4) "Department" means the department of agriculture.

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

(6) "Fiscal year" means the twelve-month period beginning with January 1st of any year and ending December 31st.

(7) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington state and who produces less than one hundred thousand barrels of beer annually per location.

(8) "Referendum" means a vote by affected producers that is conducted by secret ballot.

[2006 c 330 § 2.]

## RCW 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 food products act, chapter 15.86 RCW;

(b) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;

(c) Weights and measures, chapter 19.94 RCW;

(d) Title 66 RCW, alcoholic beverage control;

(e) Title 69 RCW, food, drugs, cosmetics, and poisons;

(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.

[2006 c 330 § 3.]

NOTES:

***Reviser's note:** The "organic food products act" was renamed the "organic products act."

## RCW 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.]

## RCW 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 other affected 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 affected producers participating in the referendum vote affirmatively; and

(ii) Thirty percent of the affected 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 affected 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 an affected producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of affected 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 affected producers. If an affected 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.

[2006 c 330 § 5.]

## RCW 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 affected 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.

[2006 c 330 § 6.]

## RCW 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.]

## RCW 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 42.17.190, 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 43.78 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.

[2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

**NOTES:**

***Reviser's note:** RCW 42.17.190 was recodified as RCW 42.17A.635 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.89.100 List of producers of beer—Reporting system.

(1) The commission shall prepare a list of all affected producers from information available from the liquor control board, the department, or the producers' association. This list must contain the names and addresses of affected 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 affected producers to ensure that their correct address is filed with the commission. It is also the responsibility of affected 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 affected producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110.

[2006 c 330 § 13.]

## RCW 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 an affected 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 affected producers who ship directly out-of-state.

(3) The commission may reduce the assessment per affected producer based upon in-kind contributions to the commission.

[2006 c 330 § 14.]

## RCW 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 depositary. 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.89.900 Construction—2006 c 330.

This act shall be liberally construed to effectuate its purposes.

[2006 c 330 § 21.]

## RCW 15.89.901 Severability—2006 c 330.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2006 c 330 § 29.]

# CHAPTER 15.105 RCW

## FROM THE HEART OF WASHINGTON PROGRAM

**Sections**


15.105.005 Findings.
15.105.010 Definitions.
15.105.020 Establishing a private, nonprofit corporation—Duties of successor organization—Debts and other liabilities.
15.105.030 Actions by department to establish a successor organization.
15.105.040 Board of directors of the successor organization—State membership.
15.105.050 Program logo.
15.105.060 Gifts, grants, or endowments.
15.105.900 Severability—2004 c 26.
15.105.901 Effective date—2004 c 26.


## RCW 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 Washington 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.]

## RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 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.]

### RCW 15.105.900 Severability—2004 c 26.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2004 c 26 § 8.]

### RCW 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**


15.115.010 Legislative declaration.

15.115.020 Regulations and restraints applicable to the wheat and barley industries.

15.115.030 Definitions.
15.115.040 Washington grain commission—Created—Members—Term of office.
15.115.050 Initial appointments to the Washington grain commission—Expiration of interim terms.
15.115.060 Producer members of the commission—Appointment—Nomination—Advisory ballot and advisory vote.
15.115.070 Industry representative member of the commission—Appointment.
15.115.080 Vacancy on the commission.
15.115.090 Removal of a commission member.
15.115.100 Membership in associations with similar objectives—Contracting with such associations.
15.115.110 Meetings—Proposed budget—Notice—Voting requirements.
15.115.120 Quorum requirements—Compensation—Travel expenses.
15.115.130 Transfer of powers, duties, assets, etc., to the Washington grain commission.
15.115.140 Powers and duties.
15.115.150 Director's duties.
15.115.160 Rule-making proceedings.
15.115.170 Liquor produced from wheat or barley.
15.115.180 Promotional printing and literature—Contracts.
15.115.190 Handling, accounting, and disbursement of moneys.
15.115.200 Bond requirements.
15.115.210 Limitation of liability.
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.
15.115.230 Application of RCW 42.56.380—Use of commercial information and records.
15.115.240 Commission shall reimburse department for certain costs—Funding of staff support.
15.115.250 Preparation of lists of producers and handlers of wheat and barley.
15.115.260 Annual assessments—Adjustments—Referendum—Temporary reduction—Limit on annual assessment.
15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue.
15.115.280 Use of moneys received by the commission under this chapter.
15.115.290 Investment of funds of the commission.
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.
15.115.310 Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction.
15.115.900 Severability—2009 c 33.

## RCW 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.]

## RCW 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 food 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.

[2009 c 33 § 2.]

NOTES:

***Reviser's note:** The term "organic food products" was changed to "organic products" by 2010 c 109 § 2.

## RCW 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 chemurgic 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, marketing, 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.]

## RCW 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.]

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## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.115.110 Meetings—Proposed budget—Notice—Voting requirements.

(1) The commission shall hold regular 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.]

## RCW 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.]

## RCW 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.

## RCW 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 barely 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 42.17.190, 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.

[2009 c 33 § 14.]

NOTES:

***Reviser's note:** RCW 42.17.190 was recodified as RCW 42.17A.635 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

## RCW 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:

(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.]

## RCW 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.]

## RCW 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.]

## RCW 15.115.180 Promotional printing and literature—Contracts.

(1) The restrictive provisions of chapter 43.78 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.

[2009 c 33 § 19.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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 commission. 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.]

## RCW 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 warehousemen, 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.

[2009 c 33 § 28.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 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.]

## RCW 15.115.900 Severability—2009 c 33.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2009 c 33 § 39.]

# TITLE 16 RCW
## ANIMALS AND LIVESTOCK

**(Formerly: Animals, estrays, brands, and fences)**

## Chapters


16.04 Trespass of animals—General.
16.24 Stock restricted areas.
16.36 Animal health.
16.38 Livestock diseases—Diagnostic service program.
16.49 Custom slaughtering.
16.50 Humane slaughter of livestock.
16.57 Identification of livestock.
16.58 Identification of cattle through licensing of certified feed lots.
16.65 Public livestock markets.
16.67 Washington state beef commission.
16.68 Disposal of dead animals.
16.70 Control of pet animals infected with diseases communicable to humans.
16.72 Fur farming.


**NOTES:**

Agister and trainer liens: Chapter 60.56 RCW.

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.

Control of predatory birds injurious to agriculture: RCW 15.04.110, 15.04.120.

"Coyote getters" may be used to control coyotes: RCW 9.41.185.

Director of agriculture: Chapter 43.23 RCW.

Dog guide or service animal, interfering with: RCW 9.91.170.

Dog license tax, counties: Chapter 36.49 RCW.

Grazing ranges: Chapter 79.13 RCW, RCW 79.10.125.

Harming a police dog or police horse: RCW 9A.76.200.

Killing of person by vicious animal: RCW 9A.32.070.

Larcenous appropriation of livestock: Chapter 9A.56 RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Race horses: Chapter 67.16 RCW.

Stealing horses or cattle as larceny: Chapter 9A.56 RCW.

# CHAPTER 16.04 RCW
## TRESPASS OF ANIMALS—GENERAL

## Sections


16.04.005 Liability for damages—Restraint—Notice.
16.04.010 Trespassing animals—Restraint—Damages and costs.
16.04.015 Damages, liability.
16.04.020 Notice of restraint—Owner known.
16.04.025 Owner of animals unknown—Procedure.
16.04.030 Actions for damages.
16.04.040 Jurisdiction—Appeal.
16.04.045 Continuance.
16.04.050 Substituted service.
16.04.060 Sale—When costs may be charged to plaintiff.
16.04.070 Surplus—Disposition.
16.04.080 Stock on United States military reservation.
16.04.100 Trespass via fence damaged by wildlife.


**NOTES:**

Dangerous dogs: RCW 16.08.070 through 16.08.100.

Disturbance on public highway: RCW 9A.84.030.

Fences: Chapter 16.60 RCW.

### RCW 16.04.005 Liability for damages—Restraint—Notice.

See RCW 16.60.015.

### RCW 16.04.010 Trespassing animals—Restraint—Damages and costs.

Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same.

[1989 c 286 § 1; 1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

**NOTES:**

**Severability—1989 c 286:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1989 c 286 § 26.]

Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.

Pleading answer in action to recover property distrained: RCW 4.36.140.

### RCW 16.04.015 Damages, liability.

Except as provided under RCW 16.04.100, whenever any animals trespass as provided in RCW 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass.

[1994 c 263 § 1; 1989 c 286 § 2.]

**NOTES:**

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.04.020 Notice of restraint—Owner known.

Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: PROVIDED, He knows to whom such animals belong.

[1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

### RCW 16.04.025 Owner of animals unknown—Procedure.

If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the

animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit.

[1989 c 286 § 21; 1985 c 415 § 24; 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.04.030 Actions for damages.

If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in RCW 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally.

[1925 ex.s. c 56 § 3; 1893 c 31 § 4; RRS § 3093.]

## RCW 16.04.040 Jurisdiction—Appeal.

District judges shall have exclusive jurisdiction of all actions and proceedings under RCW 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: PROVIDED, HOWEVER, That any party considering himself or herself aggrieved shall have the right of appeal to the superior court as in other cases.

[1987 c 202 § 177; 1893 c 31 § 9; RRS § 3098.]

NOTES:

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

## RCW 16.04.045 Continuance.

If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in RCW 16.04.050 provided, if the proper defendant be unknown to plaintiff.

[1893 c 31 § 6; RRS § 3095. Formerly RCW 16.04.050, part.]

## RCW 16.04.050 Substituted service.

If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a newspaper of general circulation in the area where the plaintiff resides less than ten days previous to the day of trial.

[1985 c 469 § 8; 1893 c 31 § 7; RRS § 3096. FORMER PART OF SECTION: 1893 c 31 § 6; RRS § 3095, now codified as RCW 16.04.045.]

## RCW 16.04.060 Sale—When costs may be charged to plaintiff.

Upon the trial of an action as herein provided [RCW 16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: PROVIDED, That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant.

[1893 c 31 § 5; RRS § 3094.]

## RCW 16.04.070 Surplus—Disposition.

If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county.

[1893 c 31 § 8; RRS § 3097.]

## RCW 16.04.080 Stock on United States military reservation.

It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: PROVIDED, HOWEVER, That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the same to run at large or be upon any such military reservation.

[1937 c 101 § 1; RRS § 3068-1.]

## RCW 16.04.100 Trespass via fence damaged by wildlife.

If damages are caused by a trespassing animal, neither the state nor the owner of the animal shall be liable if the owner of the animal can prove that the trespass is due to damage caused by wildlife to a lawful fence and, in a stock restricted area, the owner of the animal did not have a reasonable opportunity to repair the fence. The state shall pay all costs of transportation, advertising, legal proceedings, and keep of an animal that has been restrained pursuant to RCW 16.04.010. Claims filed under this section shall be processed according to the procedures under chapter 4.92 RCW.

[1994 c 263 § 3.]

# CHAPTER 16.24 RCW
## STOCK RESTRICTED AREAS

**Sections**


16.24.010 Restricted areas—Range areas.
16.24.020 Hearing—Notice.
16.24.030 Order establishing area—Publication.
16.24.040 Penalty.
16.24.050 Change of boundaries.
16.24.060 Road signs in range areas.
16.24.065 Stock at large in restricted areas—Running at large on state or federal land.
16.24.070 Stock on highway right-of-way—Limitations.
16.24.090 Animals at large—Limitations—Defense.
16.24.100 Prosecution—Proof of ownership.
16.24.110 Public nuisance—Impounding.
16.24.120 Impounding—Procedure.
16.24.130 Impounding—Notice—Copy to owner.
16.24.140 Impounding—Owner to pay costs.
16.24.150 Sale of impounded animal—Retroactive effect.
16.24.160 Conduct of sale—Disposition of proceeds.
16.24.170 Purchase of animal, restrictions.
16.24.180 Castration or gelding of stock at large.
16.24.190 Bull breed restrictions.
16.24.200 Bull ratio restrictions.
16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades.
16.24.220 Separating estrays from herd.
16.24.230 Moving another's livestock from range.


### RCW 16.24.010 Restricted areas—Range areas.

The county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large. No territory so designated shall be less than two square miles in area. RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large.

[1989 c 286 § 4; 1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.24.020 Hearing—Notice.

*Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county legislative authority of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065.

[1989 c 286 § 5; 1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

NOTES:

***Reviser's note:** RCW 16.24.010 through 16.24.065 took effect March 1, 1937.

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.24.030 Order establishing area—Publication.

Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks.

[1989 c 286 § 6; 1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.24.040 Penalty.

Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in RCW 16.24.030 or, violating any provision of this chapter, shall be guilty of a misdemeanor.

[1975 c 38 § 1; 1911 c 25 § 4; RRS § 3071.]

### RCW 16.24.050 Change of boundaries.

When the county legislative authority of any county deem[s] it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in RCW 16.24.020. If the county legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, it shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks.

[1989 c 286 § 7; 1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.24.060 Road signs in range areas.

At the point where a public road enters a range area, and at such other points thereon within such area as the county legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK."

[1989 c 286 § 8; 1937 c 40 § 5; RRS § 3070-2.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

### RCW 16.24.065 Stock at large in restricted areas—Running at large on state or federal land.

(1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing.

[1989 c 286 § 9; 1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.070 Stock on highway right-of-way—Limitations.

It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon.

[1989 c 286 § 10; 1937 c 189 § 127; RRS § 6360-127, part. Prior: 1927 c 309 § 41, part; RRS § 6362-41, part. FORMER PART OF SECTION: 1937 c 40 § 6; RRS § 3070-3, now codified as RCW 16.24.065. Formerly RCW 16.24.070 and 16.24.080.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.090 Animals at large—Limitations—Defense.

Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants.

[1989 c 286 § 14; 1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.100 Prosecution—Proof of ownership.

In any prosecution under chapter 16.24 RCW proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal.

[1989 c 286 § 3; 1895 c 124 § 2; RRS § 3086. Formerly RCW 16.16.020.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.110 Public nuisance—Impounding.

Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of chapter 16.24 RCW as now or hereafter amended, which are not restrained as provided by RCW 16.04.010, are declared to be a public nuisance. The sheriff of the county where found and the nearest brand inspector shall have authority to impound such animals which are not restrained as provided by RCW 16.04.010.

[1989 c 286 § 11; 1985 c 415 § 16; 1979 c 154 § 6; 1975 1st ex.s. c 7 § 14; 1951 c 31 § 2. Formerly RCW 16.13.020.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.24.120 Impounding—Procedure.

Upon taking possession of any livestock at large contrary to the provisions of *RCW 16.13.020, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof.

[1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

NOTES:

***Reviser's note:** RCW 16.13.020 was recodified as RCW 16.24.110 pursuant to 1989 c 286 § 18.

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.24.130 Impounding—Notice—Copy to owner.

The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding.

The notice shall state:

(1) A description of the animal, including brand, tattoo or other identifying characteristics;

(2) When and where found;

(3) Where impounded; and

(4) That if unclaimed, the animal will be sold at a public livestock market sale or other public sale, and the date of such sale: PROVIDED, That if no newspaper shall be published in such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall send a copy of the notice to the owner of record by registered mail.

[1995 c 374 § 69; 1975 1st ex.s. c 7 § 16; 1951 c 31 § 4. Formerly RCW 16.13.040.]

NOTES:

**Effective date—1995 c 374 §§ 69, 70, and 72-79:** "Sections 69, 70, and 72 through 79 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]."

[1995 c 374 § 82.]

## RCW 16.24.140 Impounding—Owner to pay costs.

Upon claiming any animal impounded under this chapter, the owner shall pay all costs of transportation, advertising, legal proceedings, and keep of the animal, except as provided under RCW 16.04.100.

[1994 c 263 § 2; 1989 c 286 § 13; 1951 c 31 § 5. Formerly RCW 16.13.050.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.150 Sale of impounded animal—Retroactive effect.

If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding public livestock market sale to be held at the sales yard where impounded, provided that in the director's discretion the department of agriculture may otherwise cause the animal to be sold at public sale.

The legislature intends this to be a clarification of existing law;

therefore, this section shall have retroactive effect as of December 1, 1994.

[1995 c 374 § 70; 1975 1st ex.s. c 7 § 17; 1951 c 31 § 6. Formerly RCW 16.13.060.]

NOTES:

**Effective date—1995 c 374 §§ 69, 70, and 72-79:** See note following RCW 16.24.130.

## RCW 16.24.160 Conduct of sale—Disposition of proceeds.

The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter.

[1985 c 415 § 17; 1951 c 31 § 7. Formerly RCW 16.13.070.]

## RCW 16.24.170 Purchase of animal, restrictions.

No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein.

[1951 c 31 § 8. Formerly RCW 16.13.080.]

## RCW 16.24.180 Castration or gelding of stock at large.

It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1 and September 30 of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such animal, or causing it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: AND PROVIDED FURTHER, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning.

[1989 c 286 § 15; 1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081. Formerly RCW 16.20.010.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.190 Bull breed restrictions.

It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run at large on any range area in this state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area.

[1986 c 177 § 1; 1985 c 415 § 18; 1917 c 111 § 1; RRS § 3082. Formerly RCW 16.20.020.]

## RCW 16.24.200 Bull ratio restrictions.

Before any person, firm, association or corporation turns upon a range area in this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area.

[1986 c 177 § 2; 1917 c 111 § 2; RRS § 3083. Formerly RCW 16.20.030.]

## RCW 16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades.

RCW 16.24.190 and 16.24.200 shall not apply to counties lying west of the summit of the Cascade mountains.

[1989 c 286 § 17; 1985 c 415 § 19. Formerly RCW 16.20.035.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

## RCW 16.24.220 Separating estrays from herd.

It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large.

[1989 c 286 § 16; 1987 c 202 § 181; 1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2. Formerly RCW 16.28.160.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

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

## RCW 16.24.230 Moving another's livestock from range.

No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to separate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours.

[1985 c 415 § 21; 1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part. Formerly RCW 16.28.165.]

# CHAPTER 16.36 RCW
## ANIMAL HEALTH

**(Formerly: Diseases—Quarantine—Garbage feeding)**

## Sections


16.36.005 Definitions.
16.36.010 Quarantine—Hold order.
16.36.020 Powers of director.
16.36.023 Fees—Rules.
16.36.025 Recovery of costs.
16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations.
16.36.045 Transporting of animals—Requirements—Vehicle inspection—Authorization by director or appointed officers.
16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.
16.36.060 Tests, examinations, inspections, samples, examine and copy records—Entry onto property—Unlawful conduct—Seizure of property—Search warrant.
16.36.070 Danger of infection—Emergencies.
16.36.080 Veterinarians and others to report diseases—Director's duties—Unlawful importation.
16.36.082 Infected or exposed animals—Unlawful to transfer or expose other animals.
16.36.084 Duty to report infection or exposure to disease—Unlawful conduct.
16.36.086 Negligence of owner of infected livestock—Liability.
16.36.090 Destruction of diseased or quarantined animals.
16.36.096 Destruction of animals—Payment of indemnity.
16.36.098 Quarantine, hold order, or destruct order—Written request for hearing.
16.36.100 Cooperation with other governmental agencies.
16.36.102 Duty to bury carcass of diseased livestock—Dead livestock presumed diseased.
16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.
16.36.110 Violations, gross misdemeanor—Injunction—Denial, revocation, or suspension of license.
16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected.
16.36.116 Civil infraction—Live nonambulatory livestock—Monetary penalty—Authorization by director—Issuance of notices—Enforcement.
16.36.128 Application of Title 77 RCW.
16.36.140 Bringing livestock into the state—Securing a certificate of veterinary inspection required—Exemptions—Director's authority—Time and mileage fee—Rules.


**NOTES:**

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

### RCW 16.36.005 Definitions.

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

(1) "Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010, except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

(2) "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

(3) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official electronic or paper form from the state of origin or from the animal and plant health inspection service (APHIS) of the United States department of agriculture, executed by a licensed and accredited veterinarian or a veterinarian approved by the animal and plant health inspection service. "Certificate of veterinary inspection" is also known as an "official health certificate."

(4) "Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

(5) "Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

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

(7) "Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

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

(9) "Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

(10) "Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

(11) "Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

(12) "Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

(13) "Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

(14) "Infectious disease" means a clinical disease of humans or

animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

(15) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

(16) "Person" means a person, persons, firm, or corporation.

(17) "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

(18) "Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

(19) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

[2010 c 66 § 1; 2003 c 39 § 9; 1998 c 8 § 1; 1987 c 163 § 1; 1953 c 17 § 1.]

NOTES:

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

## RCW 16.36.010 Quarantine—Hold order.

(1) The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products when any animal or its reproductive products are affected with or have been exposed to disease or when there is reasonable cause to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state. Overt disease or exposure to disease in any animal or its reproductive products need not be immediately obvious for a quarantine order to be issued or enforced. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for fourteen days and expires when released by the director or no later than midnight on the fourteenth day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or animal reproductive product placed under a quarantine or hold order shall be kept separate and apart from other animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals.

[2007 c 71 § 5; 2004 c 251 § 1; 1998 c 8 § 2; 1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

## RCW 16.36.020 Powers of director.

(1) The director shall enforce and administer the provisions of this chapter pertaining to garbage feeding.

(2) The director has the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner necessary to protect the health and safety of the public and the state's animal population.

(3) The director has the authority to license and regulate the activities of veterinary laboratories that do not have a veterinarian licensed under chapter 18.92 RCW present within the management or staff of the veterinary laboratory. The director may adopt rules to regulate these laboratories in any manner necessary to protect the health and safety of the public and the public's animals.

[1998 c 8 § 3; 1987 c 163 § 2; 1979 c 154 § 8; 1953 c 17 § 2; 1947 c 172 § 1; 1933 c 177 § 1; 1927 c 165 § 1; formerly Rem. Supp. 1947 § 3110. Prior: 1915 c 100 § 5; 1901 c 112 § 2; 1895 c 167 § 2.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.36.023 Fees—Rules.

(1) The director may adopt rules establishing fees for:

(a) The establishment and inspection of animal holding facilities authorized under this chapter;

(b) The inspection and monitoring of animals in authorized animal holding facilities; and

(c) Special inspections of animals or animal facilities that the director may provide at the request of the animal owner or interested persons.

(2) The fees shall, as closely as practicable, cover the cost of the service provided.

(3) All fees collected under this section shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

[2008 c 285 § 28.]

NOTES:

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

## RCW 16.36.025 Recovery of costs.

The director may collect moneys to recover the reasonable costs of printing and distributing certificates and other supplies to veterinarians.

[1998 c 8 § 19.]

## RCW 16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations.

(1) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this chapter, and including:

(a) Preventing the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting animals in this state;

(b) Governing the inspection and testing of all animals within or about to be imported into this state; and

(c) Designating any disease as a reportable disease.

(2) Rules to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases affecting animals in this state may differ from federal regulations by being more restrictive.

[1998 c 8 § 4; 1979 c 154 § 10; 1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.36.045 Transporting of animals—Requirements—Vehicle inspection—Authorization by director or appointed officers.

The director may establish points of inspection for vehicles transporting animals on the public roads of this state to determine if the animals being transported are accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules. Vehicles transporting animals on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director, with emphasis on livestock being brought in from outside the state. The director or appointed officers are authorized to stop a vehicle transporting animals upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the animals are being transported in violation of this chapter or its rules.

[2007 c 71 § 1.]

## RCW 16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.

(1) It is unlawful for a person to bring an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets the Washington state animal health requirements. This subsection does not apply to:

(a) Livestock, which are governed by RCW 16.36.140; or

(b) Other animals exempted by the director by rule.

(2) It is unlawful for a person to intentionally falsely make, complete, alter, use, or sign a certificate of veterinary inspection or official animal health document of the department.

(3) It is unlawful for a person to intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device.

(4) It is unlawful for a person to willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties.

(5) It is unlawful for a person to willfully fail to comply with or to violate any rule or order adopted by the director under this chapter.

[2010 c 66 § 2; 2007 c 71 § 2; 1998 c 8 § 5; 1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.36.060 Tests, examinations, inspections, samples, examine and copy records—Entry onto property—Unlawful conduct—Seizure of property—Search warrant.

(1) The director has the authority to enter a property at any reasonable time to:

(a) Conduct tests, examinations, or inspections to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the property or that have been on the property are infected with or have been exposed to disease; and

(b) Determine, when there is reasonable cause to investigate, whether livestock on the property have been imported into Washington state in violation of requirements of this chapter, and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations.

(2) It is unlawful for any person to interfere with investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with tests, inspections, or examinations conducted pursuant to subsection (1) of this section.

(3) If the director is denied access to a property or animals for purposes of this chapter, or a person fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or owner's agent and secure consent. The court may issue a search warrant authorizing access to any animal or property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or property, or to take samples, and examine and copy records, and may authorize seizure or destruction of property.

[2010 c 66 § 4; 2004 c 251 § 2; 1998 c 8 § 6; 1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.36.070 Danger of infection—Emergencies.

When any local governing body notifies the director of the presence or probable danger of infection from any animal diseases, the director, state veterinarian, or a deputized state veterinarian shall respond immediately and take appropriate action. In case of an emergency, the director may appoint deputies or assistants with equal power to act.

[1998 c 8 § 7; 1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

## RCW 16.36.080 Veterinarians and others to report diseases—Director's duties—Unlawful importation.

(1) Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and others designated by this chapter shall immediately report in writing or by telephone, facsimile, or electronic mail to the director the existence or suspected existence of any reportable disease among animals within the state.

(2) Persons using their own diagnostic services must report any reportable disease among animals within the state to the director.

(3) The director shall investigate and/or maintain records of all cases of reportable diseases among animals within this state.

(4) The director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treating the animal as required by the director.

(5) It is unlawful for any person to import any animal infected with or exposed to a reportable disease without a permit from the director.

[1998 c 8 § 8; 1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

## RCW 16.36.082 Infected or exposed animals—Unlawful to transfer or expose other animals.

(1) It is unlawful for any person to sell, exchange, or give away any animal that he or she knows:

(a) Is infected with any contagious, infectious, or communicable disease;

(b) Has been exposed to any contagious, communicable, or infectious disease within the previous thirty days; or

(c) Has been treated for any condition within the previous thirty days;

without notifying the purchaser or person taking possession of the animal of the infection, exposure, or treatment unless the legal withdrawal period for any treatment has been met or exceeded.

(2) It is unlawful for any owner or person in possession of any animal having any contagious, communicable, or infectious disease to knowingly:

(a) Turn out the animal onto enclosed lands adjoining the enclosed lands of another that are kept for pasture or otherwise used for raising animals without notifying the owner of the enclosed lands; or

(b) Stable the animal or allow the animal to be stabled in any barn with other animals without notifying the other owners.

[1998 c 8 § 14; 1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.130.]

## RCW 16.36.084 Duty to report infection or exposure to disease—Unlawful conduct.

Any person owning or having in his or her control any livestock which become infected with scrapie or another transmissible spongiform encephalopathy (TSE) or which have been exposed to such disease, shall immediately report the disease or exposure to the director. It is unlawful for any person to fail to report or to attempt to conceal the existence of any such disease.

[1998 c 8 § 15; 1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.140.]

## RCW 16.36.086 Negligence of owner of infected livestock—Liability.

When any livestock affected with any contagious, infectious, or communicable disease mingle with any healthy livestock belonging to another person, through the fault or negligence of the owner of the diseased livestock or his or her agent, the owner is liable for all damages sustained by the owner of the healthy livestock.

[1998 c 8 § 16; 1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.160.]

## RCW 16.36.090 Destruction of diseased or quarantined animals.

When public welfare demands, the director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. The director may order destruction of any animal held under quarantine when public welfare demands or the owner of the animal fails or refuses to follow a herd or flock plan. The director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian.

[2004 c 251 § 3; 1998 c 8 § 9; 1985 c 415 § 3; 1979 c 154 § 13; 1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.36.096 Destruction of animals—Payment of indemnity.

In ordering the slaughter or destruction of any animal, the director may pay an indemnity in an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed. The actual indemnity amount shall be established by the director by rule. Payment of indemnity does not apply to an animal: (1) Belonging to the federal government or any of its agencies, this state or any of its agencies, or any municipal corporation; or (2) that has been brought into this state in violation of this chapter or rules adopted under this chapter.

[1998 c 8 § 10; 1985 c 415 § 4; 1963 ex.s. c 8 § 1.]

## RCW 16.36.098 Quarantine, hold order, or destruct order—Written request for hearing.

Any person whose animal or animal reproductive products are placed under a quarantine, a hold order, or destruct order under RCW 16.36.090 may request a hearing. The request for a hearing must be in writing and filed with the director. Any hearing will be held in conformance with RCW 34.05.422 and 34.05.479.

[2004 c 251 § 4; 1998 c 8 § 17.]

## RCW 16.36.100 Cooperation with other governmental agencies.

The director is authorized to 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 and to promote consistency of regulation.

[1998 c 8 § 11; 1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

## RCW 16.36.102 Duty to bury carcass of diseased livestock—Dead livestock presumed diseased.

Every person owning or having in charge any livestock that has died because of disease shall dispose of the carcass within a time frame and in a manner prescribed in rule by the director, which may include, but is not limited to, burial, composting, incinerating, landfilling, natural decomposition, or rendering. Any livestock found dead from an unknown cause is presumed to have died because of disease.

[2006 c 155 § 1; 1949 c 100 § 2; Rem. Supp. 1949 § 3142-2. Formerly RCW 16.36.092, 16.68.020.]

## RCW 16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.

No person shall feed garbage to swine without first obtaining a license from the director. The license expires on June 30th of each year. Application for a license shall be accompanied by a fee of ten dollars which shall be credited to the general fund. The license is nontransferable and a separate license is required for each place of business if an operator has more than one feeding station.

Upon receipt of an application for a license to feed garbage, the director shall inspect the premises and determine whether the applicant meets the requirements of 9 C.F.R. Chapter 1 Part 166 as adopted by rule and any other rules adopted under this chapter. Upon approval of the application by the director and compliance with the provisions of this section, the applicant shall be issued a license. This section does not apply to any person feeding garbage from his or her own domestic household.

[1998 c 8 § 12; 1953 c 17 § 4.]

NOTES:

Feeding of carcasses to swine: RCW 16.68.150.

## RCW 16.36.110 Violations, gross misdemeanor—Injunction—Denial, revocation, or suspension of license.

(1) Any person who violates any provision of this chapter or the rules adopted under this chapter shall be guilty of a gross misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

(2) 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 Thurston county or of the county in which such violation occurs notwithstanding the existence of other remedies at law.

(3) The director may deny, revoke, or suspend any license issued under this chapter for any failure or refusal to comply with this chapter or rules adopted under this chapter. Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

[1998 c 8 § 13; 1989 c 354 § 35; 1981 c 296 § 14; 1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected.

Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund.

[2007 c 71 § 4.]

## RCW 16.36.116 Civil infraction—Live nonambulatory livestock—Monetary penalty—Authorization by director—Issuance of notices—Enforcement.

(1) Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules has committed a class 1 civil infraction.

(2) Any person who knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock has committed a civil infraction and shall be assessed a monetary penalty not to exceed one thousand dollars. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation. Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot. For the purposes of this section, "nonambulatory livestock" has the same meaning as in RCW 16.52.225.

(3) The director is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

[2009 c 347 § 1; 2007 c 71 § 3.]

## RCW 16.36.128 Application of Title 77 RCW.

Certain animals defined in this chapter as livestock or animal may also meet the definition of wildlife contained in Title 77 RCW. This chapter does not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title, nor does it relieve the owners or possessors of wildlife from full compliance with the requirements of Title 77 RCW or the rules adopted under that title. Rules adopted by the director shall not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title.

[1998 c 8 § 18.]

## RCW 16.36.140 Bringing livestock into the state—Securing a certificate of veterinary inspection required—Exemptions—Director's authority—Time and mileage fee—Rules.

(1) It is unlawful for a person to bring livestock into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the livestock meet Washington state animal health requirements. This subsection does not apply to livestock that:

(a) Have been exempted by the director by rule; or

(b) Will be delivered within twelve hours after entry into Washington state to:

(i) An approved, inspected feed lot for slaughter;

(ii) A federally inspected slaughter plant; or

(iii) A licensed public livestock market for sale and subsequent delivery within twelve hours to:

(a) An approved, inspected feed lot for slaughter; or

(b) A federally inspected slaughter plant.

(2) The director may monitor livestock entering Washington state. Persons importing, transporting, receiving, feeding, or housing imported livestock shall:

(a) Comply with the requirement and any exemptions specified in subsection (1) of this section; and

(b) Make the livestock and related records available for inspection by the director.

(3) The department may charge a time and mileage fee for inspecting livestock and related records during an investigation of a proven violation of this section. The fee is eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

(4) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this section.

[2010 c 66 § 3.]

# CHAPTER 16.38 RCW
## LIVESTOCK DISEASES—DIAGNOSTIC SERVICE PROGRAM

**Sections**


16.38.010 Declaration of purpose.
16.38.020 Director authorized to carry on diagnostic program.
16.38.030 Employment of personnel.
16.38.040 Agreements and/or contracts with other entities.
16.38.050 Acceptance of gifts, funds, equipment, etc.
16.38.060 Schedule of fees may be established—Use.


**NOTES:**

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

### RCW 16.38.010 Declaration of purpose.

The production of livestock is one of the largest industries in this state; and whereas livestock disease constitutes a constant threat to the public health and the production of livestock in this state; and whereas the prevention and control of such livestock diseases by the state may be best carried on by the establishment of a diagnostic service program for livestock diseases; therefore it is in the public interest and for the purpose of protecting health and general welfare that a livestock diagnostic service program be established.

[1969 c 100 § 1.]

### RCW 16.38.020 Director authorized to carry on diagnostic program.

The director of agriculture is hereby authorized to carry on a diagnostic service program for the purpose of diagnosing any livestock disease which affects or may affect any livestock which is or may be produced in this state or otherwise handled in any manner for public distribution or consumption.

[1969 c 100 § 2.]

### RCW 16.38.030 Employment of personnel.

In carrying out such diagnostic service program the director of agriculture may employ, subject to the state civil service act, chapter 41.06 RCW, the necessary personnel to properly effectuate such diagnostic service program.

[1969 c 100 § 3.]

### RCW 16.38.040 Agreements and/or contracts with other entities.

In carrying out such diagnostic service program the director of agriculture may enter into agreements and/or contracts with any other governmental agencies whether state or federal or public institution such as Washington State University or private institutions and/or research organizations.

[1969 c 100 § 4.]

### RCW 16.38.050 Acceptance of gifts, funds, equipment, etc.

In carrying out such diagnostic service program, the director of agriculture may accept public or private funds, gifts or equipment or any other necessary properties.

[1969 c 100 § 5.]

### RCW 16.38.060 Schedule of fees may be established—Use.

The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. All fees collected under this provision shall be retained by the director of agriculture to be spent only for carrying out the purposes of this chapter.

[1986 c 203 § 6; 1969 c 100 § 6.]

**NOTES:**

**Severability—1986 c 203:** See note following RCW 15.17.230.

# CHAPTER 16.49 RCW
## CUSTOM SLAUGHTERING

**Sections**


16.49.005 Intent.
16.49.008 Application.
16.49.015 Definitions.

16.49.025 Rules.
16.49.035 Custom slaughtering and custom meat licenses—Generally.
16.49.045 Inspections.
16.49.055 Custom meat facilities—Conditions for preparation of inspected and uninspected meat.
16.49.065 Licensed custom farm slaughterer—Transport of offal.
16.49.075 Unlawful acts—Selling, trading, or giving away uninspected meat or meat products—Interfering with director's duties.
16.49.085 Violations of chapter or rules—Investigation by director—Subpoenas.
16.49.095 Denial, suspension, revocation of license—Grounds—Request for hearing.
16.49.105 Noncompliance with chapter or rules—Civil penalty.
16.49.115 Application of administrative procedure act.
16.49.125 Custom meat facilities—Sale of inspected meat—Ordinances may be more restrictive.

## RCW 16.49.005 Intent.

This chapter is intended to safeguard the household user of uninspected and inspected meat products from possible harm due to adulterated, misbranded, or unfit meat or meat products or meat or meat products that have been prepared under insanitary conditions.

[2000 c 99 § 1.]

## RCW 16.49.008 Application.

(1) This chapter does not apply to the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer's farm.

(2) For the purposes of this section, "chicken" means the species Gallus domesticus.

[2003 c 397 § 1.]

## RCW 16.49.015 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 designee.

(3) "Custom farm slaughterer" means a person licensed to slaughter meat food animals for the owner of the animal through the use of a mobile unit.

(4) "Custom slaughtering establishment" means the facility operated by a person licensed to slaughter meat food animals for the owner of the animal at a fixed location.

(5) "Custom meat facility" means the facility operated by a person licensed to prepare uninspected meat for the owner of the uninspected meat. Operators of custom meat facilities may also sell prepackaged inspected meat to any person. This chapter does not prohibit the operator of a custom meat facility from being licensed to prepare at the facility and sell inspected meat to any person.

(6) "Inspected meat" means the carcasses or carcass parts of meat food animals which have been slaughtered and inspected at establishments subject to inspection under a federal meat inspection act.

(7) "Uninspected meat" means the carcasses or carcass parts of meat food animals that have been slaughtered by the owner of the animals, a custom farm slaughterer, or at a custom slaughtering establishment.

(8) "Household user" means the ultimate consumer, members of the consumer's household, and his or her nonpaying guests and employees.

(9) "Person" means any individual, partnership, association, and corporation.

(10) "Meat food animal" means cattle, swine, sheep, or goats.

(11) "Meat food bird" means a ratite, such as an ostrich, emu, or rhea.

(12) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act.

(13) "Prepared" means smoked, salted, rendered, boned, cut up, or otherwise processed.

[2000 c 99 § 2; 1999 c 291 § 28; 1987 c 77 § 4. Formerly RCW 16.49.435.]

NOTES:

**Savings—1987 c 77:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, and does not affect any proceeding instituted under those sections."

[1987 c 77 § 12.]

## RCW 16.49.025 Rules.

The director shall enforce and carry out the provisions of this chapter and adopt rules necessary to carry out its purpose. The rules may include, but are not limited to:

(1) Requirements for construction, equipment, cleaning, sanitation, and sanitary practices to ensure sanitary operations;

(2) Requirements for identification or tagging of meat food animals slaughtered by licensees to maintain identification of the owner of the animal;

(3) Requirements for handling and storing inspected and uninspected meats and meat products;

(4) Requirements for labeling meat and meat products; and

(5) Requirements for slaughtering and processing of meat food birds by licensees.

[2000 c 99 § 3; 1987 c 77 § 5. Formerly RCW 16.49.680.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.035 Custom slaughtering and custom meat licenses—Generally.

(1) It is unlawful for any person to operate as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility in the state without first obtaining a license from the director. Custom farm slaughterers must obtain a separate license for each mobile unit. Separate licenses are required for each custom slaughtering establishment and custom meat facility.

(2) Application for a license must be made on a form prescribed by the director and accompanied by a twenty-five dollar license fee. The application must include:

(a) The full name and address of the applicant. If the applicant is a partnership or corporation, the application

must include the full name and address of each partner or officer;

(b) The physical location address of each establishment or facility to be licensed;

(c) The name and address of a resident of this state authorized to accept legal notices for the applicant; and

(d) Any other information prescribed by the director.

(3) If an application for renewal of a license and the license fee are not received by June 30th, the applicant must pay an additional fee of twenty-five dollars before the renewal license is issued.

(4) Initial issuance of a license requires a prelicense inspection by the director for compliance with this chapter and rules adopted under this chapter. A license shall only be issued after an applicant is found to be in substantial compliance with this chapter and rules adopted under this chapter.

(5) Licenses issued under this chapter expire June 30th of each year.

(6) Licenses issued under this chapter are not transferrable.

[2000 c 99 § 4; 1991 c 109 § 4; 1987 c 77 § 1; 1985 c 415 § 5; 1959 c 204 § 44. Formerly RCW 16.49.440.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.045 Inspections.

To determine compliance with this chapter and the rules adopted under this chapter, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time.

[2000 c 99 § 5; 1987 c 77 § 8. Formerly RCW 16.49.690.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.055 Custom meat facilities—Conditions for preparation of inspected and uninspected meat.

Inspected and uninspected meat may only be prepared by a custom meat facility under the following conditions:

(1) Inspected meat and meat products prepared from inspected meat must be kept separated from uninspected meat and meat products prepared from uninspected meat to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat must be done at different times.

(3) Equipment used in preparing uninspected meat or products prepared from uninspected meat must be cleaned and sanitized before being used to prepare inspected meat.

(4) Uninspected meat may be prepared only for the use of the owner, who must be a household user.

(5) Uninspected meat and meat products prepared from uninspected meat must be clearly marked and labeled "not for sale".

(6) Packages of uninspected meat may not be stored in a retail counter.

[2000 c 99 § 6; 1987 c 77 § 3; 1985 c 415 § 7; 1971 ex.s. c 98 § 3. Formerly RCW 16.49.610.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.065 Licensed custom farm slaughterer—Transport of offal.

A licensed custom farm slaughterer may transport the offal of a meat food animal he or she has slaughtered for the owner, when it is transported as part of a slaughtering transaction and the offal is handled in a sanitary manner.

[2000 c 99 § 7; 1967 ex.s. c 120 § 4. Formerly RCW 16.49.451.]

## RCW 16.49.075 Unlawful acts—Selling, trading, or giving away uninspected meat or meat products—Interfering with director's duties.

It is unlawful for any person to:

(1) Sell, trade, or give away uninspected meat or meat products; or

(2) Interfere with the director in the performance of his or her duties under this chapter or the rules adopted under this chapter.

[2000 c 99 § 8; 1987 c 77 § 9. Formerly RCW 16.49.700.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.085 Violations of chapter or rules—Investigation by director—Subpoenas.

The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. To assist in such investigation, the director may issue subpoenas to compel the attendance of witnesses or to compel production of records or documents anywhere in the state.

[2000 c 99 § 9; 1987 c 77 § 10. Formerly RCW 16.49.710.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

## RCW 16.49.095 Denial, suspension, revocation of license—Grounds—Request for hearing.

The director may deny, suspend, or revoke any license required under this chapter if the director determines that an applicant or licensee has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required under this chapter or rules adopted under this chapter to make the records available to the director on request;

(3) Refused the director access to any facilities or parts of the facilities for the purpose of carrying out the provisions of this chapter or rules adopted under this chapter; or

(4) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, intrastate commerce in food, drugs, and cosmetics, or rules adopted under that chapter.

Upon receipt of notice by the director to deny, suspend, or revoke a license, a person may request a hearing under chapter 34.05 RCW.

[2000 c 99 § 10; 1994 c 128 § 1; 1985 c 415 § 12. Formerly RCW 16.49.444.]

### RCW 16.49.105 Noncompliance with chapter or rules—Civil penalty.

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. Each violation is a separate and distinct offense.

All moneys collected for civil penalties under this chapter shall be deposited in the state general fund.

[2000 c 99 § 11; 1994 c 128 § 2; 1985 c 415 § 6; 1959 c 204 § 51. Formerly RCW 16.49.510.]

### RCW 16.49.115 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 99 § 12.]

### RCW 16.49.125 Custom meat facilities—Sale of inspected meat—Ordinances may be more restrictive.

The provisions of this chapter relating to the sale of inspected meat in custom meat facilities do not supersede or restrict the authority of any county or any city to adopt ordinances that are more restrictive for the handling and sale of inspected meat than those provided in this chapter.

[2000 c 99 § 13; 1999 c 291 § 29; 1987 c 77 § 11; 1971 ex.s. c 98 § 9. Formerly RCW 16.49.670.]

NOTES:

**Savings—1987 c 77:** See note following RCW 16.49.015.

# CHAPTER 16.50 RCW
## HUMANE SLAUGHTER OF LIVESTOCK

**Sections**


16.50.100 Declaration of policy.
16.50.110 Definitions.
16.50.120 Humane methods for bleeding or slaughtering livestock required.
16.50.130 Administration of chapter—Rules.
16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane.
16.50.150 Religious freedom—Ritual slaughter defined as humane.
16.50.160 Injunctions against violations.
16.50.170 Penalty for violations.
16.50.900 Severability—1967 c 31.


### RCW 16.50.100 Declaration of policy.

The legislature of the state of Washington finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economy in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products. It is therefore declared to be the policy of the state of Washington to require that the slaughter of all livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder.

[1967 c 31 § 1.]

### RCW 16.50.110 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 duly appointed representative.

(3) "Humane method" means either:

(a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or

(b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "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.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers.

[1967 c 31 § 2.]

### RCW 16.50.120 Humane methods for bleeding or slaughtering livestock required.

No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: PROVIDED, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he finds that an earlier compliance would cause such person undue hardship.

[1967 c 31 § 3.]

### RCW 16.50.130 Administration of chapter—Rules.

The director shall administer the provisions of this chapter. He shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the Federal Humane Slaughter Act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules.

[1967 c 31 § 4.]

### RCW 16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane.

The use of a manually operated hammer, sledge or poleaxe is declared to be an inhumane method of slaughter within the meaning of this chapter.
[1967 c 31 § 5.]

### RCW 16.50.150 Religious freedom—Ritual slaughter defined as humane.

Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provisions of this chapter, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane.
[1967 c 31 § 10.]

### RCW 16.50.160 Injunctions against violations.

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 the other remedies at law.
[1967 c 31 § 6.]

### RCW 16.50.170 Penalty for violations.

Any person violating any provision of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days.
[1967 c 31 § 7.]

### RCW 16.50.900 Severability—1967 c 31.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.
[1967 c 31 § 9.]

# CHAPTER 16.57 RCW
## IDENTIFICATION OF LIVESTOCK

**Sections**


16.57.010 Definitions.
16.57.015 Livestock identification advisory board—Rule review—Fee setting.
16.57.020 Livestock brands—Director is the recorder—Recording fee.
16.57.023 Permanent renewal of brands—Heritage brands—Fees.
16.57.025 Livestock inspection—Licensed and accredited veterinarians—Fees.
16.57.030 Tattoo brands and marks not recordable.
16.57.040 Production record brands.
16.57.050 Use of unrecorded brand prohibited—Exception.
16.57.060 Brands similar to governmental brands not to be recorded.
16.57.070 Conflicting claims to brand.
16.57.080 Renewal of recorded brands—Schedule—Fee—Failure to pay.
16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Fee—Nonliability of director for agents.
16.57.100 Right to use brand—Brand as evidence of title.
16.57.105 Preemptory right to use brand.
16.57.110 Size and characteristics of brand.
16.57.120 Removal or alteration of brand—Penalty.
16.57.130 Similar brands not to be recorded.
16.57.140 Certified copy of record of brand—Fee.
16.57.150 Brand book—Contents—Costs.
16.57.153 Administration of brands—Rules.
16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates.
16.57.165 Agreements with others to perform livestock inspection.
16.57.170 Inspection of livestock, hides, records.
16.57.180 Search warrants.
16.57.200 Duty of owner or agent—Livestock inspection.
16.57.210 Arrest without warrant.
16.57.220 Livestock inspection—Fee schedule—Certificates.
16.57.223 Payment of inspection fee—Due at inspection—Lien—Late fee.
16.57.230 Charges for livestock inspection—Actual inspection required.
16.57.240 Certificates of permit, inspection, self-inspection.
16.57.243 Moving or transporting cattle—Certificate or proof of ownership must accompany—Exceptions.
16.57.245 Authority to stop vehicles carrying cattle or horses.
16.57.260 Removal of cattle or horses from state—Inspection certificate required.
16.57.267 Failure to present animal for inspection.
16.57.270 Unlawful to refuse assistance in establishing identity and ownership of livestock.
16.57.275 Transporting cattle carcass or primal part—Certificate of permit required.
16.57.277 Custom slaughter beef tags—Fee—Rules.
16.57.280 Possession of cattle or horse marked with another's brand—Penalty.
16.57.290 Impounding cattle and horses—No certificate or proof of ownership when offered for sale—Disposition.
16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director—Exception.
16.57.303 Proceeds from sale of impounded dairy breed cattle—Paid to seller.
16.57.310 Notice of sale—Claim on proceeds.
16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, barter, trade.
16.57.330 Disposition of proceeds of sale—No claim made—No proof of ownership provided.
16.57.340 Reciprocal agreements—When livestock from another state an estray, sale.
16.57.350 Rules—Enforcement of chapter.
16.57.353 Rules—Compliance with federal requirements.
16.57.360 Civil infractions.
16.57.370 Disposition of fees.
16.57.400 Horse and cattle identification—Inspection when consigned for sale.
16.57.405 Microchip in a horse—Removal with intent to defraud—Gross misdemeanor.
16.57.407 Microchip in a horse—Authority to investigate removal.
16.57.410 Horses—Registering agencies—Permit required—Fee—Records—Identification symbol inspections—Rules.
16.57.420 Ratite identification.
16.57.430 Replacement copies of brand inspection documents—Rules—Fees.
16.57.900 Severability—1959 c 54.
16.57.901 Severability—1967 c 240.
16.57.902 Effective dates—2003 c 326.


### RCW 16.57.010 Definitions.

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

(1) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(2) "Certificate of permit" means a form prescribed by and obtained from the director that is completed by the owner or a person authorized to act on behalf of the owner to show the ownership of livestock. It is used to document ownership of livestock while in transit within the state or on consignment to any public livestock market, special sale, slaughter plant or certified feed lot. It does not evidence inspection of livestock.

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

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

(5) "Horses" means horses, burros, and mules.

(6) "Individual identification certificate" means an inspection certificate that authorizes the livestock owner to transport the animal out of state multiple times within a set period of time.

(7) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(8) "Inspection certificate" means a certificate issued by the director or a veterinarian certified by the director documenting the ownership of an animal based on an inspection of the animal. It includes an individual identification certificate.

(9) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

(10) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(11) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock.

(12) "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 the plural as the case may be.

(13) "Production record brand" means a number brand which shall be used for production identification purposes only.

(14) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(15) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(16) "Self-inspection certificate" means a form prescribed by and obtained from the director that was completed and signed by the buyer and seller of livestock to document a change in ownership before June 10, 2010.

[2010 c 66 § 5; 2003 c 326 § 2; 1996 c 105 § 1; 1993 c 105 § 2; 1989 c 286 § 22; 1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

NOTES:

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

**Legislative finding and purpose—1993 c 105:** "The legislature finds that ratites have been raised for commercial purposes on farms in the United States for over sixty years and have been raised elsewhere for over one hundred twenty years.

In recognition that ratite farming is an agricultural pursuit, the purpose of this act is to assure that the regulatory mechanisms regarding animal health and ownership identification are in place."

[1993 c 105 § 1.]

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.57.015 Livestock identification advisory board—Rule review—Fee setting.

(1) The director shall establish a livestock identification advisory board. The board shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. As used in this subsection, "meat processor" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.). In making appointments, the director shall solicit nominations from organizations representing these groups statewide. The board shall elect a member to serve as chair of the board.

(2) The purpose of the board is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.65.030, 16.65.037, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.

(3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060.

[2003 c 326 § 3; 1993 c 354 § 10.]

## RCW 16.57.020 Livestock brands—Director is the recorder—Recording fee.

The director shall be the recorder of livestock brands and such

brands shall not be recorded elsewhere in this state. Any person desiring to record a livestock brand shall apply on a form prescribed by the director. The application shall be accompanied by a facsimile of the brand applied for and a one hundred twenty dollar recording fee. The director shall, upon his or her satisfaction that the application and brand facsimile meet the requirements of this chapter and its rules, record the brand.

[2003 c 326 § 4; 1994 c 46 § 7; 1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 16.57.023 Permanent renewal of brands—Heritage brands—Fees.

The director may adopt rules establishing criteria and fees for the permanent renewal of brands registered with the department but renewed as livestock heritage brands. Such heritage brands are not intended for use on livestock.

[2003 c 326 § 5; 1998 c 263 § 5.]

## RCW 16.57.025 Livestock inspection—Licensed and accredited veterinarians—Fees.

The director may enter into agreements with Washington state licensed and accredited veterinarians, who have been certified by the director, to perform livestock inspection. Fees for livestock inspection performed by a certified veterinarian shall be collected by the veterinarian and remitted to the director. Veterinarians providing livestock inspection may charge a fee for livestock inspection that is in addition to and separate from fees collected under RCW 16.57.220. The director may adopt rules necessary to implement livestock inspection performed by veterinarians and may adopt fees to cover the cost associated with certification of veterinarians.

[2003 c 326 § 6; 1998 c 263 § 6.]

## RCW 16.57.030 Tattoo brands and marks not recordable.

The director shall not record tattoo brands or marks for any purpose.

[2003 c 326 § 7; 1959 c 54 § 3.]

## RCW 16.57.040 Production record brands.

The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the recorded ownership brand or any other location prescribed by the director.

[2003 c 326 § 8; 1974 ex.s. c 64 § 1; 1959 c 54 § 4.]

## RCW 16.57.050 Use of unrecorded brand prohibited—Exception.

No person shall place a brand on livestock for any purpose unless the brand is recorded with the director in the person's name.

[2003 c 326 § 9; 1959 c 54 § 5.]

## RCW 16.57.060 Brands similar to governmental brands not to be recorded.

No brand shall be recorded for ownership purposes which will be applied in the same location and is similar or identical to a brand used or reserved for ownership or health purposes by a governmental agency or the agent of such an agency.

[1959 c 54 § 6.]

## RCW 16.57.070 Conflicting claims to brand.

The director shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants.

[1959 c 54 § 7.]

## RCW 16.57.080 Renewal of recorded brands—Schedule—Fee—Failure to pay.

The director shall establish by rule a schedule for the renewal of recorded brands. The fee for renewal of a recorded brand shall be one hundred twenty dollars for each four-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis. At least sixty days before the expiration of a recorded brand, the director shall notify by letter the owner of record of the brand that on the payment of the renewal fee the director shall issue proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent ownership period. The failure of the owner to pay the renewal fee by the date required by rule shall cause ownership of the brand to expire. For one year following the expiration, the director shall record the brand only to the prior owner upon payment of the renewal fee and a late fee of twenty-five dollars. If the brand is not recorded within one year to the prior owner, the director may issue the brand to any other applicant.

[2003 c 326 § 10; 1994 c 46 § 16; 1993 c 354 § 5; 1991 c 110 § 1; 1974 ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Fee—Nonliability of director for agents.

A brand is the personal property of the owner of record. Any instrument affecting the title of the brand shall be executed by the recorded owner and acknowledged by a notary public. The director shall record the instrument upon presentation and payment of a recording fee of twenty-five dollars. The recording shall be constructive notice to all the world of the existence and conditions affecting the title to the brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of the director's agents to properly record the instrument.

[2003 c 326 § 11; 1994 c 46 § 17; 1993 c 354 § 6; 1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.57.100 Right to use brand—Brand as evidence of title.

The right to use a brand shall be evidenced by the original certificate issued by the director showing that the brand is of present record or a certified copy of the record of the brand showing that it is of present record. A healed brand of record on livestock shall be

prima facie evidence that the recorded owner of the brand has legal title to the livestock and is entitled to its possession. The director may require additional proof of ownership for any animal showing more than one healed brand.

[2003 c 326 § 12; 1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

## RCW 16.57.105 Preemptory right to use brand.

Any person having a brand recorded with the department shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the director.

[1967 c 240 § 38.]

## RCW 16.57.110 Size and characteristics of brand.

No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The director, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands.

[1959 c 54 § 11.]

## RCW 16.57.120 Removal or alteration of brand—Penalty.

No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section is a gross misdemeanor.

[2003 c 326 § 13; 1991 c 110 § 2; 1959 c 54 § 12.]

## RCW 16.57.130 Similar brands not to be recorded.

The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between the brands when applied to livestock.

[2003 c 326 § 14; 1959 c 54 § 13.]

## RCW 16.57.140 Certified copy of record of brand—Fee.

The owner of a brand of record may obtain from the director a certified copy of the record of the owner's brand upon payment of a fee of fifteen dollars.

[2003 c 326 § 15; 1994 c 46 § 18; 1993 c 354 § 7; 1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.57.150 Brand book—Contents—Costs.

The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. The book shall contain the name and address of the owners of brands of record and a copy of the livestock identification laws and rules. Supplements to the brand book showing newly recorded brands, amendments, or newly adopted rules shall be published at the discretion of the director. Whenever the director deems it necessary, the director may publish a new brand book. The director may collect moneys to recover the reasonable costs of publishing and distributing copies of the brand book.

[2003 c 326 § 16; 1974 ex.s. c 64 § 5; 1959 c 54 § 15.]

## RCW 16.57.153 Administration of brands—Rules.

The director may adopt rules necessary to administer the recording and changing of ownership of brands.

[2003 c 326 § 17.]

## RCW 16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates.

(1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification; and

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle.

[2010 c 66 § 6; 2006 c 156 § 3; 2003 c 326 § 18; 1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

NOTES:

**Effective date—2006 c 156:** See note following RCW 16.57.220.

**Effective date—1981 c 296 § 16:** "Section 16 of this amendatory act is 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 immediately [May 19, 1981]."

[1981 c 296 § 34.]

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.165 Agreements with others to perform livestock inspection.

The director may, in order to reduce the cost of inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing livestock inspection in areas where inspection by the director may not readily be available.

[2003 c 326 § 19; 1971 ex.s. c 135 § 6.]

## RCW 16.57.170 Inspection of livestock, hides, records.

The director may enter at any reasonable time any slaughterhouse or public livestock market to inspect livestock or hides, and may enter at any reasonable time an establishment where hides are held to inspect them for brands or other means of identification. The director may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to livestock identification. For purposes of this section, "any reasonable time" means during regular business hours or during any working shift.

[2003 c 326 § 20; 1959 c 54 § 17.]

## RCW 16.57.180 Search warrants.

Should the director be denied access to any premises or establishment where access was sought for the purposes set forth in RCW 16.57.170, the director may apply to any court of

competent jurisdiction for a search warrant authorizing access to the premises or establishment for those purposes. The court may upon application, issue the search warrant for the purposes requested.

[2003 c 326 § 21; 1959 c 54 § 18.]

## RCW 16.57.200 Duty of owner or agent—Livestock inspection.

Any owner or his or her agent shall make livestock being inspected readily accessible and shall cooperate with the director to carry out the inspection in a safe and expeditious manner.

[2003 c 326 § 22; 1959 c 54 § 20.]

## RCW 16.57.210 Arrest without warrant.

The director shall have authority to arrest without warrant anywhere in the state any person found in the act of, or whom the director has reason to believe is guilty of, transporting, holding, selling, or slaughtering stolen livestock. Any person arrested by the director shall be turned over to the county sheriff or other local law enforcement officer where the arrest was made, as quickly as possible.

[2003 c 326 § 23; 1959 c 54 § 21.]

## RCW 16.57.220 Livestock inspection—Fee schedule—Certificates.

(1) Except as provided for in RCW 16.65.090 and otherwise in this section, the fee for livestock inspection is one dollar and sixty cents per head for cattle and three dollars and fifty cents for horses or the time and mileage fee, whichever is greater.

(2) When cattle are identified with the owner's brand or other form of identification specified by the director by rule, the fee for livestock inspection is one dollar and ten cents per head or the time and mileage fee, whichever is greater.

(3) No inspection fee is charged for a calf that is inspected before moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington-recorded brand or other form of identification specified by the director by rule.

(4) The fee for inspection of cattle at a processing plant with a daily capacity of no more than five hundred head of cattle where the United States department of agriculture maintains a meat inspection program is four dollars per head.

(5) When a single inspection certificate issued for thirty or more horses belonging to one person, the fee for livestock inspection is two dollars per head or the time and mileage fee, whichever is greater.

(6) The fee for individual identification certificates is twenty dollars for an annual certificate and sixty dollars for a lifetime certificate or the time and mileage fee, whichever is greater. However, the fee for an annual certificate listing thirty or more animals belonging to one person is five dollars per head or the time and mileage fee, whichever is greater. A lifetime certificate shall not be issued until the fee has been paid to the director.

(7) The minimum fee for the issuance of an inspection certificate by the director is five dollars. The minimum fee does not apply to livestock consigned to a public livestock market or special sale or inspected at a cattle processing plant.

(8) For purposes of this section, "the time and mileage fee" means seventeen dollars per hour and the current mileage rate set by the office of financial management.

[2010 c 66 § 7; 2006 c 156 § 1; 2003 c 326 § 24; 1997 c 356 § 3; 1997 c 356 § 2; 1995 c 374 § 49; (1995 c 374 § 48 expired July 1, 1997). Prior: 1994 c 46 § 25; 1994 c 46 § 19; 1993 c 354 § 8; 1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

NOTES:

**Effective date—2006 c 156:** "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 June 1, 2006."

[2006 c 156 § 4.]

**Effective dates—1997 c 356:** "(1) Sections 2, 4, 6, 8, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(2) Sections 3, 5, 7, 9, and 11 of this act take effect July 1, 1998."

[1997 c 356 § 12.]

**Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57:** "(1) Sections 49 and 57 of this act shall take effect July 1, 1997.

(2) Sections 48 and 56 of this act shall expire July 1, 1997."

[1995 c 374 § 58.]

**Effective date—1994 c 46 §§ 21-25:** See note following RCW 16.65.090.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.223 Payment of inspection fee—Due at inspection—Lien—Late fee.

(1) Any inspection fee shall be paid to the department by the owner or person in possession of the livestock unless the inspection is requested by the purchaser and then the fee shall be paid by the purchaser.

(2) Except as provided by rule, the inspection fee is due and payable at the time inspection is performed and shall be paid upon billing by the department and, if not, constitutes a prior lien on the cattle or cattle hides or horses or horse hides inspected until the fee is paid.

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

[2003 c 326 § 25.]

## RCW 16.57.230 Charges for livestock inspection—Actual inspection required.

No person shall collect or make a charge for inspection of livestock unless there has been an actual inspection of the livestock.

[2003 c 326 § 26; 1995 c 374 § 50; 1959 c 54 § 23.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 16.57.240 Certificates of permit, inspection, self-inspection.

(1) Certificates of permit, inspection certificates, and self-inspection certificates meeting the requirements of RCW 16.57.160 shall show the owner, number, breed, sex, brand, or other method of identification of the cattle or horses and any other necessary information required by the director.

(2) The director may issue certificate of permit forms to any person on payment of a fee established by rule.

(3) Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership shall be kept by the owner and/or person in possession of any cattle and shall be furnished to the director or any peace officer upon demand.

(4) A self-inspection certificate meeting the requirements of RCW 16.57.160 is not valid if proof of ownership had not been provided by the seller to the buyer for cattle bearing brands not recorded to the seller.

[2010 c 66 § 8; 2003 c 326 § 27; 1995 c 374 § 51; 1991 c 110 § 4; 1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.243 Moving or transporting cattle—Certificate or proof of ownership must accompany—Exceptions.

(1) Cattle may not be moved or transported within Washington state without being accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership, except when the cattle are moved or transported:

(a) Upon lands under the exclusive control of the person moving or transporting the cattle; or

(b) For temporary grazing or feeding purposes and have the recorded brand of the person having or transporting the cattle.

(2) Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership accompanying cattle being moved or transported within Washington state shall be subject to inspection at any time by the director or any peace officer.

[2010 c 66 § 9; 2003 c 326 § 28.]

## RCW 16.57.245 Authority to stop vehicles carrying cattle or horses.

The director or any peace officer may stop vehicles carrying cattle or horses to determine if the livestock being transported are accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.010, or other satisfactory proof of ownership, as determined by the director.

[2010 c 66 § 10; 2003 c 326 § 29.]

## RCW 16.57.260 Removal of cattle or horses from state—Inspection certificate required.

It is unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an inspection certificate on such cattle or horses, except as provided by rule adopted under this chapter.

[2003 c 326 § 30; 1981 c 296 § 19; 1959 c 54 § 26.]

NOTES:

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.267 Failure to present animal for inspection.

It is unlawful for any person to fail to present an animal for inspection at any mandatory inspection point designated by the director by rule under this chapter.

[2003 c 326 § 31.]

## RCW 16.57.270 Unlawful to refuse assistance in establishing identity and ownership of livestock.

It is unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity and ownership of the livestock being moved or transported.

[2003 c 326 § 32; 1959 c 54 § 27.]

## RCW 16.57.275 Transporting cattle carcass or primal part—Certificate of permit required.

Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for the slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of the carcass or primal part thereof and, if the carcass or primal part is delivered to a facility custom handling the carcasses or primal parts thereof, the certificate of permit shall be deposited with the owner or manager of the custom handling facility and the certificate of permit shall be retained for a period of one year and be made available to the department for inspection during regular business hours or any working shift.

[2003 c 326 § 33; 1967 c 240 § 37.]

## RCW 16.57.277 Custom slaughter beef tags—Fee—Rules.

Any person licensed as a custom farm slaughterer under RCW 16.49.035 shall complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle handled by the slaughterer. The tags must remain on the quarters until the quarters are cut and wrapped. Only the director may provide custom slaughter beef tags to custom farm slaughterers. The fee for each set of four custom slaughter beef tags is as prescribed in WAC 16-607-100 as it existed on January 1, 2000. The director may, by rule, establish criteria for the use of custom slaughter beef tags.

[2000 c 99 § 14.]

## RCW 16.57.280 Possession of cattle or horse marked with another's brand—Penalty.

(1) No person shall knowingly have possession of any cattle or horse marked with a recorded brand of another person unless the:

(a) Cattle or horse lawfully bears the person's own healed recorded brand;

(b) Cattle or horse is accompanied by a certificate of permit from the owner of the recorded brand;

(c) Cattle or horse is accompanied by an inspection certificate;

(d) Cattle are accompanied by a self-inspection certificate meeting the requirements of RCW 16.57.010;

(e) Horse is accompanied by a bill of sale from the previous owner; or

(f) Cattle or horse is accompanied by other satisfactory proof of ownership as designated in rule.

(2) A violation of this section constitutes a gross misdemeanor.

[2010 c 66 § 11; 2003 c 326 § 34; 1995 c 374 § 52; 1991 c 110 § 5; 1959 c 54 § 28.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 16.57.290 Impounding cattle and horses—No certificate or proof of ownership when offered for sale—Disposition.

All cattle and horses that are not accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership when offered for sale and presented for inspection by the director, shall be impounded. If theft is suspected, the director shall immediately initiate an investigation. If theft is not suspected, the animal shall be sold and the proceeds retained by the director. Upon the sale of the cattle or horses, the director shall give the purchasers an inspection certificate for the cattle or horses documenting their ownership.

[2010 c 66 § 12; 2003 c 326 § 35; 1995 c 374 § 53; 1989 c 286 § 23; 1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director—Exception.

Except under RCW 16.57.303, the proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other estray proceeds.

[2003 c 326 § 36; 1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.303 Proceeds from sale of impounded dairy breed cattle—Paid to seller.

The proceeds from the sale of dairy breed cattle when impounded under RCW 16.57.290, and after paying the cost thereof, shall be paid to the seller if:

(1) The cattle bears a brand that is not recorded in this state or any state where a reciprocal agreement is in place as provided under RCW 16.57.340;

(2) There is no evidence of theft;

(3) The director has posted the brand for at least ninety days at each licensed public livestock market in this state and any other state where the director provides for livestock inspection; and

(4) No other person has established legal ownership of the cattle with the director.

The proceeds from the sale shall be held by the director until paid to the seller or other person as specified by the director. However, the proceeds from a sale of the cattle at a licensed public livestock market shall be held by the licensee.

[2003 c 326 § 37.]

## RCW 16.57.310 Notice of sale—Claim on proceeds.

When a person has been notified by registered mail that animals bearing the person's recorded brand have been sold by the director, the person shall present to the director a claim on the proceeds within thirty days from the receipt of the notice or the director may decide that no claim exists.

[2003 c 326 § 38; 1959 c 54 § 31.]

## RCW 16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, barter, trade.

If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person.

[2003 c 326 § 39; 1991 c 110 § 6; 1959 c 54 § 32.]

## RCW 16.57.330 Disposition of proceeds of sale—No claim made—No proof of ownership provided.

If, after the expiration of one year from the date of sale, no claim under RCW 16.57.310 is made or no satisfactory proof of ownership is provided under RCW 16.57.320, the money shall be credited to the department to be expended in carrying out the provisions of this chapter.

[2003 c 326 § 40; 1959 c 54 § 33.]

## RCW 16.57.340 Reciprocal agreements—When livestock from another state an estray, sale.

The director has the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation, or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from those states estrays if the livestock is not accompanied by the proper inspection certificate or other certificates required by the law of the state of origin of the livestock. The director may hold the livestock subject to all costs of holding or sell the livestock and send the funds, after the deduction of the cost of the sale, to the proper authority in the state of origin of the livestock.

[2003 c 326 § 41; 1959 c 54 § 34.]

## RCW 16.57.350 Rules—Enforcement of chapter.

The director may adopt such rules as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules adopted hereunder. No person shall interfere with the director when he or she is performing or carrying out duties imposed on him or her by this chapter and/or rules adopted hereunder.

[1994 c 46 § 8; 1959 c 54 § 35.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 16.57.353 Rules—Compliance with federal requirements.

(1) The director may adopt rules:

(a) To support the agriculture industry in meeting federal requirements for the country-of-origin labeling of meat. Any requirements established under this subsection for country of origin labeling purposes shall be substantially consistent with and shall not exceed the requirements established by the United States department of agriculture; and

(b) In consultation with the livestock identification advisory board under RCW 16.57.015, to implement federal requirements for animal identification needed to trace the source of livestock for disease control and response purposes.

(2) The director may cooperate with and enter into agreements with other states and agencies of federal government to carry out such systems and to promote consistency of regulation.

[2004 c 233 § 1.]

## RCW 16.57.360 Civil infractions.

The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules adopted under this chapter shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

[2003 c 326 § 42; 1991 c 110 § 7; 1959 c 54 § 36.]

## RCW 16.57.370 Disposition of fees.

All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

[2003 c 326 § 43; 1959 c 54 § 37.]

NOTES:

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

## RCW 16.57.400 Horse and cattle identification—Inspection when consigned for sale.

Horses and cattle may be identified by individual identification certificates or other means of identification authorized by the director. The certificates or other means of identification are valid only for the use of the owner in whose name it is issued.

Horses and cattle identified pursuant to this section are only subject to inspection when the animal is consigned for sale.

[2003 c 326 § 44; 1994 c 46 § 20; 1993 c 354 § 9; 1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

NOTES:

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.405 Microchip in a horse—Removal with intent to defraud—Gross misdemeanor.

A person who removes or causes to be removed a microchip implanted in a horse, or who removes or causes to be removed a microchip from one horse and implants or causes it to be implanted in another horse, with the intent to defraud a subsequent purchaser, is guilty of a gross misdemeanor.

[1996 c 105 § 2.]

## RCW 16.57.407 Microchip in a horse—Authority to investigate removal.

The department has the authority to conduct an investigation of an incident where scars or other marks indicate that a microchip has been removed from a horse.

[1996 c 105 § 3.]

## RCW 16.57.410 Horses—Registering agencies—Permit required—Fee—Records—Identification symbol inspections—Rules.

(1) No person may act as a registering agency without a permit issued by the director. The director may issue a permit to any person to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for a permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of two hundred and fifty dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Horses shall be examined for individual identification symbols when presented for inspection.

(4) The director shall adopt rules necessary to administer this section.

[2003 c 326 § 45; 1993 c 354 § 11; 1989 c 286 § 25; 1981 c 296 § 35.]

NOTES:

**Severability—1989 c 286:** See note following RCW 16.04.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 16.57.420 Ratite identification.

The department may, in consultation with representatives of the ratite industry, develop by rule a system that provides for the identification of individual ratites through the use of microchipping. The department may establish fees for the issuance or reissuance of microchipping numbers sufficient to cover the expenses of the department.

[1993 c 105 § 3.]

NOTES:

**Legislative finding and purpose—1993 c 105:** See note following RCW 16.57.010.

## RCW 16.57.430 Replacement copies of brand inspection documents—Rules—Fees.

The director may:

(1) Adopt rules governing issuance of replacement copies of brand inspection documents; and

(2) Charge a fee of twenty-five dollars for such copies, which may be increased by rule.

[2010 c 66 § 13.]

## RCW 16.57.900 Severability—1959 c 54.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional.

[1959 c 54 § 38.]

## RCW 16.57.901 Severability—1967 c 240.

See note following RCW 43.23.010.

## RCW 16.57.902 Effective dates—2003 c 326.

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 July 1, 2003, except for sections 4 and 10 of this act which take effect January 1, 2004.

[2003 c 326 § 93.]

# CHAPTER 16.58 RCW
# IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

**Sections**


16.58.010 Purpose.
16.58.020 Definitions.
16.58.030 Rules—Interference with director proscribed.
16.58.040 Certified feed lot license—Required—Application, contents.
16.58.050 Certified feed lot license—Fee—Issuance or renewal—Inspection prior to issuance of original license.
16.58.060 Certified feed lot license—Expiration—Late renewal.
16.58.070 Certified feed lot license—Denial, suspension, or revocation—Hearings.
16.58.080 Livestock inspection—Facilities required—Help to be furnished.
16.58.095 Inspection required for cattle not having inspection certificate.
16.58.100 Audits—Purpose.
16.58.110 Records—Contents—Examination.
16.58.120 Records required at each certified feed lot.
16.58.130 Feed lots—Fee for each head of cattle handled—Failure to pay.
16.58.140 Disposition of fees.
16.58.150 Situations when no inspection required—Fee—Suspension of license—Hearing.
16.58.160 Suspension of license awaiting investigation—Hearing.
16.58.170 General penalties—Subsequent offenses.
16.58.900 Chapter as cumulative and nonexclusive.
16.58.910 Severability—1971 ex.s. c 181.


## RCW 16.58.010 Purpose.

The purpose of this chapter is to expedite the movement of cattle from producers to the point of slaughter without losing the ownership identity of such cattle, and further to provide for fair and economical methods of identification of cattle in such commercial feed lots.

[1979 c 81 § 1; 1971 ex.s. c 181 § 1.]

## RCW 16.58.020 Definitions.

For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any rules adopted under this chapter and which holds a valid license from the director.

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

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

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "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 the plural as the case may be.

(6) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(7) "Change of ownership" means the transfer of ownership from one person to another by the sale of livestock. It does not mean: A change in partners within a partnership; a change in members within an association or a society; or the sale of stock within a corporation, company, or association.

(8) "Direct to slaughter" means the delivery of livestock to a slaughter plant within ten days of the sale of the cattle to the slaughter plant.

[2003 c 326 § 46; 1971 ex.s. c 181 § 2.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.030 Rules—Interference with director proscribed.

The director may adopt those rules as are necessary to carry out the purpose of this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed upon the director by this chapter or rules adopted under this chapter.

[2003 c 326 § 47; 1971 ex.s. c 181 § 3.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.040 Certified feed lot license—Required—Application, contents.

Any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for that purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each certified feed lot; and

(5) Any other information necessary to carry out the purpose

and provisions of this chapter and rules adopted under this chapter.

[2003 c 326 § 48; 1971 ex.s. c 181 § 4.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.050 Certified feed lot license—Fee—Issuance or renewal—Inspection prior to issuance of original license.

(1) The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of eight hundred fifty dollars.

(2) Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted under this chapter, the applicant shall be issued a license or license renewal. The director shall conduct an inspection of all cattle and their corresponding ownership documents prior to issuing an original license. The inspection fee is the higher of the current inspection fee per head of cattle or time and mileage as set forth in RCW 16.57.220.

[2003 c 326 § 49; 1997 c 356 § 5; 1997 c 356 § 4; 1994 c 46 § 23; 1994 c 46 § 14; 1993 c 354 § 3; 1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective dates—1997 c 356:** See note following RCW 16.57.220.

**Effective date—1994 c 46 §§ 21-25:** See note following RCW 16.65.090.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.58.060 Certified feed lot license—Expiration—Late renewal.

Certified feed lot licenses expire on June 30th following the date of issuance. If a person fails, refuses, or neglects to apply for renewal of a license by June 30th, the person's license shall expire. To reinstate a license, the person shall be assessed a late fee of twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant.

[2003 c 326 § 50; 1991 c 109 § 10; 1971 ex.s. c 181 § 6.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.070 Certified feed lot license—Denial, suspension, or revocation—Hearings.

The director is authorized to deny, suspend, or revoke a license in accordance with the provisions of chapter 34.05 RCW if he or she finds that there has been a failure to comply with any requirement of this chapter or rules adopted under this chapter. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.05 RCW.

[2003 c 326 § 51; 1989 c 175 § 54; 1971 ex.s. c 181 § 7.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 16.58.080 Livestock inspection—Facilities required—Help to be furnished.

Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the feed lot so that necessary livestock inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out inspections in the manner set forth above.

[2003 c 326 § 52; 1971 ex.s. c 181 § 8.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.095 Inspection required for cattle not having inspection certificate.

All cattle entering or reentering a certified feed lot must be inspected upon entry, unless they are accompanied by an inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the inspection certificate accompanying the cattle to the nearest inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule.

[2003 c 326 § 53; 1991 c 109 § 11; 1979 c 81 § 6.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.100 Audits—Purpose.

The director shall conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. These audits shall be for the purpose of determining if the cattle correlate with the inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his or her assurance that inspected cattle were not commingled with uninspected cattle.

[2003 c 326 § 54; 1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.110 Records—Contents—Examination.

All certified feed lots shall furnish the director with records as requested by the director on a monthly basis on all cattle entering or on feed in the certified feed lots and dispersed therefrom. These records must include a copy of each inspection certificate received and an itemized listing of all cattle entering and leaving the feed lot. All requested records shall be subject to examination by the director for the purpose of maintaining the integrity of the identity of all the cattle. The director may make the examinations only during regular business hours or any working shift except in an emergency to protect the interest of the owners of the cattle.

[2003 c 326 § 55; 1991 c 109 § 12; 1971 ex.s. c 181 § 11.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.120 Records required at each certified feed lot.

The licensee shall maintain sufficient records as required by the director at each certified feed lot, if said licensee operates more than one certified feed lot.

[1991 c 109 § 13; 1971 ex.s. c 181 § 12.]

## RCW 16.58.130 Feed lots—Fee for each head of cattle handled—Failure to pay.

Each licensee shall pay to the director a fee of twenty-five cents for each head of cattle handled through the licensee's feed lot. Payment of the fee shall be made by the licensee on a monthly

basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. The director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

[2006 c 156 § 2; 2003 c 326 § 56; 1997 c 356 § 7; 1997 c 356 § 6; 1994 c 46 § 24; 1994 c 46 § 15; 1993 c 354 § 4; 1991 c 109 § 14; 1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

NOTES:

**Effective date—2006 c 156:** See note following RCW 16.57.220.

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective dates—1997 c 356:** See note following RCW 16.57.220.

**Effective date—1994 c 46 §§ 21-25:** See note following RCW 16.65.090.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.58.140 Disposition of fees.

All fees provided for in this chapter shall be deposited in an account in the agricultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW.

[2003 c 326 § 57; 1979 c 81 § 5; 1971 ex.s. c 181 § 14.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.150 Situations when no inspection required—Fee—Suspension of license—Hearing.

No inspection shall be required when cattle are moved or transferred from one certified feed lot to another when they are accompanied by satisfactory proof of ownership and there is no change of ownership or from a certified feed lot to a point within this state, or out of state where this state maintains inspection, for the purpose of immediate slaughter. Any change of ownership within a certified feed lot requires a livestock inspection unless the cattle are sent direct to slaughter. An inspection fee as provided for in RCW 16.57.220 is payable to the director by the seller of the cattle or through the licensee as an agent. Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW.

[2003 c 326 § 58; 1971 ex.s. c 181 § 15.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.160 Suspension of license awaiting investigation—Hearing.

The director may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle in that feed lot becomes doubtful, immediately suspend the certified feed lot's license until such time as the director can conduct an investigation to verify the condition of reports or records.

Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW.

[2003 c 326 § 59; 1991 c 109 § 15; 1971 ex.s. c 181 § 16.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.58.170 General penalties—Subsequent offenses.

(1) Except as provided in subsection (2) of this section, any person who violates 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. Any offense committed more than five years after a previous conviction shall be considered a first offense.

[2003 c 326 § 60; 2003 c 53 § 115; 1971 ex.s. c 181 § 17.]

NOTES:

**Reviser's note:** This section was amended by 2003 c 53 § 115 and by 2003 c 326 § 60, 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).

**Effective dates—2003 c 326:** See RCW 16.57.902.

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

## RCW 16.58.900 Chapter as cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.

[1971 ex.s. c 181 § 18.]

## RCW 16.58.910 Severability—1971 ex.s. c 181.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances shall not be affected.

[1971 ex.s. c 181 § 19.]

# CHAPTER 16.65 RCW
# PUBLIC LIVESTOCK MARKETS

## Sections


16.65.005 Purpose.
16.65.010 Definitions.
16.65.015 Application of chapter—Exceptions.
16.65.020 Supervision of markets and special open consignment horse sales—Rules—Interference with director's duties.
16.65.030 Public livestock market license—Application—Contents—Fee—Public hearing.
16.65.037 License—Restrictions—Fees.
16.65.040 Public livestock market license—Expiration—Renewal—Penalty.
16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid.
16.65.044 Public livestock market—Open consignment horse sale—Consignor's name.
16.65.050 Disposition of fees.
16.65.060 License to be posted.
16.65.080 Denial, suspension, revocation of license—Reasons—Hearing.
16.65.090 Livestock inspection—Consignor's fee—Inspection fee.
16.65.100 Livestock inspection—Purchaser's fee.
16.65.120 Disposition of proceeds of sale—Limitations on licensee.
16.65.130 Unlawful use of consignor's net proceeds.
16.65.140 Custodial account for consignor's proceeds—Authorized withdrawals—Accounts and records.
16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage.
16.65.160 Delivery of proceeds and invoice to consignor or shipper.
16.65.170 Records of licensee—Contents.
16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited.
16.65.190 Schedule of rates and charges.
16.65.200 Licensee's bond to operate market or special open consignment horse sale.
16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount.
16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount.

16.65.230 Licensee's bond to operate market—One bond for each market.
16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount.
16.65.235 Cash or other security in lieu of surety bond—Rules.
16.65.240 Action on bond—Fraud of licensee.
16.65.250 Action on bond—Failure to comply with chapter.
16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties.
16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim.
16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available.
16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge.
16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file.
16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim.
16.65.320 Investigations by director—Complaints.
16.65.330 Investigations—Powers of director.
16.65.340 Testing, examination, etc., of livestock for disease—Veterinarian employed by the market.
16.65.350 Examinations—Sanitary and health practices and standards—Rules.
16.65.360 Facilities—Sanitation—Requirements.
16.65.370 Watering, feeding facilities—Unlawful acts.
16.65.380 Adequate facilities and space required for veterinarians to function.
16.65.390 Adequate space and facilities required for livestock inspectors and veterinarians to function.
16.65.400 Weighing of livestock at public livestock market.
16.65.410 Packer's interest in market limited.
16.65.420 Application for change of or additional sales days, special sales—Considerations for allocation.
16.65.424 Additional sales days limited to sales of horses and/or mules.
16.65.430 Information and records available to director and news services.
16.65.440 Penalty *(as amended by 2003 c 326)*.
16.65.440 Penalty *(as amended by 2003 c 53)*.
16.65.445 Public hearings.
16.65.450 Orders—Appeal.
16.65.900 Severability—1959 c 107.
16.65.910 Severability—1963 c 232.

**NOTES:**

Exemptions from commission merchants' act: RCW 20.01.030.

## RCW 16.65.005 Purpose.

The purpose of this chapter is to ensure the orderly marketing of livestock, to ensure the financial stability of public livestock markets, and to protect persons who consign livestock to markets and sales.

[2003 c 326 § 61.]

**NOTES:**

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.010 Definitions.

For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

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

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

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "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 the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: PROVIDED, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis.

(10) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

[2003 c 326 § 62; 1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

**NOTES:**

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.015 Application of chapter—Exceptions.

(1) Except under subsection (2) of this section, this chapter does not apply to:

(a) A farmer selling his or her own livestock.

(b) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale under the association's management and responsibility.

(c) A youth livestock organization such as 4-H, FFA, or other junior livestock group, when any class of livestock owned by the youth members is assembled and offered for sale at a special sale under the organization's management and responsibility.

(2) Any farmer, farmers' cooperative association, livestock breeders' association, or youth livestock organization

under subsection (1) of this section, may, upon obtaining a permit from the director, conduct a public sale of his or her or its members livestock on an occasional or seasonal basis. Application for the permit shall be in writing to the director for his or her approval at least fifteen days before the proposed public sale is scheduled to be held. The application must be complete and accompanied by a nonrefundable fee of fifty dollars for each sale, except that the fee is waived for youth livestock organizations. The sale is subject to the livestock and health inspection requirements as provided in this chapter for sales at public livestock markets, unless otherwise prescribed by rule.

[2003 c 326 § 63; 1983 c 298 § 2.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.020 Supervision of markets and special open consignment horse sales—Rules—Interference with director's duties.

Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the director, and the director may adopt those rules as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules adopted under this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed by this chapter or rules adopted under this chapter.

[2003 c 326 § 64; 1983 c 298 § 5; 1959 c 107 § 2.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.030 Public livestock market license—Application—Contents—Fee—Public hearing.

(1) No person shall operate a public livestock market without first having obtained a license from the director. Application for a license shall be in writing on forms prescribed by the director, and shall include the following:

(a) A nonrefundable original license application fee of two thousand dollars.

(b) A legal description of the property upon which the public livestock market shall be located.

(c) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(d) A financial statement, audited by a certified or licensed public accountant, to determine whether or not the applicant meets the minimum net worth requirements, established by the director by rule, to construct and/or operate a public livestock market. If the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements. All financial statement information required by this subsection is confidential information and not subject to public disclosure.

(e) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(f) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales and the class of livestock that may be sold on these days.

(g) Projected source and quantity of livestock anticipated to be handled.

(h) Projected gross dollar volume of business to be carried on, at, or through the public livestock market during the first year's operation.

(i) Facts upon which is based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(j) Other information as the director may require by rule.

(2) If the director determines that the applicant meets all the requirements of subsection (1) of this section, the director shall conduct a public hearing as provided by chapter 34.05 RCW, and shall grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to the requirements of this section and giving reasonable consideration to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application;

(b) The geographical area that will be affected;

(c) The conflict, if any, with sales days already allocated in the area;

(d) The amount and class of livestock available for marketing in the area;

(e) Buyers available to the proposed market; and

(f) Any other conditions affecting the orderly marketing of livestock.

(3) Before a license is issued to operate a public livestock market, the applicant must:

(a) Execute and deliver to the director a surety bond as required under RCW 16.65.200;

(b) Provide evidence of a custodial account, as required under RCW 16.65.140, for the consignor's proceeds;

(c) Pay the appropriate license fee; and

(d) Provide other information required under this chapter and rules adopted under this chapter.

[2003 c 326 § 65; 1995 c 374 § 54; (1994 c 46 § 21 repealed by 1995 c 374 § 55); 1994 c 46 § 12; 1993 c 354 § 1; 1991 c 17 § 1; 1979 ex.s. c 91 § 1; 1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Prior legislative approval—1994 c 46:** "The reenactment of sections 12 through 20 of this act constitutes approval of fee increases for which prior legislative approval is required by RCW 43.135.055 (section 8, chapter 2, Laws of 1994, Initiative Measure No. 601)."

[1994 c 46 § 26.]

**Effective date—1994 c 46:** See note following RCW 15.58.070.

## RCW 16.65.037 License—Restrictions—Fees.

(1) Any license issued under the provisions of this chapter shall only be valid at the location and for the sales day or days for which the license was issued.

(2) The license fee shall be based on the average gross sales

volume per official sales day of a market in the previous twelve months or, for a new market, the projected average gross sales per official sales day of the market during its first year's operation.

(a) The license fee for markets with an average gross sales volume up to and including ten thousand dollars is one hundred fifty dollars.

(b) The license fee for markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars is three hundred dollars.

(c) The license fee for markets with an average gross sales volume over fifty thousand dollars is four hundred fifty dollars.

(3) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each public livestock market, and each application shall be accompanied by the appropriate license fee.

[2003 c 326 § 66; 1997 c 356 § 9; 1997 c 356 § 8; 1995 c 374 § 57.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective dates—1997 c 356:** See note following RCW 16.57.220.

**Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57:** See note following RCW 16.57.220.

## RCW 16.65.040 Public livestock market license—Expiration—Renewal—Penalty.

(1) All public livestock market licenses provided for in this chapter expire on March 1st subsequent to the date of issue.

(2) Application for renewal of a public livestock market license shall be in writing on forms prescribed by the director, and shall include:

(a) All information under RCW 16.65.030(1) (d), (e), and (f);

(b) The gross dollar volume of business carried on, at, or through the applicant's public livestock market in the twelve-month period prior to the application for renewal of the license;

(c) Other information as the director may require by rule; and

(d) The appropriate license fee.

(3) If any person fails, refuses, or neglects to apply for a renewal of a preexisting license by March 1st, the person's license shall expire. To reinstate a license, the person shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before the license may be reinstated by the director.

[2003 c 326 § 67; 1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid.

(1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(b) The specific date and exact location of the proposed sale;

(c) Projected quantity and approximate value of horses to be handled; and

(d) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued.

[2003 c 326 § 68; 1983 c 298 § 3.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.044 Public livestock market—Open consignment horse sale—Consignor's name.

It is lawful for the operator of a public livestock market or an open consignment horse sale, upon receiving a request to do so, to allow the announcement of the correct and accurate name of the consignor of any cattle or horses being presented for sale to potential buyers.

[1991 c 17 § 5.]

## RCW 16.65.050 Disposition of fees.

All fees provided for under this chapter shall be deposited in an account in the agricultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter and chapter 16.57 RCW.

[2003 c 326 § 69; 1959 c 107 § 5.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.060 License to be posted.

The licensee's license shall be posted conspicuously in the main office of such licensee's public livestock market or special open consignment horse sale.

[1983 c 298 § 7; 1959 c 107 § 6.]

## RCW 16.65.080 Denial, suspension, revocation of license—Reasons—Hearing.

(1) The director may deny, suspend, or revoke a license when the director finds that a licensee

(a) has misrepresented titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock;

(b) has attempted payment to a consignor or the department by a check the licensee knows not to be backed by sufficient funds to cover such check;

(c) has violated any of the provisions of this chapter or rules adopted under this chapter;

(d) has violated any laws of the state that require inspection of livestock for health or ownership purposes;

(e) has violated any condition of the bond, as provided in this chapter.

(2) Upon notice by the director to deny, revoke, or suspend a

license, a person may request a hearing under chapter 34.05 RCW.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, 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. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe.

[2003 c 326 § 70; 1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

Orders—Appeal: RCW 16.65.450.

## RCW 16.65.090 Livestock inspection—Consignor's fee—Inspection fee.

The director shall provide for livestock inspection. When livestock inspection is required the licensee shall collect from the consignor and pay to the department an inspection fee, as provided by law, for each animal inspected. However, if in any one sale day the total fees collected for inspection do not exceed one hundred dollars, then the licensee shall pay one hundred dollars for the inspection services.

[2003 c 326 § 71; 1997 c 356 § 11; 1997 c 356 § 10; 1994 c 46 § 22; 1994 c 46 § 13; 1993 c 354 § 2; 1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective dates—1997 c 356:** See note following RCW 16.57.220.

**Effective date—1994 c 46 §§ 21-25:** "Sections 21 through 25 of this act shall take effect July 1, 1997."

[1994 c 46 § 29.]

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Prior legislative approval—1994 c 46:** See note following RCW 16.65.030.

## RCW 16.65.100 Livestock inspection—Purchaser's fee.

The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting inspection a fee as provided by law for each animal inspected. This fee shall be in addition to the fee charged to the consignor for inspection and shall not apply to the minimum fee chargeable to the licensee.

[2003 c 326 § 72; 1983 c 298 § 9; 1959 c 107 § 10.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.120 Disposition of proceeds of sale—Limitations on licensee.

A licensee shall not, except as provided in this chapter, pay the net proceeds or any part thereof arising from the sale of livestock consigned to the said licensee for sale, to any person other than the consignor of such livestock except upon an order from a court of competent jurisdiction, unless (1) such licensee has reason to believe that such person is the owner of the livestock; (2) such person holds a valid unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock.

[1959 c 107 § 12.]

## RCW 16.65.130 Unlawful use of consignor's net proceeds.

It shall be unlawful for the licensee to use for his own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to the so-called "float" in the bank account, or in any other manner.

[1959 c 107 § 13.]

## RCW 16.65.140 Custodial account for consignor's proceeds—Authorized withdrawals—Accounts and records.

Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. The account shall be drawn on only for the payment of net proceeds to the consignor, or other person or persons of whom the licensee has knowledge is entitled to the proceeds, and to obtain from those proceeds only the sums due the licensee as compensation for the services as are set out in the posted tariffs, and for the sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in the capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep those accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section.

[2003 c 326 § 73; 1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage.

The delivery of livestock, for the purpose of sale, by any consignor or vendor to a public livestock market or special open consignment horse sale without making a full disclosure to the agent or licensee of such public livestock market or special open consignment horse sale of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor.

[1983 c 298 § 10; 1959 c 107 § 15.]

## RCW 16.65.160 Delivery of proceeds and invoice to consignor or shipper.

The licensee shall deliver the net proceeds together with an invoice to the consignor or shipper within twenty-four hours after the sale or by the end of the next business day if the licensee is not on notice that any other person or persons have a valid interest in the livestock.

[1959 c 107 § 16.]

## RCW 16.65.170 Records of licensee—Contents.

The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and the records shall contain the following information:

(1) The date on which each consignment of livestock was received and sold.

(2) The name and address of the buyer and seller of the livestock.

(3) The number and species of livestock received and sold.

(4) The marks and brands on the livestock.

(5) All statements of warranty or representations of title material to, or upon which, any sale is consummated.

(6) The gross selling price of the livestock with a detailed list of all charges deducted therefrom.

These records shall be kept by the licensee for one year subsequent to the receipt of such livestock.

[2003 c 326 § 74; 1967 c 192 § 1; 1959 c 107 § 17.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited.

All rates or charges made for any stockyard services furnished at a public livestock market or special open consignment horse sale shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

[1983 c 298 § 11; 1959 c 107 § 18.]

## RCW 16.65.190 Schedule of rates and charges.

No person shall operate a public livestock market or special open consignment horse sale unless that person has filed a schedule with the application for license to operate a public livestock market or special open consignment horse sale. The schedule shall show all rates and charges for stockyard services to be furnished at the public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all rates and charges in such detail as the director may require, and shall state any rules which in any manner change, affect, or determine any part of the aggregate of the rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which the schedule shall be prepared, arranged, and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as set forth under this section, which shall plainly state the changes proposed to be made and the time the changes will go into effect.

(3) No licensee shall charge, demand, or collect a greater or a lesser or a different compensation for a service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at a public livestock market or special open consignment horse sale any stockyard services except as are specified in the schedule.

[2003 c 326 § 75; 1983 c 298 § 12; 1959 c 107 § 19.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.200 Licensee's bond to operate market or special open consignment horse sale.

Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a standard form and approved by the director as to terms and conditions. The bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted under this chapter. The bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: PROVIDED, That if the applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and the applicant furnishes the director with a bond approved by the United States secretary of agriculture, the director may accept the bond and its method of termination in lieu of the bond provided for herein and issue a license if the applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of the bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on the bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service, and unless the principal shall before the expiration of this period, file a new bond, the director shall immediately cancel the principal's license.

[2003 c 326 § 76; 1983 c 298 § 13; 1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount.

The sum of the bond to be executed by an applicant for a public livestock market license shall be determined in the following manner:

(1) Determine the dollar volume of business carried on, at, or through, such applicant's public livestock market in the twelve-month period prior to such applicant's application for a license.

(2) Divide such dollar volume of business by the number of official sale days granted such applicant's public livestock market, as herein provided, in the same twelve-month period provided for in subsection (1).

(3) Bond amount shall be that amount obtained by the formula in subsection (2) except that it shall not be an amount less

than ten thousand dollars and if that amount shall exceed fifty thousand then that portion above fifty thousand shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest five thousand figure above that arrived at in the formula.

[1971 ex.s. c 192 § 6; 1959 c 107 § 21.]

## RCW 16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount.

If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month period, the director shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: PROVIDED, That the director may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered.

[1971 ex.s. c 192 § 7; 1959 c 107 § 22.]

## RCW 16.65.230 Licensee's bond to operate market—One bond for each market.

Any licensee operating more than one public livestock market shall execute a bond, as herein provided, for each such licensed public livestock market.

[1959 c 107 § 23.]

## RCW 16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount.

The sum of the bond to be executed by an applicant for a special open consignment horse sale license shall be determined by estimating the dollar volume of business to be carried on, at, or through the applicant's proposed special open consignment horse sale. The bond amount shall be that amount estimated as the applicant's dollar volume of business. However, the bond shall not be in an amount less than ten thousand dollars. If the amount exceeds fifty thousand dollars, then that portion above fifty thousand dollars shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest greater five thousand dollar figure.

[1983 c 298 § 4.]

## RCW 16.65.235 Cash or other security in lieu of surety bond—Rules.

In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules necessary for the administration of such security.

[2003 c 326 § 77; 1973 c 142 § 3.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.240 Action on bond—Fraud of licensee.

Any vendor or consignor creditor claiming to be injured by the fraud of any licensee may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud.

[1959 c 107 § 24.]

## RCW 16.65.250 Action on bond—Failure to comply with chapter.

The director or any vendor or consignor creditor may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules and/or regulations adopted hereunder.

[1959 c 107 § 25.]

## RCW 16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties.

In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the director, the director may proceed immediately to ascertain the names and addresses of all vendor or consignor creditors of the licensee, together with the amounts due and owing to them and each of them by the licensee, and shall request all vendor and consignor creditors to file a verified statement of their respective claims with the director. This request shall be addressed to each known vendor or consignor creditor at his or her last known address.

[2003 c 326 § 78; 1983 c 298 § 14; 1959 c 107 § 26.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim.

If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his or her verified claim as requested by the director within sixty days from the date of such request, the director shall be relieved of further duty or action on behalf of the producer or consignor creditor.

[2003 c 326 § 79; 1959 c 107 § 27.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available.

Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure the information from all reasonable and available sources, may make demand on the bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered.

[2003 c 326 § 80; 1959 c 107 § 28.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge.

Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

[1959 c 107 § 29.]

## RCW 16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file.

Upon the refusal of the surety company to pay the demand, the director may bring an action on the bond in behalf of vendor and consignor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on the bond the licensee shall file a new bond. Upon failure to file the new bond within ten days, such a failure shall constitute grounds for the suspension or revocation of the license.

[2003 c 326 § 81; 1959 c 107 § 30.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim.

In any settlement or compromise by the director with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: PROVIDED, That the claims of the state and the department which may accrue from the conduct of the licensee's public livestock market shall have priority over all other claims.

[1959 c 107 § 31.]

## RCW 16.65.320 Investigations by director—Complaints.

For the purpose of enforcing the provisions of this chapter, the director on the director's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The director is empowered to administer oaths of verification of such complaints.

[1985 c 415 § 10; 1959 c 107 § 32.]

## RCW 16.65.330 Investigations—Powers of director.

For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder.

[1959 c 107 § 33.]

## RCW 16.65.340 Testing, examination, etc., of livestock for disease—Veterinarian employed by the market.

The director shall, when livestock is sold, traded, exchanged, or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a Washington state licensed and accredited veterinarian employed by the market as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, pseudorabies, or any other infectious, contagious, or communicable disease among the livestock of this state. The state veterinarian or his or her authorized representative may conduct additional testing and examinations for the same purpose.

[2003 c 326 § 82; 1967 c 192 § 2; 1959 c 107 § 34.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.350 Examinations—Sanitary and health practices and standards—Rules.

The director shall adopt rules regarding sanitary practices, health practices and standards, and the examination of animals at public livestock markets.

[2003 c 326 § 83; 1959 c 107 § 35.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.360 Facilities—Sanitation—Requirements.

Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: PROVIDED, That the director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(2) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(3) All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(4) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(5) All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(7) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;

(b) provided with separate watering facilities;

(c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;

(d) provided with a tight board fence not less than five and one-half feet high;

(e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director.

[1959 c 107 § 36.]

## RCW 16.65.370 Watering, feeding facilities—Unlawful acts.

Pens used to hold livestock for a period of twenty-four hours or more in a public livestock market shall have watering and feeding facilities for livestock held in such pens. It shall be unlawful for a public livestock market to hold livestock for a period longer than twenty-four hours without feeding and watering such livestock. An operator of a public livestock market may also refuse to accept the consignment of any livestock that the licensee may believe to have been inadequately fed or otherwise inadequately cared for prior to the delivery of the livestock in question to the public livestock market.

[1991 c 17 § 2; 1959 c 107 § 37.]

## RCW 16.65.380 Adequate facilities and space required for veterinarians to function.

Public livestock market facilities shall include adequate space and facilities necessary for market, federal, or state veterinarians to properly carry out their functions as prescribed by law and rules adopted under law or as prescribed by applicable federal law or regulation.

[2003 c 326 § 84; 1959 c 107 § 38.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.390 Adequate space and facilities required for livestock inspectors and veterinarians to function.

Public livestock market facilities shall include space and facilities necessary for livestock inspectors and veterinarians to properly carry out their duties, as provided by law and rules adopted under law, in a safe and expeditious manner.

[2003 c 326 § 85; 1959 c 107 § 39.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.400 Weighing of livestock at public livestock market.

(1) Each public livestock market licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon the tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of the weight tickets shall be issued to the buyer and seller of the livestock weighed.

[2003 c 326 § 86; 1983 c 298 § 15; 1961 c 182 § 5; 1959 c 107 § 40.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.410 Packer's interest in market limited.

It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or through his agents or employees.

[1959 c 107 § 41.]

## RCW 16.65.420 Application for change of or additional sales days, special sales—Considerations for allocation.

(1) Any application for a change of sales day or days or additional sales day or days for an existing salesyard shall be subject to approval by the director, subsequent to a hearing and the director is hereby authorized to approve these days and class of livestock which may be sold on these days. In considering the approval or denial of these sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The geographical area which will be affected;

(b) The conflict, if any, with sales days already allocated in the area;

(c) The amount and class of livestock available for marketing in the area;

(d) Buyers available to such market;

(e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale. Each application must be accompanied by a nonrefundable fee of fifty dollars.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent

to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule.

[2003 c 326 § 87; 1991 c 17 § 3; 1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.424 Additional sales days limited to sales of horses and/or mules.

The director has the authority to grant a licensee an additional sales day, or days, limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his or her public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of the horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable.

[2003 c 326 § 88; 1963 c 232 § 19.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.430 Information and records available to director and news services.

Information and records of the licensee that are necessary for the compilation of adequate reports on the marketing of livestock shall be made available to the director or any news service, publishing or broadcasting such market reports.

[1959 c 107 § 43.]

## RCW 16.65.440 Penalty *(as amended by 2003 c 326)*.

Any person who ((~~shall~~)) violates any provisions or requirements of this chapter or rules ((~~and regulations~~)) adopted by the director ((~~pursuant to~~)) under this chapter ((~~shall be deemed~~)) is guilty of a gross misdemeanor((~~; and any subsequent violation thereafter shall be deemed a gross misdemeanor~~)).

[2003 c 326 § 89; 1959 c 107 § 44.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

## RCW 16.65.440 Penalty *(as amended by 2003 c 53)*.

(1) Except as provided in subsection (2) of this section, any person who ((~~shall~~)) violates any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter ((~~shall be deemed~~)) is guilty of a misdemeanor((~~; and any~~)).

(2) A second or subsequent violation ((~~thereafter shall be deemed~~)) is a gross misdemeanor.

[2003 c 53 § 116; 1959 c 107 § 44.]

NOTES:

**Reviser's note:** RCW 16.65.440 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

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

## RCW 16.65.445 Public hearings.

The director shall hold public hearings upon any proposal to adopt any new or amended rules and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act.

[2003 c 326 § 90; 1989 c 175 § 55; 1961 c 182 § 7.]

NOTES:

**Effective dates—2003 c 326:** See RCW 16.57.902.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 16.65.450 Orders—Appeal.

Any licensee or applicant who feels aggrieved by an order of the director may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo.

[1991 c 17 § 4; 1959 c 107 § 46.]

## RCW 16.65.900 Severability—1959 c 107.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional.

[1959 c 107 § 45.]

## RCW 16.65.910 Severability—1963 c 232.

See RCW 15.61.900.

# CHAPTER 16.67 RCW
# WASHINGTON STATE BEEF COMMISSION

## Sections


16.67.010 Short title.
16.67.030 Definitions.
16.67.035 Regulating beef and beef products—Existing comprehensive scheme—Laws applicable.
16.67.040 Beef commission created—Generally.
16.67.051 Designation of positions—Terms.
16.67.060 Director to appoint members—Recommendations by industry.
16.67.070 Vacancies—Compensation and travel expenses.
16.67.080 Commission records as evidence.
16.67.090 Powers and duties—Rule making.
16.67.091 Commission's plans, programs, and projects—Director's approval required.
16.67.093 Subpoenas.
16.67.095 Commission speaks for state—Director's oversight.
16.67.097 Reimbursement for costs.
16.67.100 Meetings—Notice.
16.67.110 Promotional programs, research, rate studies, labeling.
16.67.120 Levy of assessment—Collections—Federal orders.
16.67.122 Additional assessment—National beef promotion and research program—Contingency.
16.67.123 Transfer of cattle by meat packer as sale.
16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect.
16.67.140 Livestock purchasers to provide list of sellers to commission.
16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc.
16.67.170 Promotional printing not restricted by public printer laws.
16.67.180 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.
16.67.190 Funding staff support—Rules.

16.67.195 Costs of implementing RCW 16.67.091.
16.67.900 Liberal construction—1969 c 133.
16.67.910 Severability—1969 c 133.
16.67.920 Effective date—1969 c 133.

## RCW 16.67.010 Short title.

This chapter shall be known and may be cited as the Washington state beef commission act.

[1969 c 133 § 1.]

## RCW 16.67.030 Definitions.

For the purpose of this chapter:

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

(2) "Director" means the director of agriculture of the state of Washington or an appointed representative.

(3) "Ex officio members" means those advisory members of the commission who do not have a vote.

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

(5) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(6) "Beef producer" means any person who raises, breeds, grows, or purchases cattle or calves for beef production.

(7) "Dairy (beef) producer" means any person who raises, breeds, grows, or purchases cattle for dairy production and who is actively engaged in the production of fluid milk.

(8) "Feeder" means any person actively engaged in the business of feeding cattle and usually operating a feed lot.

(9) "Producer" means any person actively engaged in the cattle industry including beef producers and dairy (beef) producers.

(10) "Washington cattle" shall mean all cattle owned or controlled by affected producers and located or sold in the state of Washington.

(11) "Meat packer" means any person operating a slaughtering establishment subject to inspection under a federal meat inspection act.

(12) "Livestock salesyard operator" means any person licensed to operate a cattle auction market or salesyard under the provisions of chapter 16.65 RCW as enacted or hereafter amended.

(13) "Mail" or "send" for purposes of any notice relating to rule making 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.

[2002 c 313 § 80; 1999 c 291 § 30; 1969 c 133 § 2.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.035 Regulating beef and beef products—Existing comprehensive scheme—Laws applicable.

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

(1) That the Washington state beef 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 beef and beef products be properly promoted by

(a) enabling the beef industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of beef and beef products they produce; and

(b) working to stabilize the beef industry by increasing consumption of beef and beef products within the state, the nation, and internationally;

(3) That beef 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 beef producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the beef industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that beef and beef 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 beef 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 beef and beef products, and in reference to the various cuts and grades of beef and the uses to which each should be put;

(d) Increase the knowledge of the health-giving qualities and dietetic value of beef products; and

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

(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 beef 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 beef industry include the:

(a) Beef promotion and research act of 1985, U.S.C. Title 7, chapter 62;

(b) Beef promotion and research, 7 C.F.R., Part 1260;

(c) Agricultural marketing act, 7 U.S.C., section 1621;

(d) USDA meat grading, certification, and standards, 7 C.F.R., Part 54;

(e) Mandatory price reporting, 7 C.F.R., Part 57;

(f) Grazing permits, 43 C.F.R., Part 2920;

(g) Capper-Volstead act, U.S.C. Title 7, chapters 291 and

292;

(h) Livestock identification under chapter 16.57 RCW and rules;

(i) *Organic food products act under chapter 15.86 RCW and rules;

(j) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Washington food processing act under chapter 69.07 RCW and rules;

(l) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(m) Animal health under chapter 16.36 RCW and rules; and

(n) Weights and measures under chapter 19.94 RCW and rules.

[2002 c 313 § 79.]

NOTES:

***Reviser's note:** The "organic food products act" was renamed the "organic products act."

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.040 Beef commission created—Generally.

There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of two beef producers, two dairy (beef) producers, two feeders, one livestock salesyard operator, one meat packer, and the director, who shall be a voting member. If an otherwise voting member is elected as the chair of the commission, the member may, during the member's term as chair of the commission, cast a vote as a member of the commission only to break a tie vote. If the commission so chooses, there may be one additional nonvoting member in an advisory capacity appointed by the members of the commission for such a term as the members may set.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he or she represents for a period of five years, and has during that period derived a substantial portion of his or her income therefrom, or have a substantial investment in cattle 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 cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office.

[2003 c 396 § 33; 2000 c 146 § 1; 1997 c 363 § 1; 1993 c 40 § 1; 1991 c 9 § 1; 1969 c 133 § 3.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

**Effective date—1993 c 40:** "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 shall take effect June 1, 1993."

[1993 c 40 § 5.]

## RCW 16.67.051 Designation of positions—Terms.

Commencing on July 1, 1993, the appointive positions on the commission shall be designated as follows: The beef producers shall be designated position one and position six; the dairy (beef) producers shall be designated position two and position seven; the feeders shall be designated position three and position eight; the livestock salesyard operator shall be designated position four; and the meat packer shall be designated position five.

The initial terms of positions one and four shall terminate July 1, 1994; positions two and five shall terminate July 1, 1995; and position three shall terminate July 1, 1996. The initial terms of position six shall terminate July 1, 1998; position seven shall terminate July 1, 1999; and position eight shall terminate July 1, 2000. The regular term of office of subsequent appointees shall be three years from the date of appointment and until their successors are appointed.

[1997 c 363 § 2; 1993 c 40 § 3.]

NOTES:

**Effective date—1993 c 40:** See note following RCW 16.67.040.

## RCW 16.67.060 Director to appoint members—Recommendations by industry.

The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made to him or her by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

Commencing on June 1, 1993, and by June 1 of each subsequent year, organizations under this section shall make a recommendation as required, to the director of a person to serve on the commission.

[1993 c 40 § 4; 1991 c 9 § 3; 1969 c 133 § 5.]

NOTES:

**Effective date—1993 c 40:** See note following RCW 16.67.040.

## RCW 16.67.070 Vacancies—Compensation and travel expenses.

(1) In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the director forthwith.

(2) Each member of the commission shall be compensated in accordance with RCW 43.03.230.

(3) 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 § 81; 1991 c 9 § 4; 1984 c 287 § 19; 1975-'76 2nd ex.s. c 34 § 22; 1969 c 133 § 6.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

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

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 16.67.080 Commission records as evidence.

Copies of the proceedings, records, and acts of the commission, when certified by the secretary of the commission and authenticated by the commission seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein.

[1969 c 133 § 7.]

## RCW 16.67.090 Powers and duties—Rule making.

The powers and duties of the commission shall include the following:

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

(2) To elect a chairman and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the review of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW, except that 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;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys and other financial transactions made and done pursuant to this chapter. Such records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor and the commission. On such years and in such event the state auditor is unable to audit the records, books and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) 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;

(13) To cooperate with any other local, state, or national commission, organization or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter; and

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states.

[2002 c 313 § 82; 2000 c 146 § 2; 1982 c 81 § 3; 1969 c 133 § 8.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.091 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 its 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 its 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 its 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 § 34.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 16.67.093 Subpoenas.

The commission has the power to subpoena witnesses and to issue subpoenas for the production of any books, records, or documents of any kind for the purpose of enforcing this chapter.

[2002 c 313 § 85.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.095 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 § 35.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

## RCW 16.67.097 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 § 86.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.100 Meetings—Notice.

The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: PROVIDED, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission.

[2000 c 146 § 3; 1969 c 133 § 9.]

## RCW 16.67.110 Promotional programs, research, rate studies, labeling.

The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed.

[2000 c 146 § 4; 1969 c 133 § 10.]

## RCW 16.67.120 Levy of assessment—Collections—Federal orders.

(1) There is hereby levied an assessment of one dollar per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: PROVIDED, That if such sale is accompanied by a brand inspection by the department such assessment may be collected at the same time, place and in the same manner as brand inspection fees. Such fees may be collected by the livestock services division of the department and transmitted to the commission: PROVIDED FURTHER, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission by the fifteenth day of the month following the month the transaction occurred.

(2) The procedures for collecting all state and federal assessments under this chapter shall be as required by the federal order and as described by rules adopted by the commission.

[2002 c 313 § 83; 2000 c 146 § 5; 1987 c 393 § 11; 1986 c 190 § 2; 1982 c 47 § 1; 1975 1st ex.s. c 93 § 1; 1969 c 133 § 11.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.122 Additional assessment—National beef promotion and research program—Contingency.

In addition to the assessment authorized pursuant to RCW 16.67.120, the commission has the authority to collect an additional assessment of fifty cents per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon the implementation of federal legislation providing for a national beef promotion and research program and the establishment of

the assessment requirement to fund its activities.

[2002 c 313 § 84; 2000 c 146 § 6; 1986 c 190 § 1.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.123 Transfer of cattle by meat packer as sale.

The transfer of cattle owned by a meat packer from a feed lot to a slaughterhouse for slaughter shall be deemed a sale of such cattle for the purpose of chapter 16.67 RCW. Such packer shall pay directly to the beef commission the same assessment as required of all other cattle owners selling cattle.

[1971 c 64 § 1.]

## RCW 16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect.

Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable on the fifteenth day of the month following the month the transaction occurred. In the event any such person fails to pay the full amount within such time, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

[2000 c 146 § 7; 1969 c 133 § 12.]

## RCW 16.67.140 Livestock purchasers to provide list of sellers to commission.

The commission may adopt regulations requiring the purchasers of livestock subject to the assessments under this chapter, to furnish the commission with the names of persons from whom such livestock was purchased. Refusal or failure to furnish the commission with such a list shall constitute a misdemeanor.

[1969 c 133 § 13.]

## RCW 16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc.

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 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 member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

[1969 c 133 § 15.]

## RCW 16.67.170 Promotional printing not restricted by public printer laws.

The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for the commission.

[1969 c 133 § 16.]

## RCW 16.67.180 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 § 220; 2002 c 313 § 71.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.190 Funding staff support—Rules.

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.

[2002 c 313 § 77.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 16.67.195 Costs of implementing RCW 16.67.091.

The costs incurred by the department associated with the implementation of RCW 16.67.091 shall be paid for by the commission.

[2003 c 396 § 36.]

NOTES:

**Effective date—2003 c 396:** See note following RCW 15.66.030.

### RCW 16.67.900 Liberal construction—1969 c 133.

This chapter shall be liberally construed.

[1969 c 133 § 20.]

### RCW 16.67.910 Severability—1969 c 133.

If any provisions hereof are declared invalid, the validity of the remainder hereof of the applicability thereof to any other person, circumstances or thing shall not be affected thereby.

[1969 c 133 § 17.]

### RCW 16.67.920 Effective date—1969 c 133.

This chapter is 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 June 1, 1969.

[1969 c 133 § 21.]

# CHAPTER 16.68 RCW
## DISPOSAL OF DEAD ANIMALS

**Sections**


16.68.010 Definitions.
16.68.030 Sale, gift, or conveyance prohibited—Exceptions.
16.68.040 License required of rendering plants and independent collectors.
16.68.050 Rendering plant license fee.
16.68.060 Independent collector license fee.
16.68.070 Substation or places of transfer license fee.
16.68.080 Expiration of license—Revocation.
16.68.090 Applications for license.
16.68.100 Procedure upon application—Inspection of premises.
16.68.110 Duty of licensees as to premises.
16.68.120 Duty of licensees—Standards.
16.68.130 Right of access to premises and records.
16.68.140 Unlawful possession of horse meat—Exceptions.
16.68.150 Feeding of carcasses to swine unlawful—Exception.
16.68.160 Disposition of fees.
16.68.170 Rules and regulations.
16.68.180 Penalty for violations.
16.68.190 Bait for trapping purposes—Exception.


### RCW 16.68.010 Definitions.

For the purposes of this chapter, unless clearly indicated otherwise by the context:

(1) "Director" means the director of agriculture;

(2) "Meat food animal" means cattle, horses, mules, asses, swine, sheep and goats;

(3) "Dead animal" means the body of a meat food animal, or any part or portion thereof: PROVIDED, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his own ranch for his own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(4) "Carcass" means all parts, including viscera, of a dead meat food animal;

(5) "Person" means any individual, firm, corporation, partnership, or association;

(6) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other by-product whatsoever;

(7) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant;

(8) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(9) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant.

[1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

NOTES:

**Severability—1949 c 100:** "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, nor any section, sentence, phrase, or word thereof not adjudged invalid or unconstitutional."

[1949 c 100 § 20.]

### RCW 16.68.030 Sale, gift, or conveyance prohibited—Exceptions.

It is unlawful for any person to sell, offer for sale or give away a dead animal or convey the same along any public road or land not his own: PROVIDED, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person having an unrevoked, annual license to operate as an independent collector.

[1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

### RCW 16.68.040 License required of rendering plants and independent collectors.

It is unlawful for any person to operate a rendering plant or act as an independent collector without first obtaining a license from the director.

[1949 c 100 § 4; Rem. Supp. 1949 § 3142-4.]

### RCW 16.68.050 Rendering plant license fee.

Any person engaged in operating a rendering plant shall secure from the director an annual rendering plant license and pay an annual fee of one hundred dollars: PROVIDED, That no license shall be required to operate a rendering plant on the premises of a licensed slaughtering establishment maintaining state or federal meat inspection unless said rendering plant receives dead animals that have been transported on public highways.

[1949 c 100 § 5; Rem. Supp. 1949 § 3142-5.]

## RCW 16.68.060 Independent collector license fee.

Any person engaged in the business of independent collector shall secure from the director an annual independent collector license and pay an annual fee of fifty dollars.

[1949 c 100 § 6; Rem. Supp. 1949 § 3142-6.]

## RCW 16.68.070 Substation or places of transfer license fee.

Any rendering plant operator or independent collector that operates substations or places of transfer shall secure from the director an annual substation license or place of transfer license and pay an annual fee of twenty-five dollars for each substation or place of transfer.

[1949 c 100 § 7; Rem. Supp. 1949 § 3142-7.]

## RCW 16.68.080 Expiration of license—Revocation.

Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is made permanent.

[1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

## RCW 16.68.090 Applications for license.

Any person applying for a license to operate a rendering plant and/or substation and/or place of transfer, or to act as an independent collector shall make application on forms furnished by the director. Said application shall give all information required by the director and shall be accompanied by the required license fee.

[1949 c 100 § 9; Rem. Supp. 1949 § 3142-9.]

## RCW 16.68.100 Procedure upon application—Inspection of premises.

If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he will discontinue operations, the fee accompanying the application will be returned to him; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may be made on one application.

[1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

## RCW 16.68.110 Duty of licensees as to premises.

Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his approval before such building or remodeling is begun.

[1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

## RCW 16.68.120 Duty of licensees—Standards.

Every licensee under this chapter shall comply with the following:

(1) Dead animals shall be placed in containers or vehicles which are constructed of or lined with impervious material, and which do not permit the escape of any liquid, and which are covered in such a way that the contents shall not be openly exposed to insects.

(2) All vehicles and containers used for transporting dead animals shall be properly cleaned and disinfected before leaving the premises of a rendering plant, substation or place of transfer.

(3) After original loading, dead animals shall not be moved from the transporting container or vehicle upon a public highway or in any other place, except at a licensed rendering plant, licensed substation, or licensed place of transfer.

(4) No containers and vehicles used for transporting dead animals shall be used for the transporting of live animals except to a licensed rendering plant.

(5) All vehicles used to haul dead animals that have died of an infectious or contagious disease, shall proceed directly to the unloading point and shall not enter other premises until the vehicle has been properly cleaned and disinfected.

(6) The name of the rendering plant or independent collector

shall be painted in letters at least four inches high on each side of every truck used for transporting dead animals.

(7) The skinning and dismembering of dead animals shall be done in the building where they are processed.

(8) Cooking vats or tanks shall be airtight except for proper escape for steam or vapor.

(9) Steam or vapor from cooking vats or tanks shall be so disposed of as not to be detrimental to public health or safety.

(10) Dead animals shall be processed within forty-eight hours after delivery to the rendering plant.

(11) No carcasses, parts thereof, or packing house refuse under process for marketing shall be permitted to come in contact with any part of the building or the equipment used in connection with the unloading, skinning, dismembering and grinding of carcasses or refuse as originally received at disposal plant.

[1949 c 100 § 13; Rem. Supp. 1949 § 3142-13.]

### RCW 16.68.130 Right of access to premises and records.

The director or his authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records.

[1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

### RCW 16.68.140 Unlawful possession of horse meat—Exceptions.

It shall be unlawful for any person to transport, to sell, offer to sell, or have on his premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: PROVIDED, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations.

[1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

### RCW 16.68.150 Feeding of carcasses to swine unlawful—Exception.

It shall be unlawful to feed carcasses of animals, or any part or portion thereof, to swine, unless said carcasses or portions thereof are cooked in a manner prescribed by the director.

[1949 c 100 § 16; Rem. Supp. 1949 § 3142-20.]

NOTES:

Swine, garbage feeding: RCW 16.36.105 and 16.36.110.

### RCW 16.68.160 Disposition of fees.

Funds collected for license fees and inspection fees shall be retained by the director to be used for the enforcement of this chapter.

[1949 c 100 § 11; Rem. Supp. 1949 § 3142-11.]

### RCW 16.68.170 Rules and regulations.

The director is authorized and shall make and enforce such regulations as may be necessary to effectuate the provisions of this chapter. Such regulations shall be consistent with the provisions of this chapter.

[1949 c 100 § 17; Rem. Supp. 1949 § 3142-21.]

### RCW 16.68.180 Penalty for violations.

The violation of any provision of this chapter shall be a misdemeanor.

[1949 c 100 § 18; Rem. Supp. 1949 § 3142-22.]

### RCW 16.68.190 Bait for trapping purposes—Exception.

Nothing in this chapter shall prohibit the department of fish and wildlife from using the carcasses of dead animals for trap bait in their regular trapping operations.

[1994 c 264 § 6; 1988 c 36 § 7; 1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

# CHAPTER 16.70 RCW
## CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

**Sections**


16.70.010 Purpose.
16.70.020 Definitions.
16.70.030 Emergency action authorized—Scope—Animals as public nuisance.
16.70.040 Rules—Scope.
16.70.050 Violations—Penalty.
16.70.060 Concurrent powers—Cooperation between officials.


### RCW 16.70.010 Purpose.

The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of health and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare.

[1991 c 3 § 2; 1971 c 72 § 1.]

### RCW 16.70.020 Definitions.

The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Department" means the department of health.

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals

from entering this state.

[1991 c 3 § 3; 1971 c 72 § 2.]

## RCW 16.70.030 Emergency action authorized—Scope—Animals as public nuisance.

In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.20A.640 through 43.20A.650.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance.

[1971 c 72 § 3.]

NOTES:

**Reviser's note:** "RCW 43.20.150 through 43.20.170" were translated to "RCW 43.20A.640 through 43.20A.650" due to their recodification from chapter 43.20 RCW to chapter 43.20A RCW by 1979 c 141 § 384. Subsequently, RCW 43.20A.640 through 43.20A.650 were recodified as RCW 43.70.170 through 43.70.190, pursuant to 1989 1st ex.s. c 9 § 267, effective July 1, 1989.

## RCW 16.70.040 Rules—Scope.

(1) The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined in RCW 16.70.020 which are reasonably necessary for the protection and welfare of the people of this state.

(2) The director of the department of agriculture shall also be authorized to adopt rules to allow administration of permits for those pet animals under subsection (1) of this section by the state veterinarian.

[1996 c 188 § 5; 1971 c 72 § 4.]

## RCW 16.70.050 Violations—Penalty.

Any person violating or refusing or neglecting to obey the order or directive issued by the secretary pursuant to the authority granted under this action [act] or the rules and regulations promulgated by the board hereunder shall be guilty of a misdemeanor.

[1971 c 72 § 5.]

## RCW 16.70.060 Concurrent powers—Cooperation between officials.

The powers conferred on the secretary by this chapter shall be concurrent with the powers conferred on the director of the department of agriculture by chapter 16.36 RCW, and chapter 43.23 RCW, and the secretary and director shall cooperate in exercising their responsibilities in these areas.

[1971 c 72 § 6.]

# CHAPTER 16.72 RCW
## FUR FARMING

**Sections**


16.72.010 Definitions.
16.72.020 Quarantine controls.
16.72.030 Fox, mink, marten declared personalty.
16.72.040 Branding—Recording.


## RCW 16.72.010 Definitions.

As used in this chapter:

"Director" means director of agriculture.

"Department" means department of agriculture.

"Person" includes any individual, firm corporation, trust, association, copartnership, society, or other organization of individuals and any other business unit, device or arrangement.

"Fur farming" means breeding, raising and rearing of mink, marten, fox and chinchilla in captivity or enclosures.

[1955 c 321 § 2.]

## RCW 16.72.020 Quarantine controls.

Fur farming shall be deemed an agricultural pursuit and the director is hereby authorized to exercise quarantine controls over such farms in accordance with the provisions of this title. Facilities available to the department may be used by the director in carrying out the provisions of this chapter.

[1955 c 321 § 3.]

## RCW 16.72.030 Fox, mink, marten declared personalty.

All fox, mink and marten that have been lawfully imported or acquired, or bred or reared in captivity or enclosures, are declared to be personal property. Any person hereafter acquiring any such fur bearing animals in the wild state, shall within ten days furnish satisfactory proof to the director that such animals were lawfully obtained. Such wild animals shall not become personal property under the provisions of this section until such proof is furnished.

[1955 c 321 § 4.]

## RCW 16.72.040 Branding—Recording.

The owners of any fox, mink, or marten may mark them by branding with tattoo or other marks for the purpose of identification, but no person shall be entitled to ownership in or rights under any particular branding marks unless and until the branding marks are recorded with the department in the same manner and with like effect as brands of other animals are recorded as provided in *chapter 16.56 RCW.

[1955 c 321 § 5.]

NOTES:

***Reviser's note:** Chapter 16.56 RCW was repealed by 1959 c 54 § 39. For later enactment, see chapter 16.57 RCW.

# TITLE 17 RCW
## WEEDS, RODENTS, AND PESTS

### Chapters


17.10 Noxious weeds—Control boards.

17.21 Washington pesticide application act.

17.24 Insect pests and plant diseases.

17.26 Control of spartina and purple loosestrife.

17.34 Pest control compact.


**NOTES:**

Control of predatory birds injurious to agriculture: RCW 15.04.110 through 15.04.120.

Crop liens: Chapter 60.11 RCW.

Director of agriculture: Chapter 43.23 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Mosquito control: Chapter 70.22 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Washington pesticide control act: Chapter 15.58 RCW.

# CHAPTER 17.10 RCW
## NOXIOUS WEEDS—CONTROL BOARDS

### Sections


17.10.007 Purpose—Construction—1975 1st ex.s. c 13.

17.10.010 Definitions.

17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status.

17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses.

17.10.040 Activation of inactive county noxious weed control board.

17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy.

17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations.

17.10.070 State noxious weed control board—Powers—Report.

17.10.074 Director—Powers.

17.10.080 State noxious weed list—Hearing—Adoption—Dissemination.

17.10.090 State noxious weed list—Selection of weeds for control by county board.

17.10.100 Order to county board to include weed from state board's list in county's noxious weed list.

17.10.110 Regional noxious weed control board—Creation.

17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards.

17.10.130 Regional noxious weed control board—Powers and duties.

17.10.134 Liability of county and regional noxious weed control boards.

17.10.140 Owner's duty to control spread of noxious weeds.

17.10.145 State agencies' duty to control spread of noxious weeds.

17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement.

17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry.

17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—Lien—Alternative.

17.10.180 Hearing on liability for expense of control—Notice—Review.

17.10.190 Notice and information as to noxious weed control.

17.10.201 Noxious weed control on federal and tribal lands—State and county cooperation.

17.10.205 Control of noxious weeds in open areas.

17.10.210 Quarantine of land—Order—Expense.

17.10.230 Violations—Penalty.

17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees.

17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates.

17.10.250 Applications for noxious weed control funds.

17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts.

17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds.

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds.

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien.

17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents.

17.10.310 Notice of infraction—Issuance.

17.10.350 Infraction—Penalty.

17.10.890 Deactivation of county noxious weed control board—Hearing.

17.10.900 Weed districts—Continuation—Dissolution—Transfer of assessment funds.

17.10.910 Severability—1969 ex.s. c 113.


### RCW 17.10.007 Purpose—Construction—1975 1st ex.s. c 13.

The purpose of this chapter is to limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas in the state.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law.

[1997 c 353 § 1; 1975 1st ex.s. c 13 § 17. Formerly RCW 17.10.905.]

### RCW 17.10.010 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Noxious weed" means a plant that when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board. The list is divided into three classes:

(a) Class A consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C consists of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof,

or any other entity.

(4) "Owner" means the person in actual control of property, or his or her agent, whether the control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of the easement is deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of the easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" means conforming to the standards of noxious weed control or prevention in this chapter or as adopted by rule in chapter 16-750 WAC by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those that are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW.

(10) "Aquatic noxious weed" means an aquatic plant species that is listed on the state weed list under RCW 17.10.080.

(11) "Screenings" means a mixture of mill or elevator run mixture or a combination of varying amounts of materials obtained in the process of cleaning either grain or seeds, or both, such as light or broken grain or seed, weed seeds, hulls, chaff, joints, straw, elevator dust, floor sweepings, sand, and dirt.

[1997 c 353 § 2; 1995 c 255 § 6; 1987 c 438 § 1; 1975 1st ex.s. c 13 § 1; 1969 ex.s. c 113 § 1.]

NOTES:

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

## RCW 17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status.

(1) In each county of the state there is created a noxious weed control board, bearing the name of the county within which it is located. The jurisdictional boundaries of each board are the boundaries of the county within which it is located.

(2) Each noxious weed control board is inactive until activated pursuant to the provisions of RCW 17.10.040.

[1997 c 353 § 3; 1969 ex.s. c 113 § 2.]

## RCW 17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses.

There is created a state noxious weed control board comprised of nine voting members and three nonvoting members. Four of the voting members shall be elected by the members of the various activated county noxious weed control boards, and shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two of these members shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture is a voting member of the board. One voting member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties appoints one voting member who shall be a member of a county legislative authority. The director shall appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The director shall also appoint three nonvoting members representing scientific disciplines relating to weed control. The term of office for all members of the board is three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members serve staggered terms. Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms. Nominations and elections shall be by mail and conducted by the board.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chair and other officers as may be necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The members of the board serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060.

[1997 c 353 § 4; 1987 c 438 § 2; 1975-'76 2nd ex.s. c 34 § 23; 1969 ex.s. c 113 § 3.]

NOTES:

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## RCW 17.10.040 Activation of inactive county noxious weed control board.

An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the county legislative authority shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the county legislative authority to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred registered voters within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of the filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the county legislative authority to activate the county's noxious weed control board and to

appoint members to the board in the manner provided by RCW 17.10.050.

(3) The director, upon request of the state noxious weed control board, shall order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control on the state noxious weed list is confirmed in that county. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed has not been eradicated.

[1997 c 353 § 5; 1987 c 438 § 3; 1975 1st ex.s. c 13 § 2; 1969 ex.s. c 113 § 4.]

## RCW 17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy.

(1) Each activated county noxious weed control board consists of five voting members appointed by the county legislative authority. In appointing the voting members, the county legislative authority shall divide the county into five geographical areas that best represent the county's interests, and appoint a voting member from each geographical area. At least four of the voting members shall be engaged in the primary production of agricultural products. There is one nonvoting member on the board who is the chair of the county extension office or an extension agent appointed by the chair of the county extension office. Each voting member of the board serves a term of four years, except that the county legislative authority shall, when a board is first activated under this chapter, designate two voting members to serve terms of two years. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The voting members of the board serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in the section [geographical area] with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the geographical area with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the geographical area supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and post the names of those nominees in the county courthouse and publish in at least one newspaper of general circulation in the county. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that geographical area during that term of office.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect from its members a chair and other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which the board is located shall appoint a qualified person to fill the vacancy for the unexpired term.

[1997 c 353 § 6; 1987 c 438 § 4; 1980 c 95 § 1; 1977 ex.s. c 26 § 6; 1975 1st ex.s. c 13 § 3; 1974 ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

## RCW 17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations.

(1) Each activated county noxious weed control board shall employ or otherwise provide a weed coordinator whose duties are fixed by the board but which shall include inspecting land to determine the presence of noxious weeds, offering technical assistance and education, and developing a program to achieve compliance with the weed law. The weed coordinator may be employed full time, part time, or seasonally by the county noxious weed control board. County weed board employment practices shall comply with county personnel policies. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent, or lease equipment, facilities, or products and may hire additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board has the power to adopt rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW, as are necessary for an effective county weed control or eradication program.

(3) Each activated county noxious weed control board shall meet with a quorum at least quarterly.

[1997 c 353 § 7; 1987 c 438 § 5; 1969 ex.s. c 113 § 6.]

## RCW 17.10.070 State noxious weed control board—Powers—Report.

(1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it has the power to:

(a) Employ a state noxious weed control board executive secretary, and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts, to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts, and to assist the board in carrying out its responsibilities;

(b) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1st of each odd-numbered year to the county noxious weed control boards and the weed districts showing the expenditure of state funds on noxious weed control; specifically how the funds were spent; the status of the state, county, and district programs; and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control.

[1998 c 245 § 3; 1997 c 353 § 8; 1987 c 438 § 6; 1975 1st ex.s. c 13 § 4; 1969 ex.s. c 113 § 7.]

## RCW 17.10.074 Director—Powers.

(1) In addition to the powers conferred on the director under other provisions of this chapter, the director, with the advice of the state noxious weed control board, has power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, or by one hundred registered voters that are land owners within the county, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in (e) of this subsection involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the weed district does not take action to control the noxious weed infestation in accordance with the order, the director may control it or cause it to be controlled. The county or weed district is liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district. The director may bring a civil action in a court of competent jurisdiction to collect the expenses of the control work, costs, and attorneys' fees;

(g) In counties without an activated noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230 and 17.10.310 through [and] 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board, the administration of the director's powers under this chapter, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation.

[1997 c 353 § 9; 1987 c 438 § 7.]

## RCW 17.10.080 State noxious weed list—Hearing—Adoption—Dissemination.

(1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) Any person may request during a comment period established by the state weed board the inclusion, deletion, or designation change of any plant to the state noxious weed list.

(3) The state noxious weed control board shall send a copy of the list to each activated county noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board.

(4) The record of rule making must include the written findings of the board for the inclusion of each plant on the list. The findings shall be made available upon request to any interested person.

[1997 c 353 § 10; 1989 c 175 § 57; 1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

NOTES:

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 17.10.090 State noxious weed list—Selection of weeds for control by county board.

Each county noxious weed control board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies that it finds necessary to be controlled in the

county. The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds comprise the county noxious weed list.

[1997 c 353 § 11; 1987 c 438 § 9; 1969 ex.s. c 113 § 9.]

## RCW 17.10.100 Order to county board to include weed from state board's list in county's noxious weed list.

Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board or weed district to include a noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for inclusion from an adjacent county's noxious weed control board or weed district, which the adjacent board or district has included that weed in its county list, and the adjacent board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list.

[1997 c 353 § 12; 1987 c 438 § 10; 1969 ex.s. c 113 § 10.]

## RCW 17.10.110 Regional noxious weed control board—Creation.

A regional noxious weed control board comprising the area of two or more counties may be created as follows:

Either the county legislative authority, or the noxious weed control board, or both, of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. The resolution becomes effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board.

[1997 c 353 § 13; 1987 c 438 § 11; 1975 1st ex.s. c 13 § 6; 1969 ex.s. c 113 § 11.]

## RCW 17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards.

In any case where a regional noxious weed control board is created, the county noxious weed control boards comprising the regional board shall still remain in existence and shall retain all powers and duties provided for the boards under this chapter.

The regional noxious weed control board is comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: PROVIDED, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect a chair from its members and other officers as may be necessary. Members of the regional board serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

[1997 c 353 § 14; 1987 c 438 § 12; 1969 ex.s. c 113 § 12.]

## RCW 17.10.130 Regional noxious weed control board—Powers and duties.

The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list that it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take action as may be necessary to coordinate the noxious weed control programs of the region and adopt a regional plan for the control of noxious weeds.

[1997 c 353 § 15; 1987 c 438 § 13; 1969 ex.s. c 113 § 13.]

## RCW 17.10.134 Liability of county and regional noxious weed control boards.

Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board are governed by chapter 4.96 RCW or RCW 4.08.120: PROVIDED, That individual members or employees of a county noxious weed control board are personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment.

[1997 c 353 § 16; 1987 c 438 § 14.]

## RCW 17.10.140 Owner's duty to control spread of noxious weeds.

(1) Except as is provided under subsection (2) of this section, every owner shall perform or cause to be performed those acts as may be necessary to:

   (a) Eradicate all class A noxious weeds;

   (b) Control and prevent the spread of all class B noxious weeds designated for control in that region within and from the owner's property; and

   (c) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner's property.

(2) Forest lands classified under RCW 17.10.240(2), or meeting the definition of forest lands contained in RCW 17.10.240, are subject to the requirements of subsection (1)(a) and (b) of this section at all times. Forest lands are subject to the requirements of subsection (1)(c) of this section only within a one thousand foot buffer strip of adjacent land uses. In addition, forest lands are subject to subsection (1)(c) of this section for a single five-year period following the harvesting of trees for lumber.

[1997 c 353 § 17; 1969 ex.s. c 113 § 14.]

## RCW 17.10.145 State agencies' duty to control spread of noxious weeds.

All state agencies shall control noxious weeds on lands they own, lease, or otherwise control through integrated pest management practices. Agencies shall develop plans in cooperation with county noxious weed control boards to control noxious weeds in accordance with standards in this chapter. All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands.

[1997 c 353 § 18; 1995 c 374 § 75.]

NOTES:

**Effective date—1995 c 374 §§ 69, 70, and 72-79:** See note following RCW 16.24.130.

## RCW 17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement.

It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a period of time. Therefore, it is the intent of this chapter that county noxious weed control boards may use their discretion and, by agreement with the owners of land, may propose and accept plans for prevention, control, and eradication that may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms that will best serve the interests of the owners of the parcel of land and the common welfare that comply with this chapter. Agreements made under this section must include at least a one thousand foot buffer for all adjacent agricultural land uses. Noxious weed control in this buffer must comply with RCW 17.10.140(1).

[1997 c 353 § 19; 1987 c 438 § 16.]

## RCW 17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry.

Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture where not otherwise proscribed by law may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds, general inspection, and the performance of eradication or control work. Prior to carrying out the purpose for which the entry is made, the official making such entry or someone in his or her behalf, shall make a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner refuses permission to inspect the property, a judge of the superior court or district court in the county in which the property is located may, upon the request of the county noxious weed control board or its agent, issue a warrant directed to the board or agent authorizing the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: PROVIDED, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter shall be upon conviction guilty of a misdemeanor.

[1997 c 353 § 20; 1987 c 438 § 17; 1969 ex.s. c 113 § 16.]

## RCW 17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—Lien—Alternative.

(1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner is not taking prompt and sufficient action to control the noxious weeds, pursuant to the provisions of RCW 17.10.140, it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing that is prima facie evidence that proper notice was given. If seed or other propagule dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service, instead of ten days. If a landowner received a notice of violation from the county noxious weed control board in a prior growing season, removal or destruction of all above ground plant parts may be required at the most effective point in the growing season, as determined by the county weed board, which may be before or after propagule dispersion.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230, 17.10.310, and 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of the expense constitutes a lien against the property and may be enforced by proceedings on the lien except as provided for by RCW 79.44.060. The owner is liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the

action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his or her office any lien created under this chapter, and any lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling the weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each lien created be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED, That any collections for the lien shall not be considered as tax.

[1997 c 353 § 21; 1987 c 438 § 18; 1979 c 118 § 1; 1975 1st ex.s. c 13 § 8; 1974 ex.s. c 143 § 3; 1969 ex.s. c 113 § 17.]

## RCW 17.10.180 Hearing on liability for expense of control—Notice—Review.

Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, is entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any charge or cost and as to his or her right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board is subject to judicial review by a proceeding in the superior court in the county in which the property is located, and the court has original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: PROVIDED, That no stay or injunction shall lie to delay any control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210.

[1997 c 353 § 22; 1987 c 438 § 19; 1969 ex.s. c 113 § 18.]

## RCW 17.10.190 Notice and information as to noxious weed control.

Each activated county noxious weed control board must publish annually, and at other times as may be appropriate, in at least one newspaper of general circulation within its area, a general notice. The notice shall direct attention to the need for noxious weed control and give other information concerning noxious weed control requirements as may be appropriate, or indicate where such information may be secured. In addition to the general notice required, the county noxious weed control board may use any appropriate media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. The methods may include some combination of physical, mechanical, cultural, chemical, and/or biological methods, including livestock. Publication of a notice as required by this section is not a condition precedent to the enforcement of this chapter.

[1997 c 353 § 23; 1987 c 438 § 20; 1975 1st ex.s. c 13 § 9; 1969 ex.s. c 113 § 19.]

## RCW 17.10.201 Noxious weed control on federal and tribal lands—State and county cooperation.

(1) The state noxious weed control board shall:

(a) Work with the various federal and tribal land management agencies to coordinate state and federal noxious weed control;

(b) Encourage the various federal and tribal land management agencies to devote more time and resources to noxious weed control; and

(c) Assist the various federal and tribal land management agencies by seeking adequate funding for noxious weed control.

(2) County noxious weed control boards and weed districts shall work with the various federal and tribal land management agencies in each county in order to:

(a) Identify new noxious weed infestations;

(b) Outline and plan necessary noxious weed control actions;

(c) Develop coordinated noxious weed control programs; and

(d) Notify local federal and tribal agency land managers of noxious weed infestations.

(3) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter federal lands, with the approval of the appropriate federal agency, to survey for and control noxious weeds where control measures of a type and extent required under this chapter have not been taken.

(4) The department of agriculture, county noxious weed control boards, and weed districts may bill the federal land management agency that manages the land for all costs of the noxious weed control performed on federal land. If not paid by the federal agency that manages the land, the cost of the noxious weed control on federal land may be paid from any funds available to the county noxious weed control board or weed district that performed the noxious weed control. Alternatively, the costs of noxious weed control on federal land may be paid from any funds specifically appropriated to the department of agriculture for that purpose.

(5) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on federal or tribal lands.

(6) The department of agriculture, county noxious weed control boards, and weed districts shall consult with state agencies managing federal land concerning noxious weed infestation and control programs.

[1997 c 353 § 34.]

## RCW 17.10.205 Control of noxious weeds in open areas.

Open areas subject to the spread of noxious weeds, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights-of-way shall be subject to regulation by activated county noxious weed control boards in the same manner and to the same extent as is provided for all terrestrial and aquatic lands of the state.

[1997 c 353 § 24; 1975 1st ex.s. c 13 § 16.]

## RCW 17.10.210 Quarantine of land—Order—Expense.

(1) Whenever the director, the county noxious weed control board, or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director, the county noxious weed control board, or weed district, with the approval of the director of the department of agriculture, may issue an order for the quarantine and restriction or denial of access or use. Upon issuance of the order, the director, the county noxious weed control board, or the weed district shall commence necessary control measures and may institute legal action for the collection of costs for control work, which may include attorneys' fees and the costs of other appropriate actions.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, is apportioned.

[1997 c 353 § 25; 1987 c 438 § 22; 1969 ex.s. c 113 § 21.]

## RCW 17.10.230 Violations—Penalty.

Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; or any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; or any person who interferes with the carrying out of the provisions of this chapter has committed a civil infraction.

[1987 c 438 § 23; 1979 c 118 § 2; 1969 ex.s. c 113 § 23.]

## RCW 17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees.

(1) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds which shall be controlled in products, screenings, or articles to prevent the spread of noxious weeds. The rules shall identify the products, screenings, and articles in which the seeds must be controlled and the maximum amount of the seed to be permitted in the product, screenings, or article to avoid a hazard of spreading the noxious weed by seed from the product, screenings, or article. The director shall also adopt, with the advice of the state board, rules designating toxic weeds which shall be controlled in feed stuffs and screenings to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs and screenings in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in the feed. Rules developed under this section shall identify ways that products, screenings, articles, or feed stuffs containing noxious weed seeds or toxic weeds can be made available for beneficial uses.

(2) Any person who knowingly or negligently sells or otherwise distributes a product, article, screenings, or feed stuff designated by rule containing noxious weed seeds or toxic weeds designated for control by rule and in an amount greater than the amount established by the director for the seed or weed by rule is guilty of a misdemeanor.

(3) The department of agriculture shall, upon request of the buyer, inspect products, screenings, articles, or feed stuffs designated by rule and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds.

[1997 c 353 § 26; 1987 c 438 § 30; 1979 c 118 § 4.]

## RCW 17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates.

(1) The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: PROVIDED, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in RCW 17.10.890. Control of weeds is a benefit to the lands within any such section. Funding for the budget is derived from any or all of the following:

(a) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control 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 classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, an amount as seems just. The assessment rate shall be either uniform per acre in its respective class 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. The county legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept or modify by resolution, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. The amount of the assessment constitutes a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each lien created be collected by the treasurer in the same manner as delinquent real property tax, if within thirty days from the date the owner is sent notice of

the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for the lien shall not be considered as tax; or

(b) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

(2) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that does not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This assessment shall be computed in accordance with the formula in subsection (3) of this section.

(3) The calculation of the "weighted average per acre noxious weed assessment" is a ratio expressed as follows:

(a) The numerator is the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection (2) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area.

(b) The denominator is the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions:

(i) Unimproved lands are calculated as being one-half acre in size on the average, and

(ii) improved lands are calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

(4) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection (2) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands.

[1997 c 353 § 27; 1995 c 374 § 77; 1987 c 438 § 31; 1975 1st ex.s. c 13 § 10; 1969 ex.s. c 113 § 24.]

NOTES:

**Effective date—1995 c 374 §§ 69, 70, and 72-79:** See note following RCW 16.24.130.

## RCW 17.10.250 Applications for noxious weed control funds.

The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds when informed by the director that funds are available. Any applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account funds.

[1997 c 353 § 28; 1987 c 438 § 32; 1975 1st ex.s. c 13 § 11; 1969 ex.s. c 113 § 25.]

## RCW 17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts.

The administrative powers granted under this chapter to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the water pollution control act, chapter 90.48 RCW, as now or hereafter amended, the Washington pesticide control act, chapter 15.58 RCW, and the Washington pesticide application act, chapter 17.21 RCW.

[1987 c 438 § 33; 1969 ex.s. c 113 § 28.]

## RCW 17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds.

Each noxious weed control board may obtain such insurance or surety bonds, or both with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties.

[1987 c 438 § 34; 1974 ex.s. c 143 § 5.]

## RCW 17.10.280 Lien for labor, material, equipment used in controlling noxious weeds.

Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the owner, or his agent, of such property, or without the consent of said owner or agent.

[1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

## RCW 17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien.

Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equipment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter amended, shall give to the owner or reputed owner or his agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious

weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his place of residence or reputed residence.

[1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

## RCW 17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents.

No lien created by RCW 17.10.280 exists, and no action to enforce the same shall be maintained, unless within ninety days from the date of cessation of the performance of the labor, furnishing of materials, or the supplying of equipment, a claim for the lien is filed for record as provided in this section, in the office of the county auditor of the county in which the property, or some part of the property to be affected by the claim for a lien, is situated. The claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board that performed the labor or caused the labor to be performed, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his or her agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and the claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such an amendment.

[1997 c 353 § 29; 1975 1st ex.s. c 13 § 15.]

## RCW 17.10.310 Notice of infraction—Issuance.

The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. A civil infraction may be issued pursuant to RCW 7.80.005, 7.80.070 through 7.80.110, 7.80.120 (3) and (4), and 7.80.130 through 7.80.900.

[1997 c 353 § 30; 1987 c 438 § 24.]

## RCW 17.10.350 Infraction—Penalty.

(1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is punishable as a misdemeanor.

[2003 c 53 § 117; 1997 c 353 § 31; 1987 c 438 § 28.]

NOTES:

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

## RCW 17.10.890 Deactivation of county noxious weed control board—Hearing.

The following procedures shall be followed to deactivate a county noxious weed control board:

(1) The county legislative authority holds a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

   (a) A petition is filed by one hundred registered voters within the county;

   (b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

   (c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after a hearing, the county legislative authority determines that no need exists for a county noxious weed control board, due to the absence of class A or class B noxious weeds designated for control in the region, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year.

[1997 c 353 § 32; 1987 c 438 § 37.]

## RCW 17.10.900 Weed districts—Continuation—Dissolution—Transfer of assessment funds.

Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, continues to operate under the provisions of the chapter under which it was formed: PROVIDED, That if ten percent of the landowners subject to any such weed district, and the county noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if the weed district will continue to operate under the chapter it was formed. The land area of any dissolved weed district becomes subject to the provisions of this chapter. Any district assessment funds may be transferred after the dissolution election under contract to the county noxious weed control board to fund the noxious weed control program.

[1997 c 353 § 33; 1987 c 438 § 38; 1975 1st ex.s. c 13 § 12; 1969 ex.s. c 113 § 26.]

## RCW 17.10.910 Severability—1969 ex.s. c 113.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected.

[1969 ex.s. c 113 § 27.]

# CHAPTER 17.21 RCW
## WASHINGTON PESTICIDE APPLICATION ACT

### Sections


17.21.010 Declaration of police power and purpose.
17.21.020 Definitions.
17.21.030 Director's authority—Rules.
17.21.040 Rules subject to administrative procedure act.
17.21.050 Hearings—Administrative procedure act.
17.21.060 Subpoenas—Witness fees.
17.21.065 Classification of licenses.
17.21.070 Commercial pesticide applicator license—Requirements.
17.21.080 Commercial pesticide applicator license—Application—Form.
17.21.091 Commercial pesticide applicator license—Persons who may apply under license authority.
17.21.100 Recordkeeping by licensees and agricultural users.
17.21.110 Commercial pesticide operator license—Requirements.
17.21.122 Private-commercial pesticide applicator license—Requirements.
17.21.126 Private applicator, limited private applicator, or rancher private applicator—Requirements—Application for license—Fees.
17.21.128 Renewal of certificate or license—Recertification standards.
17.21.129 Demonstration and research license—Requirements.
17.21.130 Revocation, suspension, or denial.
17.21.132 License, certification—Applications—Expiration dates.
17.21.134 Licenses—Examination requirements.
17.21.140 Renewal—Delinquency.
17.21.150 Violation of chapter—Unlawful acts.
17.21.160 Commercial pesticide applicator license—Financial responsibility.
17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer.
17.21.180 Commercial pesticide applicator license—Suspension of license for failure to meet financial responsibility criteria.
17.21.190 Damages due to use or application of pesticide—Report of loss required.
17.21.200 Commercial pesticide applicator license—Exemptions.
17.21.203 Government research personnel—Requirements.
17.21.220 Application of chapter to governmental entities—Public operator license required—Exemption—Liability.
17.21.280 Disposition of revenue, enforcement of chapter—District court fees, fines, penalties and forfeitures.
17.21.290 Pesticide application apparatuses—License plate as identification.
17.21.300 Agreements with other governmental entities.
17.21.305 Licensing by cities of first class and counties.
17.21.310 General penalty.
17.21.315 Civil penalty for failure to comply with chapter.
17.21.320 Access to public or private premises—Search warrants—Prosecuting attorney's duties—Injunctions.
17.21.340 Violation of chapter—Remedies.
17.21.350 Report to legislature.
17.21.400 Landscape or right-of-way applications—Notice.
17.21.410 Landscape applications—Marking of property, posting requirements.
17.21.415 Schools—Policies and methods—Notification—Records—Liability.
17.21.420 Pesticide-sensitive individuals—List procedure.
17.21.430 Pesticide-sensitive individuals—Notification.
17.21.440 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of labor and industries.
17.21.900 Preexisting liabilities not affected.
17.21.920 Short title.
17.21.930 Severability—1961 c 249.
17.21.931 Severability—1967 c 177.
17.21.932 Severability—1979 c 92.
17.21.933 Severability—1989 c 380.


### RCW 17.21.010 Declaration of police power and purpose.

The application and the control of the use of various pesticides 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 affected with the public interest. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state.

[1967 c 177 § 1; 1961 c 249 § 1.]

**NOTES:**

Washington pesticide control act: Chapter 15.58 RCW.

### RCW 17.21.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "Antimicrobial pesticide" means a pesticide that is used for the control of microbial pests, including but not limited to viruses, bacteria, algae, and protozoa, and is intended for use as a disinfectant or sanitizer.

(4) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(5) "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.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, private applicator, limited private applicator, rancher private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(7) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(8) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(9) "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.

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

(11) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(12) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(13) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application. However, direct supervision for forest application does not require constant voice and visual contact when general use pesticides are applied using nonapparatus type equipment, the certified applicator is physically present and readily available in the immediate application area, and the certified applicator directly observes pesticide mixing and batching. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(14) "Director" means the director of the department or a duly authorized representative.

(15) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(16) "EPA" means the United States environmental protection agency.

(17) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(18) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(19) "Forest application" means the application of pesticides to agricultural land used to grow trees for the commercial production of wood or wood fiber for products such as dimensional lumber, shakes, plywood, poles, posts, pilings, particle board, hardboard, oriented strand board, pulp, paper, cardboard, or other similar products.

(20) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(21) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

(22) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(23) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

(24) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

(25) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply 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.

(26) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

(27) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

(28) "Landscape application" means an application of any EPA registered pesticide to any exterior landscape area around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to:

(a) Applications made by private applicators, limited private applicators, or rancher private applicators;

(b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and

(c) commercial pesticide applicators making structural applications.

(29) "Limited private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide classified by the

EPA or the director as a restricted use pesticide, for the sole purpose of controlling weeds on nonproduction agricultural land owned or rented by the applicator or the applicator's employer. Limited private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A limited private applicator may apply restricted use herbicides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(30) "Limited production agricultural land" means land used to grow hay and grain crops that are consumed by the livestock on the farm where produced. No more than ten percent of the hay and grain crops grown on limited production agricultural land may be sold each crop year. Limited production agricultural land does not include aquatic sites.

(31) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(32) "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. Nematodes may also be called nemas or eelworms.

(33) "Nonproduction agricultural land" means pastures, rangeland, fencerows, and areas around farm buildings but not aquatic sites.

(34) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(35) "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, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

(36) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant as defined in RCW 15.58.030.

(37) "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 shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(38) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(39) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

(40) "Rancher private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide or any rodenticide classified by the EPA or the director as a restricted use pesticide for the purpose of controlling weeds and pest animals on nonproduction agricultural land and limited production agricultural land owned or rented by the applicator or the applicator's employer. Rancher private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A rancher private applicator may apply restricted use herbicides and rodenticides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(41) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

(42) "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.

(43) "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.

(44) "School facility" means any facility used for licensed day care center purposes or for the purposes of a public kindergarten or public elementary or secondary school. School facility includes the buildings or structures, playgrounds, landscape areas, athletic fields, school vehicles, or any other area of school property.

(45) "Snails or slugs" include all harmful mollusks.

(46) "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.

(47) "Weed" means any plant which grows where it is not

wanted.

[2010 1st sp.s. c 7 § 134; 2004 c 100 § 1; 2002 c 122 § 2; (2002 c 122 § 1 expired July 1, 2002); 2001 c 333 § 1; 1994 c 283 § 1; 1992 c 176 § 1; 1989 c 380 § 33; 1979 c 92 § 1; 1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

NOTES:

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Effective date—2004 c 100:** "This act takes effect January 1, 2005."

[2004 c 100 § 7.]

**Effective dates—2002 c 122:** "(1) Section 1 of 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 26, 2002].

(2) Section 2 of this act takes effect July 1, 2002."

[2002 c 122 § 3.]

**Expiration date—2002 c 122 § 1:** "Section 1 of this act expires July 1, 2002."

[2002 c 122 § 4.]

**Effective date—2001 c 333:** "Except for *section 7 of this act, this act takes effect July 1, 2002."

[2001 c 333 § 6.]

***Reviser's note:** Section 7 of this act was vetoed.

## RCW 17.21.030 Director's authority—Rules.

The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter.

(1) The director may adopt rules:

(a) Governing the loading, mixing, application and use, or prohibiting the loading, mixing, application, or use of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas as prescribed by the director in the state;

(c) Providing 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 of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit;

(d) Establishing recordkeeping requirements for licensees, permittees, and certified applicators;

(e) Fixing and collecting examination fees and fees for recertification course sponsorship;

(f) Establishing testing procedures, licensing classifications, and requirements for licenses and permits, and criteria for assigning recertification credit to and procedures for department approval of courses as provided by this chapter;

(g) Concerning training by employers for employees who mix and load pesticides;

(h) Concerning minimum performance standards for spray boom and nozzles used in pesticide applications to minimize spray drift and establishing a list of approved spray nozzles that meet these standards; and

(i) Fixing and collecting permit fees.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter.

[1994 c 283 § 2; 1989 c 380 § 34; 1987 c 45 § 26; 1979 c 92 § 2; 1961 c 249 § 3.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 17.21.040 Rules subject to administrative procedure act.

All rules adopted under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended, concerning the adoption of rules.

[1989 c 380 § 35; 1961 c 249 § 4.]

## RCW 17.21.050 Hearings—Administrative procedure act.

All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license, certification, or permit issued under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings.

[1994 c 283 § 3. Prior: 1989 c 380 § 36; 1989 c 175 § 58; 1985 c 158 § 4; 1961 c 249 § 5.]

NOTES:

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 17.21.060 Subpoenas—Witness fees.

The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certification, 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.

[1994 c 283 § 4; 1961 c 249 § 6.]

## RCW 17.21.065 Classification of licenses.

The director may classify licenses to be issued under the provisions of this chapter. These classifications may include but are not limited to pest control operators, ornamental sprayers, agricultural crop sprayers or right-of-way sprayers; separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides.

Each such classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section, except as provided for in RCW 17.21.110.

[1994 c 283 § 5; 1967 c 177 § 17.]

## RCW 17.21.070 Commercial pesticide applicator license—Requirements.

It is unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for a commercial applicator license must be accompanied by a fee of two hundred fifteen dollars and in addition a fee of twenty-seven dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides.

[2008 c 285 § 21; 1997 c 242 § 11; 1994 c 283 § 6; 1993 sp.s. c 19 § 4; 1991 c 109 § 30; 1989 c 380 § 37; 1981 c 297 § 21; 1967 c 177 § 3; 1961 c 249 § 7.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 17.21.080 Commercial pesticide applicator license—Application—Form.

Application for a commercial pesticide applicator license provided

for in RCW 17.21.070 shall be on a form prescribed by the director.

(1) The application shall include the following information:

(a) The full name of the individual applying for such license.

(b) The full name of the business the individual represents with the license.

(c) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or any other organized group of persons whether incorporated or not, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group.

(d) The principal business address of the applicant in the state or elsewhere.

(e) The name of a person whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(f) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(g) License classification or classifications for which the applicant is applying.

(h) A list of the names of individuals allowed to apply pesticides under the authority of the commercial applicator's license.

(i) Any other necessary information prescribed by the director.

(2) Any changes to the information provided on the prescribed commercial applicator form shall be reported by the business to the department within thirty days of the change.

[1994 c 283 § 7; 1989 c 380 § 38; 1967 c 177 § 4; 1961 c 249 § 8.]

## RCW 17.21.091 Commercial pesticide applicator license—Persons who may apply under license authority.

(1) No commercial pesticide applicator shall allow a person to apply pesticides under the authority of the commercial pesticide applicator's license unless the commercial pesticide applicator has, by mail or facsimile transmissions, submitted the name to the department on a form prescribed by the department as provided in RCW 17.21.080(2). The department shall maintain a list for each commercial pesticide applicator of persons authorized to apply pesticides under the authority of the commercial pesticide applicator's license.

(2) Violations of this chapter by a person acting as an employee, agent, or otherwise acting on behalf of or under the license authority of a commercial pesticide applicator, may, in the discretion of the department, be treated as a violation by the commercial pesticide applicator.

[1994 c 283 § 8.]

## RCW 17.21.100 Recordkeeping by licensees and agricultural users.

(1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

(a) The location of the land where the pesticide was applied;

(b) The year, month, day and beginning and ending time of the application of the pesticide each day the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which the pesticide was applied;

(h) The licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application and their license number, if applicable;

(i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director in rule.

(2) (a) The required information shall be recorded on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed pesticide applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4) (a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the

department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; the *pesticide incident reporting and tracking review panel; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section.

[1994 c 283 § 9; 1992 c 173 § 1; 1989 c 380 § 39; 1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

NOTES:

***Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

**Effective dates—1992 c 173:** "(1) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1992].

(2) Section 4 of this act shall take effect January 1, 1993."

[1992 c 173 § 5.]

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 17.21.110 Commercial pesticide operator license—Requirements.

It is unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license is in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license must be accompanied by a fee of sixty-seven dollars. This section does not apply to any individual who is a licensed commercial pesticide applicator.

[2008 c 285 § 22; 1997 c 242 § 12; 1994 c 283 § 10; 1993 sp.s. c 19 § 5; 1992 c 170 § 5; 1991 c 109 § 31; 1989 c 380 § 40; 1981 c 297 § 22; 1967 c 177 § 6; 1961 c 249 § 11.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 17.21.122 Private-commercial pesticide applicator license—Requirements.

It is unlawful for any person to act as a private-commercial pesticide applicator without having obtained a private-commercial pesticide applicator license from the director. Application for a private-commercial pesticide applicator license must be accompanied by a fee of thirty-three dollars.

[2008 c 285 § 23; 1997 c 242 § 13; 1994 c 283 § 11; 1993 sp.s. c 19 § 6; 1992 c 170 § 6; 1991 c 109 § 32; 1989 c 380 § 41; 1979 c 92 § 6.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

## RCW 17.21.126 Private applicator, limited private applicator, or rancher private applicator—Requirements—Application for license—Fees.

It is unlawful for any person to act as a private applicator, limited private applicator, or rancher private applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private applicator, limited private applicator, or rancher private applicator is certified must be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director must take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) Application for a private applicator or a limited private applicator license must be accompanied by a fee of thirty-three dollars. Application for a rancher private applicator license must be accompanied by a fee of one hundred dollars. Individuals with a valid certified applicator license,

pest control consultant license, or dealer manager license who qualify in the appropriate statewide or agricultural license categories are exempt from the private applicator, limited private applicator, or rancher private applicator fee requirements. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the fee requirements under this subsection.

[2008 c 285 § 24; 2004 c 100 § 2; 1997 c 242 § 14; 1994 c 283 § 12; 1993 sp.s. c 19 § 7; 1992 c 170 § 7; 1991 c 109 § 33; 1989 c 380 § 42; 1979 c 92 § 8.]

NOTES:

**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.

**Effective date—2004 c 100:** See note following RCW 17.21.020.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

## RCW 17.21.128 Renewal of certificate or license—Recertification standards.

(1) The director may renew any certification or license issued under authority of 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 apply pesticides.

(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) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits.

(i) Private applicators shall accumulate a minimum of twenty department-approved credits every five years with no more than ten credits allowed per year;

(ii) Limited private applicators shall accumulate a minimum of eight department-approved credits every five years. All credits must be applicable to the control of weeds with at least one-half of the credits directly related to weed control and the remaining credits in topic areas indirectly related to weed control, such as the safe and legal use of pesticides;

(iii) Rancher private applicators shall accumulate a minimum of twelve department-approved credits every five years;

(iv) All other license types established 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) Certified pesticide applicators 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 may waive the requirements identified in subsection (2) of this section if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency approved government agency plan.

[2005 c 397 § 1; 2004 c 100 § 3; 1994 c 283 § 13; 1986 c 203 § 9; 1979 c 92 § 9.]

NOTES:

**Effective date—2004 c 100:** See note following RCW 17.21.020.

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 17.21.129 Demonstration and research license—Requirements.

Except as provided in RCW 17.21.203, it is unlawful for a person to use or supervise the use of any experimental use pesticide or any restricted use pesticide on small experimental plots for research purposes when no charge is made for the pesticide and its application without a demonstration and research applicator's license.

(1) Application for a demonstration and research license must be accompanied by a fee of thirty-three dollars.

(2) Persons licensed under this section are exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180.

[2008 c 285 § 25; 1997 c 242 § 15; 1994 c 283 § 14; 1993 sp.s. c 19 § 8; 1992 c 170 § 8; 1991 c 109 § 34; 1989 c 380 § 43; 1987 c 45 § 30; 1981 c 297 § 26.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 17.21.130 Revocation, suspension, or denial.

Any license, permit, or certification provided for in this chapter may be revoked or suspended, and any license, permit, or certification application may be denied by the director for cause. If the director suspends a license under this chapter with respect to activity of a continuing nature under chapter 34.05 RCW, the director may elect to suspend the license for a subsequent license year during a period that coincides with the period commencing thirty days before and ending thirty days after the date of the incident or incidents giving rise to the violation.

The director shall immediately suspend the license or certificate of a person who 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 or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 58 § 877; 1994 c 283 § 15; 1989 c 380 § 46; 1986 c 203 § 10; 1961 c 249 § 13.]

NOTES:

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 17.21.132 License, certification—Applications—Expiration dates.

Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director.

(1) The application shall state the license or certification and the classification(s) for which the applicant is applying and the method in which the pesticides are to be applied.

(2) For all classes of licenses except private applicator, limited private applicator, and rancher private applicator, all applicants shall be at least eighteen years of age on the date that the application is made. Applicants for a private applicator, limited private applicator, or rancher private applicator license shall be at least sixteen years of age on the date that the application is made.

(3) Application for a license to apply pesticides shall be accompanied by the required fee. No license may be issued until the required fee has been received by the department.

(4) Each classification of license issued under this chapter except the limited private applicator and the rancher private applicator expires annually on a date set by rule by the director. Limited and rancher private applicator licenses expire on the fifth December 31st after issuance. Renewal applications shall be filed on or before the applicable expiration date.

[2004 c 100 § 4; 1997 c 242 § 16; 1994 c 283 § 16; 1991 c 109 § 35; 1989 c 380 § 44.]

NOTES:

**Effective date—2004 c 100:** See note following RCW 17.21.020.

## RCW 17.21.134 Licenses—Examination requirements.

(1) The director shall not issue a commercial pesticide applicator license until the applicant, if he or she is the sole owner and manager of the business has passed examinations in all classifications that the business operates. If there is more than one owner or the owner does not participate in the pesticide application activities, the person managing the pesticide application activities of the business shall be licensed in all classifications that the business operates. The director shall not issue a commercial pesticide operator, public operator, private commercial applicator, or demonstration and research applicator license until the applicant has passed an examination demonstrating knowledge of:

(a) How to apply pesticides under the classification for which he or she has applied, manually or with the various apparatuses that he or she may operate;

(b) The nature and effect of pesticides he or she may apply under such classifications; and

(c) Any other matter the director determines to be a necessary subject for examination.

(2) The director shall charge an examination fee established by rule when an examination is necessary before a license may be issued or when application for such license and examination is made at other than a regularly scheduled examination date.

(3) The director may prescribe separate testing procedures and requirements for each license.

[1994 c 283 § 17; 1989 c 380 § 45.]

## RCW 17.21.140 Renewal—Delinquency.

(1) If the application for renewal of any license provided for in this chapter is not filed on or prior to the expiration date of the license under this chapter or as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license and the rancher private applicator license, and a penalty equivalent to the license fee for any other license, shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. However, the 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.

(2) Any license for which a timely 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.

[2004 c 100 § 5; 1991 c 109 § 36; 1989 c 380 § 47; 1961 c 249 § 14.]

NOTES:

**Effective date—2004 c 100:** See note following RCW 17.21.020.

## RCW 17.21.150 Violation of chapter—Unlawful acts.

A person who has committed any of the following acts is declared to be in violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Applied worthless or improper pesticides;

(3) Operated a faulty or unsafe apparatus;

(4) Operated in a faulty, careless, or negligent manner;

(5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director including a final order of the director directing payment of a civil penalty. In an adjudicative proceeding arising from the department's denial of a license for failure to pay a civil penalty the subject shall be limited to whether the payment was made and the proceeding may not be used to collaterally attack the final order;

(6) Refused or neglected to keep and maintain the pesticide application records required by rule, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Acted as a certified applicator without having provided direct supervision to an unlicensed person as defined in *RCW 17.21.020(12);

(9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;

(10) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Knowingly made false, misleading or erroneous statements or reports during or after an inspection concerning any

infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;

(14) Impersonated any state, county or city inspector or official;

(15) Applied a restricted use pesticide without having a certified applicator in direct supervision;

(16) Operated a commercial pesticide application business: (a) Without an individual licensed as a commercial pesticide applicator or (b) with a licensed commercial pesticide applicator not licensed in the classification or classifications in which the business operates; or

(17) Operated as a commercial pesticide applicator without meeting the financial responsibility requirements including not having a properly executed financial responsibility insurance certificate or surety bond form on file with the department.

[1994 c 283 § 18; 1989 c 380 § 48; 1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

NOTES:

***Reviser's note:** RCW 17.21.020 was amended by 2001 c 333 § 1, changing subsection (12) to subsection (13).

## RCW 17.21.160 Commercial pesticide applicator license—Financial responsibility.

The director shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility.

(1) Evidence of financial responsibility shall consist of either a surety bond; or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant. The surety bond or liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. The director shall not accept a surety bond or liability insurance policy except from authorized insurers in this state or if placed as a surplus line as provided for in chapter 48.15 RCW.

(2) Evidence of financial responsibility shall be supplied to the department on a financial responsibility insurance certificate or surety bond form (blank forms supplied by the department to the applicant).

[1994 c 283 § 19; 1989 c 380 § 49; 1967 c 177 § 9; 1961 c 249 § 16.]

## RCW 17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer.

The following requirements apply to the amount of bond or insurance required for commercial applicators:

(1) The amount of the surety bond or liability insurance, as provided for in RCW 17.21.160, shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period.

(2) The property damage portion of this requirement may be waived by the director if it can be demonstrated by the applicant that all applications performed under this license occur under confined circumstances and on property owned or leased by the applicant.

(3) 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 liability 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 bond or liability insurance policy. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

[1994 c 283 § 20; 1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

## RCW 17.21.180 Commercial pesticide applicator license—Suspension of license for failure to meet financial responsibility criteria.

The commercial pesticide applicator license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170 or whenever the commercial applicator has not supplied evidence of financial responsibility, as required by RCW 17.21.160 and 17.21.170, by the expiration date of the previous policy or surety bond, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170. In addition, the director may pick up such licensee's license plates during such period of automatic suspension and return them only at such time as the licensee has furnished written proof that he or she is in compliance with the provisions of RCW 17.21.170.

[1994 c 283 § 21; 1989 c 380 § 50; 1987 c 45 § 31; 1967 c 177 § 11; 1961 c 249 § 18.]

NOTES:

**Construction—Severability—1987 c 45:** See notes following RCW 15.54.270.

## RCW 17.21.190 Damages due to use or application of pesticide—Report of loss required.

Any person suffering property loss or damage resulting from the use or application by others of any pesticide shall file with the director a verified report of loss.

(1) The report shall set forth, so far as known to the claimant, the following:

(a) The name and address of the claimant;

(b) The type, kind, property alleged to be injured or damaged;

(c) The name of the person applying the pesticide and allegedly responsible; and

(d) The name of the owner or occupant of the property for whom such application of the pesticide was made.

(2) The report shall be filed within thirty days from the time that the property loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report shall be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department shall establish time periods by rule to determine

investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the damage.

(3) Any person filing a report of loss under this section shall cooperate with the department in conducting an investigation of such a report and shall provide the department or authorized representatives of the department access to any affected property and any other necessary information relevant to the report. If a claimant refuses to cooperate with the department, the report shall not be acted on by the department.

(4) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(5) The failure to file a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one suffering loss from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to act upon the complaint.

[1994 c 283 § 22; 1991 c 263 § 1; 1989 c 380 § 51; 1961 c 249 § 19.]

## RCW 17.21.200 Commercial pesticide applicator license—Exemptions.

The provisions of this chapter relating to commercial pesticide applicator licenses and requirements for their issuance shall not apply to:

(1) Any forest landowner, or his or her employees, applying pesticides with ground apparatus or manually, on his or her own lands or any lands or rights-of-way under his or her control; or

(2) Any farmer owner of ground apparatus applying pesticides for himself or herself or if applied on an occasional basis not amounting to a principal or regular occupation without compensation other than trading of personal services between producers of agricultural commodities on the land of another person; or

(3) Any grounds maintenance person conducting grounds maintenance on an occasional basis not amounting to a regular occupation; or

(4) Persons who apply pesticides as an incidental part of their business, such as dog grooming services or such other businesses as shall be identified by the director.

However, persons exempt under this section shall not use restricted use pesticides and shall not advertise or publicly hold themselves out as pesticide applicators.

[1994 c 283 § 23; 1992 c 170 § 9; 1989 c 380 § 52; 1979 c 92 § 3; 1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

## RCW 17.21.203 Government research personnel—Requirements.

The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in their official capacities, however when such persons are applying restricted use pesticides, they shall be licensed as public operators.

[1994 c 283 § 24; 1981 c 297 § 23; 1979 c 92 § 4; 1971 ex.s. c 191 § 9.]

NOTES:

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 17.21.220 Application of chapter to governmental entities—Public operator license required—Exemption—Liability.

(1) All state agencies, municipal corporations, and public utilities or any other governmental agencies are subject to this chapter and its rules.

(2) It is unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any restricted use pesticide, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. Application for a public operator license must be accompanied by a fee of thirty-three dollars. The fee does not apply to public operators licensed and working in the health vector field. The public operator license is valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides that are not restricted use pesticides to control pests other than weeds.

(4) Agencies, municipal corporations, and public utilities are subject to legal recourse by any person damaged by such application of any pesticide, and action may be brought in the county where the damage or some part of the damage occurred.

[2008 c 285 § 26; 1997 c 242 § 17; 1994 c 283 § 25; 1993 sp.s. c 19 § 9; 1991 c 109 § 37; 1989 c 380 § 53; 1986 c 203 § 11; 1981 c 297 § 24; 1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

NOTES:

**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.

**Effective date—1997 c 242:** See note following RCW 15.58.070.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 17.21.280 Disposition of revenue, enforcement of chapter—District court fees, fines, penalties and forfeitures.

(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 the agricultural local fund, RCW 43.23.230, for use exclusively in the enforcement of this chapter.

(2) All moneys collected for civil penalties levied under RCW 17.21.315 shall be deposited in the state general 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.

[1997 c 242 § 18; 1994 c 283 § 29; 1989 c 380 § 59; 1987 c 202 § 183; 1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

NOTES:

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

## RCW 17.21.290 Pesticide application apparatuses—License plate as identification.

All licensed apparatuses shall be identified by a license plate furnished by the director, at no cost to the licensee, which plate shall be affixed in a location and manner upon such apparatus as prescribed in rule.

[1994 c 283 § 30; 1989 c 380 § 60; 1967 c 177 § 15; 1961 c 249 § 29.]

## RCW 17.21.300 Agreements with other governmental entities.

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.

[1961 c 249 § 30.]

## RCW 17.21.305 Licensing by cities of first class and counties.

The provisions of this chapter requiring all structural pest control operators, exterminators and fumigators to license with the department shall not preclude a city of the first class with a population of one hundred thousand people or more, or the county in which it is situated, from also licensing structural pest control operators, exterminators and fumigators operating within the territorial confines of said city or county: PROVIDED, That when structural pest control operators, exterminators and fumigators are licensed by both the city of the first class and the county in which the city is situated, and there exists a joint county-city health department, then the joint county-city health department may enforce the provisions of the city and county as to the license requirements for the structural pest control operators, exterminators and fumigators.

[1986 c 203 § 12; 1967 c 177 § 19.]

NOTES:

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 17.21.310 General penalty.

(1) Except as provided in subsection (2) of this section, any person who violates any provisions or requirements of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent offense is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

[2003 c 53 § 118; 1967 c 177 § 16; 1961 c 249 § 34.]

NOTES:

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

## RCW 17.21.315 Civil penalty for failure to comply with chapter.

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 § 61; 1985 c 158 § 3.]

## RCW 17.21.320 Access to public or private premises—Search warrants—Prosecuting attorney's duties—Injunctions.

(1) For purpose of carrying out the provisions of this chapter the director may enter upon any public or private premises at reasonable times, in order:

(a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored;

(b) To inspect lands actually or reported to be exposed to pesticides;

(c) To inspect storage or disposal areas;

(d) To inspect or investigate complaints of injury to humans or land; or

(e) To sample pesticides being applied or to be applied.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

(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.

(4) 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 the superior court of the county in which such violation occurs or is about to occur.

[1989 c 380 § 62; 1971 ex.s. c 191 § 10.]

## RCW 17.21.340 Violation of chapter—Remedies.

(1) A person aggrieved by a violation of this chapter or the rules adopted under this chapter:

(a) May request an inspection of the area in which the violation is believed to have occurred. If there are reasonable grounds to believe that a violation has occurred, the department shall conduct an inspection as soon as practicable. However, the director may refuse to act on a request for inspection concerning only property loss or damage if the person suffering property damage fails to file a timely report of loss under RCW 17.21.190. If an inspection is conducted, the person requesting the inspection shall:

(i) Be promptly notified in writing of the department's decision concerning the assessment of any penalty pursuant to the inspection; and

(ii) Be entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to this chapter: PROVIDED, That in any appeal proceeding the identity of the aggrieved person who requests the inspection shall be disclosed to the alleged violator of the act upon request of the alleged violator;

(b) Shall be notified promptly, on written application to the director, of any penalty or other action taken by the department pursuant to an investigation of the violation under this chapter; and

(c) May request, within ten days from the service of a

final order fixing a penalty for the violation, that the director reconsider the entire matter if it is alleged that the penalty is inappropriate. If the person is aggrieved by a decision of the director on reconsideration, the person may request an adjudicative proceeding under chapter 34.05 RCW. However, the procedures for a brief adjudicative proceeding may not be used unless agreed to by the person requesting the adjudicative proceeding. During the adjudicative proceeding under (c) of this subsection, the presiding officer shall consider the interests of the person requesting the adjudicative proceeding.

(2) 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 § 63.]

## RCW 17.21.350 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:

(1) A review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and

(2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information.

[1997 c 242 § 19; 1989 c 380 § 64.]

## RCW 17.21.400 Landscape or right-of-way applications—Notice.

(1) (a) A certified applicator making a landscape application shall display the name and telephone number of the applicator or the applicator's employer on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(b) A certified applicator making a right-of-way application shall display the name and telephone number of the applicator or the applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION" on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(2) If a certified applicator receives a written request for information on a landscape or right-of-way spray application, the applicator shall provide the requestor with the name or names of each pesticide applied and (a) a copy of the material safety data sheet for each pesticide; or (b) a pesticide fact sheet for each pesticide as developed or approved by the department.

(3) The director shall adopt rules establishing the size and lettering requirements of the apparatus display signs required under this section.

[1994 c 283 § 32; 1992 c 176 § 2.]

## RCW 17.21.410 Landscape applications—Marking of property, posting requirements.

(1) A certified applicator making a landscape application to:

(a) Residential property shall at the time of the application place a marker at the usual point of entry to the property. If the application is made to an isolated spot that is not a substantial portion of the property, the applicator shall only be required to place a marker at the application site. If the application is in a fenced or otherwise isolated backyard, no marker is required.

(b) Commercial properties such as apartments or shopping centers shall at the time of application place a marker in a conspicuous location at or near each site being treated.

(c) A golf course shall at the time of the application place a marker at the first tee and tenth tee or post the information in a conspicuous location such as on a central message board.

(d) A school, nursery school, or licensed day care shall at the time of the application place a marker at each primary point of entry to the school grounds. A school employee making an application to a school facility shall comply with the posting requirements in RCW 17.21.415.

(e) A park, cemetery, rest stop, or similar property as may be defined in rule shall at the time of the application place a marker at each primary point of entry.

(2) An individual making a landscape application to a school grounds, nursery school, or licensed day care, and not otherwise covered by subsection (1) of this section, shall at the time of the application place a marker at each primary point of entry to the school grounds.

(3) The marker shall be a minimum of four inches by five inches. It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. Larger size requirements for markers may be established in rule for specific applications. The company name and service mark shall be included between the headline and the footer on a marker placed by a commercial applicator. The applicator's telephone number where information can be obtained about the application shall be included in the footer of the marker. Markers shall be printed in colors contrasting to the background.

(4) The property owner or tenant shall remove the marker according to the schedule established in rule. A certified applicator or individual who complies with this section is not liable for the removal of markers by unauthorized persons or removal outside the designated removal time.

(5) A certified applicator or individual who complies with this section cannot be held liable for personal property damage or bodily injury resulting from markers that are placed as required.

[2001 c 333 § 2; 1994 c 283 § 33; 1992 c 176 § 5.]

NOTES:

**Effective date—2001 c 333:** See note following RCW 17.21.020.

## RCW 17.21.415 Schools—Policies and methods—Notification—Records—Liability.

(1) As used in this section, "school" means a licensed day care center or a public kindergarten or a public elementary or secondary school.

(2) A school shall provide written notification, upon request, to parents or guardians of students and employees describing the school's pest control policies and methods, including the posting and notification requirements of this section.

(3) A school shall establish a notification system that, as a minimum, notifies interested parents or guardians of students and employees at least forty-eight hours before a pesticide application to a school facility. The notification system shall include posting of the notification in a prominent place in the main office of the school.

(4) All notifications to parents, guardians, and employees shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

(a) The product name of the pesticide to be applied;

(b) The intended date and time of application;

(c) The location to which the pesticide is to be applied;

(d) The pest to be controlled; and

(e) The name and phone number of a contact person at the school.

(5) A school facility application must be made within forty-eight hours following the intended date and time stated in the notification or the notification process shall be repeated.

(6) A school shall, at the time of application, post notification signs for all pesticide applications made to school facilities unless the application is otherwise required to be posted by a certified applicator under the provisions of RCW 17.21.410(1)(d).

(a) Notification signs for applications made to school grounds by school employees shall be placed at the location of the application and at each primary point of entry to the school grounds. The signs shall be a minimum of four inches by five inches and shall include the words: "THIS LANDSCAPE HAS BEEN RECENTLY SPRAYED OR TREATED WITH PESTICIDES BY YOUR SCHOOL" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The footer shall provide the name and telephone number of a contact person at the school.

(b) Notification signs for applications made to school facilities other than school grounds shall be posted at the location of the application. The signs shall be a minimum of eight and one-half by eleven inches and shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

(i) The product name of the pesticide applied;

(ii) The date and time of application;

(iii) The location to which the pesticide was applied;

(iv) The pest to be controlled; and

(v) The name and phone number of a contact person at the school.

(c) Notification signs shall be printed in colors contrasting to the background.

(d) Notification signs shall remain in place for at least twenty-four hours from the time the application is completed. In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the notification sign shall remain in place consistent with the restricted entry interval time as required by the label.

(7) A school facility application does not include the application of antimicrobial pesticides or the placement of insect or rodent baits that are not accessible to children.

(8) The prenotification requirements of this section do not apply if the school facility application is made when the school is not occupied by students for at least two consecutive days after the application.

(9) The prenotification requirements of this section do not apply to any emergency school facility application for control of any pest that poses an immediate human health or safety threat, such as an application to control stinging insects. When an emergency school facility application is made, notification consistent with the school's notification system shall occur as soon as possible after the application. The notification shall include information consistent with subsection (6)(b) of this section.

(10) A school shall make the records of all pesticide applications to school facilities required under this chapter, including an annual summary of the records, readily accessible to interested persons.

(11) A school is not liable for the removal of signs by unauthorized persons. A school that complies with this section may not be held liable for personal property damage or bodily injury resulting from signs that are placed as required.

[2009 c 556 § 16; 2001 c 333 § 3.]

NOTES:

**Effective date—2001 c 333:** See note following RCW 17.21.020.

## RCW 17.21.420 Pesticide-sensitive individuals—List procedure.

(1) The department shall develop a list of pesticide-sensitive individuals. The list shall include any person with a documented pesticide sensitivity who submits information to the department on an application form developed by the department indicating the person's pesticide sensitivity.

(2) An applicant for inclusion on the pesticide-sensitive list may apply to the department at any time and shall provide the department, on the department's form, the name, street address, and telephone number of the applicant and of each property owner with property abutting the applicant's principal place of residence. The pesticide sensitivity of an individual shall be certified by a physician who holds a valid license to practice medicine in this state. The lands listed on an application for inclusion on the pesticide-sensitive list shall constitute the pesticide notification area for that applicant. For highway or road rights-of-way, a property abutting shall mean that portion of the property within one-half mile of the principal place of residence.

(3) A person whose name has been included on the pesticide-sensitive list shall notify the department of a need to update

the list as soon as possible after:

(a) A change of address or telephone number;

(b) a change in ownership of property abutting a pesticide-sensitive individual;

(c) a change in the applicant's condition; or

(d) the sensitivity is deemed to no longer exist.

(4) The pesticide-sensitive list shall expire on December 31 of each year. The department shall distribute application forms for the new list at a reasonable time prior to the expiration of the current list, including mailing an application form to each person on the current list at the address given by the person in his or her most recent application. Persons desiring to be placed on or remain on the list shall submit a new application each year.

(5) The department shall distribute the list by January 1 and June 15 of each year to all certified applicators likely to make landscape applications. The list shall provide multiple methods of accessing the information so that certified applicators making landscape applications or right-of-way applications are able to easily determine what properties and individuals require notification for a specific application. An updated list shall be distributed whenever deemed necessary by the department. Certified applicators may request a list of newly registered individuals that have been added to the list since the last distribution. Registered individuals shall receive verification that their name has been placed on the list.

[1994 c 283 § 34; 1992 c 176 § 3.]

## RCW 17.21.430 Pesticide-sensitive individuals—Notification.

(1) A certified applicator making a landscape application or a right-of-way application to the pesticide notification area, as defined in RCW 17.21.420(2), of a person on the pesticide-sensitive list shall notify the listed pesticide-sensitive individual of the application. Notification shall be made at least two hours prior to the scheduled application, or in the case of an immediate service call, the applicator shall provide notification at the time of the application.

(2) Notification under this section shall be made in writing, in person, or by telephone, and shall disclose the date and approximate time of the application. In the event a certified applicator is unable to provide prior notification because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence of the individual listed on the pesticide-sensitive list at the time of the application. If a person on the pesticide-sensitive list lives in a multifamily dwelling such as an apartment or condominium, the applicator shall notify the person on the list or shall advise the manager or other property owner's representative to notify the person on the list of the application.

[1992 c 176 § 4.]

## RCW 17.21.440 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of labor and industries.

(1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2) (a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of labor and industries.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of labor and industries, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department of labor and industries under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department of labor and industries for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of labor and industries shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least [as] effective as provided for other enforcement under this chapter.

[1996 c 260 § 3.]

**NOTES:**

**Finding—Intent—Severability—1996 c 260:** See notes following RCW 49.17.280.

Department of labor and industries authority: RCW 49.17.280.

## RCW 17.21.900 Preexisting liabilities not affected.

The enactment of this act 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 act becomes effective.

[1961 c 249 § 31.]

## RCW 17.21.920 Short title.

This chapter may be cited as the Washington pesticide application act.

[1961 c 249 § 33.]

## RCW 17.21.930 Severability—1961 c 249.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1961 c 249 § 35.]

## RCW 17.21.931 Severability—1967 c 177.

If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected.

[1967 c 177 § 20.]

### RCW 17.21.932 Severability—1979 c 92.

If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1979 c 92 § 10.]

### RCW 17.21.933 Severability—1989 c 380.

See RCW 15.58.942.

# CHAPTER 17.24 RCW
## INSECT PESTS AND PLANT DISEASES

**Sections**


17.24.003 Purpose.
17.24.007 Definitions.
17.24.011 Regulation of plant, plant product, bee movement, and genetically engineered organisms.
17.24.021 Inspection and investigation.
17.24.031 Determination of origin.
17.24.041 Power to adopt quarantine measures—Rules.
17.24.051 Introduction of plant pests, noxious weeds, or organisms affecting plant life.
17.24.061 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment.
17.24.071 Compliance agreements.
17.24.081 Prohibited acts.
17.24.091 Impound and disposition.
17.24.100 Penalties—Second and subsequent offenses.
17.24.101 Statewide survey and control activity.
17.24.111 Director's cooperation with other agencies.
17.24.121 Acquisition of lands, water supply, or other properties for quarantine locations.
17.24.131 Requested inspections—Fee for service—Disbursements in lieu of fee.
17.24.141 Penalties—Criminal and civil penalty.
17.24.151 Violations—Costs of control.
17.24.161 Funds for technical and scientific services.
17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures.
17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions.
17.24.220 Sudden oak death syndrome—Coordinated response effort.
17.24.900 Captions not law—1991 c 257.


NOTES:

Horticultural pests and diseases: Chapter 15.08 RCW.

### RCW 17.24.003 Purpose.

The purpose of this chapter is to provide a strong system for the exclusion of plant and bee pests and diseases through regulation of movement and quarantines of infested areas to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state; plants and shrubs within the state; and the environment of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and the public and private costs that result when these infestations become established.

[1991 c 257 § 3.]

### RCW 17.24.007 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "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 a form of inspection and certification document that accompanies the movement of inspected and certified plant material and plant products, or bees, bee hives, or beekeeping equipment.

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

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

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

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or beekeeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species Apis mellifera.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees and those honey bees generally recognized to have undesirable behavioral characteristics such as or as found in Africanized honey bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources.

[2000 c 100 § 6; 1991 c 257 § 4.]

**NOTES:**

**Effective date—2000 c 100:** See RCW 15.60.901.

## RCW 17.24.011 Regulation of plant, plant product, bee movement, and genetically engineered organisms.

Notwithstanding the provisions of RCW 17.24.041, the director may:

(1) Make rules under which plants, plant products, bees, hives and beekeeping equipment, and noxious weeds may be brought into this state from other states, territories, or foreign countries; and

(2) Make rules with reference to plants, plant products, bees, bee hives and equipment, and genetically engineered organisms while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant and bee pests and noxious weeds.

[1991 c 257 § 5.]

## RCW 17.24.021 Inspection and investigation.

(1) The director may intercept and hold or order held for inspection, or cause to be inspected while in transit or after arrival at their destination, all plants, plant products, bees, or other articles likely to carry plant pests, bee pests, or noxious weeds being moved into this state from another state, territory, or a foreign country or within or through this state for plant and bee pests and disease.

(2) The director may enter upon public and private premises at reasonable times for the purpose of carrying out this chapter. If the director be denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises. The court may upon such application issue the search warrant for the purposes requested.

(3) The director may adopt rules in accordance with chapter 34.05 RCW as may be necessary to carry out the purposes and provisions of this chapter.

[1991 c 257 § 6.]

## RCW 17.24.031 Determination of origin.

The director may demand of a person who has in his or her possession or under his or her control, plants, bees, plant products, or other articles that may carry plant pests, bee pests, or noxious weeds, full information as to the origin and source of these items. Failure to provide that information, if known, may subject the person to a civil penalty.

[1991 c 257 § 7.]

## RCW 17.24.041 Power to adopt quarantine measures—Rules.

If determined to be necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, or environmental interests of this state, the director may declare a quarantine against an area, place, nursery, orchard, vineyard, apiary, or other agricultural establishment, county or counties within the state, or against other states, territories, or foreign countries, or a portion of these areas, in reference to plant pests, or bee pests, or noxious weeds, or genetically engineered plant or plant pest organisms. The director may prohibit the movement of all regulated articles from such quarantined places or areas that are likely to contain such plant pests or noxious weeds or genetically engineered plant, plant pest, or bee pest organisms. The quarantine may be made absolute or rules may be adopted prescribing the conditions under which the regulated articles may be moved into, or sold, or otherwise disposed of in the state.

[1991 c 257 § 8.]

## RCW 17.24.051 Introduction of plant pests, noxious weeds, or organisms affecting plant life.

The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for

research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in RCW 17.24.061.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter.

[1991 c 257 § 9.]

## RCW 17.24.061 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment.

(1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the 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 information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where 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.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section.

[1991 c 257 § 10.]

## RCW 17.24.071 Compliance agreements.

The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter.

[1991 c 257 § 11.]

## RCW 17.24.081 Prohibited acts.

It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed.

[1991 c 257 § 12.]

## RCW 17.24.091 Impound and disposition.

(1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or transported in violation of a rule or quarantine of the department, the director shall notify the owner that a violation of this chapter exists. The director may impound or order the impounding of the infected or infested or regulated article in such a manner as may be necessary to prevent the threat of infestation. The notice shall be in writing and sent by certified mail or personal service identifying the impounded article and giving notice that the articles will be treated, returned to the shipper or to a quarantined area, or destroyed in a manner as to prevent infestation. The impounded article shall not be destroyed unless the director determines that (a) no effective treatment can be carried out; and (b) the impounded article cannot be returned to the shipper or shipped back to a quarantine area without threat of infestation to this state; and (c) mere possession by the owner constitutes an emergency.

(2) Before taking action to treat, return, or destroy the impounded article, the director shall notify the owner of the owner's right to a hearing before the director under chapter 34.05 RCW. Within ten days after the notice has been given the owner may request a hearing. The request must be in writing.

(3) The cost to impound articles along with the cost, if any, to treat, return, or destroy the articles shall be at the owner's expense. The owner is not entitled to compensation for infested or infected articles destroyed by the department under this section.

[1991 c 257 § 13.]

## RCW 17.24.100 Penalties—Second and subsequent offenses.

(1) Except as provided in subsection (2) of this section, every person who violates or fails to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of this chapter is guilty of a misdemeanor.

(2) A second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder is a gross misdemeanor.

[2003 c 53 § 119; 1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

NOTES:

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

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 17.24.101 Statewide survey and control activity.

If there is reason to believe that a plant or bee pest may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state; or may cause harm to the environment of the state; or such information is needed to facilitate or allow the movement of forestry, agricultural, horticultural, or related products to out-of-state, foreign and domestic markets, the director may conduct, or cause to be conducted, surveys to determine the presence, absence, or distribution of a pest.

The director may take such measures as may be required to control or eradicate such pests where such measures are determined to be in the public interest, are technically feasible, and for which funds are appropriated or provided through cooperative agreements.

[1991 c 257 § 14.]

## RCW 17.24.111 Director's cooperation with other agencies.

The director may enter into cooperative arrangements with a person, municipality, county, Washington State University or any of its experiment stations, or other agencies of this state, and with boards, officers, and authorities of other states and the United States, including the United States department of agriculture, for the inspection of bees, plants and plant parts and products and the control or eradication of plant pests, bee pests, or noxious weeds and to carry out other provisions of this chapter.

[1991 c 257 § 15.]

## RCW 17.24.121 Acquisition of lands, water supply, or other properties for quarantine locations.

The director may acquire, in fee or in trust, by gift, or whenever funds are appropriated for such purposes, by purchase, easement, lease, or condemnation, lands or other property, water supplies, as may be deemed necessary for use by the department for establishing quarantine stations for the purpose of the isolation, prevention, eradication, elimination, and control of insect pests or plant pathogens that affect the agricultural or horticultural products of the state; for the propagation of biological control agents; or the isolation of genetically engineered plants or plant pests; or the isolation of bee pests.

[1991 c 257 § 16.]

## RCW 17.24.131 Requested inspections—Fee for service—Disbursements in lieu of fee.

To facilitate the movement or sale of forest, agricultural, floricultural, horticultural and related products, or bees and related products, the director may provide, if requested by farmers, growers, or other interested persons, special inspections, pest identifications, plant identifications, plant diagnostic services, pest control activities, other special certifications and activities not otherwise authorized by statute and prescribe a fee for that service. The fee shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Moneys collected shall be deposited in the plant pest account, which is hereby created within the agricultural local fund. No appropriation is required for disbursement from the plant pest account to provide the services authorized by this section. In lieu of a fee, assessments and other funds deposited in the plant pest account may be disbursed to provide the services authorized by this section.

[1997 c 227 § 2; 1991 c 257 § 17.]

NOTES:

**Effective date—1997 c 227:** "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 [April 26, 1997]."

[1997 c 227 § 3.]

## RCW 17.24.141 Penalties—Criminal and civil penalty.

Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to RCW 17.24.100, the director may impose upon and collect from the violator a civil penalty not exceeding five thousand dollars per violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of commission or omission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty.

[1991 c 257 § 18.]

## RCW 17.24.151 Violations—Costs of control.

A person who, through a knowing and willful violation of a quarantine established under this chapter, causes an infestation to become established, may be required to pay the costs of public control or eradication measures caused as a result of that violation.

[1991 c 257 § 19.]

## RCW 17.24.161 Funds for technical and scientific services.

The director may, at the director's discretion, provide funds for technical or scientific services, labor, materials and supplies, and biological control agents for the control of plant pests, bee pests, and noxious weeds.

[1991 c 257 § 20.]

## RCW 17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures.

(1) If the director determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, economic well-being, or the environment, the director shall request the governor to order emergency measures to control the pests or plant diseases under RCW 43.06.010(13). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to RCW 43.06.010(13), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of RCW 43.06.010(13) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals, companies, or agencies, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued.

[2003 c 314 § 6; 1991 c 257 § 21.]

NOTES:

**Findings—2003 c 314:** See note following RCW 17.24.220.

## RCW 17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions.

The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under *RCW 17.24.200 shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker."

[1982 c 153 § 3.]

NOTES:

***Reviser's note:** RCW 17.24.200 was repealed by 1991 c 257 § 23.

**Severability—1982 c 153:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1982 c 153 § 5.]

**Effective date—1982 c 153:** "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 shall take effect April 1, 1982."

[1982 c 153 § 7.]

## RCW 17.24.220 Sudden oak death syndrome—Coordinated response effort.

The department and the department of natural resources shall coordinate their sudden oak death syndrome response efforts with other plant pest agencies and private organizations to exchange information, monitor the confirmed incidences of the disease, and take action as appropriate under existing plant pest control authorities to prevent the introduction of the disease into Washington and to control or eradicate the disease if it is determined to be present in the state.

[2003 c 314 § 8.]

NOTES:

**Findings—2003 c 314:** "The legislature finds that since 1995 large numbers of oak and tanoak trees have been dying in the coastal counties of California. The legislature also finds that the disease causing the tree loss, which is commonly referred to as sudden oak death syndrome, has, as of July 27, 2003, been confirmed in twelve California counties, and one Oregon county. The legislature also finds that in addition to affecting several species of oak, this disease has been confirmed to affect several plant species common in Washington's forests, including Douglas Fir, big leaf maple, huckleberry, rhododendron, madrone, and manzanita. The legislature recognizes that the state of California and the United States department of agriculture have adopted restrictions on the movement of articles that may host the disease, and the state of Oregon and the Canadian government have adopted restrictions on the importation of potential host articles. The legislature finds that an introduction of sudden oak death syndrome into Washington could cause potential damage to the state's forest health, leading to both economic and ecological losses."

[2003 c 314 § 7.]

## RCW 17.24.900 Captions not law—1991 c 257.

Captions as used in RCW 17.24.005 through 17.24.171 constitute no part of the law.

[1991 c 257 § 24.]

# CHAPTER 17.26 RCW
## CONTROL OF SPARTINA AND PURPLE LOOSESTRIFE

### Sections


17.26.005 Findings.
17.26.006 Findings—Purpose.
17.26.007 Findings—Application to appropriations.
17.26.010 Restriction on state agencies and local governments.
17.26.011 Spartina removal includes restoration—Study.
17.26.015 Lead agency—Responsibilities.
17.26.020 High priority for all state agencies—Definitions.
17.26.900 Severability—1995 c 255.
17.26.901 Effective date—1995 c 255.


### RCW 17.26.005 Findings.

The legislature finds that:

(1) Spartina alterniflora, Spartina anglica, Spartina x townsendii, and Spartina patens which are collectively called spartina are not native to the state of Washington nor to the west coast of North America. This noxious weed was inadvertently introduced into the wetlands of the state and is now aggressively invading new areas to the detriment of native ecosystems and aquatic habitat. The spread of spartina threatens to permanently convert and displace native freshwater and saltwater wetlands and intertidal zones, including critical habitat for migratory birds, many fish species, bivalves, invertebrates, marine mammals, and other animals. The continued spread of spartina will permanently reduce the diversity and the quantity of these species and will have a significant negative environmental impact.

Spartina poses a significant hydrological threat. Clumps and meadows of spartina are dense environments that bind sediments and lift the intertidal gradient up out of the intertidal zone through time. This process reduces flows during flood conditions, raises flood levels, and significantly alters the hydrological regime of estuarine areas.

Spartina spreads by rhizomes and seed production. Through lateral growth by rhizomes, spartina establishes a dense monotypic meadow. Through seed production and the spread of seed through the air and by water, spartina is currently being spread to other states and to Canadian provinces.

(2) Purple loosestrife was first documented in the state in 1929 along freshwater shorelands. It is now present throughout the state and is particularly abundant in Grant county and its neighboring counties. The plant appears to be colonizing more rapidly on the eastern side of the state than on the western side. It was first introduced to the Winchester wasteway area in the 1960's and has invaded the area rapidly. Purple loosestrife is displacing native plants and as a result is threatening an extremely important part of this state's wildlife habitat. Lythrum salicaria and L. virgatum are closely related loosestrife species that are morphologically similar and not easily distinguished from each other in the field. Both species have been referred to as purple loosestrife.

(3) Current laws and rules designed to protect the environment and preserve the wetland habitats, fish, and wildlife of the state are not designed to respond to an ecosystem-wide threat of this kind. State and federal agencies, local governments, weed boards, concerned individuals, and property owners attempting to deal with the ecological emergency posed by spartina and purple loosestrife infestations have been frustrated by interagency disagreements, demands for an undue amount of procedural and scientific process and information, dilatory appeals, and the improper application of laws and regulations by agencies that have in fact undermined the legislative purposes of those same laws while ignoring the long-term implications of delay and inaction. There is a compelling need for strong leadership, coordination, and reporting by a single state agency to respond appropriately to this urgent environmental challenge.

Any further delay of control efforts will significantly increase the cost of spartina and purple loosestrife control and reduce the likelihood of long-term success. Control efforts must be coordinated across political and ownership boundaries in order to be effective.

(4) The presence of noxious weeds on public lands constitutes a public nuisance and negatively impacts public and private lands. The legislature finds that control and eradication of noxious weeds on private lands is in the public interest.

[1995 c 255 § 1.]

### RCW 17.26.006 Findings—Purpose.

This state is facing an environmental disaster that will affect other states as well as other nations. The legislature finds that six years is sufficient time for state agencies to debate solutions to the spartina and purple loosestrife problems that are occurring in state waters. One of the purposes of chapter 255, Laws of 1995 is to focus agency action on control and future eradication of spartina and purple loosestrife. It is the mandate of the legislature that one state agency, the department of agriculture, be responsible for a unified effort to eliminate spartina and control purple loosestrife, with the advice of the state noxious weed control board, and that state agency shall be directly accountable to the legislature on the progress of the spartina eradication and purple loosestrife control program.

[1995 c 255 § 2.]

### RCW 17.26.007 Findings—Application to appropriations.

This section applies to appropriations made to the department of agriculture specifically for the removal or control of spartina or purple loosestrife or both plants. The legislature finds that: The presence of spartina or purple loosestrife on private lands threatens wildlife habitat and provides a source of renewed infestation for public lands; and effective eradication or control of spartina or purple loosestrife requires concerted efforts on both public and private lands to protect public resources. The department of agriculture may grant funds to other state agencies, local governments, and nonprofit corporations for eradication or control purposes and may use those moneys itself. The department of agriculture may match private funds for eradication or control programs on private property on a fifty-fifty matching basis. The accounting and supervision of the funds at the local level shall be conducted by the department of agriculture.

[1995 c 255 § 11.]

## RCW 17.26.010 Restriction on state agencies and local governments.

State agencies and local governments may not use any other local, state, or federal permitting requirement, regulatory authority, or legal mechanism to override the legislative intent and statutory mandates of chapter 255, Laws of 1995.

[1995 c 255 § 8.]

## RCW 17.26.011 Spartina removal includes restoration—Study.

Spartina removal shall include restoration to return intertidal land and other infested lands to the condition found on adjacent unaffected lands in the same tidal elevation. The department of fish and wildlife, the department of ecology, the department of agriculture, and the department of natural resources shall develop a restoration plan in cooperation with owners of spartina infested lands and shall submit the plan to the appropriate standing committees of the house of representatives and the senate by December 31, 1995.

[1995 c 255 § 9.]

## RCW 17.26.015 Lead agency—Responsibilities.

(1) The state department of agriculture is the lead agency for the control of spartina and purple loosestrife with the advice of the state noxious weed control board.

(2) Responsibilities of the lead agency include:

(a) Coordination of the control program including memorandums of understanding, contracts, and agreements with local, state, federal, and tribal governmental entities and private parties;

(b) Preparation of a statewide spartina management plan utilizing integrated vegetation management strategies that encompass all of Washington's tidelands. The plan shall be developed in cooperation with local, state, federal, and tribal governments, private landowners, and concerned citizens. The plan shall prioritize areas for control. Nothing in this subsection prohibits the department from taking action to control spartina in a particular area of the state in accordance with a plan previously prepared by the state while preparing the statewide plan;

(c) Directing on the ground control efforts that include, but are not limited to:

(i) Control work and contracts;

(ii) spartina survey;

(iii) collection and maintenance of spartina location data;

(iv) purchasing equipment, goods, and services;

(v) survey of threatened and endangered species; and

(vi) site-specific environmental information and documents; and

(d) Evaluating the effectiveness of the control efforts.

The lead agency shall report to the appropriate standing committees of the house of representatives and the senate no later than December 15th of each year through the year 1999 on the progress of the program, the number of acres treated by various methods of control, and on the funds spent.

[1998 c 245 § 4; 1995 c 255 § 10.]

## RCW 17.26.020 High priority for all state agencies—Definitions.

(1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and *77.55.150:

(a) "Spartina" means Spartina alterniflora, Spartina anglica, Spartina x townsendii, and Spartina patens.

(b) "Purple loosestrife" means Lythrum salicaria and Lythrum virgatum.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

[2003 c 39 § 10; 1995 c 255 § 12.]

NOTES:

***Reviser's note:** RCW 77.55.150 was recodified as RCW 77.55.081 pursuant to 2005 c 146 § 1001.

## RCW 17.26.900 Severability—1995 c 255.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1995 c 255 § 14.]

## RCW 17.26.901 Effective date—1995 c 255.

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 shall take effect immediately [May 5, 1995].

[1995 c 255 § 15.]

# CHAPTER 17.34 RCW
## PEST CONTROL COMPACT

**Sections**


17.34.010 Compact provisions.
17.34.020 Cooperation with insurance fund authorized.
17.34.030 Filing of bylaws and amendments.
17.34.040 Compact administrator.
17.34.050 Requests or applications for assistance from insurance fund.
17.34.060 Agency incurring expenses to be credited with payments to this

state.
17.34.070 "Executive head" defined.

## RCW 17.34.010 Compact provisions.

The pest control compact is hereby enacted into law and entered into with all other jurisdiction legally joining therein in the form substantially as follows:

### ARTICLE I
### FINDINGS

The party states find that:

1. In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.
2. Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.
3. The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.
4. While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

### ARTICLE II
### DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
2. "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.
3. "Responding state" means a state request to undertake or intensify the measures referred to in subdivision (2) of this Article.
4. "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.
5. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.
6. "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.
7. "Executive Committee" means the committee established pursuant to Article V(E) of this compact.

### ARTICLE III
### THE INSURANCE FUND

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

### ARTICLE IV
### THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

A. The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

B. The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

C. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

D. The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provisions for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

F. The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or

any other governmental agency, or from any person, firm, association or corporation.

G. The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

H. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

I. The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

J. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

## ARTICLE V
### COMPACT AND INSURANCE FUND ADMINISTRATION

A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

C. The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

D. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

E. The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

## ARTICLE VI
### ASSISTANCE AND REIMBURSEMENT

A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

C. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
2. Evidence that the pest on account of whose eradication

or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
6. Such other information as the Governing Board may require consistent with the provisions of this compact.

D. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

E. Upon the submission as required by paragraph (C) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

F. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

H. Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the Federal Government and shall request the appropriate agency or agencies of the Federal Government for such assistance and participation.

I. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

## ARTICLE VII
### ADVISORY AND TECHNICAL COMMITTEES

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

## ARTICLE VIII
### RELATIONS WITH NONPARTY JURISDICTIONS

A. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

B. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

C. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or

Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

## ARTICLE IX
### FINANCE

A. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

C. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

D. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(G) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(G) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

E. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.

F. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

## ARTICLE X
### ENTRY INTO FORCE AND WITHDRAWAL

A. This compact shall enter into force when enacted into law by any five or more states: provided, that one such state is contiguous to this state and the legislature has appropriated the necessary funds. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

## ARTICLE XI
### CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[1969 ex.s. c 130 § 1.]

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**RCW 17.34.020 Cooperation with insurance fund authorized.**

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact.

[1969 ex.s. c 130 § 2.]

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**RCW 17.34.030 Filing of bylaws and amendments.**

Pursuant to Article IV(H) of the compact, copies of bylaws and amendments thereto shall be filed with the code reviser's office.

[1969 ex.s. c 130 § 3.]

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**RCW 17.34.040 Compact administrator.**

The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his office.
[1969 ex.s. c 130 § 4.]

## RCW 17.34.050 Requests or applications for assistance from insurance fund.

Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.
[1969 ex.s. c 130 § 5.]

## RCW 17.34.060 Agency incurring expenses to be credited with payments to this state.

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.
[1969 ex.s. c 130 § 6.]

## RCW 17.34.070 "Executive head" defined.

As used in the compact, with reference to this state, the term "executive head" shall mean the director of agriculture.
[1969 ex.s. c 130 § 7.]

# TITLE 19 RCW
## BUSINESS REGULATIONS—MISCELLANEOUS

### Chapters


19.94 Weights and Measures

19.112 Motor Fuel Quality Act


Notes:

Food processing, adulteration, misbranding, standards: Chapter 69.04 RCW.

Fruit: Title 15 RCW.

Livestock marketing and inspection: Chapter 16.57 RCW.

Measurement of goods, raw materials and agricultural products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Milk and milk products for animal food: Chapter 15.37 RCW.

Pesticide applicators -- Surety bond: Chapter 17.21 RCW.

Warehouses and grain elevators: Title 22 RCW.

Washington fresh fruit sales limitation act: Chapter 15.21 RCW.

# CHAPTER 19.94 RCW
## WEIGHTS AND MEASURES

### Sections


19.94.005 Findings.

19.94.010 Definitions—Director may prescribe by rule.

19.94.015 Commercial use of instrument or device—Registration—Fees.

19.94.150 Standards recognized.

19.94.160 State standards.

19.94.163 Testing by department—Ensuring enforcement—Issuance of seal of approval—Exception.

19.94.165 Commercial instruments or devices to be correct.

19.94.175 Registration—Inspection and testing—Fees.

19.94.185 Deposit of moneys—Weights and measures account—General fund.

19.94.190 Enforcement—Rules.

19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice.

19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed.

19.94.216 Department inspection—City sealer—Agencies, institutions—Fees.

19.94.220 Investigations.

19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps.

19.94.240 Stop-use, stop-removal, and removal orders.

19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction—Use of incorrect instrument or device—Notice.

19.94.255 Correction of rejected weights and measures.

19.94.258 Service agent—Registration certificate.

19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund.

19.94.2584 Service agent—Registration certificate—Revocation, suspension, refusal to renew—Appeal.

19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant.

19.94.265 Grievances—Procedure—Notice—Hearing—Rules.

19.94.280 City sealers and deputies—Appointment, removal—Record, report—Testing of devices and instruments—Seal of approval.

19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years.

19.94.320 City sealers—Director—General oversight powers, concurrent authority—Powers and duties of chapter are additional.

19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty.

19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy.

19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules.

19.94.360 Declaration of price on outside of package.

19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required.

19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions—Examination procedure standard—Department may revise—Electronic scanner screen visibility.

19.94.400 Meat, fish, poultry to be sold by weight—Exceptions.

19.94.410 Butter, margarine to be sold by weight.

19.94.420 Fluid dairy products to be packaged for retail sale in certain units.

19.94.430 Packaged flour to be kept, sold, etc., in certain units.

19.94.440 Commodities sold in bulk—Delivery tickets.

19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets.

19.94.460 Heating oils—Delivery tickets—Statements.

19.94.470 Berries and small fruit.

19.94.480 Fractional units as fractional value.

19.94.485 Contracts—Construction.

19.94.490 Obstruction of director or sealer in performance of duties—Penalty.

19.94.500 Impersonation of director or sealer—Penalty.

19.94.505 Gasoline containing alcohol—Dispensing device label required—Carbon monoxide nonattainment area—Penalty.

19.94.507 Gasoline delivered to service stations—Invoice required.

19.94.510 Unlawful practices—Penalty.

19.94.515 Unlawful commercial use of instrument or device—Penalty.

19.94.517 Incorrect commercial instrument or device to benefit of owner/operator—Penalties—Appeal.

19.94.520 Injunction against violations.

19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use.

19.94.540 Antifreeze products—Use of aversive agent.

19.94.542 Antifreeze products—Aversive agents—Limitation of liability.

19.94.544 Antifreeze products—Aversive agents—Application.

19.94.900 Chapter cumulative and nonexclusive.

19.94.910 Severability—1969 c 67.

19.94.920 Effective date—1992 c 237.


## RCW 19.94.005 Findings.

The legislature finds:

(1) The accuracy of weighing and measuring instruments and devices used in commerce in the state of Washington affects every consumer throughout the state and is of vital importance to the public interest.

(2) Fair weights and measures are equally important to business and the consumer.

(3) This chapter safeguards the consuming public and ensures that businesses receive proper compensation for the commodities they deliver.

[1995 c 355 § 3; 1992 c 237 § 1.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

**Intent—1992 c 237:** "Until such time as the study in section 38, chapter 237, Laws of 1992, is completed, it is the intent of the legislature that consumer protection activities of the department of agriculture

weights and measures program be funded by the general fund and that device inspection related activities be funded on a fee-for-service basis."

[1992 c 237 § 2.]

## RCW 19.94.010 Definitions—Director may prescribe by rule.

(1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and to any rules adopted pursuant to this chapter.

(a) "City" means a first-class city with a population of over fifty thousand persons.

(b) "City sealer" means the person duly authorized by a city to enforce and administer the weights and measures program within such city and any duly appointed deputy sealer acting under the instructions and at the direction of the city sealer.

(c) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in packaged form, but on which there is marked a selling price based on established price per unit of weight or of measure, shall be construed to be a commodity in package form.

(d) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by persons, or used by persons for the purpose of personal care or in the performance of services ordinarily rendered in or about a household or in connection with personal possessions.

(e) "Cord" means the measurement of wood intended for fuel or pulp purposes that is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed.

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

(g) "Director" means the director of the department or duly authorized representative acting under the instructions and at the direction of the director.

(h) "Fish" means any waterbreathing animal, including shellfish, such as, but not limited to, lobster, clam, crab, or other mollusca that is prepared, processed, sold, or intended for sale.

(i) "Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of such commodity. Materials, substances, or items not considered to be part of a commodity shall include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons.

(j) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(k) "Meat" means and shall include all animal flesh, carcasses, or parts of animals, and shall also include fish, shellfish, game, poultry, and meat food products of every kind and character, whether fresh, frozen, cooked, cured, or processed.

(l) "Official seal of approval" means the seal or certificate issued by the director or city sealer which indicates that a secondary weights and measures standard or a weighing or measuring instrument or device conforms with the specifications, tolerances, and other technical requirements adopted in RCW 19.94.195.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(n) "Poultry" means all fowl, domestic or wild, that is prepared, processed, sold, or intended or offered for sale.

(o) "Service agent" means a person who for hire, award, commission, or any other payment of any kind, installs, tests, inspects, checks, adjusts, repairs, reconditions, or systematically standardizes the graduations of a weighing or measuring instrument or device.

(p) "Ton" means a unit of two thousand pounds avoirdupois weight.

(q) "Weighing or measuring instrument or device" means any equipment or apparatus used commercially to establish the size, quantity, capacity, count, extent, area, heaviness, or measurement of quantities, things, produce, or articles for distribution or consumption, that are purchased, offered or submitted for sale, hire, or award on the basis of weight, measure or count, including any accessory attached to or used in connection with a weighing or measuring instrument or device when such accessory is so designed or installed that its operation affects, or may effect, the accuracy or indication of the device. This definition shall be strictly limited to those weighing or measuring instruments or devices governed by Handbook 44 as adopted under RCW 19.94.195.

(r) "Weight" means net weight as defined in this section.

(s) "Weights and measures" means the recognized standards or units of measure used to indicate the size, quantity, capacity, count, extent, area, heaviness, or measurement of any consumable commodity.

(t) "Secondary weights and measures standard" means the physical standards that are traceable to the primary standards through comparisons, used by the director, a city sealer, or a service agent that under specified conditions defines or represents a recognized weight or measure during the inspection, adjustment, testing, or systematic standardization of the graduations of any weighing or measuring instrument or device.

(2) The director shall prescribe by rule other definitions as may be necessary for the implementation of this chapter.

[1995 c 355 § 4; 1992 c 237 § 3; 1969 c 67 § 1.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.015 Commercial use of instrument or device—Registration—Fees.

(1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device shall be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device shall be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee shall not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers shall be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device shall be paid to the department of licensing concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device shall be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. However, the use of an instrument or device that is in commercial use on *the effective date of this act shall be initially registered at the time the first renewal of the master license of the owner of the instrument or device is due following *the effective date of this act. The department of licensing shall remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section shall notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted.

[1995 c 355 § 1.]

NOTES:

***Reviser's note:** 1995 c 355 has different effective dates. The effective date for sections 1 and 7 is January 1, 1996, and the effective date for sections 2 through 6 and 8 through 25 is July 1, 1995.

**Application—1995 c 355:** "This act applies prospectively only and not retroactively. It applies only to causes of action that arise or that are commenced on or after *the effective date of this act. This act does not affect any liability or obligation arising prior to *the effective date of this act."

[1995 c 355 § 27.]

***Effective dates—1995 c 355:** "(1) Sections 2 through 6 and 8 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(2) Sections 1 and 7 of this act shall take effect January 1, 1996."

[1995 c 355 § 28.]

## RCW 19.94.150 Standards recognized.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure and weights and measures equivalents, as published by the national institute of standards and technology or any successor organization, are recognized and shall govern weighing or measuring instruments or devices used in commercial activities and other transactions involving weights and measures within this state.

[1992 c 237 § 4; 1991 sp.s. c 23 § 4; 1969 c 67 § 15.]

NOTES:

**Legislative findings—1991 sp.s. c 23:** "The legislature finds:

(1) Accurate weights and measures are essential for the efficient operation of commerce in Washington, and weights and measures are important to both consumers and businesses.

(2) Legislation to expand the weights and measures program and fund the program with license fees on weights and measures devices has been considered.

(3) Additional information is necessary before further action can be taken."

[1991 sp.s. c 23 § 1.]

**Intent—1991 sp.s. c 23:** "It is the intent of the legislature to fund the current weights and measures program only through the first year of the 1991-93 fiscal biennium, and to base funding of the program for the second year of the biennium and ensuing biennia upon the recommendations of the study performed under section 3, chapter 23, Laws of 1991 1st sp. sess."

[1991 sp.s. c 23 § 2.]

## RCW 19.94.160 State standards.

Weights and measures standards that are in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state weights and measures standards, shall, when the same shall have been certified as such by the national institute of standards and technology or any successor organization, be the primary standards of weight and measure. The state weights and measures standards shall be kept in a place designated by the director and shall be maintained in such calibration as prescribed by the national institute of standards and technology or any successor organization.

[1995 c 355 § 5; 1992 c 237 § 5; 1991 sp.s. c 23 § 5; 1969 c 67 § 16.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.163 Testing by department—Ensuring enforcement—Issuance of seal of approval—Exception.

(1) Except as provided in subsection (3) of this section and RCW 19.94.190(1)(d), the department shall test and inspect each biennium a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced.

(2) The department may issue an official seal of approval for each weighing or measuring instrument or device that has been tested and inspected and found to be correct.

(3) Except as provided in RCW 19.94.216, this section does not apply to weighing or measuring instruments or devices located in an area of the state that is within a city that has a city sealer and a weights and measures program pursuant to RCW 19.94.280 unless the city sealer does not possess the equipment necessary to test and inspect the weighing or

measuring instrument or device.

[1995 c 355 § 2.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.165 Commercial instruments or devices to be correct.

All weighing or measuring instruments or devices used for commercial purposes within this state shall be correct.

[1995 c 355 § 6; 1992 c 237 § 6.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.175 Registration—Inspection and testing—Fees.

(1) Pursuant to RCW 19.94.015, the following annual registration fees shall be charged for each weighing or measuring instrument or device used for commercial purposes in this state:

(a) Weighing devices:

(i) Small scales "zero to four hundred pounds capacity"..... $ 10.00

(ii) Intermediate scales "four hundred one pounds to five thousand pounds capacity".. $ 40.00

(iii) Large scales "over five thousand pounds capacity"..... $ 75.00

(iv) Railroad track scales ..... $ 800.00

(b) Liquid fuel metering devices:

(i) Motor fuel meters with flows of twenty gallons or less per minute ..... $ 10.00

(ii) Motor fuel meters with flows of more than twenty but not more than one hundred fifty gallons per minute..... $ 32.00

(iii) Motor fuel meters with flows over one hundred fifty gallons per minute ..... $ 50.00

(c) Liquid petroleum gas meters:

(i) With one inch diameter or smaller dispensers ..... $ 25.00

(ii) With greater than one inch diameter dispensers ..... $ 50.00

(d) Fabric meters ..... $ 10.00

(e) Cordage meters..... $ 10.00

(f) Mass flow meters..... $ 200.00

(g) Taxi meters ..... $ 25.00

(2) With the exception of subsection (3) of this section, no person shall be required to pay more than the annual registration fee for any weighing or measuring instrument or device in any one year.

(3) The department or a city sealer may establish reasonable inspection and testing fees for each type or class of weighing or measuring instrument or device specially requested to be inspected or tested by the device owner. These inspection and testing fees shall be limited to those amounts necessary for the department or city sealer to cover the direct costs associated with such inspection and testing. The fees shall not be set so as to compete with service agents normally engaged in such services.

[2006 c 358 § 2; (2006 c 358 § 1 expired July 1, 2007); 1995 c 355 § 7; 1992 c 237 § 7.]

NOTES:

**Effective dates—2006 c 358:** "(1) Sections 1 and 3 through 7 of this act take effect July 1, 2006.

(2) Section 2 of this act takes effect July 1, 2007."

[2006 c 358 § 8.]

**Expiration date—2006 c 358 § 1:** "Section 1 of this act expires July 1, 2007."

[2006 c 358 § 9.]

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.185 Deposit of moneys—Weights and measures account—General fund.

(1) Except as provided in subsection (2) of this section, all moneys collected under this chapter shall be payable to the director and placed in the weights and measures account hereby established in the agricultural local fund. Moneys deposited in this account shall be used solely for the purposes of implementing or enforcing this chapter. No appropriation is required for the disbursement of moneys from the weights and measures account by the director.

(2) Civil penalties collected by the department under RCW 19.94.510, 19.94.515, and 19.94.517 shall be deposited in the state general fund.

[1998 c 245 § 9; 1995 c 355 § 8; 1992 c 237 § 8.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.190 Enforcement—Rules.

(1) The director and duly appointed city sealers shall enforce the provisions of this chapter. The director shall adopt rules for enforcing and carrying out the purposes of this chapter including but not limited to the following:

(a) Establishing state standards of weight, measure, or count, and reasonable standards of fill for any commodity in package form;

(b) The establishment of technical and reporting procedures to be followed, any necessary report and record forms, and marks of rejection to be used by the director and city sealers in the discharge of their official duties as required by this chapter;

(c) The establishment of technical test procedures, reporting procedures, and any necessary record and reporting forms to be used by service agents when testing and inspecting instruments or devices under RCW 19.94.255(3) or when otherwise installing, repairing, inspecting, or standardizing the graduations of any weighing or measuring instruments or devices;

(d) The establishment of exemptions from the marking or tagging requirements of RCW 19.94.250 with respect to weighing or measuring instruments or devices of such character or size that such marking or tagging would be inappropriate, impracticable, or damaging to the apparatus in question;

(e) The establishment of exemptions from the inspection and testing requirements of RCW 19.94.163 with respect to classes of weighing or measuring instruments or devices found to be of such character that periodic inspection and testing is unnecessary to ensure

continued accuracy;

(f) The establishment of inspection and approval techniques, if any, to be used with respect to classes of weighing or measuring instruments or devices that are designed specifically to be used commercially only once and then discarded, or are uniformly mass-produced by means of a mold or die and are not individually adjustable; and

(g) The establishment of inspection and testing procedures to be used for classes of weighing or measuring instruments or devices found to be few in number, highly complex, and of such character that differential or special inspection and testing is necessary, including railroad track scales. The department's procedures shall include requirements for the provision, maintenance, and transport of any weight or measure necessary for the inspection and testing at no expense to the state.

(2) These rules shall also include specifications and tolerances for the acceptable range of accuracy required of weighing or measuring instruments or devices and shall be designed to eliminate from use, without prejudice to weighing or measuring instruments or devices that conform as closely as practicable to official specifications and tolerances, those

(a) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or

(b) that facilitate the perpetration of fraud.

[1995 c 355 § 9; 1992 c 237 § 9; 1991 sp.s. c 23 § 6; 1989 c 354 § 36; 1977 ex.s. c 26 § 5; 1969 c 67 § 19.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice.

(1) The department shall adopt the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices, together with amendments thereto, as recommended by the most recent edition of Handbook 44 published by the national institute of standards and technology or any successor organization as the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices commercially used in this state.

(2) (a) To promote uniformity, any supplements or amendments to Handbook 44 or any similar subsequent publication of the national institute of standards and technology or any successor organization shall be deemed to have been adopted under this section.

(b) The director may, however, within thirty days of the publication or effective date of Handbook 44 or any supplements, amendments, or similar publications give public notice that a hearing will be held to determine if such publications should not be applicable under this section. Any such hearing shall be conducted under chapter 34.05 RCW.

[1992 c 237 § 10.]

## RCW 19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed.

For the purposes of this chapter, weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "correct" when they conform to all applicable requirements of this chapter or the requirements of any rule adopted by the department under the authority granted in this chapter; all other weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "incorrect."

[1992 c 237 § 11.]

## RCW 19.94.216 Department inspection—City sealer—Agencies, institutions—Fees.

The department shall:

(1) Biennially inspect and test the secondary weights and measures standards of any city for which the appointment of a city sealer is provided by this chapter and shall issue an official seal of approval for same when found to be correct. The department shall, by rule, establish a reasonable fee for this and any other inspection and testing services performed by the department's metrology laboratory. Each such fee shall recover at least seventy-five percent of the laboratory's costs incurred in performing the service governed by the fee on or before June 30, 1998. The fees established under this subsection may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending 1996, 1997, and 1998. For fiscal year 1999 and thereafter, the fees established under this subsection may not be increased by an amount greater than the fiscal growth factor as provided in RCW 43.135.055.

(2) Biennially inspect and test any weighing or measuring instrument or device used in an agency or institution to which moneys are appropriated by the legislature or of the federal government and shall report any findings in writing to the executive officer of the agency or institution concerned. The department shall collect a reasonable fee, to be set by rule, for testing any such weighing or measuring instrument or device.

[1995 c 355 § 10; 1992 c 237 § 12.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.220 Investigations.

In promoting the general objective of ensuring accuracy of weighing or measuring instruments or devices and the proper representation of weights and measures in commercial transactions, the director or a city sealer shall, upon his or her own initiative and as he or she deems appropriate and advisable, investigate complaints made concerning violations of the provisions of this chapter.

[1992 c 237 § 13; 1991 sp.s. c 23 § 8; 1969 c 67 § 22.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps.

(1) The director or a city sealer may, from time to time, inspect and test packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether the same contain the amounts represented

and whether they are kept, offered, exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale or sold in violation of law, the director or city sealer may order them off sale and may mark, tag, or stamp them in a manner prescribed by the department.

(2) In carrying out the provisions of this section, the director or city sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of a result obtained on a sample selected from and representative of such lot.

(3) No person shall

(a) sell, keep, offer, or expose for sale any package or amount of commodity that has been ordered off sale as provided in this section unless and until such package or amount of commodity has been brought into full compliance with legal requirements or

(b) dispose of any package or amount of commodity that has been ordered off sale and that has not been brought into compliance with legal requirements in any manner except with the specific written approval of the director or city sealer who issued such off sale order.

[1992 c 237 § 14; 1969 c 67 § 23.]

## RCW 19.94.240 Stop-use, stop-removal, and removal orders.

(1) The director or a city sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weighing or measuring devices being, or susceptible of being, commercially used within this state.

(2) The director or a city sealer shall also have the power to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, exposed for sale, sold, or in process of delivery.

(3) The director or a city sealer shall issue such orders whenever in the course of his or her enforcement of the provisions of this chapter or rules adopted hereunder he or she deems it necessary or expedient to issue such orders.

(4) No person shall use, remove from the premises specified, or fail to remove from any premises specified any weighing or measuring instrument or device, commodity in packaged form, or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal order, issued under the authority of this section.

[1992 c 237 § 15; 1991 sp.s. c 23 § 9; 1969 c 67 § 24.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction—Use of incorrect instrument or device—Notice.

(1) If the director or a city sealer discovers upon inspection that a weighing or measuring instrument or device is "incorrect," but in his or her best judgment is susceptible of satisfactory repair, he or she shall reject and mark or tag as rejected any such weighing or measuring instrument or device.

(2) The director or a city sealer may reject or seize any weighing or measuring instrument or device found to be incorrect that, in his or her best judgment, is not susceptible of satisfactory repair.

(3) Weighing or measuring instruments or devices that have been rejected under subsection (1) of this section may be confiscated and may be destroyed by the director or a city sealer if not corrected as required by RCW 19.94.255 or if used or disposed of contrary to the requirements of that section.

(4) The director or a city sealer shall permit the use of an incorrect weighing or measuring instrument or device, pending repairs, if the device is incorrect to the economic benefit of the consumer and the consumer is not the seller. However, if the director or city sealer finds such an error, the director or city sealer shall notify the owner of the instrument or device, or the owner's representative at the business location, regarding the error.

[1995 c 355 § 11; 1992 c 237 § 16; 1991 sp.s. c 23 § 10; 1969 c 67 § 25.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.255 Correction of rejected weights and measures.

(1) Weighing or measuring instruments or devices that have been rejected under the authority of the director or a city sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section.

(2) The owner of any weighing or measuring instrument or device that has been marked or tagged as rejected by the director or a city sealer shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority. In lieu of correction, the owner of such weighing and measuring instrument or device may dispose of the same, but only in the manner specifically authorized by the rejecting authority.

(3) Weighing and measuring instruments or devices that have been rejected shall not again be used commercially until they have been reexamined and found to be correct by the department, city sealer, or a service agent registered with the department.

(4) If a weighing or measuring instrument or device marked or tagged as rejected is placed back into commercial service by a service agent registered with the department, the agent shall provide a signed certification to the owner or operator of the instrument or device so indicating and shall report to the rejecting authority as provided by rule under RCW 19.94.190(1)(c).

[1995 c 355 § 12; 1992 c 237 § 17; 1991 sp.s. c 23 § 14; 1969 c 67 § 33. Formerly RCW 19.94.330.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.258 Service agent—Registration certificate.

(1) Except as authorized by the department, a service agent who intends to provide the examination that permits a weighing or measuring instrument or device to be placed back into commercial service under RCW 19.94.255(3) shall receive

an official registration certificate from the director prior to performing such a service. This registration requirement does not apply to the department or a city sealer.

(2) Except as provided in RCW 19.94.2584, a registration certificate is valid for one year. It may be renewed by submitting a request for renewal to the department.

[2000 c 171 § 61; 1995 c 355 § 15.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund.

(1) Each request for an official registration certificate shall be in writing, under oath, and on a form prescribed by the department and shall contain any relevant information as the director may require, including but not limited to the following:

(a) The name and address of the person, corporation, partnership, or sole proprietorship requesting registration;

(b) The names and addresses of all individuals requesting an official registration certificate from the department; and

(c) The tax registration number as required under RCW 82.32.030 or uniform business identifier provided on a master license issued under RCW 19.02.070.

(2) Each individual when submitting a request for an official registration certificate or a renewal of such a certificate shall pay a fee to the department in the amount of one hundred sixty dollars per individual.

(3) The department shall issue a decision on a request for an official registration certificate within twenty days of receipt of the request. If an individual is denied their request for an official registration certificate, the department must notify that individual in writing stating the reasons for the denial and shall refund any payments made by that individual in connection with the request.

[2006 c 358 § 5; 1995 c 355 § 16. Formerly RCW 19.94.025.]

NOTES:

**Effective dates—2006 c 358:** See note following RCW 19.94.175.

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.2584 Service agent—Registration certificate—Revocation, suspension, refusal to renew—Appeal.

(1) The department shall have the power to revoke, suspend, or refuse to renew the official registration certificate of any service agent for any of the following reasons:

(a) Fraud or deceit in obtaining an official registration certificate under this chapter;

(b) A finding by the department of a pattern of intentional fraudulent or negligent activities in the installation, inspection, testing, checking, adjusting, or systematically standardizing and approving the graduations of any weighing or measuring instrument or device;

(c) Knowingly placing back into commercial service any weighing or measuring instrument or device that is incorrect;

(d) A violation of any provision of this chapter; or

(e) Conviction of a crime or an act constituting a crime under the laws of this state, the laws of another state, or federal law.

(2) Upon the department's revocation of, suspension of, or refusal to renew an official registration certificate, an individual shall have the right to appeal this decision in accordance with the administrative procedure act, chapter 34.05 RCW.

[2000 c 171 § 62; 1995 c 355 § 17. Formerly RCW 19.94.035.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant.

(1) With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he or she is, or may be empowered to enforce, the director or a city sealer may reject or seize for use as evidence incorrect weighing or measuring instruments or devices or packages of commodities to be used, retained, offered, exposed for sale, or sold in violation of the law.

(2) In the performance of his or her official duties conferred under this chapter, the director or a city sealer is authorized at reasonable times during the normal business hours of the person using a weighing or measuring instrument or device to enter into or upon any structure or premises where such weighing or measuring instrument or device is used or kept for commercial purposes. If the director or a city sealer is denied access to any premises or establishment where such access was sought for the purposes set forth in this chapter, the director or a city sealer may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for such purposes. The court may, upon such application, issue the search warrant for the purposes requested.

[1992 c 237 § 18; 1991 sp.s. c 23 § 11; 1969 c 67 § 26.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.265 Grievances—Procedure—Notice—Hearing—Rules.

(1) Any person aggrieved by any official action of the department or a city sealer conferred under this chapter, including but not limited to, "stop-use orders," "stop-removal orders," "removal orders," "condemnation," or "off sale order" may within thirty days after an order is given or any action is taken, petition the director for a hearing to determine the matter. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director shall give due notice and hold a hearing within ten days after the confiscation or seizure of any weighing or measuring instrument or device or commodity under RCW 19.94.250 or the seizure of any weighing or measuring instrument or device for evidence under RCW 19.94.260. This hearing shall be for the purposes of determining whether any such weighing or measuring instrument or device or commodity was properly confiscated or seized, to determine whether or not such weighing or measuring

instrument or device or commodity was used for, or is in, violation of any provision of this chapter or to determine the disposition to be made of such weighing or measuring instrument or device or commodity. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may by rule establish procedures for the administration of this section.

[1992 c 237 § 19.]

## RCW 19.94.280 City sealers and deputies—Appointment, removal—Record, report—Testing of devices and instruments—Seal of approval.

(1) There may be a city sealer in every city and such deputies as may be required by ordinance of each such city to administer and enforce the provisions of this chapter.

(2) Each city electing to have a city sealer shall adopt rules for the appointment and removal of the city sealer and any deputies required by local ordinance. The rules for appointment of a city sealer and any deputies must include provisions for the advice and consent of the local governing body of such city and, as necessary, any provisions for local civil service laws and regulations.

(3) A city sealer shall keep a complete and accurate record of all official acts performed under the authority of this chapter and shall submit an annual report to the governing body of his or her city and shall make any reports as may be required by the director.

(4) The city sealer shall test and inspect a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced in the city. This subsection does not apply to weighing or measuring instruments or devices for which the sealer does not have the necessary testing or inspection equipment or to instruments or devices that are to be inspected by the department under RCW 19.94.216(2).

(5) A city sealer may issue an official seal of approval for each weighing or measuring instrument or device that has been inspected and tested and found to be correct.

[1995 c 355 § 13; 1992 c 237 § 20; 1969 c 67 § 28.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years.

(1) The governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall:

(a) Procure at the expense of the city the official weights and measures standards and any field weights and measures standards necessary for the administration and enforcement of the provisions of this chapter or any rule that may be prescribed by the director;

(b) Provide a suitable office for the city sealer and any deputies that have been duly appointed; and

(c) Make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer and his or her deputies in carrying out the provisions of this chapter.

(2) When the acquisition of the official weights and measures standards required under subsection (1)(a) of this section has been made and such weights and measures standards have been examined and approved by the director, they shall be the certified weights and measures standards for such city.

(3) In order to maintain field weights and measures standards in accurate condition, the city sealer shall, at least once every two years, compare the field weights and measures standards used within his or her city to the certified weights and measures standards of such city or to the official weights and measures standards of this state.

[2000 c 171 § 63; 1992 c 237 § 21; 1969 c 67 § 31.]

## RCW 19.94.320 City sealers—Director—General oversight powers, concurrent authority—Powers and duties of chapter are additional.

(1) In cities for which city sealers have been appointed as provided for in this chapter, the director shall have general oversight powers over city weights and measures programs and may, when he or she deems it reasonably necessary, exercise concurrent authority to carry out the provisions of this chapter.

(2) When the director elects to exercise concurrent authority within a city with a duly appointed city sealer, the director's powers and duties relative to this chapter shall be in addition to the powers granted in any such city by law or charter.

[1995 c 355 § 14; 1992 c 237 § 22; 1969 c 67 § 32.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty.

(1) Except as otherwise provided for in this chapter or in any rule adopted under the authority of this chapter, any person who engages in business within this state as a service agent shall biennially submit to the department for inspection and testing all weights and measures standards used by the service agent, or any agent or employee of the service agent. If the department finds such weights and measures standards to be correct, the director shall issue an official seal of approval for each such standard.

(2) The department may by rule adopt reasonable fees for the inspection and testing services performed by the weights and measures laboratory pursuant to this section.

(3) A service agent shall not use in the installation, inspection, adjustment, repair, or reconditioning of any weighing or measuring instrument or device any weight or measure standard that does not have a valid, official seal of approval from the director. Any service agent who violates this section is subject to a civil penalty of no more than five hundred dollars.

[1992 c 237 § 23.]

## RCW 19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy.

(1) Except as provided in subsection (2) of this section, commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count.

(2) Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods provide accurate information as to the quantity of commodity sold.

(3) The provisions of this section shall not apply to:

(a) Commodities that are sold for immediate consumption on the premises where sold;

(b) Vegetables when sold by the head or bunch;

(c) Commodities in containers standardized by a law of this state or by federal law;

(d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) Concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) Unprocessed vegetable and animal fertilizer when sold by cubic measure.

(4) The director may issue such reasonable rules as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented to be accurate and informative to all interested parties.

[1992 c 237 § 24; 1991 sp.s. c 23 § 15; 1969 c 67 § 34.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules.

(1) Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, offered or exposed for sale or sold in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declaration of:

(a) The identity of the commodity contained within the package unless the same can easily be identified through the package;

(b) The net quantity of the contents in terms of weight, measure or count; and

(c) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule issued by the director.

(2) In connection with the declaration required under subsection (1)(b) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", "or over", and the like) that tends to exaggerate the amount of commodity in a package, shall be used.

(3) With respect to the declaration required under subsection (1)(b) of this section the director shall by rule establish: (a) Reasonable variations to be allowed, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

[1992 c 237 § 25; 1991 sp.s. c 23 § 16; 1969 c 67 § 35.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.360 Declaration of price on outside of package.

In addition to the declarations required by RCW 19.94.350, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity at the time it is exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count and the total selling price of the package.

[1995 c 355 § 18; 1969 c 67 § 36.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed by the director for the commodity in question.

[1992 c 237 § 26; 1969 c 67 § 37.]

## RCW 19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions—Examination procedure standard—Department may revise—Electronic scanner screen visibility.

(1) Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents.

(2) The examination procedure recommended for price verification by the price verification working group of the laws and regulations committee of the national conference on weights and measures (as reflected in the fourth draft, dated November 1, 1994) for devices such as electronic scanners shall govern such examinations conducted under this chapter. The procedure shall be deemed to be adopted under this chapter. However, the department may revise the procedure as follows: The department shall provide notice of and conduct a public hearing pursuant to chapter 34.05

RCW to determine whether any revisions to this procedure made by the national institute of standards and technology or its successor organization for incorporating the examination procedure into an official handbook of the institute or its successor, or any subsequent revisions of the handbook regarding such procedures shall also be adopted under this chapter. If the department determines that the procedure should be so revised, it may adopt the revisions. Violations of this section regarding the use of devices such as electronic scanners may be found only as provided by the examination procedures adopted by or under this subsection.

(3) Electronic scanner screens installed after January 1, 1996, and used in retail establishments must be visible to the consumer at the checkout line.

[2000 c 171 § 64; 1995 c 355 § 20; 1969 c 67 § 39.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.400 Meat, fish, poultry to be sold by weight—Exceptions.

Except for immediate consumption on the premises where sold or as one of several elements comprising a meal sold as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry offered or exposed for sale or sold as food, unless otherwise provided for by the laws of the state of Washington, shall be offered or exposed for sale and sold by weight.

[1969 c 67 § 40.]

## RCW 19.94.410 Butter, margarine to be sold by weight.

Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight.

[1995 c 355 § 19; 1988 c 63 § 1; 1969 c 67 § 41.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.420 Fluid dairy products to be packaged for retail sale in certain units.

All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and all fluid imitation and fluid substitute dairy products shall be packaged for retail sale only in units as provided by the director of the department of agriculture by rule pursuant to the provisions of chapter 34.05 RCW.

[1991 sp.s. c 23 § 17; 1975 1st ex.s. c 51 § 1; 1969 c 67 § 42.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.430 Packaged flour to be kept, sold, etc., in certain units.

When in package form and when packed, kept, offered, exposed for sale or sold, flour such as, but not limited to, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal and hominy grits shall be packaged only in units of five, ten, twenty-five, fifty and one hundred pounds avoirdupois weight: PROVIDED, That packages in units of less than five pounds or more than one hundred pounds shall be permitted.

[1969 c 67 § 43.]

## RCW 19.94.440 Commodities sold in bulk—Delivery tickets.

(1) When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity, equal to type or printing:

(a) The name and address of the vendor;

(b) The name and address of the purchaser; and

(c) The weight of the delivery expressed in pounds, and, if the weight is derived from determinations of gross and tare weights, such gross and tare weights also must be stated in terms of pounds.

(2) One of the delivery tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered on demand to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(3) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered.

[1992 c 237 § 27; 1991 sp.s. c 23 § 18; 1969 c 67 § 44.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets.

(1) Except as provided in subsection (2) of this section, all solid fuels such as, but not limited to, coal, coke, charcoal, broiler chips, pressed fuels and briquets shall be sold by weight.

(2) All solid fuels such as hogged fuel, sawdust and similar industrial fuels may be sold or purchased by cubic measure.

(3) Unless a fuel is delivered to the purchaser in package form, each delivery of such fuel to an individual purchaser must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity equal to type or printing:

(a) The name and address of the vendor;

(b) The name and address of the purchaser; and

(c) The weight of the delivery and the gross and tare weights from which the weight is computed, each expressed in pounds.

(4) One of the delivery tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(5) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered.

[1992 c 237 § 28; 1991 sp.s. c 23 § 19; 1969 c 67 § 45.]

NOTES:

**Legislative findings—Intent—1991 sp.s. c 23:** See notes following RCW 19.94.150.

## RCW 19.94.460 Heating oils—Delivery tickets—Statements.

(1) All stove and furnace oil shall be sold by liquid measure or by weight in accordance with the provisions of RCW 19.94.340.

(2) Unless such fuel is delivered to the purchaser in package form, each delivery of such fuel in an amount greater than ten gallons in the case of sale by liquid measure or one hundred pounds in the case of sale by weight must be accompanied by a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

(a) The name and address of the vendor;

(b) The name and address of the purchaser;

(c) The identity of the type of fuel comprising the delivery;

(d) The unit price (that is, price per gallon or per pound, as the case may be), of the fuel delivered;

(e) In the case of sale by liquid measure, the liquid volume of the delivery together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(f) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

(3) The delivery ticket required under this section must be delivered at the time of delivery unless an agreement, written or otherwise, between the vendor and the purchaser has been reached regarding the delivery of such delivery ticket.

[1992 c 237 § 29; 1969 c 67 § 46.]

## RCW 19.94.470 Berries and small fruit.

Berries and small fruit shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half dry pint, one dry pint or one dry quart: PROVIDED, That the marking provisions of RCW 19.94.340 shall not apply to such dry volume containers.

[1969 c 67 § 47.]

## RCW 19.94.480 Fractional units as fractional value.

Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed in RCW 19.94.150.

[1992 c 237 § 30; 1969 c 67 § 48.]

## RCW 19.94.485 Contracts—Construction.

All contracts concerning the sale of commodities and services by weight, measure, or count, will be construed in accordance with the weights and measures adopted under this chapter.

[1992 c 237 § 31.]

## RCW 19.94.490 Obstruction of director or sealer in performance of duties—Penalty.

Any person who shall hinder or obstruct in any way the director or a city sealer in the performance of his or her official duties under this chapter is subject to a civil penalty of no more than five hundred dollars.

[1992 c 237 § 32; 1969 c 67 § 49.]

## RCW 19.94.500 Impersonation of director or sealer—Penalty.

Any person who shall impersonate in any way the director or a city sealer, by using an official seal of approval without specific authorization to do so or by using a counterfeit seal of approval, or in any other manner, is subject to a civil penalty of no more than one thousand dollars.

[1992 c 237 § 33; 1969 c 67 § 50.]

## RCW 19.94.505 Gasoline containing alcohol—Dispensing device label required—Carbon monoxide nonattainment area—Penalty.

(1) It is unlawful for any dealer, as defined in *RCW 82.36.010, to sell ethanol and/or methanol at one percent, by volume, or greater in gasoline for use as motor vehicle fuel unless the dispensing device has a label stating the type and maximum percentage of alcohol contained in the motor vehicle fuel.

(2) In any county, city, or other political subdivision designated as a carbon monoxide nonattainment area pursuant to the provisions of subchapter I of the clean air act amendments of 1990, P.L. 101-549, and in which the sale of oxygenated petroleum products is required by section 211(m) of the clean air act amendments of 1990, 42 U.S.C. 7545(m), any dealer, as defined in *RCW 82.36.010, who sells or dispenses a petroleum product that contains at least one percent, by volume, ethanol, methanol, or other oxygenate, shall post only such label or notice as may be required pursuant to 42 U.S.C. 7545(m)(4) or any amendments thereto or any successor provision thereof. This provision shall be applicable only during such portion of the year as oxygenated petroleum product sales are required pursuant to 42 U.S.C. 7545(m).

(3) Any person who violates this section is subject to a civil penalty of no more than five hundred dollars.

[2000 c 171 § 65; 1992 c 237 § 34; 1984 c 61 § 1.]

**NOTES:**

***Reviser's note:** RCW 82.36.010 was amended by 2007 c 515 § 1, deleting the definition of "dealer."

## RCW 19.94.507 Gasoline delivered to service stations—Invoice required.

Persons delivering gasoline to retail service stations shall supply the station with an invoice which shall include the following information:

(1) The gross volume of gasoline and the net volume of gasoline at sixty degrees Fahrenheit;

(2) the time and temperature of the gasoline as loaded onto the delivery truck; and

(3) the time of delivery to the retail service station.

[1987 c 42 § 2.]

**NOTES:**

**Intent—1987 c 42:** "The legislature finds: That leaking underground storage tanks containing petroleum products may pose a significant and widespread problem to human health and the environment, that current inventory procedures are inadequately suited to identify leaking underground storage tanks, and that new measures are needed to properly determine which tanks may be leaking."

[1987 c 42 § 1.]

## RCW 19.94.510 Unlawful practices—Penalty.

(1) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any one of the acts enumerated in (a) through (l) of this subsection is subject to a civil penalty of no more than one thousand dollars:

(a) Use or have in possession for the purpose of using for any commercial purpose a weighing or measuring instrument or device that is intentionally calculated to falsify any weight, measure, or count of any commodity, or to sell, offer, expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weighing or measuring instrument or device or any weighing or measuring instrument or device calculated to falsify any weight or measure.

(b) Knowingly use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight, measurement, or count, or in the determination of weight, measurement or count, when a charge is made for such determination, any incorrect weighing or measuring instrument or device.

(c) Dispose of any rejected weighing or measuring instrument or device in a manner contrary to law or rule.

(d) Remove from any weighing or measuring instrument or device, contrary to law or rule, any tag, seal, stamp or mark placed thereon by the director or a city sealer.

(e) Sell, offer or expose for sale less than the quantity he or she represents of any commodity, thing or service.

(f) Take more than the quantity he or she represents of any commodity, thing, or service when, as buyer, he or she furnishes the weight, measure, or count by means of which the amount of the commodity, thing or service is determined.

(g) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service known to be in a condition or manner contrary to law or rule.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weighing or measuring instrument or device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observable from some position which may reasonably be assumed by a customer.

(i) Knowingly approve or issue an official seal of approval for any weighing or measuring instrument or device known to be incorrect.

(j) Find a weighing or measuring instrument or device to be correct under RCW 19.94.255 when the person knows the instrument or device is incorrect.

(k) Fails to disclose to the department or a city sealer any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weighing or measuring instrument or device for the purpose of selling, offering, or exposing for sale, less than the quantity represented of a commodity or calculated to falsify weight or measure, if the person is a service agent.

(l) Violate any other provision of this chapter or of the rules adopted under the provisions of this chapter for which a specific penalty has not been prescribed.

(2) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, violates RCW 19.94.390 as determined by the examination procedure adopted by or under RCW 19.94.390(2) is subject to a civil penalty of not more than one thousand dollars.

(3) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any of the following acts is subject to a civil penalty of no more than five thousand dollars:

(a) Knowingly adds to or modifies any weighing or measuring instrument or device by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or falsification of weight or measure.

(b) Commits as a fourth or subsequent infraction any of the acts listed in subsection (1) or (2) of this section.

[1995 c 355 § 21; 1992 c 237 § 35; 1969 c 67 § 51.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.515 Unlawful commercial use of instrument or device—Penalty.

A person who owns a weighing or measuring instrument or device and uses or permits the use of the instrument for commercial purposes in violation of RCW 19.94.015 is subject to a civil penalty of fifty dollars for each such instrument or device used or permitted to be used in violation of RCW 19.94.015.

[1995 c 355 § 22.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.517 Incorrect commercial instrument or device to benefit of owner/operator—Penalties—Appeal.

(1) Whenever the department or a city sealer tests or inspects a weighing or measuring instrument or device and finds the instrument or device to be incorrect to the economic benefit of the owner/operator of the weighing or measuring instrument or device and to the economic detriment of the customer, the owner of the weighing or measuring instrument or device may be subject to the following civil penalties:

Device deviations outside the tolerances stated in Handbook 44.

| | Penalty |
|---|---|
| Small weighing or measuring instruments or devices: | |
| First violation | $ 50.00 |
| Second or subsequent violation within one year of first violation | $ 150.00 |
| Medium weighing or measuring instruments or devices: | |
| First violation | $ 100.00 |

Second or subsequent violation within one year of first violation ..... $ 300.00

Large weighing or measuring instruments or devices:

First violation..... $ 200.00

Second or subsequent violation within one year of first violation ..... $ 500.00

(2) For the purposes of this section:

(a) The following are small weighing or measuring instruments or devices: Scales of zero to four hundred pounds capacity, liquid fuel metering devices with flows of not more than twenty gallons per minute, liquid petroleum gas meters with one inch in diameter or smaller dispensers, fabric meters, cordage meters, and taxi meters.

(b) The following are medium weighing or measuring instruments or devices: Scales of four hundred one to five thousand pounds capacity, liquid fuel metering devices with flows of more than twenty but not more than one hundred fifty gallons per minute, and mass flow meters.

(c) The following are large weighing or measuring instruments or devices: Liquid petroleum gas meters with greater than one inch diameter dispensers, liquid fuel metering devices with flows over one hundred fifty gallons per minute, and scales of more than five thousand pounds capacity and scales of more than five thousand pounds capacity with supplemental devices.

(3) The director or a city sealer shall issue the appropriate civil penalty concurrently with the conclusion of the test or inspection.

(4) The weighing or measuring instrument or device owner shall have the right to appeal the civil penalty in accordance with the administrative procedure act, chapter 34.05 RCW.

[1995 c 355 § 23.]

NOTES:

**Application—Effective dates—1995 c 355:** See notes following RCW 19.94.015.

## RCW 19.94.520 Injunction against violations.

The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter.

[1969 c 67 § 52.]

## RCW 19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use.

For the purposes of this chapter, proof of the existence of a weighing or measuring instrument or device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle.

[1992 c 237 § 36; 1969 c 67 § 53.]

## RCW 19.94.540 Antifreeze products—Use of aversive agent.

(1) Any engine coolant or antifreeze manufactured or distributed in the state of Washington after January 1, 2010, that contains more than ten percent ethylene glycol shall contain denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive agent so as to render the product unpalatable.

(2) The requirements of this section apply to manufacturers, packagers, distributors, recyclers, or sellers of engine coolant or antifreeze, but not to those who install engine coolant or antifreeze for compensation.

(3) A manufacturer of a product subject to this section and RCW 19.94.542 and 19.94.544 shall maintain a record of the trade name, scientific name, and active ingredients of any aversive used under this section. The manufacturer shall make this information available to the public upon request.

[2008 c 68 § 1.]

## RCW 19.94.542 Antifreeze products—Aversive agents—Limitation of liability.

(1) A manufacturer, packager, distributor, recycler, or seller of an engine coolant or antifreeze that is required to contain an aversive agent as required by RCW 19.94.540 shall not be liable for any personal injury, death, property damage, damage to the environment or a natural resource, or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

(2) The limitation of liability provided in subsection (1) of this section does not apply to a particular liability that is not caused or is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

[2008 c 68 § 2.]

## RCW 19.94.544 Antifreeze products—Aversive agents—Application.

The requirements of this section and RCW 19.94.540 and 19.94.542 shall not apply to the sale of a motor vehicle that contains engine coolant or antifreeze or to wholesale containers of fifty-five gallons or more of engine coolant or antifreeze.

[2008 c 68 § 3.]

## RCW 19.94.900 Chapter cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law.

[1969 c 67 § 54.]

## RCW 19.94.910 Severability—1969 c 67.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional.

[1969 c 67 § 55.]

## RCW 19.94.920 Effective date—1992 c 237.

This act shall take effect July 1, 1992.

[1992 c 237 § 41.]

# CHAPTER 19.112 RCW
## MOTOR FUEL QUALITY ACT

**Sections**


19.112.005 Purpose.
19.112.010 Definitions.
19.112.020 Administration of chapter—Standards—Testing laboratory.
19.112.030 Director's authority.
19.112.040 Motor fuel registration.
19.112.050 Unlawful acts.
19.112.060 Penalties.
19.112.070 Injunctive relief.
19.112.080 Chapter in addition to chapter 19.94 RCW.
19.112.090 Air pollution reduction—Variances from ASTM.
19.112.100 Methyl tertiary-butyl ether.
19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules.
19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section.
19.112.130 Information submitted under RCW 19.112.110 or 19.112.120—Limitation on release.
19.112.140 Standards for biodiesel fuel/fuel blended with biodiesel fuel—Rules.
19.112.150 Biofuels advisory committee.
19.112.160 Governor's authority to suspend certain minimum renewable fuel content requirements.
19.112.170 Determination of the supply of certain fuels—Notification—Declaration concerning the applicability of RCW 19.112.110 or 19.112.120.
19.112.180 Goals under RCW 19.112.170—Report—Executive request legislation.
19.112.900 Short title.
19.112.901 Severability—1990 c 102.
19.112.902 Effective date—1990 c 102.
19.112.903 Effective date—2006 c 338.
19.112.904 Severability—2006 c 338.


### RCW 19.112.005 Purpose.

It is desired that there should be uniformity among the requirements of the several states. This chapter provides for the establishment of quality specifications for all liquid motor fuels, except aviation fuel, marine fuel, and liquefied petroleum gases, and establishes a sampling, testing, and enforcement program.

[1990 c 102 § 1.]

### RCW 19.112.010 Definitions.

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

(1) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas that is used alone or in combination with gasoline or other petroleum products for use as a fuel in self-propelled motor vehicles.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuel includes, but is not limited to, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal environmental protection agency and standards established by the American society of testing and materials.

(4) "Diesel" means special fuel as defined in RCW 82.38.020, and diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec. 48.4082-1T as of October 24, 2005.

(5) "Director" means the director of agriculture.

(6) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(7) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state, and any biodiesel fuel. Motor fuels containing ethanol may be marketed if either

(a) the base motor fuel meets the applicable standards before the addition of the ethanol or

(b) the resultant blend meets the applicable standards after the addition of the ethanol.

(8) "Nonhazardous motor fuel" means any fuel of a type distributed for use in self-propelled motor vehicles that does not contain a hazardous liquid as defined in RCW 19.122.020.

(9) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.

[2009 c 132 § 1; 2007 c 309 § 1; 2006 c 338 § 15; 1991 c 145 § 1; 1990 c 102 § 2.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

### RCW 19.112.020 Administration of chapter—Standards—Testing laboratory.

(1) This chapter shall be administered by the director or his or her authorized agent. For the purpose of administering this chapter, for motor fuel except biodiesel fuel, the standards set forth in the Annual Book of ASTM Standards and supplements thereto, and revisions thereof, are adopted, together with applicable federal environmental protection agency standards. If a conflict exists between federal environmental protection agency standards, ASTM standards, or state standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM standards. Any state standards adopted must be consistent with federal environmental

protection agency standards and ASTM standards not in conflict with federal environmental protection agency standards.

(2) The director may establish a fuel testing laboratory or may contract with a laboratory for testing. The director may also adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels. The director shall require fuel pumps offering an ethanol blend to be identified by a label stating the percentage of ethanol and fuel pumps offering a biodiesel blend of up to and including five percent to be identified by a label that states "may contain up to five percent biodiesel." Biodiesel blends above five percent shall be identified by a label stating the percentage of biodiesel being offered.

(3) The rules adopted under RCW 19.112.140 shall also provide that the diesel refiner is responsible for meeting the ASTM standards required by chapter 338, Laws of 2006 when providing diesel fuel into the distribution system.

[2010 c 96 § 1; 2006 c 338 § 8; 1990 c 102 § 3.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.030 Director's authority.

The director may:

(1) Enforce and administer this chapter by inspections, analyses, and other appropriate actions;

(2) Have access during normal business hours to all places where motor fuels are marketed for the purpose of examination, inspection, taking of samples, and investigation. If access is refused by the owner or agent or other persons leasing the same, the director or his or her agent may obtain an administrative search warrant from a court of competent jurisdiction;

(3) Collect or cause to be collected, samples of motor fuels marketed in this state, and cause such samples to be tested or analyzed for compliance with this chapter;

(4) Issue a stop-sale order for any motor fuel found not to be in compliance and rescind the stop-sale order if the motor fuel is brought into compliance with this chapter;

(5) Refuse, revoke, or suspend the registration of a motor fuel;

(6) Delegate to authorized agents any of the responsibilities for the proper administration of this chapter;

(7) Establish a motor fuel testing laboratory.

[1990 c 102 § 4.]

## RCW 19.112.040 Motor fuel registration.

All motor fuel shall be registered by the name, brand, or trademark under which it will be sold at the terminal. Registration shall include:

(1) The name and address of the person registering the motor fuel;

(2) The antiknock index or cetane number, as appropriate, at which the motor fuel is to be marketed;

(3) A certification, declaration, or affidavit that each individual grade or type of motor fuel shall conform to this chapter.

[1990 c 102 § 5.]

## RCW 19.112.050 Unlawful acts.

It is unlawful to:

(1) Market motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity, and quality of a motor fuel;

(2) Fail to register a motor fuel;

(3) Submit incorrect, misleading, or false information regarding the registration of a motor fuel;

(4) Hinder or obstruct the director, or his or her authorized agent, in the performance of his or her duties;

(5) Market a motor fuel that is contrary to this chapter.

[1990 c 102 § 6.]

## RCW 19.112.060 Penalties.

(1) (a) Any person who knowingly violates any provision of this chapter or rules adopted under it is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

(b) The director shall assess a civil penalty ranging from one hundred dollars to ten thousand dollars per occurrence, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of previous violations. Civil penalties collected under this chapter shall be deposited into the motor vehicle fund.

(2) The penalties in subsection (1)(a) of this section do not apply to violations of RCW 19.112.110 and 19.112.120.

[2006 c 338 § 6; 1990 c 102 § 7.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.070 Injunctive relief.

The director may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter.

[1990 c 102 § 8.]

## RCW 19.112.080 Chapter in addition to chapter 19.94 RCW.

This chapter is in addition to any requirements under chapter 19.94 RCW.

[1990 c 102 § 9.]

## RCW 19.112.090 Air pollution reduction—Variances from ASTM.

The directors of the departments of ecology and agriculture may grant a variance from ASTM motor fuel specifications if necessary to produce lower emission motor fuels.

[1991 c 199 s 231.]

NOTES:

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

## RCW 19.112.100 Methyl tertiary-butyl ether.

Methyl tertiary-butyl ether may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the

state of Washington after December 31, 2003. In no event may methyl tertiary-butyl ether be knowingly mixed in gasoline above fifteen one-hundredths of one percent by volume.

[2007 c 310 § 1; 2001 c 218 § 1.]

## RCW 19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules.

(1) Special fuel licensees under chapter 82.38 RCW, other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall provide evidence to the department of licensing that at least two percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the director, published in the Washington State Register, that feedstock grown in Washington state can satisfy a two-percent requirement.

(2) Special fuel licensees under chapter 82.38 RCW, other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall provide evidence to the department of licensing that at least five percent of total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, when the director determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington state can satisfy a three-percent requirement.

(3) The requirements of subsections (1) and (2) of this section shall take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing shall each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

[2009 c 132 § 2; 2006 c 338 § 2.]

NOTES:

**Findings—Intent—2006 c 338:** "The legislature finds that it is in the public interest to establish a market for alternative fuels in Washington. By requiring a growing percentage of our fuel supply to be renewable biofuel that meets appropriate fuel quality standards, we will reduce our dependence on imports of foreign oil, improve the health and quality of life for Washingtonians, and stimulate the creation of a new industry in Washington that benefits our farmers and rural communities. The legislature finds that it is in the public interest for the state to play a central role in spurring the market by purchasing an increasing amount of alternative fuels produced in Washington. The legislature finds that we must act now and that the time available before the requirements of this act take effect is sufficient for feedstock and fuel providers to prepare for successful implementation.

The legislature intends for consumers to have a choice of fuels and to encourage and promote the development, availability, and use of a diversity of renewable fuels and fuel blends ranging from fuels composed of no renewable content to completely renewable fuels."

[2006 c 338 § 1.]

## RCW 19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section.

(1) By December 1, 2008, motor vehicle fuel licensees under chapter 82.36 RCW, other than motor vehicle fuel distributors, shall provide evidence to the department of licensing that at least two percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

(2) If the director of ecology determines that ethanol content greater than two percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution in Washington and the director of agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the director of agriculture may require by rule that licensees provide evidence to the department of licensing that denatured ethanol comprises between two percent and at least ten percent of total gasoline sold in Washington, measured on a quarterly basis.

(3) The requirements of subsections (1) and (2) of this section shall take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing shall each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

(5) Nothing in this section is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using E85 motor fuel. Nothing in this section is intended to limit the use of high octane gasoline not blended with ethanol for use in aircraft.

[2007 c 309 § 2; 2006 c 338 § 3.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.130 Information submitted under RCW 19.112.110 or 19.112.120—Limitation on release.

The department of licensing shall not publicly release, unless pursuant to an order of a court of competent jurisdiction, information submitted as evidence as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees.

[2006 c 338 § 4.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.140 Standards for biodiesel fuel/fuel blended with biodiesel fuel—Rules.

(1) The director shall adopt rules for maintaining standards for biodiesel fuel or fuel blended with biodiesel fuel by adopting all or part of the standards set forth in the Annual Book of ASTM Standards and supplements, amendments, or revisions thereof, all or part of the standards set forth in the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality rules, and any supplements, amendments, or revisions thereof, together with applicable federal environmental protection agency standards. The rules shall provide that the biodiesel refiner is responsible for meeting the ASTM standards required by chapter 338, Laws of 2006 when providing biodiesel fuel into the distribution system. If a conflict exists between federal environmental protection agency standards, ASTM standards, or NIST standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM and NIST standards. The department of agriculture shall not exceed ASTM standards for diesel.

(2) The rules adopted under subsection (1) of this section shall be updated to provide for fuel stability standards when national or international fuel stability standards have been adopted.

[2006 c 338 § 7.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.150 Biofuels advisory committee.

The director shall establish a biofuels advisory committee to advise the director on implementing or suspending the minimum renewable fuel content requirements. The committee shall advise the director on applicability to all users; logistical, technical, and economic issues of implementation, including the potential for credit trading, compliance and enforcement provisions, and tracking and reporting requirements; and how the use of renewable fuel blends greater than two percent and renewable fuels other than biodiesel or ethanol could achieve the goals of chapter 338, Laws of 2006. In addition, the committee shall make recommendations to the legislature and governor on the potential to use alternatives to biodiesel, which are produced from nonpetroleum renewable sources (inclusive of vegetable oils and animal fats), to meet the minimum renewable fuel content requirement. The director shall make recommendations to the legislature and the governor on the implementation or suspension of chapter 338, Laws of 2006 by September 1, 2007.

[2006 c 338 § 9.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.160 Governor's authority to suspend certain minimum renewable fuel content requirements.

The governor, by executive order, may suspend all or portions of the minimum renewable fuel content requirements in RCW 19.112.110 or 19.112.120, or 43.19.642, based on a determination that such requirements are temporarily technically or economically infeasible, or pose a significant risk to public safety.

[2006 c 338 § 11.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.170 Determination of the supply of certain fuels—Notification—Declaration concerning the applicability of RCW 19.112.110 or 19.112.120.

(1) By November 30, 2008, the director shall determine whether the state's diesel fuel supply is comprised of at least ten percent biodiesel made predominantly from Washington feedstock.

(2) By November 30, 2008, the director shall determine whether the state's gasoline fuel supply is comprised of at least twenty percent ethanol made predominantly from Washington feedstock, without jeopardizing continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution.

(3) By December 1, 2008, the director shall notify the governor and the legislature of the findings in subsections (1) and (2) of this section.

(4) If the findings from the director indicate that the goals of subsection (1) or (2) of this section, or both, have been achieved, then the governor shall issue an executive order declaring that RCW 19.112.110 or 19.112.120, or both, are no longer applicable.

[2006 c 338 § 13.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.180 Goals under RCW 19.112.170—Report—Executive request legislation.

(1) If either or both of the goals in RCW 19.112.170 are not achieved by November 30, 2008, the director shall monitor the state's diesel and gasoline fuel supply until such time as those goals, or either of them, is met.

(2) The director shall report to the governor and the legislature regarding the goals in RCW 19.112.170 by November 30th of the year in which a goal is met.

(3) Following notification under this section that a goal has been met, the governor shall prepare executive request legislation repealing RCW 19.112.110 or 19.112.120, or both, as applicable.

[2006 c 338 § 14.]

NOTES:

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

## RCW 19.112.900 Short title.

RCW 19.112.005 through 19.112.080 shall constitute a new chapter in Title 19 RCW and may be cited as the motor fuel quality act.

[1990 c 102 § 11.]

## RCW 19.112.901 Severability—1990 c 102.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1990 c 102 § 10.]

## RCW 19.112.902 Effective date—1990 c 102.

This act shall take effect on July 1, 1990.

[1990 c 102 § 12.]

## RCW 19.112.903 Effective date—2006 c 338.

This act takes effect July 1, 2006.

[2006 c 338 § 16.]

## RCW 19.112.904 Severability—2006 c 338.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2006 c 338 § 17.]

# TITLE 20 RCW

## COMMISSION MERCHANTS — AGRICULTURAL PRODUCTS

### Chapters

20.01 Agricultural Products—Commission Merchants, Dealers, Brokers, Buyers, Agents

Notes:

Sales of personal property: Title 62A RCW.

Washington wholesome eggs and egg products act: Chapter 69.25 RCW.

# CHAPTER 20.01 RCW

## AGRICULTURAL PRODUCTS—COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

### Sections

20.01.010 Definitions.
20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited.
20.01.030 Exemptions.
20.01.038 License required of persons dealing in livestock, hay, grain, or straw.
20.01.040 License—Generally.
20.01.050 License renewals.
20.01.060 Licensee in one class may obtain license in another—Additional fee.
20.01.070 Application for license—Contents.
20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting.
20.01.086 Waiver of reporting, accounting, and record-keeping requirements prohibited.
20.01.090 Agent to disclose principal licensee and his endorsement.
20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation.
20.01.110 Publication of list of licensees and rules—Posting license.
20.01.120 Vehicle license plates.
20.01.125 Hay or straw—Certified vehicle tare and load weights—Violations.
20.01.130 Disposition of moneys.
20.01.140 Change in organization of firm to be reported.
20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority.
20.01.160 Denial, suspension, revocation of licenses, probationary orders—Procedure.
20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees.
20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record.
20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court.
20.01.200 Denial, suspension, revocation of licenses, probationary orders—Appellate review.
20.01.205 License suspension—Noncompliance with support order—Reissuance.
20.01.210 Commission merchants, dealers—Bonds.
20.01.211 Alternative bonding provision for certain dealers.
20.01.212 Livestock dealers bonded under federal law.
20.01.214 Appeal from rejected bond claim.
20.01.220 Action on bond for fraud.
20.01.230 Action on bond for failure to comply with chapter.
20.01.240 Claims against commission merchant, dealer.
20.01.250 Failure of consignor to file claim, time limitation.
20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond.
20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise.
20.01.280 Action on bond after refusal to pay—New bond, failure to file.
20.01.300 Verified complaints of consignor—Investigations.
20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence.
20.01.320 Investigations, examinations, inspections—Search warrants—Subpoenas.
20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds.
20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds.
20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices.
20.01.360 Order of revocation, suspension.
20.01.370 Commission merchants—Recordkeeping.
20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping—Carrying identification and health documents.
20.01.385 Failure to comply—Construction of transaction.
20.01.390 When dealer must pay for products delivered to him.
20.01.400 Broker's memorandum of sale.
20.01.410 Manifest of cargo—Bill of lading.
20.01.420 Commission merchant's report of sale to consignor.
20.01.430 Commission merchant's remittance to consignor.
20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc.
20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof.
20.01.460 Prohibited acts—Penalties.
20.01.465 Time of sale requirement—Unlawful practice.
20.01.470 Action to enjoin violation of chapter.
20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products.
20.01.480 Violations resulting in improper or nonpayment—Charges.
20.01.482 Civil infractions—Notice—Misdemeanors.
20.01.484 Civil infractions—Response to notice.
20.01.486 Civil infractions—Hearing to contest charge—Order—Appeal.
20.01.488 Civil infractions—Informal hearing on mitigating circumstances—Order—No appeal.
20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor.
20.01.500 "Grower," "processor" defined—Application of exemption contained in RCW 20.01.030(1).
20.01.510 Processor's form showing maximum processing capacity.
20.01.520 Processor to have grower contracts and commitments on file.
20.01.530 Grower may file form showing crops processor is committed to purchase.
20.01.540 Committing to purchase more crops than plants can process—Violation.
20.01.550 Discrimination by processor.
20.01.560 Effective date of RCW 20.01.500 through 20.01.550.
20.01.570 Cash or other security in lieu of surety bond.
20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction.

20.01.900 Chapter cumulative and nonexclusive.
20.01.910 Severability—1959 c 139.
20.01.911 Severability—1963 c 232.
20.01.912 Severability—1967 c 240.
20.01.913 Severability—1979 ex.s. c 115.
20.01.920 Effective date—1959 c 139.
20.01.930 Repealer.
20.01.940 Repealer—Savings—1979 ex.s. c 115.

**NOTES:**

Administrative Procedure Act: Chapter 34.05 RCW.

Lien for transportation, storage, advancements, etc.: Chapter 60.60 RCW.

## RCW 20.01.010 Definitions.

As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or a duly authorized representative.

(2) "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.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its by-products, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products. "Agricultural product" also includes (a) mint or mint oil processed by or for the producer thereof, hay and straw baled or prepared for market in any manner or form and livestock; and (b) agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW, however, any disputes regarding responsibilities for seed clean out are governed exclusively by contracts between the producers of the seed and conditioners or processors of the seed.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product and who operates under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, credit card, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent

quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

(22) "Licensee" means any person or business licensed under this chapter as a commission merchant, dealer, limited dealer, broker, cash buyer, or agent.

(23) "Seed" means agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW.

(24) "Seed clean out" means the process of removing impurities from raw seed product.

[2004 c 212 § 1; 2003 c 395 § 1; 1991 c 174 § 1; 1989 c 354 § 37; 1986 c 178 § 6; 1985 c 412 § 8; 1983 c 305 § 1; 1982 c 194 § 1; 1981 c 296 § 30; 1979 ex.s. c 115 § 1; 1977 ex.s. c 304 § 1; 1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

**NOTES:**

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1983 c 305 § 78.]

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited.

The director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter, rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter, rules and regulations adopted hereunder.

[1959 c 139 § 2.]

## RCW 20.01.030 Exemptions.

This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent

place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its transactions involving agricultural products used by the domestic winery in making wine.

[1993 c 104 § 1. Prior: 1989 c 354 § 38; 1989 c 307 § 37; 1988 c 254 § 10; 1983 c 305 § 2; 1982 c 194 § 2; 1981 c 296 § 31; 1979 ex.s. c 115 § 2; 1977 ex.s. c 304 § 2; 1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Application—1989 c 307:** See RCW 23.86.900.

**Severability—1983 c 305:** See note following RCW 20.01.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 20.01.038 License required of persons dealing in livestock, hay, grain, or straw.

Any person who deals in livestock, hay, grain or straw, other than the producer or grower thereof, shall license as a dealer or commission merchant and shall be subject to all the provisions of this chapter regulating such a licensee.

[1963 c 232 § 9.]

## RCW 20.01.040 License—Generally.

No person may act as a commission merchant, dealer, broker, cash buyer, or agent without a license. Any person applying for such a license shall file an application with the director prior to conducting business pursuant to this chapter. No application shall be considered complete unless an effective bond or other acceptable form of security is also filed with the director, as provided under RCW 20.01.210, 20.01.211, or 20.01.212. Each license issued under this chapter shall require renewal on or before the renewal date prescribed by the director by rule. License fees shall be prorated where necessary to accommodate staggered renewals of a license or licenses. The application shall be accompanied by a license fee as prescribed by the director by rule.

[1991 c 109 § 16; 1989 c 354 § 39; 1987 c 393 § 13; 1983 c 305 § 3; 1979 ex.s. c 115 § 3; 1974 ex.s. c 102 § 3; 1971 ex.s. c 182 § 3; 1959 c 139 § 4.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 20.01.050 License renewals.

If an application for renewal of a commission merchant, dealer, broker or cash buyer license is not filed prior to the prescribed renewal date a penalty of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

[1991 c 109 § 17; 1959 c 139 § 5.]

## RCW 20.01.060 Licensee in one class may obtain license in another—Additional fee.

Any person licensed as a commission merchant, dealer, or broker, in the manner prescribed in this chapter, may apply for and secure a license in any or all of the remaining such classifications upon payment of an additional fee of twenty-five dollars for each such additional classification: PROVIDED, That the applicant's principal license shall be in that classification requiring the greatest license fee. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved.

[1979 ex.s. c 115 § 4; 1977 ex.s. c 304 § 3; 1974 ex.s. c 102 § 4; 1971 ex.s. c 182 § 4; 1959 c 139 § 6.]

## RCW 20.01.070 Application for license—Contents.

Application for a license shall be on a form prescribed by the director and shall state the full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, exchange, partnership, association or corporation, the full name of each member of the firm or partnership, or the names of the officers of the exchange, association or corporation shall be given in the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name or names of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant and any other necessary information prescribed by the director.

[1959 c 139 § 7.]

## RCW 20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting.

Any person applying for a commission merchant's license shall include in his or her application a schedule of commissions, together with an itemized list of all charges for services to be rendered to a consignor and shall post a copy of such charges on his or her premises in a conspicuous place where it is clearly visible and available to consignors. In addition to the posting of the itemized list of charges, such list shall be distributed to each consignor along with each contract entered into between the consignor and the commission merchant. Such commissions and charges shall not be changed or varied for the license period except by written contract between the consignor or his or her agent and the licensee or thirty days after written notice to the director, and proper posting of such changes, as prescribed by the director, on the licensee's premises. Charges for services rendered and not listed on the schedule of commissions and charges filed with the director, or for increases in charges listed and filed which are directly caused by increases in labor rates or in cost of materials which occur after the signing of the contract by the grower, shall be rendered only on an actual cost to the licensee basis.

[1988 c 254 § 16; 1977 ex.s. c 304 § 4; 1971 ex.s. c 182 § 5; 1959 c 139 § 8.]

## RCW 20.01.086 Waiver of reporting, accounting, and record-keeping requirements prohibited.

Except where specifically provided in this chapter, the reporting, accounting, and record-keeping requirements of this chapter, being matters of public interest, may not be waived by contract between the consignor and/or the commission merchant or dealer.

[1977 ex.s. c 304 § 5; 1974 ex.s. c 102 § 8.]

## RCW 20.01.090 Agent to disclose principal licensee and his endorsement.

Any person applying for an agent's license shall include the name and address of the principal licensee represented or sought to be represented by such agent and the written endorsement or nomination of such principal licensee.

[1959 c 139 § 9.]

## RCW 20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation.

The director, upon his satisfaction that the applicant has met the requirements of this chapter and rules and regulations adopted hereunder, shall issue a license entitling the applicant to carry on the business described on the application. Such license shall expire on December 31st following the issuance of the license, provided that it has not been revoked or suspended prior thereto, by the director, after due notice and hearing. Fraud and misrepresentation in making an application for a license shall be cause for refusal to grant a license or revocation of license granted pursuant to a fraudulent application after due notice and hearing.

[1959 c 139 § 10.]

## RCW 20.01.110 Publication of list of licensees and rules—Posting license.

The director may publish a list, as often as he deems necessary, of all persons licensed under this chapter together with all the necessary rules and regulations concerning the enforcement of this chapter. Each person licensed under [the] provisions of this chapter shall post his license or a copy thereof in his place or places of business in plain view of the public.

[1959 c 139 § 11.]

## RCW 20.01.120 Vehicle license plates.

The licensee shall prominently display license plates issued by the director on the front and back of any vehicle used by the licensee to transport upon public highways unprocessed agricultural products which he has not produced as a producer of such agricultural products. If the licensee operates more than one vehicle to transport unprocessed agricultural products on public highways he shall apply to the director for license plates for each such additional vehicle. Such additional license plates shall be issued to the licensee at the actual cost to the department for such license plates and necessary handling charges. Such license plates are not transferable to any other person and may be used only on the licensee's vehicle or vehicles. The display of such license plates on the vehicle or vehicles of a person whose license has been revoked, or the failure to surrender such license plates forthwith to the department after such revocation, shall be deemed a violation of this chapter.

[1959 c 139 § 12.]

## RCW 20.01.125 Hay or straw—Certified vehicle tare and load weights—Violations.

Every dealer and commission merchant dealing in hay or straw shall obtain a certified vehicle tare weight and a certified vehicle gross weight for each load hauled and shall furnish the consignor with a copy of such certified weight ticket within seventy-two hours after taking delivery. It shall be a violation of this chapter for any licensee to transport hay or straw which has been purchased by weight without having obtained a certified weight ticket from the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay or straw is to be unloaded. If agreed upon in writing between a dealer or commission merchant and a grower or consigner, a certified vehicle tare weight and certified vehicle gross weight may be obtained from a hay or straw processing facility with a scale approved by the director.

[2008 c 26 § 1; 1986 c 178 § 7; 1971 ex.s. c 182 § 6; 1963 c 232 § 8.]

## RCW 20.01.130 Disposition of moneys.

All fees and other moneys received by the department under this chapter shall be paid to the director and used solely for the purpose of carrying out this chapter and the rules adopted under this chapter. All civil fines received by the courts as the result of notices of infractions issued by the director shall be paid to the director, less any mandatory court costs and assessments.

[2003 c 395 § 2; 1993 sp.s. c 24 § 929; 1986 c 178 § 8; 1973 c 142 § 1; 1971 ex.s. c 182 § 7; 1959 c 139 § 13.]

NOTES:

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

## RCW 20.01.140 Change in organization of firm to be reported.

Any change in the organization of any firm, association, exchange, corporation, or partnership licensed under this chapter shall be reported to the director and the licensee's surety or sureties within thirty days.

[2003 c 395 § 3; 1959 c 139 § 14.]

## RCW 20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority.

The director is authorized to deny, suspend, or revoke a license or issue conditional or probationary orders in the manner prescribed herein, in any case in which he finds that there has been a failure and/or refusal to comply with the requirements of this chapter, rules or regulations adopted hereunder.

[1959 c 139 § 15.]

## RCW 20.01.160 Denial, suspension, revocation of licenses, probationary orders—Procedure.

In all proceedings for revocation, suspension, or denial of a license, or the issuance of a conditional or probationary order, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for the hearing for such revocation, suspension, denial or the issuance of a conditional or probationary order. The notice shall also state the date, time and place where such hearing is to be held. A copy of such notice shall be mailed

to the licensee's surety. Such hearings shall be held in the city of Olympia, unless a different place is fixed by the director.

[1959 c 139 § 16.]

## RCW 20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees.

The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents, anywhere in the state. The licensee or applicant shall have opportunity to make his defense, and may have such subpoenas issued as he 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. Testimony shall be recorded and may be taken by deposition under such rules as the director may prescribe. 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.

[1963 c 232 § 2; 1959 c 139 § 17.]

## RCW 20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record.

The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions.

[1959 c 139 § 18.]

## RCW 20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court.

The revocation, suspension or denial of a license, or the issuance of conditional or probationary orders, shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of Thurston county or the county in which the hearing was held. A copy of such findings shall be mailed to the licensee's surety. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director.

[1959 c 139 § 19.]

## RCW 20.01.200 Denial, suspension, revocation of licenses, probationary orders—Appellate review.

Appellate review of the judgment of the superior court may be sought as provided in other civil cases.

[1988 c 202 § 24; 1971 c 81 § 66; 1959 c 139 § 20.]

NOTES:

**Severability—1988 c 202:** See note following RCW 2.24.050.

## RCW 20.01.205 License suspension—Noncompliance with support order—Reissuance.

The director shall immediately suspend the license or certificate of a person who 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 or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 58 § 855.]

NOTES:

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## RCW 20.01.210 Commission merchants, dealers—Bonds.

(1) Before the license is issued to any commission merchant or dealer, or both, the applicant shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be to the state for the benefit of qualified consignors of agricultural products in this state. All such sureties on a bond, as provided in this section, shall be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration period provided for in this subsection.

(2) The bond for a commission merchant or dealer in hay, straw, or seed shall be not less than fifteen thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by twelve and increasing that amount to the next multiple of five thousand dollars. The bond for a new commission merchant or dealer in hay, straw, or seed shall be subject to increase at any time during the licensee's first year of operation based on the average of business volume for any three months. Except as provided in subsection (3) of this section, the bond shall be not less than ten thousand dollars for any other dealer.

(3) The bond for a commission merchant or dealer in livestock shall be not less than ten thousand dollars. The actual amount of such bond shall be determined in accordance with the formula set forth in the packers and stockyard act of 1921 (7 U.S.C. 181), except that a commission merchant or dealer in livestock shall increase the commission merchant's or dealer's bond by five thousand dollars for each agent the commission merchant or dealer has endorsed under RCW 20.01.090. A dealer who also acts as an order buyer for other persons who are also licensed and bonded under this chapter or under the packers and stockyards act (7 U.S.C. 181) may subtract that amount of business from the annual gross volume of purchases reported to the director in determining the amount of bond coverage that must be provided and maintained for the purposes of this chapter.

(4) The bond for a commission merchant handling agricultural products other than livestock, hay, straw, or seed shall not be less than ten thousand dollars. The bond for a dealer handling agricultural products other than livestock, hay, straw, or seed shall not be less than ten thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by fifty-two and increasing that amount to the next multiple of two thousand dollars. However, bonds above twenty-six thousand dollars shall be increased to the next multiple of five thousand dollars.

(5) When the annual dollar volume of any commission merchant or dealer reaches two million six hundred thousand dollars, the amount of the bond required above this level shall be on a basis of ten percent of the amount arrived at by applying the appropriate formula.

[2004 c 212 § 2; 1991 c 109 § 18; 1986 c 178 § 9; 1983 c 305 § 4; 1982 c 194 § 3; 1977 ex.s. c 304 § 6; 1974 ex.s. c 102 § 5; 1971 ex.s. c 182 § 8; 1963 c 232 § 5. Prior: 1959 c 139 § 21.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

Cash or other security in lieu of surety bond: RCW 20.01.570.

## RCW 20.01.211 Alternative bonding provision for certain dealers.

(1) In lieu of the bonding provision required by RCW 20.01.210, any dealer who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product may file a bond in an amount equal to the dealer's maximum monthly purchases, divided by twelve, but the minimum bond under this section shall be no less than ten thousand dollars.

(2) Any dealer using the bonding provisions of this section shall file an affidavit with the director that sets forth the dealer's maximum monthly purchases from or payments to consignors. The affidavit shall be filed at the time of application and with each renewal.

(3) Any dealer bonded under this section who is found to be in violation of this chapter shall be required to comply with the bonding requirements of RCW 20.01.210 for a minimum of two years.

[2003 c 395 § 4; 1983 c 305 § 5; 1977 ex.s. c 304 § 16.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 20.01.212 Livestock dealers bonded under federal law.

If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer or packer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181), as amended, on June 13, 1963, and acts as a commission merchant, packer, and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of this chapter, and all persons who act as order buyers of livestock shall license under this chapter as a livestock dealer: PROVIDED, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture. Such bond shall be in a minimum amount of ten thousand dollars. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing.

[1991 c 109 § 19; 1977 ex.s. c 304 § 7; 1971 ex.s. c 182 § 9; 1963 c 232 § 6.]

## RCW 20.01.214 Appeal from rejected bond claim.

Upon any bond claim being denied by the director the claimant must appeal such action to the superior court in the county where this claimant resides in this state or Thurston county, within sixty days after receipt of written notice of such rejection or such rejection shall become final and binding upon the claimant.

[1971 ex.s. c 182 § 10; 1963 c 232 § 7.]

## RCW 20.01.220 Action on bond for fraud.

Any consignor of an agricultural product claiming to be injured by the fraud of any commission merchant and/or dealer or their agents may bring action upon said bond against principal, surety, and agent in any court of competent jurisdiction to recover the damages caused by such fraud. Any consignor undertaking such an action shall name the director as a party.

[1986 c 178 § 10; 1982 c 194 § 4; 1959 c 139 § 22.]

## RCW 20.01.230 Action on bond for failure to comply with chapter.

The director or any consignor of an agricultural product may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Any consignor undertaking such an action shall name the director as a party.

[1986 c 178 § 11; 1959 c 139 § 23.]

## RCW 20.01.240 Claims against commission merchant, dealer.

(1) Any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer shall file a claim with the director.

(2) In the case of a claim against the bond of a commission merchant or dealer in hay or straw, default occurs when the licensee fails to make payment within thirty days of the date the licensee took possession of the hay or straw or at a date agreed to by both the consignor and commission merchant or dealer in written contract. In the case of a claim against a limited dealer in hay or straw, default occurs when the licensee fails to make payment upon taking possession of the hay or straw.

(3) Upon the filing of a claim under this subsection against any commission merchant or dealer handling any agricultural product, the director may, after investigation, proceed to ascertain the names and addresses of all consignor creditors

of such commission merchant and dealer, together with the amounts due and owing to them by such commission merchant and dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his last known address.

(4) For claims against a bond that have been filed by consignors prior to the sixty-day deadline established in RCW 20.01.250, the director shall investigate the claims and, within thirty days of verifying the claims, demand payment for the valid claims by the licensee's surety. The director shall distribute the proceeds of the valid bond claims to the claimants on a pro rata basis within the limits of the claims and the availability of the bond proceeds. If a claim is filed after the sixty-day deadline established in RCW 20.01.250, the director may investigate the claim and may demand payment for a valid claim. The director shall distribute the proceeds of any such payment made by the surety to the claimant on a first-to-file, first-to-be-paid basis within the limits of the claim and the availability of any bond proceeds remaining after the pro rata distribution. All distributions made by the director under this subsection are subject to RCW 20.01.260.

[2003 c 395 § 5; 1986 c 178 § 12; 1959 c 139 § 24.]

## RCW 20.01.250 Failure of consignor to file claim, time limitation.

If a consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said consignor creditor.

[1959 c 139 § 25.]

## RCW 20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond.

Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said consignor creditors, the director after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered.

[1959 c 139 § 26.]

## RCW 20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise.

Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

[1959 c 139 § 27.]

## RCW 20.01.280 Action on bond after refusal to pay—New bond, failure to file.

Upon the refusal of the surety company to pay the demand the director may thereupon bring an action on the bond in behalf of said consignor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such commission merchant and/or dealer shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his license.

[1959 c 139 § 28.]

## RCW 20.01.300 Verified complaints of consignor—Investigations.

For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from any consignor against any commission merchant, dealer, broker, cash buyer, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint.

[1959 c 139 § 30.]

## RCW 20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence.

The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas in the manner prescribed in RCW 20.01.170 requiring attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing provided in this chapter.

[1959 c 139 § 31.]

## RCW 20.01.320 Investigations, examinations, inspections—Search warrants—Subpoenas.

The director on his or her own motion or upon the verified complaint of any interested party may investigate, examine, or inspect

(1) any transaction involving solicitation, receipt, sale, or attempted sale of agricultural products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, cash buyer, or agent;

(2) the failure to make proper and true account of sales and settlement thereof as required under this chapter or rules adopted under this chapter;

(3) the intentional making of false statements as to conditions and quantity of any agricultural products received or in storage;

(4) the intentional making of false statements as to market conditions;

(5) the failure to make payment for products within the time required by this chapter;

(6) any and all other injurious transactions. In furtherance of such an investigation, examination, or inspection, the director or an authorized representative may examine that portion of the ledgers, books, accounts, memoranda and other documents, agricultural products, scales, measures, and other articles and things used in connection with the business of the person relating to the transactions involved. For the purpose of the investigation the director shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities or any other place where agricultural products are kept, stored, handled, or transported. If the director is denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises and records. The court may upon the application issue the search warrant for the purposes requested. The director may also, for the purpose of the investigation, issue subpoenas to compel the attendance of witnesses, as provided in RCW 20.01.170, or the production of books or documents, anywhere in the state.

[2003 c 395 § 6; 1959 c 139 § 32.]

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## RCW 20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds.

The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by a check the licensee knows not to be backed by sufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted a person to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

(21) That the licensee has discriminated in the licensee's dealings with consignors on the basis of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

[1989 c 354 § 40; 1982 c 20 § 1; 1981 c 296 § 32; 1977 ex.s. c 304 § 8; 1971 ex.s. c 182 § 11; 1959 c 139 § 33.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds.

Previous violation by the applicant or licensee, or by any person connected with him, of any of the provisions of this chapter and/or rules and regulations adopted hereunder, shall be good and sufficient ground for denial, suspension or revocation of a license, or the issuance of a conditional or probationary order.

[1959 c 139 § 34.]

## RCW 20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices.

The director, after hearing or investigation, may refuse to grant a license or renewal thereof and may revoke or suspend any license or issue a conditional or probationary order, as the case may require, when he is satisfied that the licensee has executory or executed contracts for the purchase of agricultural products, or for the handling of agricultural products on consignment.

In such cases, if the director is satisfied that to permit the dealer or commission merchant to continue to purchase or to receive further shipments or deliveries of agricultural products would be likely to cause serious and irreparable loss to said consignor-creditors, or to consignors with whom the said dealer or commission merchant has said contracts, then the director within his discretion may thereupon and forthwith shorten the time herein provided for hearing upon an order to show cause why the license of said dealer or commission merchant should not be forthwith suspended, or revoked: PROVIDED, That the time of notice of said hearing, shall in no event be less than twenty-four hours, and the director shall, within that period, call a hearing at which the dealer or commission merchant proceeded against shall be ordered to show cause why the license should not be suspended, or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors involved. Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the dealer or commission merchant involved, and may be held at the nearest office of the director or at such place as may be most convenient at the discretion of the director, for the attendance of all parties involved.

[1959 c 139 § 35.]

## RCW 20.01.360 Order of revocation, suspension.

Any order revoking or suspending a license may, within the discretion of the director, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the director of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final.

[1959 c 139 § 36.]

## RCW 20.01.370 Commission merchants—Recordkeeping.

Every commission merchant taking control of any agricultural products for sale as such commission merchant, shall promptly make and keep for a period of three years, beginning on the day the sale of the product is complete, a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

(1) The name and address of the consignor.

(2) The date received.

(3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(4) An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold, and proof of payments received on behalf of the consignor.

(5) The terms of payment to the producer.

(6) An itemized statement of the charges to be paid by consignor in connection with the sale.

(7) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.

(8) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.

(9) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

Before a commission merchant may handle an agricultural product in a pooling arrangement or accounting, the consignor must have agreed in writing to allow the pooling.

Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), and (8) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

For individual accounting, the commission merchant shall transmit a copy of the record required by this section to the consignor on the same day the final remittance is made to the consignor as required by RCW 20.01.430. For a consignor who is participating in a pooling arrangement, the commission merchant shall, on the same day final remittance and accounting are made to the consignor as required by RCW 20.01.430, transmit to the consignor a summary of the records which are available for inspection by any consignor to that pool.

[1991 c 109 § 20; 1989 c 354 § 41; 1988 c 254 § 18; 1979 ex.s. c 115 § 5; 1977 ex.s. c 304 § 9; 1974 ex.s. c 102 § 6; 1963 c 232 § 3; 1959 c 139 § 37.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping—Carrying identification and health documents.

Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for three years a correct record showing in detail the following:

(1) The name and address of the consignor.

(2) The date received.

(3) The terms of the sale.

(4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.

(6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or rule adopted by the director.

Livestock dealers must carry animal identification and animal health documents as required by chapters 16.36 and 16.57 RCW and rules adopted by the director under those chapters.

[2007 c 71 § 7; 1991 c 109 § 21; 1989 c 354 § 42; 1988 c 254 § 17; 1981 c 296 § 33; 1963 c 232 § 4; 1959 c 139 § 38.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 20.01.385 Failure to comply—Construction of transaction.

Whenever a commission merchant or dealer handling any agricultural products fails to carry out the provisions of RCW 20.01.370 as now or hereafter amended or RCW 20.01.380, whichever is applicable, it shall be prima facie evidence that the transaction involving the handling of any agricultural products between the consignor and the commission merchant or dealer was either a commission type transaction, or dealer transaction constituting an outright sale by the consignor, whichever is most favorable to the consignor. Such determination in favor of the consignor shall be based on the market price of the agricultural product in question at the time the complaint is filed against said commission merchant or dealer by the consignor: PROVIDED, That if the return to the consignor is determined most favorably on a commission basis, the total commission shall not exceed ten percent, and all other charges for handling the agricultural product in question shall be figured on the basis of the actual cost of said handling.

[1977 ex.s. c 304 § 10; 1974 ex.s. c 102 § 7; 1967 c 240 § 42.]

## RCW 20.01.390 When dealer must pay for products delivered to him.

(1) Every dealer must pay for agricultural products, except livestock, delivered to him at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such agricultural products.

(2) Every dealer must pay for livestock delivered to him at the time and in the manner specified in the contract, but if no time is set by such contract, or at the time of said delivery, then within seven days from the delivery or taking possession of such livestock. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale.

[1982 c 20 § 2; 1959 c 139 § 39.]

## RCW 20.01.400 Broker's memorandum of sale.

Every broker, upon negotiating the sale of agricultural products, shall issue to both buyer and seller a written memorandum of sale, showing price, date of delivery, quality, and other details concerned in the transaction. A copy of this memorandum shall be retained by the broker for a period of one year.

[1959 c 139 § 40.]

## RCW 20.01.410 Manifest of cargo—Bill of lading.

(1) A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to a commission merchant from the consignor thereof when prescribed by the director. A bill of lading may be carried in lieu of a manifest of cargo for an agricultural product other than hay or straw.

(2) Except as provided in subsection (3) of this section, the commission merchant, dealer, or cash buyer of agricultural products shall issue a copy of the manifest or bill of lading to the consignor of the agricultural products and the original shall be retained by the licensee for a period of three years during which time it shall be surrendered upon request to the director. The manifest of cargo is valid only when signed by the licensee or his or her agent and the consignor or his or her authorized representative of the agricultural products.

(3) The commission merchant or dealer of hay or straw shall issue a copy of a manifest to the consignor. The original copy shall be retained by the commission merchant or dealer for a period of three years during which time it shall be surrendered upon request to the director. The manifest of cargo is valid only when signed by the licensee or his or her agent and the consignor or his or her authorized representative of hay or straw.

(4) Manifest forms will be provided to licensees at the actual cost for the manifests plus necessary handling costs incurred by the department.

[2003 c 395 § 7; 1971 ex.s. c 182 § 12; 1959 c 139 § 41.]

## RCW 20.01.420 Commission merchant's report of sale to consignor.

When requested by a consignor, a commission merchant shall promptly make available to the consignor or to the director all records of the ongoing sales of the consignor's agricultural products showing the amount sold, the selling price, and any other information required under RCW 20.01.370.

[1991 c 109 § 22; 1959 c 139 § 42.]

## RCW 20.01.430 Commission merchant's remittance to consignor.

Every commission merchant shall remit to the consignor of any agricultural product the full price for which such agricultural product was sold within thirty days of the date of sale, or in the case of livestock within seven days of the date of sale unless otherwise mutually agreed between grower and commission merchant. The remittance to the consignor shall include all collections, overcharges, and damages, less the agreed commission and other charges and advances, and a complete account of the sale. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale unless otherwise specified in an agreement between the producer and the dealer in livestock.

[1982 c 20 § 3; 1977 ex.s. c 304 § 11; 1974 ex.s. c 102 § 9; 1959 c 139 § 43.]

## RCW 20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc.

Every commission merchant shall retain a copy of all records covering each transaction for a period of three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

[1991 c 109 § 23; 1959 c 139 § 44.]

## RCW 20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof.

No claim may be made as against the seller of agricultural products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a consignor of agricultural products by reason of damage to, or loss, dumping, or disposal of agricultural products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said consignor, unless said dealer or cash buyer has secured and is in possession of a certificate, issued by an agricultural inspector, county health officer, director, a duly authorized officer of the state department of social and health services, or by some other official now or hereafter authorized by law, to the effect that the agricultural products involved have been damaged, dumped, destroyed or otherwise disposed of as unfit for the purpose intended. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-four hours, or a reasonable time as prescribed by the director, of the receipt by the dealer or cash buyer of the agricultural products involved.

[1979 c 141 § 33; 1959 c 139 § 45.]

## RCW 20.01.460 Prohibited acts—Penalties.

(1) Any person who violates the provisions of this chapter or fails to comply with the rules adopted under this chapter is guilty of a gross misdemeanor, except as provided in subsections (2) through (4) of this section.

(2) Any commission merchant, dealer, or cash buyer, or any person assuming or attempting to act as a commission merchant, dealer, or cash buyer without a license is guilty of a class C felony who:

   (a) Imposes false charges for handling or services in connection with agricultural products.

   (b) Makes fictitious sales or is guilty of collusion to defraud the consignor.

   (c) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

   (d) With the intent to defraud the consignor, fails to comply with the requirements set forth under RCW 20.01.010(10), 20.01.390, or 20.01.430.

(3) Any person who violates the provisions of RCW 20.01.040, 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed a civil infraction.

(4) Unlawful issuance of a check or draft may be prosecuted under RCW 9A.56.060.

[2003 c 395 § 8; 1989 c 354 § 43; 1988 c 254 § 19; 1986 c 178 § 13; 1982 c 20 § 4; 1959 c 139 § 46.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 20.01.465 Time of sale requirement—Unlawful practice.

(1) In the preparation and use of written contracts, it is unlawful for a commission merchant to include in such contracts a requirement that a consignor give up all involvement in determining the time the consignor's agricultural products will be sold.

(2) Subsection (1) of this section does not apply to agricultural products consigned to a commission merchant under a written pooling agreement.

(3) Subsection (1) of this section does not apply to seeds consigned to a commission merchant.

[2004 c 212 § 3; 1991 c 109 § 24.]

## RCW 20.01.470 Action to enjoin violation of chapter.

The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur.

[1959 c 139 § 47.]

## RCW 20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products.

It shall be prima facie evidence that a licensee licensed under the provisions of *this 1971 amendatory act is acting as such in the handling of any agricultural product.

[1971 ex.s. c 182 § 13; 1967 c 240 § 43.]

NOTES:

***Reviser's note:** The term "this 1971 amendatory act" [1971 ex.s. c 182] refers to the 1971 amendments to RCW 20.01.010, 20.01.030, 20.01.040, 20.01.060, 20.01.080, 20.01.125, 20.01.130, 20.01.210, 20.01.212, 20.01.214, 20.01.330, 20.01.410, 20.01.475, and the enactment of RCW 20.01.480, 20.01.500 through 20.01.560.

## RCW 20.01.480 Violations resulting in improper or nonpayment—Charges.

When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department, the charges made to the consignor for the action of the department in the matter will depend upon the delay of reporting after such improper payment or nonpayment would normally become obvious to the consignor as follows:

(1) When reported within thirty days, no charge.

(2) When reported thirty days to one hundred eighty days, five percent.

(3) When reported after one hundred eighty days, ten percent.

[1977 ex.s. c 304 § 13; 1971 ex.s. c 182 § 14.]

## RCW 20.01.482 Civil infractions—Notice—Misdemeanors.

(1) The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed.

(2) It is a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction.

(3) Any person willfully failing to respond to a notice of infraction is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

[2006 c 270 § 10; 2004 c 43 § 3; 2003 c 53 § 161; 1986 c 178 § 1.]

NOTES:

**Effective date—2004 c 43:** See note following RCW 7.80.150.

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

## RCW 20.01.484 Civil infractions—Response to notice.

(1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) Any employee or agent of a licensee under this chapter is fully authorized to accept a notice of infraction on behalf of the licensee. The director shall also furnish a copy of the notice of infraction to the licensee by certified mail within five days of issuance.

(3) If the person determined to have committed the infraction does not contest the determination, that person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response, which does not contest the determination, is received, an appropriate order shall be entered into the courts record and a record of the response shall be furnished to the director.

(4) If a person determined to have committed the infraction wishes to contest the determination, that person shall respond by completing the portion of the notice of the infraction requesting a hearing and submitted either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and the date of the hearing which shall not be sooner than fifteen days from the date of the notice, except by agreement.

(5) If the person determined to have committed the infraction does not contest the determination, but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place and date of the hearing.

(6) If a person issued a notice of infraction fails to respond to the notice of infraction or fails to appear at the hearing requested pursuant to this section, the court shall enter an appropriate order in assessing the monetary penalty prescribed in the schedule of penalties submitted to the court by the director and shall notify the director of the failure to respond to the notice of infraction or to appear at a requested hearing.

[1986 c 178 § 2.]

## RCW 20.01.486 Civil infractions—Hearing to contest charge—Order—Appeal.

A hearing held for the purpose of contesting the determination that an infraction has been committed shall be held without jury. The court may consider the notice of infraction and any other written report submitted by the director. The person named in the notice may subpoena witnesses and has the right to present evidence and examine witnesses present in court. The burden of proof is upon the state to establish the commission of the infraction by preponderance of evidence.

After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it is not established that the infraction was committed, an order dismissing the notice shall be entered in the court's record. When it is established that the infraction was committed, an appropriate order shall be entered in the court's record, a copy of which shall be furnished to the director. Appeal from the court's determination or order shall be to the superior court and must be appealed within ten days. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the rules of appellate procedure.

[1986 c 178 § 3.]

## RCW 20.01.488 Civil infractions—Informal hearing on mitigating circumstances—Order—No appeal.

A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person named in the notice may not subpoena witnesses. The determination that the infraction has been committed may not be contested at a hearing held for the purpose of explaining circumstances. After the court has heard the explanation of the circumstances surrounding the commission of the infraction, an appropriate order shall be entered in the court's record. A copy of the order shall be furnished to the director. There may be no appeal from the court's determination or order.

[1986 c 178 § 4.]

## RCW 20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor.

(1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed five thousand dollars. The director shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the proper courts. Whenever a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is a misdemeanor.

[2003 c 395 § 9; 2003 c 53 § 162; 1986 c 178 § 5.]

NOTES:

**Reviser's note:** This section was amended by 2003 c 53 § 162 and by 2003 c 395 § 9, 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).

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

## RCW 20.01.500 "Grower," "processor" defined—Application of exemption contained in RCW 20.01.030(1).

Notwithstanding any other provision of law, for the purposes of RCW 20.01.510 through 20.01.550 the term "grower" and the term "processor" shall have the meanings ascribed thereto by this section:

(1) "Grower" means any person, firm, company, or other organization that is engaged in the production of agricultural crops which must be planted, cultivated, and harvested within a twelve month period.

(2) (a) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a grower and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(b) The exemption provided for in RCW 20.01.030(1) shall not apply to a cooperative or association as defined therein, which acts as a processor defined herein, and markets such agricultural crops on behalf of the grower or on its own behalf.

[1977 ex.s. c 304 § 14; 1971 ex.s. c 182 § 15.]

## RCW 20.01.510 Processor's form showing maximum processing capacity.

In order to carry out the purposes of *this 1971 amendatory act, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him.

[1971 ex.s. c 182 § 16.]

NOTES:

***Reviser's note:** For "this 1971 amendatory act," see note following RCW 20.01.475.

## RCW 20.01.520 Processor to have grower contracts and commitments on file.

By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of *this 1971 amendatory act, may require a processor to have filed with him:

(1) A copy of each contract he has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment he has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself.

[1971 ex.s. c 182 § 17.]

NOTES:

***Reviser's note:** For "this 1971 amendatory act," see note following RCW 20.01.475.

## RCW 20.01.530 Grower may file form showing crops processor is committed to purchase.

Any grower may file with the director on a form prescribed by him the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he understands a processor has orally committed himself to purchase.

[1971 ex.s. c 182 § 18.]

## RCW 20.01.540 Committing to purchase more crops than plants can process—Violation.

Any processor who, from the information filed with the director, appears to or has committed himself either orally or in writing to purchase more crops than his plants are capable of processing shall be in violation of this chapter and his dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330.

[1971 ex.s. c 182 § 19.]

## RCW 20.01.550 Discrimination by processor.

Any processor who discriminates between growers with whom he contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer.

[1977 ex.s. c 304 § 15; 1971 ex.s. c 182 § 20.]

## RCW 20.01.560 Effective date of RCW 20.01.500 through 20.01.550.

RCW 20.01.500 through 20.01.550 shall take effect beginning on September 1, 1972.

[1971 ex.s. c 182 § 21.]

## RCW 20.01.570 Cash or other security in lieu of surety bond.

In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security.

[1973 c 142 § 2.]

## RCW 20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction.

The director may establish points of inspection for vehicles transporting agricultural products on the public roads of this state. Vehicles transporting agricultural products on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director. The director or appointed officers may stop a vehicle transporting agricultural products upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the carrier, seller, or buyer may be in violation of this chapter. Any operator of a vehicle failing or refusing to stop when directed to do so has committed a civil infraction.

The director and appointed officers shall work to ensure that vehicles carrying perishable agricultural products are detained no longer than is absolutely necessary for a prompt assessment of compliance with this chapter. If a vehicle carrying perishable agricultural products is found to be in violation of this chapter, the director or appointed officers shall promptly issue necessary notices of civil infraction, as provided in RCW 20.01.482 and 20.01.484, and shall allow the vehicle to continue toward its destination without further delay.

[2007 c 71 § 6; 2003 c 395 § 10; 1986 c 178 § 14; 1983 c 305 § 8.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 20.01.900 Chapter cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.

[1959 c 139 § 48.]

## RCW 20.01.910 Severability—1959 c 139.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional.

[1959 c 139 § 49.]

## RCW 20.01.911 Severability—1963 c 232.

See RCW 15.61.900.

## RCW 20.01.912 Severability—1967 c 240.

See note following RCW 43.23.010.

## RCW 20.01.913 Severability—1979 ex.s. c 115.

If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1979 ex.s. c 115 § 7.]

## RCW 20.01.920 Effective date—1959 c 139.

The effective date of this chapter shall be January 1, 1960.

[1959 c 139 § 50.]

## RCW 20.01.930 Repealer.

Chapter 14, Laws of 1955 as amended by section 4, chapter 262, Laws of 1955, section 3, chapter 262, Laws of 1955, sections 1 and 2, chapter 262, Laws of 1955 and RCW 20.04.010 through 20.04.120, 20.08.010 through 20.08.110, 20.12.020 through 20.12.040, 20.16.010 through 20.16.040, 20.20.010 through 20.20.060, 20.24.010 through 20.24.070 and 20.98.010 through 20.98.060 are hereby repealed.

[1959 c 139 § 51.]

## RCW 20.01.940 Repealer—Savings—1979 ex.s. c 115.

Section 10, chapter 102, Laws of 1974 ex. sess., section 12, chapter 304, Laws of 1977 ex. sess. and RCW 20.01.445 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder.

[1979 ex.s. c 115 § 6.]

# TITLE 22 RCW
## WAREHOUSING AND DEPOSITS

### Chapters


22.09 Agricultural commodities.

22.16 Warehouses and elevators — Eminent domain.


# CHAPTER 22.09 RCW
## AGRICULTURAL COMMODITIES

### Sections


22.09.011 Definitions.

22.09.020 Department authority—Rules.

22.09.030 Warehouse license or licenses required.

22.09.035 Grain dealer license required, exception.

22.09.040 Application for warehouse license.

22.09.045 Application for grain dealer license.

22.09.050 Warehouse license fees—Penalty.

22.09.055 Grain dealer—Exempt grain dealers—License fees—Penalty.

22.09.060 Bond or certificate of deposit and insurance prerequisite to license—Exemption.

22.09.070 Warehouse licenses—Issuance—Posting—Duration.

22.09.075 Grain dealer licenses—Issuance—Posting—Duration.

22.09.080 Licenses—Denial—Suspension—Revocation.

22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain.

22.09.095 Single bond by multiple applicants.

22.09.100 Bonds—Duration—Release of surety—Cancellation by surety.

22.09.110 Casualty insurance required—Certificate to be filed.

22.09.120 Insurance—Cancellation procedure—Suspension of license.

22.09.130 Rights and duties of warehousemen—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities.

22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties.

22.09.150 Rights and duties of warehousemen—Delivery of stored commodities—Damages.

22.09.160 Rights and duties of licensees—Disposition of hazardous commodities.

22.09.170 Rights and duties of warehousemen—Special disposition of commodities under written order.

22.09.175 Presumptions regarding commodities—Approval of contracts.

22.09.180 Rights and duties of licensees—Records, contents—Itemized charges.

22.09.190 Rights and duties of warehousemen—Rebates, preferences, etc., prohibited.

22.09.195 Rights and duties of warehousemen—RCW 22.09.190 inapplicable to contracts with governmental agencies.

22.09.200 Rights and duties of licensees—Reports to department.

22.09.220 Rights and duties of licensees—Premises, construction and maintenance.

22.09.230 Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse."

22.09.240 Rights and duties of warehousemen—Schedule of rates—Posting—Revision.

22.09.250 Rights and duties of warehousemen—Unlawful practices.

22.09.260 Deposit of commodities unfit for human consumption—Notice.

22.09.290 Warehouse receipts—Required terms.

22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation.

22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty.

22.09.320 Warehouse receipts—Lost or destroyed receipts.

22.09.330 Scale weight tickets not precluded.

22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices.

22.09.345 Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees.

22.09.350 Remedies of department on discovery of shortage.

22.09.361 Seizure of commodities or warehouseman's records—Department duties—Warehouseman's remedies—Expenses and attorneys' fees.

22.09.371 Depositor's lien.

22.09.381 Depositors' claims, processing by department.

22.09.391 Depositor's lien—Liquidation procedure.

22.09.405 Grain indemnity fund program—Activation—In lieu of other security.

22.09.411 Grain indemnity fund program—Fund established—Contents, deposits, disbursements, use.

22.09.416 Grain indemnity fund program—Assessments.

22.09.421 Grain indemnity fund program—Initial assessment—Effect on preceding security—New applicants for warehouse or grain dealer licenses.

22.09.426 Grain indemnity fund program—Annual assessments—Limitations.

22.09.431 Grain indemnity fund program—Additional security.

22.09.436 Grain indemnity fund program—Advisory committee.

22.09.441 Grain indemnity fund program—Processing of claims.

22.09.446 Grain indemnity fund program—Failure to file claim in time.

22.09.451 Grain indemnity fund program—Payment limitations.

22.09.456 Grain indemnity fund program—Additional payment limitations.

22.09.461 Grain indemnity fund program—Payment of claims—Restrictions, priority.

22.09.466 Grain indemnity fund program—Debt and obligation of grain dealer or warehouseman—Recovery by director.

22.09.471 Grain indemnity fund program—Proceedings against licensee.

22.09.520 Deposits as bailments.

22.09.570 Action on bond by director—Authorized—Grounds.

22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect.

22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect.

22.09.600 Action on bond by director—Powers of director.

22.09.610 Action on bond by director—When authorized—New bond, when required—Penalty for failure to file.

22.09.615 Action by depositor upon licensee's bond.

22.09.620 Payment for agricultural commodities purchased—Time requirements.

22.09.630 Payment violations—Recovery by department—Charges to depositors.

22.09.640 Publication and distribution of list of licensed warehouses.

22.09.650 Remedies of department as to stations.

22.09.660 Emergency storage situation—Forwarding to other warehouses.

22.09.710 Designation of inspection points and terminal warehouses.

22.09.720 Grades and standards of commodities—Regulations.

22.09.730 Inspection or grading of commodities—Methods.

22.09.740 Inspection or grading of commodities—File samples, retention.

22.09.750 Inspection or grading of commodities—Powers and duties of inspectors at terminal warehouses—Recordkeeping.

22.09.760 Inspection or grading of commodities—No inspection if

commodity is to be loaded into defective container.
22.09.770 Inspection or grading of commodities—Unlawful practices—Penalty.
22.09.780 Inspection or grading of commodities.
22.09.790 Inspection or grading of commodities—Fees and charges.
22.09.800 Inspection or grading of commodities—Scales and weighing.
22.09.810 Inspection or grading of commodities—Inspection of commodities shipped to or from places other than inspection points.
22.09.820 Inspection or grading of commodities—Unloading commodity without inspection or weighing.
22.09.830 Grain inspection revolving fund—Hop inspection fund—Grain warehouse audit account.
22.09.840 Fumigated conveyances to be labeled.
22.09.850 Railroads to provide side tracks and track scales—Weighing of cars.
22.09.860 Police protection of terminal yards and tracks.
22.09.870 Injunctions.
22.09.880 Cooperation with governmental agencies and private associations.
22.09.890 General penalty.
22.09.895 Civil penalty.
22.09.900 Continuation of rules adopted pursuant to repealed chapter.
22.09.910 Savings—1963 c 124.
22.09.920 Construction as to Article 7 of Title 62A RCW.
22.09.930 Effective date—1963 c 124.
22.09.940 Severability—1963 c 124.
22.09.941 Severability—1979 ex.s. c 238.

**NOTES:**

Commodity transactions: Chapter 21.30 RCW.

## RCW 22.09.011 Definitions.

The definitions set forth 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 duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," or "commodities," means:

(a) Grains for which inspection standards have been established under the United States grain standards act;

(b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and

(c) other similar agricultural products for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are

(a) immediately adjacent to each other, or

(b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or

(c) at any railroad siding or switching area and subject to the same transportation tariff zone, or

(d) at one location in the open country off rail, or

(e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.05 RCW, or

(f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means

(a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or

(b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or

(c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or

inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(22) "Original inspection" means an initial, official inspection of a grain or commodity.

(23) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(24) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(25) "Exempt grain dealer" means a grain dealer who purchases less than one hundred thousand dollars of covered commodities annually from producers, and operates under the provisions of RCW 22.09.060.

[1994 c 46 § 3; 1989 c 354 § 44; 1988 c 254 § 11; 1987 c 393 § 19; 1983 c 305 § 16.]

**NOTES:**

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.020 Department authority—Rules.

The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it has the power and authority to:

(1) Supervise the receiving, handling, conditioning, weighing, storage, and shipping of all commodities;

(2) Supervise the inspection and grading of commodities;

(3) Approve or disapprove the facilities, including scales, of all warehouses;

(4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;

(5) Investigate all complaints of fraud in the operation of any warehouse;

(6) Examine, inspect, and audit, during ordinary business hours, any warehouse licensed under this chapter, including all commodities therein and examine, inspect, audit, or record all books, documents, and records;

(7) Examine, inspect, and audit during ordinary business hours, all books, documents, and records, and examine, inspect, audit, or record records of any grain dealer licensed hereunder at the grain dealer's principal office or headquarters;

(8) Inspect at reasonable times any warehouse or storage facility where commodities are received, handled, conditioned, stored, or shipped, including all commodities stored therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;

(9) Inspect at reasonable times any grain dealer's books,

documents, and records in order to determine whether or not the grain dealer should be licensed under this chapter;

(10) Administer oaths and issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW;

(11) Adopt rules establishing inspection standards and procedures for grains and commodities;

(12) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;

(13) Adopt all the necessary rules for carrying out the purpose and provisions of this chapter. The adoption of rules under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW, the Administrative Procedure Act. When adopting rules in respect to the provisions of this chapter, the director shall hold a public hearing and shall to the best of his ability consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state.

[1989 c 354 § 45; 1983 c 305 § 17; 1963 c 124 § 2.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.030 Warehouse license or licenses required.

It shall be unlawful for any person to operate a warehouse in the state of Washington without first having obtained an annual license from the department, but this chapter shall not apply to warehouses that are federally licensed under the provisions of 7 USC 241 et seq. for the handling and storage of agricultural commodities. A separate license shall be required for each warehouse that a person intends to operate, but any person operating two or more warehouses that constitute a station may license the warehouses under one state license. All the assets of a given station that is licensed under one state license are subject to all the liabilities of that station and for the purposes of this chapter shall be treated as a single warehouse, requiring all the stocks and obligations of the warehouses at a given station to be treated as a unit for all purposes including, but not limited to, issuance of warehouse receipts and receipt and delivery of commodities for handling, conditioning, storage, or shipment.

[1983 c 305 § 18; 1975 1st ex.s. c 7 § 20; 1963 c 124 § 3.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.035 Grain dealer license required, exception.

It is unlawful for any person to operate as a grain dealer in the state of Washington without first having obtained an annual license from the department. This chapter does not apply to a grain dealer that is licensed for dealing in agricultural commodities under federal law.

[1983 c 305 § 19.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.040 Application for warehouse license.

Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

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

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

(5) Whether the applicant has also applied for or has been issued a grain dealer license under the provisions of this chapter;

(6) The location of each warehouse the applicant intends to operate and the location of the headquarters or main office of the applicant;

(7) The bushel storage capacity of each such warehouse to be licensed;

(8) The schedule of fees to be charged at each warehouse for the handling, conditioning, storage, and shipment of all commodities during the licensing period;

(9) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(10) Whether the application is for a terminal, subterminal, or country warehouse license;

(11) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(12) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter.

[1987 c 393 § 17; 1983 c 305 § 20; 1979 ex.s. c 238 § 13; 1975 1st ex.s. c 7 § 21; 1963 c 124 § 4.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.045 Application for grain dealer license.

Application for a license to operate as a grain dealer under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or

the names of the officers of the company, society, cooperative association, or corporation;

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

(4) The name or names of the person or persons in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a warehouse license under this chapter;

(6) The location of each business location from which the applicant intends to operate as a grain dealer in the state of Washington whether or not the business location is physically within the state of Washington, and the location of the headquarters or main office of the application;

(7) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. However, if the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(8) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(9) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter.

[1987 c 393 § 18; 1983 c 305 § 21.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.050 Warehouse license fees—Penalty.

Any application for a license to operate a warehouse shall be accompanied by a license fee of one thousand three hundred fifty dollars for a terminal warehouse, one thousand fifty dollars for a subterminal warehouse, and five hundred dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country warehouse license fee.

If an application for renewal of a warehouse license or licenses is not received by the department prior to the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his or her prior license.

[1997 c 303 § 6; 1994 c 46 § 4; 1991 c 109 § 25; 1986 c 203 § 13; 1983 c 305 § 22; 1979 ex.s. c 238 § 14; 1963 c 124 § 5.]

NOTES:

**Effective date—1997 c 303 §§ 6 and 7**: "Sections 6 and 7 of this act take effect July 1, 1998."

[1997 c 303 § 8.]

**Findings—1997 c 303:** See note following RCW 43.135.055.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.055 Grain dealer—Exempt grain dealers—License fees—Penalty.

An application for a license to operate as a grain dealer shall be accompanied by a license fee of seven hundred fifty dollars. The license fee for exempt grain dealers shall be three hundred dollars.

If an application for renewal of a grain dealer or exempt grain dealer license is not received by the department before the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a grain dealer or exempt grain dealer after the expiration of his or her prior license.

[1997 c 303 § 7; 1994 c 46 § 5; 1991 c 109 § 26; 1988 c 95 § 1; 1986 c 203 § 14; 1983 c 305 § 23.]

NOTES:

**Effective date—1997 c 303 §§ 6 and 7:** See note following RCW 22.09.050.

**Findings—1997 c 303:** See note following RCW 43.135.055.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.060 Bond or certificate of deposit and insurance prerequisite to license—Exemption.

Except as provided in RCW 22.09.405(2), no warehouse or grain dealer license may be issued to an applicant before a bond, certificate of deposit, or other security is given to the department as provided in RCW 22.09.090, or in RCW 22.09.095. No warehouse license may be issued to an applicant before a certificate of insurance as provided in RCW 22.09.110 has been filed with the department. Grain dealers may be exempted by rule from the bonding requirement if the grain dealer does not do more than one hundred thousand dollars in business annually and makes payments solely in coin or currency of the United States at the time of obtaining possession or control of grain. However, a cashier's check, certified check, or bankdraft may be considered as cash for purposes of this section.

[1988 c 95 § 2; 1987 c 509 § 1; 1983 c 305 § 24; 1975 1st ex.s. c 7 § 22; 1963 c 124 § 6.]

NOTES:

**Severability—1987 c 509:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1987 c 509 § 22.]

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.070 Warehouse licenses—Issuance—Posting—Duration.

The department shall issue a warehouse license to an applicant upon its determination that the applicant has facilities adequate for handling and storage of commodities and, if applicable, conditioning, and that the application is in the proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in the office of the licensed warehouse or if a station license,

in the main office at the station. The license automatically expires on the date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary to accommodate the staggering of renewal dates of a license or licenses.

[1991 c 109 § 27; 1983 c 305 § 25; 1963 c 124 § 7.]

**NOTES:**

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.075 Grain dealer licenses—Issuance—Posting—Duration.

The department shall issue a grain dealer license to an applicant upon its determination that the application is in its proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in its principal place of business. The license expires automatically on a date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary in order to accommodate staggered renewal of a license or licenses.

[1991 c 109 § 28; 1983 c 305 § 26.]

**NOTES:**

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.080 Licenses—Denial—Suspension—Revocation.

The department is authorized to deny, suspend, or revoke a license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter, rules adopted hereunder, or the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended. All hearings for the denial, suspension, or revocation of a license shall be subject to chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended.

[1979 ex.s. c 238 § 15; 1963 c 124 § 8.]

## RCW 22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain.

(1) An applicant for a warehouse or grain dealer license pursuant to the provisions of this chapter shall give a bond to the state of Washington executed by the applicant as the principal and by a corporate surety licensed to do business in this state as surety.

(2) The bond required under this section for the issuance of a warehouse license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the warehouse bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond. The applicant for a warehouse license may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouseman are deemed to be one warehouse for the purpose of the amount of the bond required under this subsection. Any change in the capacity of a warehouse or addition of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department.

(3) The bond required under this section for the issuance of a grain dealer license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the dealer bond which shall be computed at a rate not less than six percent nor more than twelve percent of the sales of agricultural commodities purchased by the dealer from producers during the dealer's last completed fiscal year or in the case of a grain dealer who has been engaged in business as a grain dealer less than one year, the estimated aggregate dollar amount to be paid by the dealer to producers for agricultural commodities to be purchased by the dealer during the dealer's first fiscal year.

(4) An applicant making application for both a warehouse license and a grain dealer license may satisfy the bonding requirements set forth in subsections (2) and (3) of this section by giving to the state of Washington a single bond for the issuance of both licenses, which bond shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of the applicant whichever is greater.

(5) The bonds required under this chapter shall be approved by the department and shall be conditioned upon the faithful performance by the licensee of the duties imposed upon him by this chapter. If a person has applied for warehouse licenses to operate two or more warehouses in this state, the assets applicable to all warehouses, but not the deposits except in case of a station, are subject to the liabilities of each. The total and aggregate liability of the surety for all claims upon the bond is limited to the face amount of the bond.

(6) Any person required to submit a bond to the department under this chapter has the option to give the department a certificate of deposit or other security acceptable to the department payable to the director as trustee, in lieu of a bond or a portion thereof. The principal amount of the certificate or other security shall be the same as that required for a surety bond under this chapter or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for a surety bond under this chapter, and the interest thereon shall be made payable to the purchaser of the certificate or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this chapter that apply to a bond required under this chapter apply to each certificate of deposit or other security given in lieu of such a bond.

(7) The department may, when it has reason to believe that a grain dealer does not have the ability to pay producers for grain purchased, or when it determines that the grain dealer

does not have a sufficient net worth to outstanding financial obligations ratio, or when it believes there may be claims made against the bond in excess of the face amount of the bond, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the department or may require an additional certificate of deposit or other security. The additional bonding or other security may exceed the maximum amount of the bond otherwise required under this chapter. Failure to post the additional bond, certificate of deposit, or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

(8) Notwithstanding any other provisions of this chapter, the license of a warehouseman or grain dealer shall automatically be suspended in accordance with RCW 22.09.100 for failure at any time to have or to maintain a bond, certificate of deposit, or other security or combination thereof in the amount and type required by this chapter. The department shall remove the suspension or issue a license as the case may be, when the required bond, certificate of deposit, or other security has been obtained.

[1987 c 509 § 2; 1983 c 305 § 27; 1975 1st ex.s. c 7 § 23; 1969 ex.s. c 132 § 2; 1963 c 124 § 9.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

**Severability—1983 c 305:** See note following RCW 20.01.010.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

## RCW 22.09.095 Single bond by multiple applicants.

(1) Two or more applicants for a warehouse or grain dealer license may provide a single bond to the state of Washington, executed by a corporate surety licensed to do business in this state and designating each of the applicants as a principal on said bond.

(2) The department shall promulgate rules establishing the amount of the bond required under this section. In no event shall that amount be less than ten percent of the aggregate amount of each of the bonds that would be required of the applicants under RCW 22.09.090 or less than the amount that would be required under RCW 22.09.090 for the applicant having the highest bond requirement under that section.

[1987 c 509 § 3.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

## RCW 22.09.100 Bonds—Duration—Release of surety—Cancellation by surety.

(1) Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouseman or grain dealer license of each principal on the bond is revoked or otherwise canceled.

(2) The surety on a bond, as provided in this chapter, shall be released and discharged from all liability to the state, as to a principal whose license is revoked or canceled, which liability accrues after the expiration of thirty days from the effective date of the revocation or cancellation of the license. The surety on a bond under this chapter shall be released and discharged from all liability to the state accruing on the bond after the expiration of ninety days from the date upon which the surety lodges with the department a written request to be released and discharged. Nothing in this section shall operate to relieve, release, or discharge the surety from any liability which accrues before the expiration of the respective thirty or ninety-day period. In the event of a cancellation by the surety, the surety shall simultaneously send the notification of cancellation in writing to any other governmental agency requesting it. Upon receiving any such request, the department shall promptly notify the principal or principals who furnished the bond, and unless the principal or principals file a new bond on or before the expiration of the respective thirty or ninety-day period, the department shall forthwith cancel the license of the principal or principals whose bond has been canceled.

[1987 c 509 § 4; 1983 c 305 § 28; 1963 c 124 § 10.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.110 Casualty insurance required—Certificate to be filed.

All commodities in storage in a warehouse shall be kept fully insured for the current market value of the commodity for the license period against loss by fire, lightning, internal explosion, windstorm, cyclone, and tornado. Evidence of the insurance coverage in the form of a certificate of insurance approved by the department shall be filed by the warehouseman with the department at the time of making application for an annual license to operate a warehouse as required by this chapter. The department shall not issue a license until the certificate of insurance is received.

[1983 c 305 § 29; 1963 c 124 § 11.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.120 Insurance—Cancellation procedure—Suspension of license.

(1) Upon the existence of an effective policy of insurance as required in RCW 22.09.110, the insurance company involved shall be required to give thirty days' advance notice to the department by registered mail or certified mail return receipt requested of any cancellation of the policy. In the event of any cancellation, the department, without hearing, shall immediately suspend the license of such person, and the suspension shall not be removed until satisfactory evidence of the existence of an effective policy of insurance, conditioned as above set out, has been submitted to the department.

[1963 c 124 § 12.]

## RCW 22.09.130 Rights and duties of warehousemen—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities.

(1) Every warehouseman shall receive for handling, conditioning, storage, or shipment, so far as the capacity and facilities of his warehouse will permit, all commodities included in the provisions of this chapter, in suitable condition for storage, tendered him in the usual course of business from historical depositors and shall issue therefor a warehouse receipt or receipts in a form prescribed by the department as provided in this chapter or a scale weight ticket. Warehousemen may accept agricultural commodities from new depositors who

qualify to the extent of the capacity of that warehouse. The deposit for handling, conditioning, storage, or shipment of the commodity must be credited to the depositor in the books of the warehouseman as soon as possible, but in no event later than seven days from the date of the deposit. If the commodity has been graded a warehouse receipt shall be issued within ten days after demand by the owner.

(2) If requested by the depositor, each lot of his commodity shall be kept in a special pile or special bin, if available, but in the case of a bulk commodity, if the lot or any portion of it does not equal the capacity of any available bin, the depositor may exercise his option to require the commodity to be specially binned only on agreement to pay charges based on the capacity of the available bin most nearly approximating the required capacity.

(3) A warehouseman may refuse to accept for storage, commodities that are wet, damaged, insect-infested, or in other ways unsuitable for storage.

(4) Terminal and subterminal warehousemen shall receive put through agricultural commodities to the extent satisfactory transportation arrangements can be made, but may not be required to receive agricultural commodities for storage.

[1983 c 305 § 30; 1981 c 296 § 38; 1979 ex.s. c 238 § 16; 1963 c 124 § 13.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

**Severability—1981 c 296:** See note following RCW 15.08.010.

## RCW 22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties.

(1) When partial withdrawal of his commodity is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records, or, if the warehouseman has issued a negotiable receipt to the depositor, he shall claim, cancel, and replace it with a negotiable receipt showing the amount of such depositor's commodity remaining in the warehouse, and for his failure to claim and cancel, upon delivery to the owner of a commodity stored in his warehouse, a negotiable receipt issued by him, the negotiation of which would transfer the right to possession of such commodity, a warehouseman shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver to him all the commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the commodity by the warehouseman.

[1963 c 124 § 14.]

## RCW 22.09.150 Rights and duties of warehousemen—Delivery of stored commodities—Damages.

(1) The duty of the warehouseman to deliver the commodities in storage is governed by the provisions of this chapter and the requirements of Article 7 of Title 62A RCW. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, the warehouseman shall deliver commodities of the grade and quantity named upon the receipt to the holder of the receipt, except as provided by Article 7 of Title 62A RCW.

(2) A warehouseman's duty to deliver any commodity is fulfilled if delivery is made pursuant to the contract with the depositor or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. Where delivery is made within forty-eight hours excluding Saturdays, Sundays, and legal holidays after facilities for receiving the commodity are provided, the delivery is deemed to comply with this subsection.

(3) No warehouseman may fail to deliver a commodity as provided in this section, and delivery shall be made at the warehouse or station where the commodity was received unless the warehouseman and depositor otherwise agree in writing.

(4) In addition to being subject to penalties provided in this chapter for a violation of this section, if a warehouseman unreasonably fails to deliver commodities within the time as provided in this section, the person entitled to delivery of the commodity may maintain an action against the warehouseman for any damages resulting from the warehouseman's unreasonable failure to so deliver. In any such action the person entitled to delivery of the commodity has the option to seek recovery of his actual damages or liquidated damages of one-half of one percent of the value for each day's delay after the forty-eight hour period.

[1983 c 305 § 31; 1979 ex.s. c 238 § 17; 1963 c 124 § 15.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.160 Rights and duties of licensees—Disposition of hazardous commodities.

(1) If a warehouseman discovers that as a result of a quality or condition of a certain commodity placed in his warehouse, including identity preserved commodities as provided for in RCW 22.09.130(2), of which he had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the warehouse he may notify the depositor that it will be removed. If the depositor does not accept delivery of such commodity upon removal the warehouseman may sell the commodity at public or private sale without advertisement but with reasonable notification of the sale to all persons known to claim an interest in the commodity. If the warehouseman after a reasonable effort is unable to sell the commodity, he may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(2) At any time prior to sale or disposition as authorized in this section, the warehouseman shall deliver the commodity to any person entitled to it, upon proper demand and payment of charges.

(3) From the proceeds of sale or other disposition of the commodity the warehouseman may satisfy his charges for which otherwise he would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom he would have been required to deliver the commodity.

[1963 c 124 § 16.]

## RCW 22.09.170 Rights and duties of warehousemen—Special disposition of commodities under written order.

If the owner of the commodity or his authorized agent gives or furnishes to a licensed warehouseman a written instruction or order, and if the order is properly made a part of the warehouseman's records and is available for departmental inspection, then the warehouseman:

(1) May receive the commodity for the purpose of processing or conditioning;

(2) May receive the commodity for the purpose of shipping by the warehouseman for the account of the depositor;

(3) May accept an agricultural commodity delivered as seed and handle it pursuant to the terms of a contract with the depositor and the contract shall be considered written instructions pursuant to this section.

[1983 c 305 § 32; 1963 c 124 § 17.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.175 Presumptions regarding commodities—Approval of contracts.

(1) A commodity deposited with a warehouseman without a written agreement for sale of the commodity to the warehouseman shall be handled and considered to be a commodity in storage.

(2) A presumption is hereby created that in all written agreements for the sale of commodities, the intent of the parties is that title and ownership to the commodities shall pass on the date of payment therefor. This presumption may only be rebutted by a clear statement to the contrary in the agreement.

(3) Any warehouseman or grain dealer entering into a deferred price contract with a depositor shall first have the form of the contract approved by the director. The director shall adopt rules setting forth the standards for approval of the contracts.

[1983 c 305 § 33.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.180 Rights and duties of licensees—Records, contents—Itemized charges.

(1) The licensee shall maintain complete records at all times with respect to all agricultural commodities handled, stored, shipped, or merchandised by him, including commodities owned by him. The department shall adopt rules specifying the minimum record-keeping requirements necessary to comply with this section.

(2) The licensee shall maintain an itemized statement of any charges paid by the depositor.

[1983 c 305 § 34; 1975 1st ex.s. c 7 § 24; 1963 c 124 § 18.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.190 Rights and duties of warehousemen—Rebates, preferences, etc., prohibited.

No warehouseman subject to the provisions of this chapter may:

(1) Directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the handling, conditioning, storage, or shipment of any commodity than he demands, collects, or receives from any other person for doing for him a like and contemporaneous service in the handling, conditioning, storage, or shipment of any commodity under substantially similar circumstances or conditions;

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever;

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[1983 c 305 § 35; 1963 c 124 § 19.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.195 Rights and duties of warehousemen—RCW 22.09.190 inapplicable to contracts with governmental agencies.

RCW 22.09.190 does not apply to contracts entered into with a governmental agency, state or federal, for the handling, conditioning, storage, or shipping of agricultural commodities.

[1983 c 305 § 36; 1979 ex.s. c 238 § 24.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.200 Rights and duties of licensees—Reports to department.

Each licensee shall report information to the department at such times and as may be reasonably required by the department for the necessary enforcement and supervision of a sound, reasonable, and efficient commodity inspection program for the protection of depositors of commodities and for persons or agencies who deal in commodities.

[1983 c 305 § 37; 1963 c 124 § 20.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.220 Rights and duties of licensees—Premises, construction and maintenance.

A warehouse or station shall be constructed and maintained in a manner adequate to carry out the provisions of this chapter.

[1963 c 124 § 22.]

## RCW 22.09.230 Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse."

Every warehouse licensee shall post at or near the main entrance to each of his warehouses a sign as prescribed by the department which shall include the words "Washington Bonded Warehouse." It is unlawful to display such sign or any sign of similar appearance or bearing the same words, or words of similar import, when the warehouse is not licensed and bonded under this chapter.

[1983 c 305 § 39; 1963 c 124 § 23.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.240 Rights and duties of warehousemen—Schedule of rates—Posting—Revision.

Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in each of his warehouses the schedule of handling, conditioning, and storage rates filed with the department for the ensuing license year. The schedule shall be

kept posted, and the rates shall not be changed during such year except after thirty days' written notice to the director and proper posting of the changes on the licensee's premises.

[1991 c 109 § 29; 1983 c 305 § 40; 1963 c 124 § 24.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.250 Rights and duties of warehousemen—Unlawful practices.

It is unlawful for a warehouseman to:

(1) Issue a warehouse receipt for any commodity that he does not have in his warehouse at the time the receipt is issued;

(2) Issue warehouse receipts in excess of the amount of the commodities held in the licensee's warehouse to cover the receipt;

(3) Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which warehouse receipts have been issued and are outstanding without receiving and canceling the warehouse receipt issued therefor;

(4) Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a warehouse any commodity received by him for deposit, handling, conditioning, or shipment, for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman;

(5) Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of the licensee is reduced below the amount for which warehouse receipts or scale weight tickets for the particular commodity are outstanding;

(6) Issue a warehouse receipt showing a grade or description different from the grade or description of the commodity delivered;

(7) Issue a warehouse receipt or scale weight ticket that exceeds the amount of the actual quantity of commodities delivered for storage;

(8) Fail to deliver commodities pursuant to RCW 22.09.150 upon demand of the depositor;

(9) Knowingly accept for storage any commodity destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the commodities are commingled with any uncontaminated commodity;

(10) Terminate storage of a commodity in his warehouse without giving thirty days' written notice to the depositor.

[1983 c 305 § 41; 1963 c 124 § 25.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.260 Deposit of commodities unfit for human consumption—Notice.

No depositor may knowingly deliver for handling, conditioning, storage, or shipment any commodity treated with an agricultural pesticide or contaminated with filth rendering it unfit for human consumption without first notifying the warehouseman.

[1983 c 305 § 42; 1963 c 124 § 26.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.290 Warehouse receipts—Required terms.

(1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities as described by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. A commodity in a special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing the change;

(b) Such other terms and conditions as required by Article 7 of Title 62A RCW: PROVIDED, That nothing contained therein requires a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouseman the optional right to terminate storage upon thirty days' written notice to the depositor and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States Warehouse Act (7 USCA § 241 et seq.) are deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts.

[1989 c 354 § 46; 1983 c 305 § 43; 1979 ex.s. c 238 § 19; 1963 c 124 § 29.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation.

(1) All warehouse receipts issued under this chapter shall be upon forms prescribed by the department and supplied only to licensed warehousemen at cost of printing, packing, and shipping, as determined by the department. They shall contain the state number of such license and shall be numbered serially for each state number and the original negotiable receipts shall bear the state seal. Requests for such receipts shall be on forms furnished by the department and shall be accompanied by payment to cover cost: PROVIDED, That the department by order may allow a warehouseman to have his individual warehouse receipts printed, after the form of the receipt is approved as in compliance with this chapter, and the warehouseman's printer shall supply an affidavit stating the amount of receipts printed, numbers thereof: PROVIDED FURTHER, That the warehouseman must supply a bond in an amount fixed by the department and not to exceed five thousand dollars to cover any loss resulting from the unlawful use of any such receipts.

(2) All warehouse receipts shall comply with the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended, except as to the variety of wheat as set forth in

RCW 22.09.290(1)(b) herein, and with the provisions of this chapter where not inconsistent or in conflict with Article 7 of Title 62A RCW. All receipts remaining unused shall be confiscated by the department if the license required herein is not promptly renewed or is suspended, revoked, or canceled.

[1979 ex.s. c 238 § 20; 1963 c 124 § 30.]

## RCW 22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty.

Any person, or any agent or servant of that person, or any officer of a corporation who prints, binds, or delivers warehouse receipt forms, except on an order or requisition signed by the director, or who uses such forms knowing that they were not so printed, bound, or delivered is guilty of a class C felony and is punishable as provided in chapter 9A.20 RCW.

[1983 c 305 § 44; 1963 c 124 § 31.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.320 Warehouse receipts—Lost or destroyed receipts.

In case any warehouse receipt issued by a licensee shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt from the licensee upon executing and delivering to the warehouseman issuing such receipt, a bond in double the value of the commodity covered by such lost receipt, with good and sufficient surety to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof.

[1963 c 124 § 32.]

## RCW 22.09.330 Scale weight tickets not precluded.

Nothing in this chapter may be construed to prevent the issuance of scale weight tickets showing when and what quantities of commodities were received and the condition thereof upon delivery.

[1983 c 305 § 45; 1963 c 124 § 33.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices.

(1) Upon the request of any person or persons having an interest in a commodity stored in any public warehouse and upon payment of fifty dollars in advance by the person or persons, the department may cause the warehouse to be inspected and shall check the outstanding negotiable and nonnegotiable warehouse receipts, and scale weight tickets that have not been superseded by negotiable or nonnegotiable warehouse receipts, with the commodities on hand and shall report the amount of receipts and scale weight tickets outstanding and the amount of storage, if any. If the cost of the examination is more than fifty dollars, the person or persons having an interest in the commodity stored in the warehouse and requesting the examination, shall pay the additional cost to the department, unless a shortage is found to exist.

(2) A warehouse shall be maintained in a manner that will provide a reasonable means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections, and an adequate facility to complete the inspections shall be provided.

(3) The property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all reasonable times be subject to inspection by the department. The warehouseman shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, scale weight tickets, other documents, and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of scale weight tickets, and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouseman for a period of at least three years from the date of deposit.

(4) Any warehouseman whose principal office or headquarters is located outside the state of Washington shall make available, if requested, during ordinary business hours, at any of their warehouses licensed in the state of Washington, all books, documents, and records for inspection.

(5) Any grain dealer whose principal office or headquarters is located outside the state of Washington shall make available, if requested, all books, documents, and records for inspection during ordinary business hours at any facility located in the state of Washington, or if no facility in the state of Washington, then at a Washington state department of agriculture office or other mutually acceptable place.

[1983 c 305 § 46; 1963 c 124 § 34.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.345 Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees.

(1) The department may give written notice to the warehouseman or grain dealer to submit to inspection, and/or furnish required reports, documents, or other requested information, under such conditions and at such time as the department may deem necessary whenever a warehouseman or grain dealer fails to:

(a) Submit his books, papers, or property to lawful inspection or audit;

(b) Submit required reports or documents to the department by their due date; or

(c) Furnish the department with requested information, including but not limited to correction notices.

(2) If the warehouseman or grain dealer fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department shall levy a fine of fifty dollars per day from the final date for compliance allowed by this section or the department. In those cases where the failure to comply continues for more than thirty days or where the director determines the failure to comply creates a threat of loss to depositors, the department may, in lieu of levying further fines petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's or grain dealer's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman or grain dealer from interfering with the department in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

[1987 c 393 § 20; 1983 c 305 § 47.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.350 Remedies of department on discovery of shortage.

(1) Whenever it appears that there is evidence after any investigation that a warehouseman has a shortage, the department may levy a fine of one hundred dollars per day until the warehouseman covers the shortage.

(2) In any case where the director determines the shortage creates a substantial or continuing threat of loss to the depositors of the warehouseman, the department may, in lieu of levying a fine or further fines, give notice to the warehouseman to comply with all or any of the following requirements:

(a) Cover the shortage;

(b) Give additional bond as requested by the department;

(c) Submit to such inspection as the department may deem necessary;

(d) Cease accepting further commodities from depositors or selling, encumbering, transporting, or otherwise changing possession, custody, or control of commodities owned by the warehouseman until there is no longer a shortage.

(3) If the warehouseman fails to comply with the terms of the notice provided for in subsection (2) of this section within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department may petition the superior court of the county where the licensee's principal place of business in Washington is located as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all or a portion of special piles and special bins of commodities and all or a portion of commingled commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's warehouse business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this section.

[1983 c 305 § 48; 1963 c 124 § 35.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.361 Seizure of commodities or warehouseman's records—Department duties—Warehouseman's remedies—Expenses and attorneys' fees.

(1) Whenever the department, pursuant to court order, seizes and takes possession of all or a portion of special piles and special bins of commodities, all or a portion of commingled commodities in a warehouse owned, operated, or controlled by a warehouseman, or books, papers, and property of any kind used in connection with the conduct of a warehouseman's warehouse business, the department shall:

(a) Give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all warehouse receipts or scale weight tickets issued for commodities, to present their warehouse receipt or other evidence of deposits for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if practicable. The department shall notify the warehouseman and the surety on his bond of the approximate amount of the shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

(b) Retain possession of the commodities in the warehouse or warehouses, and of the books, papers, and property of the warehouseman, until the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits, or, in case the shortage exceeds the amount of the bond, the surety on the bond has satisfied the claims pro rata.

(2) At any time within ten days after the department takes possession of any commodities or the books, papers, and property of any warehouse, the warehouseman may serve notice upon the department to appear in the superior court of the county in which the warehouse is located, at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of the notice, and show cause why such commodities, books, papers, and property should not be restored to his possession.

(3) All necessary expenses and attorneys' fees incurred by the department in carrying out the provisions of this section may be recovered in the same action or in a separate civil action brought by the department in the superior court.

(4) As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section.

[1983 c 305 § 49.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.371 Depositor's lien.

(1) When a depositor stores a commodity with a warehouseman or sells a commodity to a grain dealer, the depositor has a first priority statutory lien on the commodity or the proceeds therefrom or on commodities owned by the warehouseman or grain dealer if the depositor has written evidence of ownership disclosing a storage obligation or written evidence of sale. The lien arises at the time the title is transferred from the depositor to the warehouseman or grain dealer, or if the commodity is under a storage obligation, the lien arises at the commencement of the storage obligation. The lien terminates when the liability of the warehouseman or grain dealer to the depositor terminates or if the depositor sells his commodity to the warehouseman or grain dealer, then thirty days after the date title passes. If, however, the depositor is tendered payment by check or draft, then the lien shall not terminate until forty days after the date title passes.

(2) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman or grain dealer, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (1) of this section.

(3) A depositor who claims a lien under subsection (1) of this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created by subsection (1) of this section is discharged, except as to the proceeds therefrom and except as to commodities owned by the warehouseman or grain dealer, upon sale of the commodity by the warehouseman or grain dealer to a buyer in the ordinary course of business.

[1987 c 393 § 21; 1983 c 305 § 50.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.381 Depositors' claims, processing by department.

In the event of a failure of a grain dealer or warehouseman, the department may process the claims of depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities in the following manner:

(1) The department shall give notice and provide a reasonable time to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of the commodities has occurred. The department may, in writing, notify each claimant and the failed grain dealer or warehouseman of the department's determination as to the status and amount of each claimant's claim. A claimant, failed warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification, and a hearing shall be held in accordance with chapter 34.05 RCW.

(3) The department may inspect and audit the failed warehouseman to determine whether the warehouseman has in his possession sufficient quantities of commodities to cover his storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for

[the] purpose of determining shortages.

(4) The department shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner set forth in this chapter.

[1983 c 305 § 51.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.391 Depositor's lien—Liquidation procedure.

Upon the failure of a grain dealer or warehouseman, the statutory lien created in RCW 22.09.371 shall be liquidated by the department to satisfy the claims of depositors in the following manner:

(1) The department shall take possession of all commodities in the warehouse, including those owned by the warehouseman or grain dealer, and those that are under warehouse receipts or any written evidence of ownership that discloses a storage obligation by a failed warehouseman, including but not limited to scale weight tickets, settlement sheets, and ledger cards. These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding warehouse receipts or other written evidences of ownership. If a shortage exists, the department shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale are inadequate to satisfy the claims of depositors with evidence of storage obligations, the depositors have a first priority lien against any proceeds received from commodities sold while under a storage obligation or against any commodities owned by the failed warehouseman or grain dealer.

(2) Depositors possessing written evidence of the sale of a commodity to the failed warehouseman or grain dealer, including but not limited to scale weight tickets, settlement sheets, deferred price contracts, or similar commodity delivery contracts, who have completed delivery and passed title during a thirty-day period immediately before the failure of the failed warehouseman or grain dealer have a second priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodity, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy the claim of depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer, each depositor shall receive a pro rata share thereof.

(3) Upon the satisfaction of the claims of depositors qualifying for first or second priority treatment, all other depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer have a third priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodities, commodity proceeds, or warehouse-

owned or grain dealer-owned commodities are insufficient to wholly satisfy these claims, each depositor shall receive a pro rata share thereof.

(4) The director of agriculture may represent depositors whom, under RCW 22.09.381, the director has determined have claims against the failed warehouseman or failed grain dealer in any action brought to enjoin or otherwise contest the distributions made by the director under this section.

[1987 c 393 § 22; 1983 c 305 § 52.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.405 Grain indemnity fund program—Activation—In lieu of other security.

(1) The provisions of this section and RCW 22.09.416 through 22.09.471 constitute the grain indemnity fund program. RCW 22.09.416 through 22.09.471 shall take effect on a date specified by the director but within ninety days after receipt by the director of a petition seeking implementation of the grain indemnity fund program provided for in this chapter and a determination by the director, following a public hearing on said petition, that a grain indemnity fund program is in the interest of the agricultural industry of this state. The petition shall be signed by licensees of at least thirty-three percent of the grain warehouses and thirty-three percent of the grain dealers. At least sixty days in advance, the director shall notify each licensed warehouse and grain dealer of the effective date of the grain indemnity fund program provisions.

(2) The grain indemnity fund program, if activated by the director, shall be in lieu of the bonding and security provisions of RCW 22.09.090 and 22.09.095.

[1987 c 509 § 7.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.411 Grain indemnity fund program—Fund established—Contents, deposits, disbursements, use.

(1) There is hereby established a fund to be known as the grain indemnity fund. The grain indemnity fund shall consist of assessments remitted by licensees pursuant to the provisions of RCW 22.09.416 through 22.09.426.

(2) All assessments shall be paid to the department and shall be deposited in the grain indemnity fund. The state treasurer shall be the custodian of the grain indemnity fund. Disbursements shall be on authorization of the director. No appropriation is required for disbursements from this fund.

(3) The grain indemnity fund shall be used exclusively for purposes of paying claimants pursuant to this chapter, and paying necessary expenses of administering the grain indemnity fund, provided however, that moneys equivalent to one-half of the interest earned by the fund for deposit to the general fund may be paid to the department to defray costs of administering the warehouse audit program. The state of Washington shall not be liable for any claims presented against the fund.

[1991 sp.s. c 13 § 67; 1987 c 509 § 8.]

NOTES:

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.416 Grain indemnity fund program—Assessments.

(1) Every licensed warehouse and grain dealer and every applicant for any such license shall pay assessments to the department for deposit in the grain indemnity fund according to the provisions of RCW 22.09.405 through 22.09.471 and rules promulgated by the department to implement this chapter.

(2) The rate of the assessments shall be established by rule, provided however, that no single assessment against a licensed warehouse or grain dealer or applicant for any such license shall exceed five percent of the bond amount that would otherwise have been required of such grain dealer, warehouseman, or license applicant under RCW 22.09.090.

[1987 c 509 § 9.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.421 Grain indemnity fund program—Initial assessment—Effect on preceding security—New applicants for warehouse or grain dealer licenses.

(1) The department shall establish the initial assessment within sixty days of the activation of the grain indemnity fund program pursuant to RCW 22.09.405. Immediately upon promulgation of the rule, the department shall issue notice to each licensed warehouse and grain dealer of the assessment owed. The initial assessment and assessments issued thereafter shall be paid within thirty days of the date posted on the assessment notice.

(2) The surety bond or other security posted by a licensed warehouse or grain dealer in effect immediately preceding the effective date of the grain indemnity fund program, shall remain in full force and effect and shall not be released until thirty days after the initial assessment is paid. A certificate of deposit or other security in effect immediately preceding the effective date of the grain indemnity fund program shall remain on deposit until the initial assessment is paid and until such certificate of deposit or other security is released by the department following a prompt determination that no outstanding claims are pending against the security.

(3) Each new applicant for a warehouse or grain dealer license shall pay the assessment imposed pursuant to RCW 22.09.416 at the time of application. No license to operate as a grain dealer or grain warehouse or both shall be issued until such assessment is paid.

Notwithstanding the provisions of RCW 22.09.416(2), new applicants shall pay annual assessments into the grain indemnity fund for an equivalent number of years as those participating at the inception of the grain indemnity fund program and who continue to participate in the grain indemnity fund program.

[1987 c 509 § 10.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.426 Grain indemnity fund program—Annual assessments—Limitations.

The assessments imposed pursuant to RCW 22.09.416 shall be imposed annually, under rules promulgated by the department,

until such time as the grain indemnity fund balance, less any outstanding claims, reaches three million dollars. For any year in which the grain indemnity fund balance, less any outstanding claims, exceeds three million dollars on the annual assessment date, no assessment shall be imposed by the department, except as provided in RCW 22.09.421(3) or 22.09.431.

[1987 c 509 § 11.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.431 Grain indemnity fund program—Additional security.

The department may, when it has reason to believe that a licensee does not have the ability to pay producers for grain purchased, or when it determines that the licensee does not have a sufficient net worth to outstanding financial obligations ratio, require from the licensee the payment of an additional assessment or, at the department's option, the posting of a bond or other additional security in an amount to be prescribed by rule. The additional assessment or other security may exceed the maximum amount set forth in RCW 22.09.416. Failure of the licensee to timely pay the additional assessment or post the additional bond or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

[1987 c 509 § 12.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.436 Grain indemnity fund program—Advisory committee.

(1) There is hereby created a grain indemnity fund advisory committee consisting of six members to be appointed by the director. The director shall make appointments to the committee no later than seven days following the date this section becomes effective pursuant to RCW 22.09.405. Of the initial appointments, three shall be for two-year terms and three shall be for three-year terms. Thereafter, appointments shall be for three-year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of two producers primarily engaged in the production of agricultural commodities, two licensed grain dealers, and two licensed grain warehousemen.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel and subsistence expense under RCW 43.03.050 and 43.03.060. The expenses of the committee and its operation shall be paid from the grain indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the grain indemnity fund, and payment of claims from the fund.

[1987 c 509 § 13.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.441 Grain indemnity fund program—Processing of claims.

In the event a grain dealer or warehouse fails, as defined in RCW 22.09.011(21), or otherwise fails to comply with the provisions of this chapter or rules promulgated hereunder, the department shall process the claims of depositors producing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities for damages caused by the failure, in the following manner:

(1) The department shall give notice and provide a reasonable time, not to exceed thirty days, to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their written verified claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of commodities has occurred. The department shall notify each claimant, the grain warehouseman or grain dealer, and the committee of the department's determination as to the validity and amount of each claimant's claim. A claimant, warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 34.05 RCW. Upon determining the amount and validity of the claim, the director shall pay the claim from the grain indemnity fund.

(3) The department may inspect and audit a failed warehouseman, as defined by RCW 22.09.011(21) to determine whether the warehouseman has in his possession, sufficient quantities of commodities to cover his storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages.

[1987 c 509 § 14.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.446 Grain indemnity fund program—Failure to file claim in time.

If a depositor or creditor, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or grain dealer as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the grain indemnity fund.

[1987 c 509 § 15.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.451 Grain indemnity fund program—Payment limitations.

Subject to the provisions of RCW 22.09.456 and 22.09.461 and to a maximum payment of seven hundred fifty thousand dollars

on all claims against a single licensee, approved claims against a licensed warehouseman or licensed grain dealer shall be paid from the grain indemnity fund in the following amounts:

(1) Approved claims against a licensed warehouseman shall be paid in full;

(2) Approved claims against a licensed grain dealer for payments due within thirty days of transfer of title shall be paid in full for the first twenty-five thousand dollars of the claim. The amount of such a claim in excess of twenty-five thousand dollars shall be paid to the extent of eighty percent;

(3) Approved claims against a licensed grain dealer for payments due between thirty and ninety days of transfer of title shall be paid to the extent of eighty percent;

(4) Approved claims against a licensed grain dealer for payments due after ninety days from transfer of title shall be paid to the extent of seventy-five percent;

(5) In the event that approved claims against a single licensee exceed seven hundred fifty thousand dollars, recovery on those claims shall be prorated.

[1987 c 509 § 16.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.456 Grain indemnity fund program—Additional payment limitations.

In addition to the payment limitations imposed by RCW 22.09.451, payment of any claim approved before the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, shall be limited to the following amounts:

(1) For claims against a licensed grain warehouse, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to the licensee's total bushels of licensed storage space multiplied by the rate of eighteen cents.

(2) For claims against a licensed grain dealer, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to six percent of the gross purchases of the licensee during the licensee's immediately preceding fiscal year.

(3) The unpaid balance of any claim subject to this section shall be paid when the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, provided that the total paid on the claim shall not exceed the limits specified in RCW 22.09.451.

[1987 c 509 § 17.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.461 Grain indemnity fund program—Payment of claims—Restrictions, priority.

The requirement that the state of Washington pay claims under this chapter only exists so long as the grain indemnity fund contains sufficient money to pay the claims. Under no circumstances whatsoever may any funds (other than assessment amounts and other money obtained under this chapter) be used to pay claims. In the event that the amount in the grain indemnity fund is insufficient to pay all approved claims in the amount provided for under RCW 22.09.451 or 22.09.456, the claims shall be paid in the order in which they were filed with the department, until such time as sufficient moneys are available in the grain indemnity fund to pay all of the claims.

[1987 c 509 § 18.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.466 Grain indemnity fund program—Debt and obligation of grain dealer or warehouseman—Recovery by director.

Amounts paid from the grain indemnity fund in satisfaction of any approved claim shall constitute a debt and obligation of the grain dealer or warehouseman against whom the claim was made. On behalf of the grain indemnity fund, the director may bring suit, file a claim, or intervene in any legal proceeding to recover from the grain dealer or warehouseman the amount of the payment made from the grain indemnity fund, together with costs and attorneys' fees incurred. In instances where the superior court is the appropriate forum for a recovery action, the director may elect to institute the action in the superior court of Thurston county.

[1987 c 509 § 19.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.471 Grain indemnity fund program—Proceedings against licensee.

The department may deny, suspend, or revoke the license of any grain dealer or warehouseman who fails to timely pay assessments to the grain indemnity fund or against whom a claim has been made, approved, and paid from the grain indemnity fund. Proceedings for the denial, suspension, or revocation shall be subject to the provisions of chapter 34.05 RCW.

[1987 c 509 § 20.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

## RCW 22.09.520 Deposits as bailments.

Whenever any commodity shall be delivered to a warehouse under this chapter, and the scale ticket or warehouse receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the legal holder of the warehouse receipt to enforce the terms thereof. Such commodities, in the event of failure or insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding warehouse receipts and scale weight tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license, as provided in RCW 22.09.030, shall be applied to the redemption and satisfaction of warehouse receipts and scale weight tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the warehouse receipts or scale weight tickets issued therefor.

[1987 c 393 § 23; 1963 c 124 § 52.]

## RCW 22.09.570 Action on bond by director—Authorized—Grounds.

The director may bring action upon the bond of a warehouseman or grain dealer against both principal against whom a claim has

been made and the surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Recovery for damages against a warehouseman or grain dealer on a bond furnished under RCW 22.09.095 shall be limited to the bond amount that would be required for that warehouseman or grain dealer under RCW 22.09.090.

[1987 c 509 § 5; 1983 c 305 § 56; 1975 1st ex.s. c 7 § 29.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect.

If a depositor creditor after notification fails, refuses, or neglects to file in the office of the director his verified claim against a warehouseman or grain dealer bond as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of further duty or action under this chapter on behalf of the depositor creditor.

[1983 c 305 § 57; 1975 1st ex.s. c 7 § 30.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect.

Where by reason of the absence of records or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all the depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouseman's or grain dealer's bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims that may subsequently appear or be discovered.

[1983 c 305 § 58; 1975 1st ex.s. c 7 § 31.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.600 Action on bond by director—Powers of director.

Upon ascertaining all claims and statements in the manner set forth in this chapter, the director may then make demand upon the warehouseman's or grain dealer's bond on behalf of those claimants whose claims and statements have been filed, and has the power to settle or compromise the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

[1983 c 305 § 59; 1975 1st ex.s. c 7 § 32.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.610 Action on bond by director—When authorized—New bond, when required—Penalty for failure to file.

Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the warehouseman's or grain dealer's bond in behalf of the depositor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond, and immediately upon the recovery in any action on the bond, a new bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirements of this chapter within ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond.

[1987 c 509 § 6; 1983 c 305 § 60; 1975 1st ex.s. c 7 § 33.]

NOTES:

**Severability—1987 c 509:** See note following RCW 22.09.060.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.615 Action by depositor upon licensee's bond.

(1) If no action is commenced under RCW 22.09.570 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his bond has a right of action upon the licensee's bond for the recovery of his damages. The depositor shall give the department immediate written notice of the commencement of any such action.

(2) Recovery under the bond shall be prorated when the claims exceed the liability under the bond.

(3) Whenever the claimed shortage exceeds the amount of the bond, it is not necessary for any depositor suing on the bond to join other depositors in the suit, and the burden of establishing proration is on the surety as a matter of defense.

[1983 c 305 § 53; 1963 c 124 § 37. Formerly RCW 22.09.370.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.620 Payment for agricultural commodities purchased—Time requirements.

Every warehouseman or grain dealer must pay for agricultural commodities purchased by him at the time and in the manner specified in the contract with the depositor, but if no time is set by the contract, then within thirty days after taking possession for purpose of sale or taking title of the agricultural product.

[1983 c 305 § 62; 1975 1st ex.s. c 7 § 34.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.630 Payment violations—Recovery by department—Charges to depositors.

When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department the following charges will be made to the depositor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent.

[1975 1st ex.s. c 7 § 35.]

## RCW 22.09.640 Publication and distribution of list of licensed warehouses.

Notwithstanding the provisions of chapter 42.56 RCW, the department shall publish annually and distribute to interested parties, a list of licensed warehouses showing the location, county, capacity, and bond coverage for each company.

[2005 c 274 § 240; 1979 ex.s. c 238 § 25.]

NOTES:

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## RCW 22.09.650 Remedies of department as to stations.

When a station is licensed pursuant to this chapter, the department may assert any and all the remedies provided for in this chapter, including but not limited to those remedies provided for in RCW 22.09.350. Furthermore, if inspection of that portion of the station located in the contiguous state is refused by the licensee, the department may give notice to the licensee to submit to such inspection as the department may deem necessary.

If the station refuses to comply with the terms of the notice within twenty-four hours, the director may summarily suspend the station's license pending a hearing in compliance with chapter 34.05 RCW.

[1983 c 305 § 63; 1979 ex.s. c 238 § 26.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.660 Emergency storage situation—Forwarding to other warehouses.

Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouseman to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts pursuant to conditions established by rule.

[2003 c 13 § 1; 1983 c 305 § 64.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.710 Designation of inspection points and terminal warehouses.

The department may designate a warehouse located at an inspection point as a terminal warehouse. The department shall, by rule, designate inspection points which shall be provided with state/federal inspection and weighing services commencing July 1, 1979. The revenue from inspection and weighing shall equal the cost of providing such services. Where the department after hearing determines that such cities are no longer necessary as inspection points it may by rule change such designated inspection points by removing one or more locations.

[1979 ex.s. c 238 § 21; 1963 c 124 § 38. Formerly RCW 22.09.380.]

## RCW 22.09.720 Grades and standards of commodities—Regulations.

The grades and standards established by the United States department of agriculture as of September 30, 1988, for all commodities included within the provisions of this chapter are hereby adopted as the grades and standards for such commodities in this state: PROVIDED, That the department is hereby authorized to adopt by regulation any new or future amendments to such federal grades and standards. The department is also authorized to issue regulations whether or not in accordance with the federal government and to prescribe therein grades and standards which it may deem suitable for inspection of commodities in the state of Washington. In adopting any new or amendatory regulations the department shall give appropriate consideration, among other relevant factors, to the following:

(1) The usefulness of uniform federal and state grades;

(2) The common classifications given such commodities within the industry;

(3) The utility of various grades;

(4) The kind and type of grades requested by those dealing with the particular type of commodity; and

(5) The condition of the commodity with regard to its wholesomeness and purity.

[1989 c 354 § 47; 1963 c 124 § 39. Formerly RCW 22.09.390.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 22.09.730 Inspection or grading of commodities—Methods.

Inspection or grading of a lot, partial lot, or sample of a commodity tendered for inspection or grading under this chapter shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade, condition, or other qualitative measurement. Commodities tendered for inspection must be offered and made accessible for sampling at inspection points during customary business hours.

(1) No inspector shall issue a certificate of grade, grading factors, condition, or other qualitative measurement for any commodity unless the inspection or grading thereof be based upon a correct and representative sample of the commodity and the inspection is made under conditions which permit the determination of its true grade or quality, except as provided in subsections (2) and (3) of this section. No sample shall be deemed to be representative unless it is of the size and procured in accordance with the uniform methods prescribed by the department.

(2) An inspection may be made of a submitted sample of a commodity, provided that the certificate issued in such case clearly shows that the inspection or grading covers only the submitted sample of such commodity and not the lot from which it is purportedly drawn.

(3) When commodities are tendered for inspection in such a manner as to make the drawing of a representative sample impossible, a qualified inspection may be made. In such case, the certificate shall clearly show the condition preventing proper sampling such as heavily loaded car, truck, barge, or other container, or other condition.

[1989 c 354 § 48; 1963 c 124 § 40. Formerly RCW 22.09.400.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 22.09.740 Inspection or grading of commodities—File samples, retention.

From all commodities inspected, samples may be drawn, which samples, unless returned by agreement to the applicant, shall become the property of the state and subject to disposition by the department. Upon request the department may transmit a portion of such samples to interested parties upon payment of a reasonable fee set by regulation. Official state file samples shall be retained for periods prescribed by state or federal regulation.

[1989 c 354 § 49; 1963 c 124 § 41. Formerly RCW 22.09.410.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 22.09.750 Inspection or grading of commodities—Powers and duties of inspectors at terminal warehouses—Recordkeeping.

The department's inspectors shall, at terminal warehouses, have exclusive control of the weighing, inspecting, and grading of the commodities that are included within the provisions of this chapter: PROVIDED, That official supervision of weighing under the United States grain standards act shall be deemed in compliance with this section. The action and the certificates of the inspectors in the discharge of their duties, as to all commodities inspected or weighed by them, shall be accepted as prima facie evidence of the correctness of the above activity. Suitable books and records shall be maintained in which shall be entered a record of each inspection activity and the fees assessed and collected. These books and records shall be available for inspection by any party of interest during customary business hours. The records shall be maintained for periods set by regulation.

[1989 c 354 § 50; 1983 c 305 § 54; 1963 c 124 § 42. Formerly RCW 22.09.420.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.760 Inspection or grading of commodities—No inspection if commodity is to be loaded into defective container.

No inspection shall be made of any commodity which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the commodity is to be loaded is in such condition as to contaminate the commodity or lower the grade.

[1963 c 124 § 43. Formerly RCW 22.09.430.]

## RCW 22.09.770 Inspection or grading of commodities—Unlawful practices—Penalty.

Any department employee who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such department employee; or any person who shall knowingly cause or attempt to cause the issuance of a false or incorrect grade or weight certificate under this chapter by deceptive loading, handling, or sampling of commodities or by submitting commodities for inspection knowing that it has been so loaded, handled, or sampled, or by any other means; shall be deemed guilty of a misdemeanor.

[1963 c 124 § 44. Formerly RCW 22.09.440.]

## RCW 22.09.780 Inspection or grading of commodities.

(1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his agent or broker, or any warehouseman shall be aggrieved at the grading of such commodity, the person may request a reinspection or appeal inspection within three business days from the date of certificate. The reinspection or appeal may be based in the official file sample or upon a new sample drawn from the lot of the grain or commodity if the lot remains intact and available for sampling. The reinspection or appeal inspection shall be of the same factors and scope as the original inspection.

(2) For commodities inspected under federal standards, the reinspection and appeal inspection procedure provided in the applicable federal regulations shall apply. For commodities inspected under state standards, the department shall provide a minimum of a reinspection and appeal inspection service. The reinspection shall consist of a full review of all relevant information and a reexamination of the commodity to determine the correctness of the grade assigned or other determination. The reinspection shall be performed by an authorized inspector of the department other than the inspector who performed the original inspection unless no other inspector is available. An appeal inspection shall be performed by a supervisory inspector.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington.

[1989 c 354 § 51; 1963 c 124 § 45. Formerly RCW 22.09.450.]

NOTES:

**Severability—1989 c 354:** See note following RCW 15.36.012.

## RCW 22.09.790 Inspection or grading of commodities—Fees and charges.

(1) The department shall fix the fees for inspection, grading, and weighing of the commodities included under the provisions of this chapter, which fees shall be sufficient to cover the cost of such service. The fees for inspection, weighing, and grading of such commodities shall be a lien upon the commodity so weighed, graded, or inspected which the department may require to be paid by the carrier or agent transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "not for terminal weight and grade," and the commodity is not unloaded at a terminal warehouse.

(2) The department is authorized to make any tests relating to grade or quality of commodities covered by this chapter. The department may inspect and approve facilities and vessels to be used in transporting such commodities and provide any other necessary services. It may fix and charge a reasonable fee to be collected from the person or his agent requesting such service.

(3) The department shall so adjust the fees to be collected under this chapter as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The department may also prescribe a reasonable charge for service performed at places other than terminal warehouses in addition to the regular fees when necessary to avoid rendering the services at a loss

to the state.

[1963 c 124 § 46. Formerly RCW 22.09.460.]

## RCW 22.09.800 Inspection or grading of commodities—Scales and weighing.

If any terminal warehouse at inspection points is provided with proper scales and weighing facilities, the department may weigh the commodity upon the scales so provided. The department at least once each year shall cause to be examined, tested, and corrected, all scales used in weighing commodities in any of the cities designated as inspection points in this chapter or such places as may be hereinafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing commodities for the ensuing year, unless sooner revoked by the department. If such scales be found to be inaccurate or unfit for use, the department shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them and until thus repaired or modified to the satisfaction of the department the certificate of such party shall be suspended or revoked at the discretion of the department. The party receiving such certificate shall pay to the department a reasonable fee for such inspection and certificate to be fixed by the department. It shall be the duty of the department to see that the provisions of this section are strictly enforced.

[1963 c 124 § 47. Formerly RCW 22.09.470.]

## RCW 22.09.810 Inspection or grading of commodities—Inspection of commodities shipped to or from places other than inspection points.

In case any commodity under the provisions of this chapter is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this chapter, the buyer, seller, or persons making delivery may have it inspected by notifying the department or its inspectors, whose duty it shall be to have such commodity inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, without undue delay, a certificate showing the grade of such commodity. The person or persons, or his agent, calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the department.

[1963 c 124 § 48. Formerly RCW 22.09.480.]

## RCW 22.09.820 Inspection or grading of commodities—Unloading commodity without inspection or weighing.

When commodities are shipped to points where inspection is provided and the bill of lading does not contain the notation "not for terminal weight and grade" and the commodity is unloaded by or on account of the consignee or his assignee without being inspected or weighed by a duly authorized inspector under the provisions of this chapter, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee or his assignee, by whom such commodities are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten percent of the sale price of such commodities computed on the basis of the shipper's weight and grade.

[1963 c 124 § 49. Formerly RCW 22.09.490.]

## RCW 22.09.830 Grain inspection revolving fund—Hop inspection fund—Grain warehouse audit account.

(1) All moneys collected as fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsections (2) and (3) of this section, shall be deposited in the grain inspection revolving fund, which is hereby established. The state treasurer is the custodian of the revolving fund. Disbursements from the revolving fund shall be on authorization of the director of the department of agriculture. The revolving fund is subject to the allotment procedure provided in chapter 43.88 RCW, but no appropriation is required for disbursements from the fund. The fund shall be used for all expenses directly incurred by the grain inspection program in carrying out the provisions of this chapter and for departmental administrative expenses during the 1993-95 biennium. The department may use so much of such fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on July 1, 1963, and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops.

(3) All moneys collected by the grain warehouse audit program, including grain warehouse license fees pursuant to RCW 22.09.050 and 22.09.055, shall be deposited by the director into the grain warehouse audit account, hereby created within the agricultural local fund established in RCW 43.23.230. Moneys collected shall be used to support the grain warehouse audit program.

[1994 sp.s. c 6 § 901; 1994 c 46 § 6; 1989 c 354 § 52; 1981 c 297 § 25; 1963 c 124 § 50. Formerly RCW 22.09.500.]

NOTES:

**Reviser's note:** This section was amended by 1994 c 46 § 6 and by 1994 sp.s. c 6 § 901, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—1994 sp.s. c 6:** See notes following RCW 28A.310.020.

**Effective date—1994 c 46:** See note following RCW 15.58.070.

**Severability—1989 c 354:** See note following RCW 15.36.012.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 22.09.840 Fumigated conveyances to be labeled.

It shall be unlawful to ship commodities in closed conveyances

which have been fumigated without labeling such railroad car, vehicle, or other conveyance to show that it has been fumigated. The label shall show the type of fumigant used and the date of application.

[1963 c 124 § 53. Formerly RCW 22.09.530.]

## RCW 22.09.850 Railroads to provide side tracks and track scales—Weighing of cars.

Any railroad delivering commodities covered by this chapter in cars at designated inspection points shall provide convenient and suitable side tracks at such places as the department may approve. All cars billed for inspection shall be placed on such side tracks and the department shall be notified by the railroad in accordance with department regulations. Such railroad company shall provide suitable track scales for weighing cars of commodities upon the request of interested persons. Upon request, the department may weigh, or supervise the weighing of all cars of commodities received over the line of such railroad. Such weighing shall be conditioned upon the weighing of such cars after unloading to determine the actual weight of commodities delivered.

[1963 c 124 § 28. Formerly RCW 22.09.280.]

## RCW 22.09.860 Police protection of terminal yards and tracks.

All railroad companies and warehousemen operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section.

[1963 c 124 § 27. Formerly RCW 22.09.270.]

## RCW 22.09.870 Injunctions.

The director may bring an action in the name of the state to temporarily and/or permanently enjoin the 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 notwithstanding the existence of any other remedy at law.

[1963 c 124 § 54. Formerly RCW 22.09.540.]

## RCW 22.09.880 Cooperation with governmental agencies and private associations.

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 and the United States Warehouse Act (7 USCA § 241 et seq.) and the United States Grain Standards Act, as amended (7 USCA § 71, et seq.). Notwithstanding any other provision of this chapter such agreements may also relate to a joint program for licensing, bonding, and inspecting stations. Such a program should be designed to avoid duplication of effort on the part of the licensing authority and requirements for operation, and promote more efficient enforcement of the provisions of this chapter and comparable provisions of the law of the states of Idaho or Oregon.

[1983 c 305 § 55; 1979 ex.s. c 238 § 22; 1963 c 124 § 55. Formerly RCW 22.09.550.]

NOTES:

**Severability—1983 c 305:** See note following RCW 20.01.010.

## RCW 22.09.890 General penalty.

A violation of any provision or section of this chapter, where no other penalty is provided for, and the violation of any rule or regulation adopted hereunder shall constitute a misdemeanor.

[1963 c 124 § 58. Formerly RCW 22.09.560.]

## RCW 22.09.895 Civil penalty.

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 one thousand dollars for every such violation. Each and every 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.

[1987 c 393 § 24.]

## RCW 22.09.900 Continuation of rules adopted pursuant to repealed chapter.

The repeal of chapter 22.08 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 22.08 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.05 RCW concerning the adoption of rules.

[1963 c 124 § 56.]

## RCW 22.09.910 Savings—1963 c 124.

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, 1963.

[1963 c 124 § 57.]

## RCW 22.09.920 Construction as to Article 7 of Title 62A RCW.

Nothing in this chapter, with the exception of RCW 22.09.290(1)(b), shall be deemed to repeal, amend, or modify Article 7 of Title 62A RCW.

[1979 ex.s. c 238 § 23; 1963 c 124 § 59.]

## RCW 22.09.930 Effective date—1963 c 124.

The effective date of this chapter shall be July 1, 1963.

[1963 c 124 § 60.]

## RCW 22.09.940 Severability—1963 c 124.

If any section, sentence, clause, or part of this chapter is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part thereof despite the fact that one or more sections,

clauses, sentences, or parts thereof be declared unconstitutional.
[1963 c 124 § 61.]

### RCW 22.09.941 Severability—1979 ex.s. c 238.

See note following RCW 15.44.010.

# CHAPTER 22.16 RCW
## WAREHOUSES AND ELEVATORS—EMINENT DOMAIN

**Sections**


22.16.010 Right of eminent domain extended.
22.16.020 Right of entry.
22.16.030 Extent of appropriation.
22.16.040 Limitations on right—Finding of public necessity.


NOTES:

**Reviser's note:** The term "director of the department of agriculture" has been substituted for "public service commission" in this chapter since the powers and duties of the commission devolved upon the director of agriculture by virtue of 1921 c 7 § 90, 1921 c 137 §§ 1, 2, 1921 c 145 § 8, and 1937 c 90 § 10.

### RCW 22.16.010 Right of eminent domain extended.

The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights-of-way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all other purposes incident to and connected with the business conducted by such warehouse or elevator.
[1919 c 98 § 1; RRS § 11566.]

### RCW 22.16.020 Right of entry.

Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights-of-way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby.
[1919 c 98 § 2; RRS § 11567.]

### RCW 22.16.030 Extent of appropriation.

Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the same procedure as now is or may be hereafter provided by law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.
[1919 c 98 § 3; RRS § 11568.]

### RCW 22.16.040 Limitations on right—Finding of public necessity.

The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right-of-way of any railroad company within the yard limits thereof, nor unless and until the director of the department of agriculture after a full hearing shall have determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the director.
[1919 c 98 § 4; RRS § 11569.]

# TITLE 43 RCW
## STATE GOVERNMENT — EXECUTIVE

### Chapters


43.23 Department of agriculture.

43.325 Energy freedom program


# CHAPTER 43.23 RCW
## DEPARTMENT OF AGRICULTURE

### Sections


43.23.001 Definitions.

43.23.002 Director—Appointment—Powers and duties—Salary.

43.23.005 Deputy director—Appointment—Powers and duties.

43.23.010 Divisions of department—Assistant directors—State veterinarian—Salaries—Assignment of duties.

43.23.015 Divisions of department—Reassignment of division functions.

43.23.025 Rule-making authority.

43.23.030 Powers and duties.

43.23.033 Funding staff support for commodity boards and commissions—Rules.

43.23.035 Powers and duties—State agricultural market development programs and activities.

43.23.037 Publishing and dissemination costs—Deposit of proceeds.

43.23.042 Consultation with commodity commissions.

43.23.050 Powers and duties.

43.23.070 Powers and duties of state veterinarian.

43.23.090 Powers and duties.

43.23.110 Powers and duties.

43.23.120 Bulletins and reports.

43.23.130 Annual report.

43.23.160 Powers and duties.

43.23.170 Enforcement in accordance with RCW 43.05.100 and 43.05.110.

43.23.200 Official chemists of department—Designated—Duties.

43.23.205 Additional chemists—Appointment—Duties—Compensation.

43.23.220 Disposition of impounded livestock on Hanford reservation—Agreements to act as federal government's agent.

43.23.230 Agricultural local fund.

43.23.250 Collection of unpaid penalties, assessments, and debts—Use of collection agencies.

43.23.255 Assessments levied by director—Personal debt—Costs of collecting—Civil actions authorized—Attorneys' fees.

43.23.260 Interest on unpaid balances.

43.23.265 Dishonored check or negotiable instrument.

43.23.270 Export market development project records—Confidentiality.

43.23.275 Market development and promotion matching fund program.

43.23.280 Trade barrier matching fund program.

43.23.290 Food assistance programs.


**NOTES:**

Agricultural

enabling act of 1955, powers and duties under, generally: Chapter 15.66 RCW.

enabling act of 1961, powers and duties under, generally: Chapter 15.65 RCW.

fairs and youth shows, director's duties relating to: Chapter 15.76 RCW.

pest districts: Chapter 17.12 RCW.

Animal

carcasses, disposal: Chapter 16.68 RCW.

health: Chapter 16.36 RCW.

Apiaries act: Chapter 15.60 RCW.

Apiculture division: RCW 15.60.010.

Apple commission: Chapter 15.24 RCW.

Chief assistants: RCW 43.17.040.

Commercial feed law, director's duties relating to: Chapter 15.53 RCW.

Commission merchants: Chapter 20.01 RCW.

Control of pet animals infected with diseases communicable to humans, director's duties: Chapter 16.70 RCW.

Dairies and dairy products, director's duties relating to: Chapter 15.36 RCW.

Department created: RCW 43.17.010.

Drugs, food and cosmetics act: Chapter 69.04 RCW.

Eggs and egg products, duties concerning: Chapter 69.25 RCW.

Fair fund, horse racing moneys, disposition: RCW 15.76.115.

Farm labor

contractors: Chapter 19.30 RCW.

director may aid in obtaining and employment of: RCW 15.64.010.

unemployment compensation: RCW 50.04.150.

Farm marketing act, powers and duties under, generally: Chapter 15.64 RCW.

Food, drug and cosmetic act, duties under: Chapter 69.04 RCW.

Grades and packs, generally, standards of, duties relating to: Chapters 15.04, 15.17 RCW.

Honey, enforcement powers and duties: Chapter 69.28 RCW.

Horticultural plants, Christmas trees, and facilities, inspection and licensing of, duties relating to: Chapter 15.13 RCW.

Inspection, duties relating to generally: Chapter 15.04 RCW.

International marketing program for agricultural commodities and trade center: RCW 28B.30.535 through 28B.30.543.

Livestock

identification: Chapter 16.57 RCW.

markets: Chapter 16.65 RCW.

Marketing, director's duties relating to: Chapters 15.64, 15.65, 15.66 RCW.

Milk, fluid milk act, director's duties relating to: Chapter 15.36 RCW.

Milk and milk products for animal food act, duties relating to: Chapter 15.37 RCW.

Minimum flows and levels—Departmental authority exclusive—Other recommendations considered: RCW 90.03.247.

Oath: RCW 43.17.030.

Office maintained at state capital: RCW 43.17.050.

Pesticide application act: Chapter 17.21 RCW.

Pesticide control act, director's duties under: Chapter 15.58 RCW.

Planting stock act, powers and duties relating to: Chapter 15.14 RCW.

Poisons, enforcement of

caustic or corrosive poison act: RCW 69.36.040.

chapter relating to: RCW 69.40.025.

Powers and duties generally: RCW 43.17.030, chapter 43.23 RCW.

Predatory birds, controlled by: RCW 15.04.110, 15.04.120.

Rule-making power: RCW 43.17.060.

Rural rehabilitation program, director's duties relating to: Chapter 15.70 RCW.

Seeds, director's duties relating to: Chapter 15.49 RCW.

Soil conservation: Chapter 89.08 RCW.

State fairs commission: Chapter 15.76 RCW.

State international trade fairs, duties relating to: RCW 43.31.800 through 43.31.850.

State trade fair fund, horse racing moneys, disposition: RCW 43.31.805.

Vacancy: RCW 43.17.020, 43.17.040.

Weighing commodities in highway transport—Weighmasters, director's duties relating to: Chapter 15.80 RCW.

## RCW 43.23.001 Definitions.

For purposes of this chapter:

(1) "Department" means department of agriculture;

(2) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

[1995 c 374 § 61.]

**NOTES:**

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 43.23.002 Director—Appointment—Powers and duties—Salary.

The executive and administrative head of the department of

agriculture shall be the director. The director shall be appointed by the governor with the consent of the senate and shall have complete charge of and supervisory power over the department. The director shall be paid a salary fixed by the governor in accordance with RCW 43.03.040.

[1983 c 248 § 1.]

## RCW 43.23.005 Deputy director—Appointment—Powers and duties.

The director of agriculture may appoint a deputy director who shall assist the director in the administration of the affairs of the department and who shall have charge and general supervision of the department in the absence or disability of the director, and who, in case a vacancy occurs in the office of director, shall continue in charge of the department until a director is appointed and qualified, or the governor appoints an acting director.

[1983 c 248 § 2; 1967 c 240 § 14.]

## RCW 43.23.010 Divisions of department—Assistant directors—State veterinarian—Salaries—Assignment of duties.

In order to obtain maximum efficiency and effectiveness within the department of agriculture, the director may create such administrative divisions within the department as he or she deems necessary. The director shall appoint a deputy director as well as such assistant directors as shall be needed to administer the several divisions within the department. The director shall appoint no more than eight assistant directors. The officers appointed under this section are exempt from the provisions of the state civil service law as provided in RCW 41.06.070(1)(g), and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the state civil service law. The director shall also appoint and deputize a state veterinarian who shall be an experienced veterinarian properly licensed to practice veterinary medicine in this state.

The director of agriculture shall have charge and general supervision of the department and may assign supervisory and administrative duties other than those specified in RCW 43.23.070 to the division which in his or her judgment can most efficiently carry on those functions.

[2002 c 354 § 244; 1990 c 37 § 1; 1983 c 248 § 3; 1967 c 240 § 1; 1965 c 8 § 43.23.010. Prior: 1951 c 170 § 1; 1921 c 7 § 83; RRS § 10841.]

NOTES:

**Short title—Headings, captions not law—Severability—2002 c 354:** See RCW 41.80.907 through 41.80.909.

**Severability—1967 c 240:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected."

[1967 c 240 § 52.]

Apiary advisory committee: RCW 15.60.010.

## RCW 43.23.015 Divisions of department—Reassignment of division functions.

Except for the functions specified in RCW 43.23.070, the director may, at his or her discretion, reassign any of the functions delegated to the various divisions of the department under the provisions of this chapter or any other law to any other division of the department.

[2009 c 549 § 5103; 1983 c 248 § 4; 1967 c 240 § 15.]

## RCW 43.23.025 Rule-making authority.

For rules adopted after July 23, 1995, the director of agriculture may not rely solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule.

[1995 c 403 § 104.]

NOTES:

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

## RCW 43.23.030 Powers and duties.

The director of agriculture shall exercise all the powers and perform all the duties relating to the development of markets, for agricultural products, state and federal cooperative marketing programs, land utilization for agricultural purposes, water resources, transportation, and farm labor as such matters relate to the production, distribution and sale of agricultural commodities including private sector cultured aquatic products as defined in RCW 15.85.020.

[1985 c 457 § 15; 1983 c 248 § 5; 1967 c 240 § 3; 1965 c 8 § 43.23.030. Prior: (i) 1921 c 7 § 90; RRS § 10848. (ii) 1937 c 90 § 10; RRS § 10847-1.]

NOTES:

Fair commission: Chapter 15.76 RCW.

Farm marketing: Chapters 15.64, 15.65, 15.66 RCW.

## RCW 43.23.033 Funding staff support for commodity boards and commissions—Rules.

(1) The director may provide by rule for a method to fund staff support for all commodity boards and commissions if a position is not directly funded by the legislature.

(2) Staff support funded under this section, RCW 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320, 15.44.190, 15.88.180, 15.89.150, and 16.67.190, and chapter 15.115 RCW shall be limited to one-half full-time equivalent employee for all commodity boards and commissions.

[2009 c 33 § 38; 2006 c 330 § 27; 2002 c 313 § 78.]

NOTES:

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 43.23.035 Powers and duties—State agricultural market development programs and activities.

The department of agriculture is hereby designated as the agency of state government for the administration and implementation of state agricultural market development programs and activities, both domestic and foreign, and shall, in addition to the powers and duties otherwise imposed by law, have the following powers and duties:

(1) To study the potential marketability of various agricultural commodities of this state in foreign and domestic trade;

(2) To collect, prepare, and analyze foreign and domestic market data;

(3) To establish a program to promote and assist in the marketing of Washington-bred horses: PROVIDED, That the department shall present a proposal to the legislature no later than December 1, 1986, that provides for the elimination of all state funding for the program after June 30, 1989;

(4) To encourage and promote the sale of Washington's agricultural commodities and products at the site of their

production through the development and dissemination of referral maps and other means;

(5) To encourage and promote those agricultural industries, such as the wine industry, which attract visitors to rural areas in which other agricultural commodities and products are produced and are, or could be, made available for sale;

(6) To encourage and promote the establishment and use of public markets in this state for the sale of Washington's agricultural products;

(7) To maintain close contact with foreign firms and governmental agencies and to act as an effective intermediary between foreign nations and Washington traders;

(8) To publish and disseminate to interested citizens and others information which will aid in carrying out the purposes of chapters 43.23, 15.64, 15.65, and 15.66 RCW;

(9) To encourage and promote the movement of foreign and domestic agricultural goods through the ports of Washington;

(10) To conduct an active program by sending representatives to, or engaging representatives in, foreign countries to promote the state's agricultural commodities and products;

(11) To assist and to make Washington agricultural concerns more aware of the potentials of foreign trade and to encourage production of those commodities that will have high export potential and appeal;

(12) To coordinate the trade promotional activities of appropriate federal, state, and local public agencies, as well as civic organizations; and

(13) To develop a coordinated marketing program with the *department of community, trade, and economic development, utilizing existing trade offices and participating in mutual trade missions and activities.

As used in this section, "agricultural commodities" includes products of both terrestrial and aquatic farming.

[1995 c 399 § 70; 1986 c 202 § 1; 1985 c 159 § 3.]

NOTES:

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Severability—1986 c 202:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1986 c 202 § 7.]

**Legislative declaration and intent—1985 c 159:** "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 export of agricultural products produced in Washington state contributes substantial benefits to the economic base of the state, provides a large number of jobs and sizeable tax revenues to state and local governments, provides an important stabilizing effect on prices received by agricultural producers, and contributes to the United States balance of trade.

(3) State government should play a significant role in the development and expansion of markets for Washington grown and processed agricultural and food products.

(4) In order for state government to serve the best interests of agriculture in the area of market development, the role of state government in this area must be clearly defined.

(5) The department of agriculture, the department of commerce and economic development, and the IMPACT center at Washington State University, each possesses its own unique body of knowledge, expertise, and relationships that, when combined and applied in a logical and cooperative manner, will benefit the agricultural industry and the overall state economy and will provide a powerful force to seek aggressively new domestic and international markets for Washington's agricultural products.

It is the intent of the legislature to establish an organized agricultural market development function within state government with clearly defined areas of responsibility which will be responsive to the state's agricultural and food products industries' needs, without duplicating established private sector marketing efforts."

[1985 c 159 § 1.]

## RCW 43.23.037 Publishing and dissemination costs—Deposit of proceeds.

The director may collect moneys to recover the reasonable costs of publishing and disseminating informational materials by the department. Materials may be disseminated in printed or electronic format. All moneys collected shall be deposited in the agricultural local fund or other appropriate fund administered by the director.

[1997 c 303 § 5.]

NOTES:

**Findings—1997 c 303:** See note following RCW 43.135.055.

## RCW 43.23.042 Consultation with commodity commissions.

The director may consult with each commodity commission established under state law in order to establish or maintain an integrated comprehensive regulatory scheme for each commodity and the agricultural industry in this state as a whole.

[2002 c 313 § 112.]

NOTES:

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## RCW 43.23.050 Powers and duties.

The director of agriculture shall:

(1) Exercise all the powers and perform all the duties prescribed by law relating to horticulture, and horticultural plants and products;

(2) Enforce and supervise the administration of all laws relating to horticulture, horticultural products, and horticultural interests.

[1983 c 248 § 6; 1967 c 240 § 5; 1965 c 8 § 43.23.050. Prior: 1921 c 7 § 91; RRS § 10849.]

NOTES:

Horticultural

pests and diseases: Chapter 15.08 RCW.

plants, Christmas trees, and facilities: Chapter 15.13 RCW.

## RCW 43.23.070 Powers and duties of state veterinarian.

The state veterinarian shall exercise all the powers and perform all duties prescribed by law relating to diseases among animals and the quarantine and destruction of diseased animals.

The state veterinarian shall enforce and supervise the administration of all laws relating to meat inspection, the prevention, detection, control and eradication of diseases of animals, and all other matters relative to the diseases of livestock and their effect upon the public health.

[1998 c 8 § 20; 1983 c 248 § 7; 1967 c 240 § 7; 1965 c 8 § 43.23.070. Prior: 1943 c 56 § 1; 1921 c 7 § 92; Rem. Supp. 1943 § 10850.]

NOTES:

Animal health: Chapter 16.36 RCW.

Dairies and dairy products: Chapter 15.36 RCW.

Diseased animals: Chapter 16.36 RCW.

## RCW 43.23.090 Powers and duties.

The director of agriculture shall exercise all powers and perform all duties prescribed by law with respect to the inspection of foods, food products, drinks, milk and milk products, and dairies and dairy products and the components thereof.

He or she shall enforce and supervise the administration of all laws relating to foods, food products, drinks, milk and milk products, dairies and dairy products, and their inspection, manufacture, and sale.

[2009 c 549 § 5104; 1983 c 248 § 8; 1967 c 240 § 9; 1965 c 8 § 43.23.090. Prior: 1921 c 7 § 93; RRS § 10851.]

**NOTES:**

Commercial feed law: Chapter 15.53 RCW.

Eggs and egg products: Chapter 69.25 RCW.

Food, drugs and cosmetics: Chapter 69.04 RCW.

Honey: Chapter 69.28 RCW.

Weighing commodities in highway transport: Chapter 15.80 RCW.

Weights and measures: Chapter 19.94 RCW.

## RCW 43.23.110 Powers and duties.

The director of agriculture shall exercise all powers and perform all duties prescribed by law with respect to grains, grain and hay products, grain and terminal warehouses, commercial feeds, commercial fertilizers, and chemical pesticides.

He or she shall enforce and supervise the administration of all laws relating to grains, grain and hay products, grain and terminal warehouses, commercial feeds, commercial fertilizers, and chemical pesticides.

[2009 c 549 § 5105; 1983 c 248 § 9; 1967 c 240 § 11; 1965 c 8 § 43.23.110. Prior: 1921 c 7 § 94; RRS § 10852.]

**NOTES:**

Commercial fertilizers: Chapter 15.54 RCW.

Grain and terminal warehouses: Chapter 22.09 RCW.

Quarantine: Chapter 17.24 RCW.

Seeds: Chapter 15.49 RCW.

Weeds: Chapters 17.04 and 17.06 RCW.

## RCW 43.23.120 Bulletins and reports.

The director of agriculture may publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, livestock, dairying, foods and drugs, and other matters pertaining to his or her department.

[2009 c 549 § 5106; 1977 c 75 § 50; 1965 c 8 § 43.23.120. Prior: (i) 1919 c 126 § 1, part; 1913 c 60 § 6, part; RRS § 2724, part. (ii) 1921 c 7 § 89, part; RRS § 10847, part.]

## RCW 43.23.130 Annual report.

The director of agriculture shall make an annual report to the governor containing an account of all matters pertaining to his or her department and its administration.

[2009 c 549 § 5107; 1977 c 75 § 51; 1965 c 8 § 43.23.130. Prior: (i) 1919 c 126 § 1, part; 1913 c 60 § 6, part; RRS § 2724, part. (ii) 1921 c 7 § 89, part; RRS § 10847, part.]

## RCW 43.23.160 Powers and duties.

The director of agriculture shall exercise all the powers and perform all the duties prescribed by law relating to commission merchants, livestock identification, livestock brand registration and inspection. All officers appointed to enforce these laws who have successfully completed a course of training prescribed by the Washington state criminal justice training commission shall have the authority generally vested in a peace officer solely for the purpose of enforcing these laws.

He or she shall enforce and supervise the administration of all laws relating to commission merchants, livestock identification and shall have the power to enforce all laws relating to any division under the supervision of the director of agriculture.

[2009 c 549 § 5108; 1983 c 248 § 10; 1967 c 240 § 13. Prior: 1965 c 8 § 43.23.160; prior: 1951 c 170 § 3.]

## RCW 43.23.170 Enforcement in accordance with RCW 43.05.100 and 43.05.110.

Enforcement action taken after July 23, 1995, by the director or the department of agriculture shall be in accordance with RCW 43.05.100 and 43.05.110.

[1995 c 403 § 623.]

**NOTES:**

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

## RCW 43.23.200 Official chemists of department—Designated—Duties.

The chief chemist of the department of agriculture dairy and food laboratory and the chief chemist of the department of agriculture chemical and hop laboratory shall be the official chemists of the department of agriculture. Official chemists of the department shall provide laboratory services and analyze all substances that the director of agriculture may send to them and report to the director without unnecessary delay the results of any analysis so made. When called upon by the director, they or any of the additional chemists provided for pursuant to RCW 43.23.205 shall assist in any prosecution for the violation of any law enforced by the department.

[1987 c 393 § 14; 1981 c 297 § 27.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 43.23.205 Additional chemists—Appointment—Duties—Compensation.

The director of agriculture may appoint one or more competent graduate chemists to serve as additional chemist of the department of agriculture, who may perform any of the duties required of and under the supervision of the official chemists, and whose compensation shall be fixed by the director.

[1981 c 297 § 28.]

**NOTES:**

**Severability—1981 c 297:** See note following RCW 15.36.201.

## RCW 43.23.220 Disposition of impounded livestock on Hanford reservation—Agreements to act as federal government's agent.

The director of agriculture may enter written agreements with one or more agencies of the United States to act as the federal government's agent for determining the disposition of livestock impounded on the federal Hanford reservation. The director's authority under such an agreement may include, but is not limited to, selling or donating, on behalf of the federal government, unclaimed livestock to a qualified person, organization, or governmental agency that the director determines to be capable of humanely transporting and caring for the livestock. The director may sell or donate such livestock only if the livestock remains unclaimed after the completion of a reasonable attempt to ascertain ownership and, if ownership is not otherwise determined, by the publication of notice that the livestock has been impounded on the reservation.

[1983 c 248 § 12.]

## RCW 43.23.230 Agricultural local fund.

The agricultural local fund is hereby established in the custody of the state treasurer. The fund shall consist of such money as is directed by law for deposit in the fund, and such other money not subject to appropriation that the department authorizes to be deposited in the fund. Any money deposited in the fund, the use of which has been restricted by law, may only be expended in accordance with those restrictions. The department may make

disbursements from the fund. The fund is not subject to legislative appropriation.

[1988 c 254 § 1.]

## RCW 43.23.250 Collection of unpaid penalties, assessments, and debts—Use of collection agencies.

Except as otherwise specified by law, the director or his or her designee has the authority to retain collection agencies licensed under chapter 19.16 RCW for the purposes of collecting unpaid penalties, assessments, and other debts owed to the department.

The director or his or her designee may also collect as costs moneys paid to the collection agency as charges, or in the case of credit cards or financial instruments, such as checks returned for nonpayment, moneys paid to financial institutions.

[1995 c 374 § 62.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 43.23.255 Assessments levied by director—Personal debt—Costs of collecting—Civil actions authorized—Attorneys' fees.

Except as otherwise specified by law, any due and payable assessment levied under the authority of the director or his or her designee in such specified amount as may be determined by the department 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 department when payment is called for by the department. In the event any person fails to pay the department the full amount of such assessment or such other sum on or before the date due, the department may, and is hereby authorized to, add to such unpaid assessment or other 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 sum, the department may bring a civil action against such person or persons in a court of competent jurisdiction for the collections thereof, including all costs and reasonable attorneys' fees together with the above specified ten percent, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

[1995 c 374 § 63.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 43.23.260 Interest on unpaid balances.

Except as otherwise specified by law, the department is authorized to charge interest at the rate authorized under RCW 43.17.240 for all unpaid balances for moneys owed to the department.

[1995 c 374 § 64.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 43.23.265 Dishonored check or negotiable instrument.

Except as otherwise specified by law, in the event a check or negotiable instrument as defined by RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the department is entitled to collect a reasonable handling fee for each instrument. If the check or instrument is not paid within fifteen days and proper notice is sent, the department is authorized to recover the assessment, the handling fee, and any other charges allowed by RCW 62A.3-515.

[1995 c 374 § 65.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 43.23.270 Export market development project records—Confidentiality.

Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. For purposes of this section, persons include any natural person, joint venture, firm, partnership or association, private or public corporation, or governmental entity.

[1996 c 80 § 2.]

## RCW 43.23.275 Market development and promotion matching fund program.

There is created a market development and promotion matching fund program within the Washington state department of agriculture. The purpose of the program is to allow the department of agriculture and the agricultural industry to combine funds in order to enhance access to markets that are growth sales areas for the industry's product. The goal of the program is to expose buyers to Washington's diverse agricultural products. The agriculture [agricultural] industry may bring in buying missions, perform trade promotions in various markets, hire overseas contractors, and perform other marketing functions that help it target the correct buyer and market for its product.

[2001 c 324 § 2.]

NOTES:

**Findings—Intent—2001 c 324:** "The legislature finds that the growing and processing of food and agricultural products is the dominant industry in Washington state and a major employer in rural Washington. The legislature also finds that agriculture is a critical component of Washington's international trade industry, accounting for billions of dollars in exports every year.

The legislature further finds that the export market for Washington's agricultural products has dropped significantly in recent years and that such a drop has negatively impacted the economy in Washington's agricultural regions. Therefore, it is the intent of the legislature to enhance Washington's international trade of agricultural products by increasing funding for the Washington state department of agriculture's international marketing program in an effort to promote marketing of Washington's products and to assist the agricultural industry in efforts to reduce trade barriers that stand in the way of trade in new and emerging markets."

[2001 c 324 § 1.]

## RCW 43.23.280 Trade barrier matching fund program.

(1) The legislature finds that trade barriers have become an increasingly important issue in the agricultural arena. Further, the world trade organization highlighted the need for "a fair and level playing field." The legislature finds that both large and small commodity groups need adequate resources to address trade barrier issues.

(2) There is created within the department of agriculture a trade barrier matching fund program to assist agriculture [agricultural] industries in fighting trade barriers. The purpose of the program is to allow the department of agriculture and the agricultural industry to combine funds in order to address trade barriers issues impacting the agricultural industry.

[2001 c 324 § 3.]

NOTES:

**Findings—Intent—2001 c 324:** See note following RCW 43.23.275.

## RCW 43.23.290 Food assistance programs.

The director of the department may exercise powers and duties with respect to the administration of food assistance programs in the department. It is the intent of the legislature in administering the food assistance programs transferred to the department by chapter 68, Laws of 2010, that programs continue to be provided through community-based organizations. It is the intent of the legislature that in accepting the administration of food assistance programs, the department's core programs administered by the department by July 1, 2010, not be impacted.

The director of the department may adopt rules necessary to implement the food assistance programs.

The director may enter into contracts and agreements to implement food assistance programs, including contracts and agreements with the United States department of agriculture, to implement federal food assistance programs.

[2010 c 68 § 1.]

**NOTES:**

**Effective date—2010 c 68:** "This act takes effect July 1, 2010."

[2010 c 68 § 5.]

# CHAPTER 43.325 RCW
## ENERGY FREEDOM PROGRAM

**Sections**


43.325.001 Findings—2006 c 171.
43.325.005 Findings—2007 c 348.
43.325.010 Definitions.
43.325.020 Energy freedom program—Established.
43.325.030 Coordinator—Duties.
43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account.
43.325.050 Director's report.
43.325.060 Suspension or cancellation of assistance.
43.325.070 Applications—Criteria.
43.325.080 Electricity and biofuel usage goals—Rules.
43.325.090 Refueling projects.
43.325.100 Framework to mitigate climate change—Report.
43.325.110 Vehicle electrification demonstration grant program.
43.325.900 Expiration date—Transfer of moneys—2006 c 171 §§ 1-7.
43.325.901 Severability—2006 c 171.
43.325.902 Servicing and management of projects in effect before July 1, 2007.
43.325.903 Part headings not law—2007 c 348.
43.325.904 Effective date—2007 c 348 §§ 205 and 301-307.


## RCW 43.325.001 Findings—2006 c 171. *(Expires June 30, 2016.)*

The legislature finds that:

(1) Washington's dependence on energy supplied from outside the state and volatile global energy markets makes its economy and citizens vulnerable to unpredictable and high energy prices;

(2) Washington's dependence on petroleum-based fuels increases energy costs for citizens and businesses;

(3) Diesel soot from diesel engines ranks as the highest toxic air pollutant in Washington, leading to hundreds of premature deaths and increasing rates of asthma and other lung diseases;

(4) The use of biodiesel results in significantly less air pollution than traditional diesel fuels;

(5) Improper disposal and treatment of organic waste from farms and livestock operations can have a significant negative impact on water quality;

(6) Washington has abundant supplies of organic wastes from farms that can be used for energy production and abundant farmland where crops could be grown to supplement or supplant petroleum-based fuels;

(7) The use of energy and fuel derived from these sources can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, would improve air and water quality in Washington, reduce environmental risks from farm wastes, create new markets for farm products, and provide new industries and jobs for Washington citizens;

(8) The bioenergy industry is a new and developing industry that is, in part, limited by the availability of capital for the construction of facilities for converting farm and forest products into energy and fuels;

(9) Instead of leaving our economy at the mercy of global events, and the policies of foreign nations, Washington state should adopt a policy of energy independence; and

(10) The energy freedom program is meant to lead Washington state towards energy independence.

Therefore, the legislature finds that it is in the public interest to encourage the rapid adoption and use of bioenergy, to develop a viable bioenergy industry within Washington state, to promote public research and development in bioenergy sources and markets, and to support a viable agriculture industry to grow bioenergy crops. To accomplish this, the energy freedom program is established to promote public research and development in bioenergy, and to stimulate the construction of facilities in Washington to generate energy from farm sources or convert organic matter into fuels.

[2006 c 171 § 1. Formerly RCW 15.110.005.]

## RCW 43.325.005 Findings—2007 c 348.

(1) The legislature finds that excessive dependence on fossil fuels jeopardizes Washington's economic security, environmental integrity, and public health. Accelerated development and use of clean fuels and clean vehicle technologies will reduce the drain on Washington's economy from importing fossil fuels. As fossil fuel prices rise, clean fuels and vehicles can save consumers money while promoting the development of a major, sustainable industry that provides good jobs and a new source of rural prosperity. In addition, clean fuels and vehicles protect public health by reducing toxic air and climate change emissions.

(2) The legislature also finds that climate change is expected to have significant impacts in the Pacific Northwest region in the near and long-term future. These impacts include: Increased temperatures, declining snowpack, more frequent heavy rainfall and flooding, receding glaciers, rising sea levels, increased risks to public health due to insect and rodent-borne diseases, declining salmon populations, and increased drought and risk of forest fires. The legislature recognizes

the need at this time to continue to gather and analyze information related to climate protection. This analysis will allow prudent steps to be taken to avoid, mitigate, or respond to climate impacts and protect our communities.

(3) Finally, the legislature finds that to reduce fossil fuel dependence, build our clean energy economy, and reduce climate impacts, the state should develop policies and incentives that help businesses, consumers, and farmers gain greater access to affordable clean fuels and vehicles and to produce clean fuels in the state. These policies and incentives should include: Incentives for replacement of the most polluting diesel engines, especially in school buses; transitional incentives for development of the most promising in-state clean fuels and fuel feedstocks, including biodiesel crops, ethanol from plant waste, and liquid natural gas from landfill or wastewater treatment gases; reduced fossil fuel consumption by state fleets; development of promising new technologies for displacing petroleum with electricity, such as "plug-in hybrids"; and impact analysis and emission accounting procedures that prepare Washington to respond and prosper as climate change impacts occur, and as policies and markets to reduce climate pollution are developed.

[2007 c 348 § 1.]

## RCW 43.325.010 Definitions. *(Expires June 30, 2016.)*

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

(1) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. "Alternative fuel" includes, but is not limited to, cellulose, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biofuels, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(2) "Applicant" means the state and any political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations. "Applicant" may also include federally recognized tribes, state institutions of higher education with appropriate research capabilities, any organization described in section 501(c)(3) of the internal revenue code, and private entities that are eligible to receive federal funds.

(3) "Assistance" includes loans, leases, product purchases, or other forms of financial or technical assistance.

(4) "Biofuel" includes, but is not limited to, biodiesel, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas.

(5) "Biogas" includes waste gases derived from landfills and wastewater treatment plants and dairy and farm wastes.

(6) "Cellulose" means lignocellulosic, hemicellulosic, or other cellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste.

(7) "Coordinator" means the person appointed by the director of the department of commerce.

(8) "Department" means the department of commerce.

(9) "Director" means the director of the department of commerce.

(10) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption. The term includes, but is not limited to: Insulation; storm windows and doors; automatic energy control systems; energy efficiency audits; heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants; caulking and weather stripping; energy recovery systems; geothermal heat pumps; and day lighting systems.

(11) "Green highway zone" means an area in the state designated by the department that is within reasonable proximity of state route number 5, state route number 90, and state route number 82.

(12) "Innovative energy technology" means, but is not limited to, the following: Smart grid or smart metering; biogas from landfills, wastewater treatment plants, anaerobic digesters, or other processes; wave or tidal power; fuel cells; high efficiency cogeneration; and energy storage systems.

(13) "Peer review committee" means a board, appointed by the director, that includes bioenergy specialists, energy conservation specialists, scientists, and individuals with specific recognized expertise.

(14) "Project" includes:

(a) The construction of facilities, including the purchase of equipment, to convert farm products or wastes into electricity or gaseous or liquid fuels or other coproducts associated with such conversion;

(b) clean energy projects identified by the clean energy leadership council, created in section 2, chapter 318, Laws of 2009; and

(c) energy efficiency improvements, renewable energy improvements, or innovative energy technologies. These specifically include fixed or mobile facilities to generate electricity or methane from the anaerobic digestion of organic matter, and fixed or mobile facilities for extracting oils from canola, rape, mustard, and other oilseeds. "Project" may also include the construction of facilities associated with such conversion for the distribution and storage of such feedstocks and fuels. The definition of project does not apply to projects as described in RCW 43.325.020(5).

(15) "Renewable energy improvements" means a fixture, product, system, device, or interacting group of devices that produces energy from renewable resources. The term includes, but is not limited to: Photovoltaic systems; solar thermal systems; small wind systems; biomass systems; and geothermal systems.

(16) "Refueling project" means the construction of new alternative fuel refueling facilities, as well as upgrades and expansion of existing refueling facilities, that will enable these facilities to offer alternative fuels to the public.

(17) "Research and development project" means research and development, by an institution of higher education as defined

in subsection (2) of this section, relating to:

(a) Bioenergy sources including but not limited to biomass and associated gases; or

(b) The development of markets for bioenergy coproducts.

[2009 c 565 § 41; 2009 c 451 § 2; 2007 c 348 § 301; 2006 c 171 § 2. Formerly RCW 15.110.010.]

NOTES:

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 451 § 2 and by 2009 c 565 § 41, 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).

**Expiration dates—2009 c 565 §§ 16 and 41:** See note following RCW 43.330.300.

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** "(1) Sections 2, 3, 5, and 6 of this act expire June 30, 2016.

(2) Section 7 of this act expires July 1, 2009."

[2009 c 451 § 10.]

**Effective date—2009 c 451:** "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

[May 11, 2009]."

[2009 c 451 § 11.]

**Intent—2009 c 451:** "The legislature intends to modify the energy freedom program and account in order to receive federal funds and other sources of funding. Also, the legislature intends to expand the mission of the energy freedom program to accelerate energy efficiency improvements, renewable energy improvements, and deployment of innovative energy technologies. Additionally, the legislature intends to support, through the energy freedom program, research, demonstration, and commercialization of energy efficiency improvements, renewable energy improvements, and innovation energy technologies."

[2009 c 451 § 1.]

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## RCW 43.325.020 Energy freedom program—Established. *(Expires June 30, 2016.)*

(1) The energy freedom program is established within the department. The director may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) When reviewing applications submitted under this program, the director shall consult with those agencies and other public entities having expertise and knowledge to assess the technical and business feasibility of the project and probability of success. These agencies may include, but are not limited to, Washington State University, the University of Washington, the department of ecology, the department of natural resources, the department of agriculture, the department of general administration, local clean air authorities, the Washington state conservation commission, and the clean energy leadership council created in section 2, chapter 318, Laws of 2009.

(3) Except as provided in subsections (4) and (5) of this section, the director, in cooperation with the department of agriculture, may approve an application only if the director finds:

(a) The project will convert farm products, wastes, cellulose, or biogas directly into electricity or biofuel or other coproducts associated with such conversion;

(b) The project demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;

(c) The facility will produce long-term economic benefits to the state, a region of the state, or a particular community in the state;

(d) The project does not require continuing state support;

(e) The assistance will result in new jobs, job retention, or higher incomes for citizens of the state;

(f) The state is provided an option under the assistance agreement to purchase a portion of the fuel or feedstock to be produced by the project, exercisable by the department of general administration;

(g) The project will increase energy independence or diversity for the state;

(h) The project will use feedstocks produced in the state, if feasible, except this criterion does not apply to the construction of facilities used to distribute and store fuels that are produced from farm products or wastes;

(i) Any product produced by the project will be suitable for its intended use, will meet accepted national or state standards, and will be stored and distributed in a safe and environmentally sound manner;

(j) The application provides for adequate reporting or disclosure of financial and employment data to the director, and permits the director to require an annual or other periodic audit of the project books; and

(k) For research and development projects, the application has been independently reviewed by a peer review committee as defined in RCW 43.325.010 and the findings delivered to the director.

(4) When reviewing an application for a refueling project, the coordinator may award a grant or a loan to an applicant if the director finds:

(a) The project will offer alternative fuels to the motoring public;

(b) The project does not require continued state support;

(c) The project is located within a green highway zone as defined in RCW 43.325.010;

(d) The project will contribute towards an efficient and adequately spaced alternative fuel refueling network along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140; and

(e) The project will result in increased access to alternative fueling infrastructure for the motoring public along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140.

(5) When reviewing an application for energy efficiency improvements, renewable energy improvements, or innovative energy technology, the director may award a grant or a loan to an applicant if the director finds:

(a) The project or program will result in increased access for the public, state and local governments, and businesses to energy efficiency improvements, renewable energy improvements, or innovative energy technologies;

(b) The project or program demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;

(c) The project or program does not require continued state support; or

(d) The federal government has provided funds with a limited time frame for use for energy independence and security, energy efficiency, renewable energy, innovative energy technologies, or conservation.

(6) (a) The director may approve a project application for

assistance under subsection (3) of this section up to five million dollars. In no circumstances shall this assistance constitute more than fifty percent of the total project cost.

(b) The director may approve a refueling project application for a grant or a loan under subsection (4) of this section up to fifty thousand dollars. In no circumstances shall a grant or a loan award constitute more than fifty percent of the total project cost.

(7) The director shall enter into agreements with approved applicants to fix the terms and rates of the assistance to minimize the costs to the applicants, and to encourage establishment of a viable bioenergy or biofuel industry, or a viable energy efficiency, renewable energy, or innovative energy technology industry. The agreement shall include provisions to protect the state's investment, including a requirement that a successful applicant enter into contracts with any partners that may be involved in the use of any assistance provided under this program, including services, facilities, infrastructure, or equipment. Contracts with any partners shall become part of the application record.

(8) The director may defer any payments for up to twenty-four months or until the project starts to receive revenue from operations, whichever is sooner.

[2009 c 451 § 3; 2007 c 348 § 302; 2006 c 171 § 3. Formerly RCW 15.110.020.]

NOTES:

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

## RCW 43.325.030 Coordinator—Duties.

The director of the department shall appoint a coordinator that is responsible for:

(1) Managing, directing, inventorying, and coordinating state efforts to promote, develop, and encourage biofuel and energy efficiency, renewable energy, and innovative energy technology markets in Washington;

(2) Developing, coordinating, and overseeing the implementation of a plan, or series of plans, for the production, transport, distribution, and delivery of biofuels produced predominantly from recycled products or Washington feedstocks;

(3) Working with the departments of transportation and general administration, and other applicable state and local governmental entities and the private sector, to ensure the development of biofuel fueling stations for use by state and local governmental motor vehicle fleets, and to provide greater availability of public biofuel fueling stations for use by state and local governmental motor vehicle fleets;

(4) Coordinating with the Western Washington University alternative automobile program for opportunities to support new Washington state technology for conversion of fossil fuel fleets to biofuel, hybrid, or alternative fuel propulsion;

(5) Coordinating with the University of Washington's college of forest management and the Olympic natural resources center for the identification of barriers to using the state's forest resources for fuel production, including the economic and transportation barriers of physically bringing forest biomass to the market;

(6) Coordinating with the department of agriculture and Washington State University for the identification of other barriers for future biofuels development and development of strategies for furthering the penetration of the Washington state fossil fuel market with Washington produced biofuels, particularly among public entities.

[2009 c 451 § 4; 2007 c 348 § 205.]

NOTES:

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

## RCW 43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account. *(Expires June 30, 2016.)*

(1) The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under the energy freedom account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for financial assistance for further funding for projects consistent with this chapter or otherwise authorized by the legislature.

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(a) Refueling projects awarded under this chapter;

(b) Pilot projects for plug-in hybrids, including grants provided for the electrification program set forth in RCW 43.325.110; and

(c) Demonstration projects developed with state universities as defined in RCW 28B.10.016 and local governments that result in the design and building of a hydrogen vehicle fueling station.

(3) (a) The energy recovery act account is created in the state treasury. State and federal funds may be deposited into the account and any loan payments of principal and interest derived from loans made from the energy recovery act account must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Expenditures from the account may be used only for loans, loan guarantees, and grants that encourage the establishment of innovative and sustainable industries for renewable energy and energy efficiency technology, including but not limited to:

(i) Renewable energy projects or programs that require interim financing to complete project development and implementation;

(ii) Companies with innovative, near-commercial or commercial, clean energy technology; and

(iii) Energy efficiency technologies that have a viable repayment stream from reduced utility costs.

(c) The director shall establish policies and procedures for processing, reviewing, and approving applications for funding under this section. When developing these policies and procedures, the department must consider the clean energy leadership strategy developed under

section 2, chapter 318, Laws of 2009.

(d) The director shall enter into agreements with approved applicants to fix the term and rates of funding provided from this account.

(e) The policies and procedures of this subsection (3) do not apply to assistance awarded for projects under RCW 43.325.020(3).

(4) Any state agency receiving funding from the energy freedom account is prohibited from retaining greater than three percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce unless this provision is waived in writing by the director.

(5) Any university, institute, or other entity that is not a state agency receiving funding from the energy freedom account is prohibited from retaining greater than fifteen percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce.

(6) Subsections (2), (4) and (5) of this section do not apply to assistance awarded for projects under RCW 43.325.020(3).

(7) During the 2009-2011 fiscal biennium, the legislature may transfer from the energy freedom account to the state general fund such amounts as reflect the excess fund balance of the account.

[2009 c 564 § 942; 2009 c 451 § 5; 2007 c 348 § 305; 2006 c 371 § 223; 2006 c 171 § 6. Formerly RCW 15.110.050.]

NOTES:

**Reviser's note:** This section was amended by 2009 c 451 § 5 and by 2009 c 564 § 942, 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).

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

**Part headings not law—2006 c 371:** "Part headings in this act are not any part of the law."

[2006 c 371 § 240.]

**Severability—2006 c 371:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[2006 c 371 § 241.]

**Effective date—2006 c 371:** "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 31, 2006]."

[2006 c 371 § 242.]

## RCW 43.325.050 Director's report. *(Expires June 30, 2016.)*

The director shall report to the legislature and governor on the status of the energy freedom program created under this chapter, on or before December 1, 2006, and biennially thereafter. This report must include information on the projects that have been funded, the status of these projects, and their environmental, energy savings, and job creation benefits.

[2009 c 518 § 20; 2006 c 171 § 7. Formerly RCW 15.110.060.]

NOTES:

**Expiration date—2009 c 518 § 20:** "Section 20 of this act expires June 30, 2016."

[2009 c 518 § 26.]

## RCW 43.325.060 Suspension or cancellation of assistance. *(Expires June 30, 2016.)*

(1) Upon written notice to the recipient of any assistance under this program, the director may suspend or cancel the assistance if any of the following occur:

(a) The recipient fails to make satisfactory and reasonable progress to complete the project, or the director concludes the recipient will be unable to complete the project or any portion of it; or

(b) The recipient has made misrepresentations in any information furnished to the director in connection with the project.

(2) In the event that any assistance has been awarded to the recipient under this program at the time of breach, or failure of the recipient to satisfactorily perform, the director may require that the full amount or value of the assistance, or a portion thereof, be repaid within a period specified by the director.

[2006 c 171 § 4. Formerly RCW 15.110.030.]

## RCW 43.325.070 Applications—Criteria. *(Expires June 30, 2016.)*

(1) If the total requested dollar amount of assistance awarded for projects under RCW 43.325.020(3) exceeds the amount available in the energy freedom account created in RCW 43.325.040, the applications must be prioritized based upon the following criteria:

(a) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(b) The extent to which the project will reduce air and water pollution either directly or indirectly;

(c) The extent to which the project will establish a viable bioenergy or biofuel production capacity, energy efficiency, renewable energy, or innovative energy technology industry in Washington;

(d) The benefits to Washington's agricultural producers;

(e) The benefits to the health of Washington's forests;

(f) The beneficial uses of biogas;

(g) The number and quality of jobs and economic benefits created by the project; and

(h) Other criteria as determined by the clean energy leadership council created in section 2, chapter 318, Laws of 2009.

(2) This section does not apply to grants or loans awarded for refueling projects under RCW 43.325.020 (4) and (5).

[2009 c 451 § 6; 2007 c 348 § 303; 2006 c 171 § 5. Formerly RCW 15.110.040.]

NOTES:

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

## RCW 43.325.080 Electricity and biofuel usage goals—Rules.

By June 1, 2010, the department shall adopt rules to define practicability and clarify how state agencies and local government subdivisions will be evaluated in determining whether they have met the goals set out in RCW 43.19.648(1). At a minimum, the rules must address:

(1) Criteria for determining how the goal in RCW 43.19.648(1)

will be met by June 1, 2015;

(2) Factors considered to determine compliance with the goal in RCW 43.19.648(1), including but not limited to: The regional availability of fuels; vehicle costs; differences between types of vehicles, vessels, or equipment; the cost of program implementation; and cost differentials in different parts of the state; and

(3) A schedule for phased-in progress towards meeting the goal in RCW 43.19.648(1) that may include different schedules for different fuel applications or different quantities of biofuels.

[2007 c 348 § 204.]

## RCW 43.325.090 Refueling projects.

If the total requested dollar amount of funds for refueling projects under RCW 43.325.020(4) exceeds the amount available for refueling projects in the energy freedom account created in RCW 43.325.040, the applications must be prioritized based upon the following criteria:

(1) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(2) The extent to which the project will reduce air and water pollution either directly or indirectly;

(3) The extent to which the project will establish a viable bioenergy production capacity in Washington;

(4) The extent to which the project will make biofuels more accessible to the motoring public;

(5) The benefits to Washington's agricultural producers; and

(6) The number and quality of jobs and economic benefits created by the project.

[2007 c 348 § 304.]

## RCW 43.325.100 Framework to mitigate climate change—Report.

(1) The *department of community, trade, and economic development and the department of ecology shall develop a framework for the state of Washington to participate in emerging regional, national, and to the extent possible, global markets to mitigate climate change, on a multisector basis. This framework must include, but not be limited to, credible, verifiable, replicable inventory and accounting methodologies for each sector involved, along with the completion of the stakeholder process identified in executive order number 07-02 creating the Washington state climate change challenge.

(2) The *department of community, trade, and economic development and the department of ecology shall include the forestry sector and work closely with the department of natural resources on those recommendations.

(3) The department must provide a report to the legislature by December 1, 2008. The report may be included within the report produced for executive order number 07-02.

[2007 c 348 § 403.]

NOTES:

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

## RCW 43.325.110 Vehicle electrification demonstration grant program.

(1) The vehicle electrification demonstration grant program is established within the *department of community, trade, and economic development. The director may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) The director may approve an application for a vehicle electrification demonstration project only if the director finds:

(a) The applicant is a state agency, public school district, public utility district, or a political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations or a state institution of higher education;

(b) The project partially funds the purchase of or conversion of existing vehicles to plug-in hybrid electric vehicles or battery electric vehicles for use in the applicant's fleet or operations;

(c) The project partners with an electric utility and demonstrates technologies to allow controlled vehicle charging, including the use of power electronics or wireless technologies, to regulate time-of-day and duration of charging;

(d) The project provides matching resources; and

(e) The project provides evaluation of fuel savings, greenhouse gas reductions, battery capabilities, energy management system, charge controlling technologies, and other relevant information determined on the advice of the vehicle electrification work group.

(3) The director may approve an application for a vehicle electrification demonstration project if the project, in addition to meeting the requirements of subsection (2) of this section, also demonstrates charging using on-site renewable resources or vehicle-to-grid capabilities that enable the vehicle to discharge electricity into the grid.

[2007 c 348 § 408.]

NOTES:

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

## RCW 43.325.900 Expiration date—Transfer of moneys—2006 c 171 §§ 1-7.

Sections 1 through 7 of this act expire June 30, 2016. Any moneys in the energy freedom account on that date and any moneys received pursuant to assistance made under this chapter must be deposited in the general fund.

[2006 c 171 § 11. Formerly RCW 15.110.900.]

## RCW 43.325.901 Severability—2006 c 171.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2006 c 171 § 15. Formerly RCW 15.110.901.]

## RCW 43.325.902 Servicing and management of projects in effect before July 1, 2007.

(1) Energy freedom program projects funded pursuant to RCW 43.325.040 or by the legislature pursuant to sections 191 and 192, chapter 371, Laws of 2006 for which the department of agriculture has signed loan agreements and disbursed funds prior to June 30, 2007, shall continue to be serviced by the department of agriculture.

(2) Energy freedom program projects funded pursuant to RCW 43.325.040 or by the legislature pursuant to sections 191 and 192, chapter 371, Laws of 2006 for which moneys have been appropriated but loan agreements or disbursements have not been completed must be transferred to the department for project management on July 1, 2007, subject to the ongoing requirements of the energy freedom program.

[2007 c 348 § 307.]

## RCW 43.325.903 Part headings not law—2007 c 348.

Part headings used in this act are not any part of the law.

[2007 c 348 § 501.]

## RCW 43.325.904 Effective date—2007 c 348 §§ 205 and 301-307.

Sections 205 and 301 through 307 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2007.

[2007 c 348 § 503.]

# TITLE 69 RCW

## FOOD, DRUGS, COSMETICS, AND POISONS

### Chapters


69.04 Intrastate commerce in food, drugs, and cosmetics.
69.07 Washington food processing act.
69.10 Food storage warehouses.
69.25 Washington wholesome eggs and egg products act.
69.28 Honey.
69.36 Washington caustic poison act of 1929.


NOTES:

Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Board of pharmacy: Chapter 18.64 RCW.

Controlled atmosphere storage of fruits and vegetables: Chapter 15.30 RCW.

Hazardous substances (poison prevention): Chapter 70.106 RCW.

Horse meat: RCW 16.68.140.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Inhaling toxic fumes: Chapter 9.47A RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Poison information centers: Chapter 18.76 RCW.

Preparations, patent medicines containing alcohol: Chapter 66.12 RCW.

Regulation of sale of drugs and medicines authorized: State Constitution Art. 20 § 2.

Unlawful to refill trademarked containers: RCW 19.76.110.

# CHAPTER 69.04 RCW

## INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

**(Formerly: Food, drug, and cosmetic act)**

### Sections


69.04.001 Statement of purpose.
69.04.002 Introductory.
69.04.003 "Federal act" defined.
69.04.004 "Intrastate commerce."
69.04.005 "Sale."
69.04.006 "Director."
69.04.007 "Person."
69.04.008 "Food."
69.04.009 "Drugs."
69.04.010 "Device."
69.04.011 "Cosmetic."
69.04.012 "Official compendium."
69.04.013 "Label."
69.04.014 "Immediate container."
69.04.015 "Labeling."
69.04.016 "Misleading labeling or advertisement," how determined.
69.04.017 "Antiseptic" as germicide.
69.04.018 "New drug" defined.
69.04.019 "Advertisement."
69.04.020 "Contaminated with filth."
69.04.021 "Package."
69.04.022 "Pesticide chemical."
69.04.023 "Raw agricultural commodity."
69.04.024 "Food additive," "safe."
69.04.025 "Color additive," "color."
69.04.040 Prohibited acts.
69.04.050 Remedy by injunction.
69.04.060 Criminal penalty for violations.
69.04.070 Additional penalty.
69.04.080 Avoidance of penalty.
69.04.090 Liability of disseminator of advertisement.
69.04.100 Condemnation of adulterated or misbranded article.
69.04.110 Embargo of articles.
69.04.120 Procedure on embargo.
69.04.123 Exception to petition requirement under RCW 69.04.120.
69.04.130 Petitions may be consolidated.
69.04.140 Claimant entitled to sample.
69.04.150 Damages not recoverable if probable cause existed.
69.04.160 Prosecutions.
69.04.170 Minor infractions.
69.04.180 Proceedings to be in name of state.
69.04.190 Standards may be prescribed by regulations.
69.04.200 Conformance with federal standards.
69.04.205 Bacon—Packaging at retail to reveal quality and leanness.
69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal.
69.04.207 Bacon—Effective date.
69.04.210 Food—Adulteration by poisonous or deleterious substance.
69.04.220 Food—Adulteration by abstraction, addition, substitution, etc.
69.04.231 Food—Adulteration by color additive.
69.04.240 Confectionery—Adulteration.
69.04.245 Poultry—Improper use of state's geographic outline.
69.04.250 Food—Misbranding by false label, etc.
69.04.260 Packaged food—Misbranding.
69.04.270 Food—Misbranding by lack of prominent label.
69.04.280 Food—Misbranding for nonconformity with standard of identity.
69.04.290 Food—Misbranding for nonconformity with standard of quality.
69.04.300 Food—Misbranding for nonconformity with standard of fill.
69.04.310 Food—Misbranding by failure to show usual name and ingredients.
69.04.315 Halibut—Misbranding by failure to show proper name.
69.04.320 Food—Misbranding by failure to show dietary properties.
69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc.
69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed.
69.04.333 Poultry and poultry products—Label to indicate if product frozen.
69.04.334 Turkeys—Label requirement as to grading.
69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter.
69.04.340 Natural vitamin, mineral, or dietary properties need not be shown.
69.04.350 Permits to manufacture or process certain foods.
69.04.360 Suspension of permit.
69.04.370 Right of access for inspection.
69.04.380 Food exempt if in transit for completion purposes.
69.04.390 Regulations permitting tolerance of harmful matter.
69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities.
69.04.394 Regulations permitting tolerance of harmful matter—Food additives.
69.04.396 Regulations permitting tolerance of harmful matter—Color additives.
69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394,

69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules.
69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398.
69.04.400 Conformance with federal regulations.
69.04.410 Drugs—Adulteration by harmful substances.
69.04.420 Drugs—Adulteration for failure to comply with compendium standard.
69.04.430 Drugs—Adulteration for lack of represented purity or quality.
69.04.440 Drugs—Adulteration by admixture or substitution of ingredients.
69.04.450 Drugs—Misbranding by false labeling.
69.04.460 Packaged drugs—Misbranding.
69.04.470 Drugs—Misbranding by lack of prominent label.
69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.
69.04.490 Drugs—Misbranding by failure to show usual name and ingredients.
69.04.500 Drugs—Misbranding by failure to give directions for use and warnings.
69.04.510 Drugs—Misbranding for improper packaging and labeling.
69.04.520 Drugs—Misbranding for failure to show possibility of deterioration.
69.04.530 Drugs—Misbranding by misleading representation.
69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it.
69.04.550 Drugs exempt if in transit for completion purposes.
69.04.560 Dispensing of certain drugs exempt.
69.04.565 DMSO (dimethyl sulfoxide) authorized.
69.04.570 Introduction of new drug.
69.04.580 Application for introduction.
69.04.590 Effective date of application.
69.04.600 Denial of application.
69.04.610 Revocation of denial.
69.04.620 Service of order of denial.
69.04.630 Drug for investigational use exempt.
69.04.640 Court review of denial.
69.04.650 Dispensing of certain drugs exempt.
69.04.660 Federally licensed drugs exempt.
69.04.670 Cosmetics—Adulteration by injurious substances.
69.04.680 Cosmetics—Misbranding by false label, etc.
69.04.690 Cosmetics—Misbranding by lack of prominent label.
69.04.700 Cosmetics exempt if in transit for completion purposes.
69.04.710 Advertisement, when deemed false.
69.04.720 Advertising of cure of certain diseases deemed false.
69.04.730 Enforcement, where vested—Regulations.
69.04.740 Regulations to conform with federal regulations.
69.04.750 Hearings.
69.04.761 Hearing on proposed regulation—Procedure.
69.04.770 Review on petition prior to effective date.
69.04.780 Investigations—Samples—Right of entry—Verified statements.
69.04.790 Owner may obtain part of sample.
69.04.800 Access to records of other agencies.
69.04.810 Access to records of intrastate carriers.
69.04.820 Right of entry to factories, warehouses, vehicles, etc.
69.04.830 Publication of reports of judgments, orders and decrees.
69.04.840 Dissemination of information.
69.04.845 Severability—1945 c 257.
69.04.850 Construction—1945 c 257.
69.04.860 Effective date of chapter—1945 c 257.
69.04.870 Short title.
69.04.880 Civil penalty.
69.04.900 Perishable packaged food—Pull date labeling—Definitions.
69.04.905 Perishable packaged food—Pull date labeling—Required.
69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.
69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations.
69.04.920 Perishable packaged food—Pull date labeling—Penalties.
69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement.
69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.
69.04.932 Salmon labeling—Definitions.
69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty.
69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.
69.04.935 Salmon labeling—Rules for identification and enforcement.
69.04.940 Imported lamb products—Labeling requirements.
69.04.950 Transport of bulk foods—Definitions.
69.04.955 Transport of bulk foods—Prohibitions—Exemption.
69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.
69.04.965 Transport of bulk foods—Transports not constituting violations.
69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.
69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.
69.04.980 Transport of bulk foods—Penalties.

**NOTES:**

Chapter 69.07 RCW does not impair authority of director or department under this chapter: RCW 69.07.160.

Dairies and dairy products: Chapter 15.36 RCW.

Food processing inspection account: RCW 69.07.120.

Patent medicine peddlers: Chapter 18.64 RCW.

## RCW 69.04.001 Statement of purpose.

This chapter is intended to enact state legislation

(1) which safeguards the public health and promotes the public welfare by protecting the consuming public from

(a) potential injury by product use;

(b) products that are adulterated; or

(c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food, drugs, devices, and cosmetics; and

(2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and

(3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States.

[1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163-51.]

**NOTES:**

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

## RCW 69.04.002 Introductory.

For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise.
[1945 c 257 § 3; Rem. Supp. 1945 § 6163-52.]

## RCW 69.04.003 "Federal act" defined.

The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.)
[1945 c 257 § 4; Rem. Supp. 1945 § 6163-53.]

## RCW 69.04.004 "Intrastate commerce."

The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.
[1945 c 257 § 5; Rem. Supp. 1945 § 6163-54.]

## RCW 69.04.005 "Sale."

The term "sale" means any and every sale and includes

(1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up;

(2) exposure, offer, or any other proffer;

(3) holding, storing, or any other possessing;

(4) dispensing, giving, delivering, serving, or any other supplying; and

(5) applying, administering, or any other using.

[1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

## RCW 69.04.006 "Director."

The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives.
[1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]
NOTES:
Director of agriculture, general duties: Chapter 43.23 RCW.

## RCW 69.04.007 "Person."

The term "person" includes individual, partnership, corporation, and association.
[1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

## RCW 69.04.008 "Food."

The term "food" means

(1) articles used for food or drink for people or other animals,

(2) bottled water,

(3) chewing gum, and

(4) articles used for components of any such article.

[1992 c 34 § 2; 1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]
NOTES:
**Severability—1992 c 34:** See note following RCW 69.07.170.

## RCW 69.04.009 "Drugs."

The term "drug" means

(1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and

(2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; and

(3) articles (other than food) intended to affect the structure or any function of the body of human beings or other animals; and

(4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

[2009 c 549 § 1018; 1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

## RCW 69.04.010 "Device."

The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended

(1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; or

(2) to affect the structure or any function of the body of human beings or other animals.

[2009 c 549 § 1019; 1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

## RCW 69.04.011 "Cosmetic."

The term "cosmetic" means

(1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and

(2) articles intended for use as a component of any such article; except that such term shall not include soap.

[1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

## RCW 69.04.012 "Official compendium."

The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.
[1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

## RCW 69.04.013 "Label."

The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.
[1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

## RCW 69.04.014 "Immediate container."

The term "immediate container" does not include package liners.
[1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

## RCW 69.04.015 "Labeling."

The term "labeling" means all labels and other written, printed, or graphic matter

(1) upon any article or any of its containers or wrappers, or

(2) accompanying such article.

[1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

**NOTES:**

Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.

## RCW 69.04.016 "Misleading labeling or advertisement," how determined.

If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

[1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

**NOTES:**

Crimes relating to advertising: Chapter 9.04 RCW.

## RCW 69.04.017 "Antiseptic" as germicide.

The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

[1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

## RCW 69.04.018 "New drug" defined.

The term "new drug" means

(1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: PROVIDED, That no drug in use on the *effective date of this chapter shall be regarded as a new drug.

[1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

**NOTES:**

***Effective date—1945 c 257:** See RCW 69.04.860.

## RCW 69.04.019 "Advertisement."

The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

[1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

## RCW 69.04.020 "Contaminated with filth."

The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

[1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

## RCW 69.04.021 "Package."

The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale.

[1963 c 198 § 8.]

## RCW 69.04.022 "Pesticide chemical."

The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended.

[1963 c 198 § 9.]

## RCW 69.04.023 "Raw agricultural commodity."

The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

[1963 c 198 § 10.]

## RCW 69.04.024 "Food additive," "safe."

(1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include;

   (a) a pesticide chemical in or on a raw agricultural commodity; or

   (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

   (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of human beings or animals.

[2009 c 549 § 1020; 1963 c 198 § 11.]

## RCW 69.04.025 "Color additive," "color."

(1) The term "color additive" means a material which

(a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and

(b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

[1963 c 198 § 12.]

## RCW 69.04.040 Prohibited acts.

The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of

(a) any food in violation of RCW 69.04.350; or

(b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit

(a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or

(b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section.

[1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

## RCW 69.04.050 Remedy by injunction.

(1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals

(a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

[1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

**NOTES:**

Injunctions, generally: Chapter 7.40 RCW.

## RCW 69.04.060 Criminal penalty for violations.

Any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine.

[2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

**NOTES:**

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

## RCW 69.04.070 Additional penalty.

Notwithstanding the provisions of RCW 69.04.060, a person who violates RCW 69.04.040 with intent to defraud or mislead is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine.

[2003 c 53 § 315; 1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

NOTES:

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

## RCW 69.04.080 Avoidance of penalty.

No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040 (1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington.

[1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

## RCW 69.04.090 Liability of disseminator of advertisement.

No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement.

[1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

## RCW 69.04.100 Condemnation of adulterated or misbranded article.

Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use.

[1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

## RCW 69.04.110 Embargo of articles.

Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed.

[1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

NOTES:

**Purpose of section:** See RCW 69.04.398.

## RCW 69.04.120 Procedure on embargo.

When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction, for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances.

[1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

## RCW 69.04.123 Exception to petition requirement under RCW 69.04.120.

The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order.

[1995 c 374 § 20.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.04.130 Petitions may be consolidated.

Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant.

[1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

## RCW 69.04.140 Claimant entitled to sample.

The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon.

[1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

## RCW 69.04.150 Damages not recoverable if probable cause existed.

No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action.

[1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

## RCW 69.04.160 Prosecutions.

(1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding.

[1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

## RCW 69.04.170 Minor infractions.

Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

[1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

## RCW 69.04.180 Proceedings to be in name of state.

All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington.

[1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

## RCW 69.04.190 Standards may be prescribed by regulations.

Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

[1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

## RCW 69.04.200 Conformance with federal standards.

The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended.

[1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

NOTES:

***Reviser's note:** The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

## RCW 69.04.205 Bacon—Packaging at retail to reveal quality and leanness.

All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product.

[1971 c 49 § 1.]

## RCW 69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal.

The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction.

[1971 c 49 § 2.]

## RCW 69.04.207 Bacon—Effective date.

RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972.

[1971 c 49 § 3.]

## RCW 69.04.210 Food—Adulteration by poisonous or deleterious substance.

A food shall be 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 food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) (a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i)

a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or

(b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or

(c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: 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 RCW 69.04.392 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 food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, 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 food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394.

[1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

## RCW 69.04.220 Food—Adulteration by abstraction, addition, substitution, etc.

A food shall be deemed to be adulterated

(1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(2) if any substance has been substituted wholly or in part therefor; or

(3) if damage or inferiority has been concealed in any manner; or

(4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

[1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

## RCW 69.04.231 Food—Adulteration by color additive.

A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396.

[1963 c 198 § 5.]

## RCW 69.04.240 Confectionery—Adulteration.

A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin. This section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances, or to any confection permitted to be sold by an endorsement from the liquor control board under RCW 66.24.360.

[2007 c 226 § 3; 1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

NOTES:

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

## RCW 69.04.245 Poultry—Improper use of state's geographic outline.

Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state.

[1989 c 257 § 2.]

NOTES:

**Legislative findings—1989 c 257:** "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state."

[1989 c 257 § 1.]

## RCW 69.04.250 Food—Misbranding by false label, etc.

A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading.

[1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.260 Packaged food—Misbranding.

If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director.

[1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

## RCW 69.04.270 Food—Misbranding by lack of prominent label.

A food shall be deemed to be misbranded 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.

[1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

## RCW 69.04.280 Food—Misbranding for nonconformity with standard of identity.

If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless

(1) it conforms to such definition and standard, and

(2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

[1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

## RCW 69.04.290 Food—Misbranding for nonconformity with standard of quality.

If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard.

[1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

## RCW 69.04.300 Food—Misbranding for nonconformity with standard of fill.

If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of container applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

[1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

## RCW 69.04.310 Food—Misbranding by failure to show usual name and ingredients.

If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears

(1) the common or usual name of the food, if any there be, and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director.

[1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

## RCW 69.04.315 Halibut—Misbranding by failure to show proper name.

No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is Hippoglossus Hippoglossus or Hippoglossus Stenolepsis. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter.

[1967 ex.s. c 79 § 1.]

## RCW 69.04.320 Food—Misbranding by failure to show dietary properties.

If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act.

[1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

## RCW 69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc.

If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: PROVIDED, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream.

[1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

## RCW 69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed.

(1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-like flavoring added to or attributed to the popcorn offered for sale is butter as defined in *RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods.

[1986 c 203 § 17.]

NOTES:

*Reviser's note: RCW 15.32.010 was recodified as RCW 15.36.012 pursuant to 1994 c 143 § 514.

Severability—1986 c 203: See note following RCW 15.17.230.

## RCW 69.04.333 Poultry and poultry products—Label to indicate if product frozen.

It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label.

[1969 ex.s. c 194 § 1.]

## RCW 69.04.334 Turkeys—Label requirement as to grading.

No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded.

[1969 ex.s. c 194 § 2.]

## RCW 69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter.

The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter.

[1969 ex.s. c 194 § 3.]

## RCW 69.04.340 Natural vitamin, mineral, or dietary properties need not be shown.

Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food.

[1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

## RCW 69.04.350 Permits to manufacture or process certain foods.

Whenever the director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act.

[1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

## RCW 69.04.360 Suspension of permit.

The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

[1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

NOTES:

*Reviser's note: The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

## RCW 69.04.370 Right of access for inspection.

Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

[1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

## RCW 69.04.380 Food exempt if in transit for completion purposes.

Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter.

[1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

## RCW 69.04.390 Regulations permitting tolerance of harmful matter.

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be

so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

[1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

## RCW 69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities.

(1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The purpose of this chapter being to promote uniformity of state legislation with the federal act;

(b) the necessity for the production of an adequate, wholesome, and economical food supply;

(c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and

(d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical.

[1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

**NOTES:**

**Purpose of section:** See RCW 69.04.398.

## RCW 69.04.394 Regulations permitting tolerance of harmful matter—Food additives.

(1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a

food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his or her own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The purpose of this chapter being to promote uniformity of state legislation with the federal act;

(b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive;

(c) the cumulative effect of such additive in the diet of human beings or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and

(d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data.

[2009 c 549 § 1021; 1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

NOTES:

**Purpose of section:** See RCW 69.04.398.

## RCW 69.04.396 Regulations permitting tolerance of harmful matter—Color additives.

(1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The purpose of this chapter being to promote uniformity of state legislation with the federal act;

(b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive;

(c) the cumulative effect, if any, of such additive in the diet of human beings or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of

(i) the pure dye and all intermediates and other impurities contained in such color additives,

(ii) such additive in or on any article of food, and

(iii) any substance formed in or on such article because of the use of such additive; and

(f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive.

[2009 c 549 § 1022; 1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

NOTES:

**Purpose of section:** See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

## RCW 69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and

**regulations—Application to production of kosher food products—Adoption of rules.**

(1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter.

[1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

NOTES:

**Severability—1986 c 203:** See note following RCW 15.17.230.

## RCW 69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398.

See RCW 15.36.471.

## RCW 69.04.400 Conformance with federal regulations.

The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act.

[1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

## RCW 69.04.410 Drugs—Adulteration by harmful substances.

A drug or device shall be deemed to be adulterated

(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act.

[1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

## RCW 69.04.420 Drugs—Adulteration for failure to comply with compendium standard.

If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia.

[1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

## RCW 69.04.430 Drugs—Adulteration for lack of represented purity or quality.

If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated.

[1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

## RCW 69.04.440 Drugs—Adulteration by admixture or substitution of ingredients.

A drug shall be deemed to be adulterated if any substance has been

(1) mixed or packed therewith so as to reduce its quality or strength or

(2) substituted wholly or in part therefor.

[1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

## RCW 69.04.450 Drugs—Misbranding by false labeling.

A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular.

[1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.460 Packaged drugs—Misbranding.

If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing

(1) the name and place of business of the manufacturer, packer,

or distributor; and

(2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director.

[1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.470 Drugs—Misbranding by lack of prominent label.

A drug or device shall be deemed to be misbranded 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.

[1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.

A drug or device shall be deemed to be misbranded if it is for use by human beings and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

[2009 c 549 § 1023; 1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.490 Drugs—Misbranding by failure to show usual name and ingredients.

If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears

(1) the common or usual name of the drug, if such there be; and

(2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamime, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: PROVIDED, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director.

[1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.500 Drugs—Misbranding by failure to give directions for use and warnings.

A drug or device shall be deemed to be misbranded unless its labeling bears

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: PROVIDED, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder.

[1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.510 Drugs—Misbranding for improper packaging and labeling.

A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: PROVIDED, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia.

[1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.520 Drugs—Misbranding for failure to show possibility of deterioration.

If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health.

[1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.530 Drugs—Misbranding by misleading representation.

A drug shall be deemed to be misbranded if

(1) its container is so made, formed, or filled as to be misleading; or

(2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

[1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it.

A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug.

[1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

## RCW 69.04.550 Drugs exempt if in transit for completion purposes.

A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter.

[1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

## RCW 69.04.560 Dispensing of certain drugs exempt.

A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if

(1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540.

[1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

## RCW 69.04.565 DMSO (dimethyl sulfoxide) authorized.

Notwithstanding any other provision of state law, DMSO (dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer.

[1981 c 50 § 1.]

NOTES:

DMSO use by health facilities, physicians: RCW 70.54.190.

## RCW 69.04.570 Introduction of new drug.

No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless

(1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and

(2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: PROVIDED FURTHER, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly.

[1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

## RCW 69.04.580 Application for introduction.

An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include

(1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof;

(2) a full list of the articles used as components of such drug;

(3) a full statement of the composition of such drug;

(4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(5) such samples of such drug and of the articles used as components thereof as the director may require; and

(6) specimens of the labeling proposed to be used for such drug.

[1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

## RCW 69.04.590 Effective date of application.

An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600.

[1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

## RCW 69.04.600 Denial of application.

If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based.

[1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

## RCW 69.04.610 Revocation of denial.

An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based.

[1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

## RCW 69.04.620 Service of order of denial.

Orders of the director issued under RCW 69.04.600 shall be served

(1) in person by a duly authorized representative of the director or

(2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director.

[1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

## RCW 69.04.630 Drug for investigational use exempt.

A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only."

[1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

## RCW 69.04.640 Court review of denial.

The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties.

[1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

## RCW 69.04.650 Dispensing of certain drugs exempt.

A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if

(1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640.

[1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

## RCW 69.04.660 Federally licensed drugs exempt.

The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913.

[1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

## RCW 69.04.670 Cosmetics—Adulteration by injurious substances.

A cosmetic shall be deemed to be adulterated

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: PROVIDED, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or

(2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act.

[1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

## RCW 69.04.680 Cosmetics—Misbranding by false label, etc.

A cosmetic shall be deemed to be misbranded

(1) if its labeling is false or misleading in any particular; or

(2) if in package form, unless it bears a label containing

  (a) the name and place of business of the manufacturer, packer, or distributor; and

  (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director.

[1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

## RCW 69.04.690 Cosmetics—Misbranding by lack of prominent label.

A cosmetic shall be deemed to be misbranded

(1) 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; or

(2) if its container is so made, formed, or filled as to be

misleading.

[1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

## RCW 69.04.700 Cosmetics exempt if in transit for completion purposes.

A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter.

[1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

## RCW 69.04.710 Advertisement, when deemed false.

An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular.

[1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

## RCW 69.04.720 Advertising of cure of certain diseases deemed false.

The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmacal, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: PROVIDED, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: PROVIDED FURTHER, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

[1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

NOTES:

***Reviser's note:** The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

## RCW 69.04.730 Enforcement, where vested—Regulations.

The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof.

[1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

## RCW 69.04.740 Regulations to conform with federal regulations.

The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized

(1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and

(2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act.

[1945 c 257 § 92; Rem. Supp. 1945 § 6163-140.]

## RCW 69.04.750 Hearings.

Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose.

[1945 c 257 § 93; Rem. Supp. 1945 § 6163-141.]

## RCW 69.04.761 Hearing on proposed regulation—Procedure.

The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended.

[1963 c 198 § 13.]

## RCW 69.04.770 Review on petition prior to effective date.

The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under *RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order.

[1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

NOTES:

***Reviser's note:** RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, see RCW 69.04.761.

## RCW 69.04.780 Investigations—Samples—Right of entry—Verified statements.

The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right

(1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and

(2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements.

[1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

## RCW 69.04.790 Owner may obtain part of sample.

Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter.

[1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

## RCW 69.04.800 Access to records of other agencies.

For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government shall be open to inspection by the director.

[1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

## RCW 69.04.810 Access to records of intrastate carriers.

For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers.

[1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

## RCW 69.04.820 Right of entry to factories, warehouses, vehicles, etc.

For the purpose of enforcing the provisions of this chapter, the director is authorized

(1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and

(2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein.

[1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

## RCW 69.04.830 Publication of reports of judgments, orders and decrees.

The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

[1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

## RCW 69.04.840 Dissemination of information.

The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter.

[1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

## RCW 69.04.845 Severability—1945 c 257.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

[1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

## RCW 69.04.850 Construction—1945 c 257.

This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics.

[1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

## RCW 69.04.860 Effective date of chapter—1945 c 257.

This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: PROVIDED, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: PROVIDED FURTHER, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter.

[1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

NOTES:

**Reviser's note:** 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

## RCW 69.04.870 Short title.

This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act.

[1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

## RCW 69.04.880 Civil penalty.

Whenever the director finds that a person has committed a

violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW.

[1991 c 162 § 2.]

## RCW 69.04.900 Perishable packaged food—Pull date labeling—Definitions.

For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale.

[1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

## RCW 69.04.905 Perishable packaged food—Pull date labeling—Required.

All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: PROVIDED, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910.

[1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

## RCW 69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.

No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: PROVIDED, HOWEVER, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date.

[1973 1st ex.s. c 112 § 3.]

## RCW 69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations.

The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920.

[1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

NOTES:

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

## RCW 69.04.920 Perishable packaged food—Pull date labeling—Penalties.

Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars.

[1973 1st ex.s. c 112 § 5.]

## RCW 69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement.

The department of agriculture must develop a pamphlet that generally describes the labeling requirements for seafood, as set forth in this chapter, and provide an adequate quantity of the pamphlets to the department of fish and wildlife to distribute with the issuance of a direct retail endorsement under RCW 77.65.510.

[2002 c 301 § 11.]

NOTES:

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

## RCW 69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.

It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization.

[2003 c 39 § 28; 1999 c 291 § 32; 1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

## RCW 69.04.932 Salmon labeling—Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 69.04.933 through 69.04.935.

(1) "Salmon" means all species of the genus Oncorhynchus, except those classified as game fish in Title 77 RCW, and includes:

| SCIENTIFIC NAME | COMMON NAME |
|---|---|
| Oncorhynchus tshawytscha | Chinook salmon or king salmon |
| Oncorhynchus kisutch | Coho salmon or silver salmon |

| | |
|---|---|
| Oncorhynchus keta | Chum salmon |
| Oncorhynchus gorbuscha | Pink salmon |
| Oncorhynchus nerka | Sockeye salmon |
| Salmo salar (in other than its landlocked form) | Atlantic salmon |

(2) "Commercially caught" means salmon harvested by commercial fishers.

[1993 c 282 § 2.]

NOTES:

**Finding—1993 c 282:** "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers."

[1993 c 282 § 1.]

## RCW 69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty.

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.

[1993 c 282 § 3.]

NOTES:

**Finding—1993 c 282:** See note following RCW 69.04.932.

## RCW 69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.

[2003 c 39 § 29; 1993 c 282 § 4.]

NOTES:

**Finding—1993 c 282:** See note following RCW 69.04.932.

## RCW 69.04.935 Salmon labeling—Rules for identification and enforcement.

To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fish and wildlife, shall adopt rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;

(2) Enforcing RCW 69.04.933 and 69.04.934.

[1994 c 264 § 39; 1993 c 282 § 5.]

NOTES:

**Finding—1993 c 282:** See note following RCW 69.04.932.

## RCW 69.04.940 Imported lamb products—Labeling requirements.

All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States.

[1987 c 393 § 25.]

## RCW 69.04.950 Transport of bulk foods—Definitions.

The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

(1) "Food" means:

(a) Any article used for food or drink for humans or used as a component of such an article; or

(b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use:

(a) As an additive in food or drink for human consumption,

(b) in sanitizing food or drink for human consumption,

(c) in processing food or drink for human consumption, or

(d) in maintaining equipment with food contact surfaces during which maintenance the substance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel.

[1990 c 202 § 1.]

NOTES:

**Advisory committee—Report—1990 c 202:** "The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry."

[1990 c 202 § 8.]

## RCW 69.04.955 Transport of bulk foods—Prohibitions—Exemption.

(1) Except as provided in RCW 69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged.

[1990 c 202 § 2.]

## RCW 69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.

(1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations.

[1990 c 202 § 3.]

## RCW 69.04.965 Transport of bulk foods—Transports not constituting violations.

Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture.

[1990 c 202 § 4.]

## RCW 69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.

The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960 or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard.

[1990 c 202 § 5.]

## RCW 69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.

A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel.

[1990 c 202 § 6.]

### RCW 69.04.980 Transport of bulk foods—Penalties.

A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955.

[1990 c 202 § 7.]

# CHAPTER 69.07 RCW
## WASHINGTON FOOD PROCESSING ACT

**Sections**


69.07.005 Legislative declaration.
69.07.010 Definitions.
69.07.020 Enforcement—Rules—Adoption—Contents—Standards.
69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.
69.07.050 Renewal of license—Additional fee, when.
69.07.060 Denial, suspension or revocation of license—Grounds.
69.07.065 Suspension of license summarily—Reinstatement.
69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act.
69.07.080 Inspections by department—Access—When.
69.07.085 Sanitary certificates—Fee.
69.07.095 Authority of director and personnel.
69.07.100 Establishments exempted from provisions of chapter.
69.07.103 Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee.
69.07.110 Enforcement of chapter.
69.07.120 Disposition of money into food processing inspection account.
69.07.135 Unlawful to sell or distribute food from unlicensed processor.
69.07.140 Violations—Warning notice.
69.07.150 Violations—Penalties.
69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.170 Definitions.
69.07.180 Bottled water labeling standards.
69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.
69.07.900 Chapter is cumulative and nonexclusive.
69.07.910 Severability—1967 ex.s. c 121.
69.07.920 Short title.


### RCW 69.07.005 Legislative declaration.

The processing of food intended for public consumption is important and vital to the 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 [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing.

[1991 c 137 § 1.]

### RCW 69.07.010 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;

(3) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "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;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Person" means an individual, partnership, corporation, or association.

[1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

NOTES:

**Severability—1992 c 34:** See note following RCW 69.07.170.

## RCW 69.07.020 Enforcement—Rules—Adoption—Contents—Standards.

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

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods.

[1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

## RCW 69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.

It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

| If gross annual sales are: | The license fee is: |
|---|---|
| $0 to $50,000 | $55.00 |
| $50,001 to $500,000 | $110.00 |
| $500,001 to $1,000,000 | $220.00 |
| $1,000,001 to $5,000,000 | $385.00 |
| $5,000,001 to $10,000,000 | $550.00 |
| Greater than $10,000,000 | $825.00 |

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. 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 names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and 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 applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food 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 regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food 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 or has a high potential for harm, 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 food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility.

[1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.07.050 Renewal of license—Additional fee, when.

If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license 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 fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license.

[1992 c 160 § 4; 1991 c 137 § 4; 1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

## RCW 69.07.060 Denial, suspension or revocation of license—Grounds.

The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065.

[1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

NOTES:

**Severability—1979 c 154:** See note following RCW 15.49.330.

## RCW 69.07.065 Suspension of license summarily—Reinstatement.

(1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever 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) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction.

[1991 c 137 § 6.]

## RCW 69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act.

The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended.

[1967 ex.s. c 121 § 7.]

## RCW 69.07.080 Inspections by department—Access—When.

For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency.

[1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

## RCW 69.07.085 Sanitary certificates—Fee.

The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund.

[1995 c 374 § 23; 1988 c 254 § 9.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.07.095 Authority of director and personnel.

The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement.

[1991 c 137 § 7.]

## RCW 69.07.100 Establishments exempted from provisions of chapter.

The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

(1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

(2) Chapter 69.28 RCW, the Washington state honey act;

(3) Chapter 16.49 RCW, the Meat inspection act;

(4) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;

(5) Title 66 RCW, relating to alcoholic beverage control; and

(6) Chapter 69.30 RCW, the Sanitary control of shellfish act. However, if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments.

[2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

NOTES:

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.07.103 Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee.

(1) A special permit issued by the department under this section is required for the slaughter, preparation, and sale of one thousand or fewer poultry in a calendar year by a poultry producer for the sale of whole raw poultry directly to the ultimate consumer at the producer's farm. Activities conducted under the permit are exempt from any other licensing requirements of this chapter.

(2) (a) The department must adopt by rule requirements for the permit. The requirements must be generally patterned after those established by the state board of health for temporary food service establishments, but must be tailored specifically to poultry slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) A permit expires December 31st and may be issued for either one or two years as requested by the permit applicant upon payment of the applicable fee in accordance with subsection (4) of this section.

(3) The department shall conduct such inspections as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years.

[2009 c 114 § 1; 2003 c 397 § 2.]

## RCW 69.07.110 Enforcement of chapter.

The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter.

[1967 ex.s. c 121 § 11.]

## RCW 69.07.120 Disposition of money into food processing inspection account.

All moneys received by the department under the provisions of this chapter shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapter 69.04 RCW.

[1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

## RCW 69.07.135 Unlawful to sell or distribute food from unlicensed processor.

It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation.

[1991 c 137 § 8.]

## RCW 69.07.140 Violations—Warning notice.

Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing.

[1967 ex.s. c 121 § 14.]

## RCW 69.07.150 Violations—Penalties.

(1) (a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(b) 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.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

[2003 c 53 § 316; 1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

NOTES:

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

## RCW 69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.

The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW).

[1969 c 68 § 4.]

## RCW 69.07.170 Definitions.

As used in RCW 69.07.180 and 69.07.190:

(1) "Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water."

(2) "Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

(3) "Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

(4) "Department" means the department of agriculture.

(5) "Distilled water" means bottled water that has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

(6) "Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration, activated carbon or particulate, and ozonization or an equivalent disinfection process, or that meets the requirements of the federal safe drinking water act of 1974 as amended and complies with all department of health rules regarding drinking water.

(7) "Mineral water" means bottled water that contains not less than five hundred parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water."

(8) "Natural water" means bottled spring, mineral, artesian, or well water that is derived from an underground formation and may be derived from a public water system as defined in RCW 70.119A.020 only if that supply has a single source such as an actual spring, artesian well, or pumped well, and has not undergone any treatment that changes its original chemical makeup except ozonization or an equivalent disinfection process.

(9) "Plant operator" means a person who owns or operates a bottled water plant.

(10) "Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water that meets this definition and is vaporized, then condensed, may be labeled "distilled water."

(11) "Spring water" means water derived from an underground formation from which water flows naturally to the surface of the earth. "Spring water" shall meet the requirements of "natural water."

(12) "Water dealer" means a person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

(13) "Well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. "Well water" shall meet the requirements of "natural water."

[1992 c 34 § 1.]

NOTES:

**Severability—1992 c 34:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1992 c 34 § 9.]

## RCW 69.07.180 Bottled water labeling standards.

All bottled water must conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

(1) Mineral water may be labeled "mineral water." Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water."

(2) Spring water may be labeled "spring water" or "natural spring water."

(3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in the water may bear on its label the words "naturally carbonated" or "naturally sparkling."

(4) Bottled water that contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated," "carbonation added," or "sparkling" if the carbonation is obtained from a natural or manufactured source.

(5) Well water may be labeled "well water" or "natural well water."

(6) Artesian water may be labeled "artesian water" or "natural artesian water."

(7) Purified water may be labeled "purified water" and the method of preparation shall be stated on the label, except that purified water produced by distillation may be labeled as "distilled water."

(8) Drinking water may be labeled "drinking water."

(9) The use of the word "spring," or any derivative of "spring" other than in a trademark, trade name, or company name, to describe water that is not spring water is prohibited.

(10) A product meeting more than one of the definitions in RCW 69.07.170 may be identified by any of the applicable product types defined in RCW 69.07.170, except where otherwise specifically prohibited.

(11) Supplemental printed information and graphics may appear on the label but shall not imply properties of the product or preparation methods that are not factual.

[1992 c 34 § 6.]

NOTES:

**Severability—1992 c 34:** See note following RCW 69.07.170.

## RCW 69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.

Bottled soft drinks, soda, or seltzer products commonly recognized as soft drinks and identified on the product identity panel with a common or usual name other than one of those specified in RCW 69.07.170 are exempt from the requirements of RCW 69.07.180. Water that is not in compliance with the requirements of RCW 69.07.180 may not be identified, labeled, or advertised as "artesian water," "bottled water," "distilled water," "natural water," "purified water," "spring water," or "well water."

[1992 c 34 § 7.]

NOTES:

**Severability—1992 c 34:** See note following RCW 69.07.170.

### RCW 69.07.900 Chapter is cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.

[1967 ex.s. c 121 § 16.]

### RCW 69.07.910 Severability—1967 ex.s. c 121.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1967 ex.s. c 121 § 17.]

### RCW 69.07.920 Short title.

This chapter shall be known and designated as the Washington food processing act.

[1967 ex.s. c 121 § 18.]

# CHAPTER 69.10 RCW
## FOOD STORAGE WAREHOUSES

**Sections**


69.10.005 Definitions.

69.10.010 Inspection of food storage warehouses—Powers of director.

69.10.015 Annual license required—Director's duties—Fee—Application—Renewal.

69.10.020 Exemption from licensure—Independent inspection—Report to department.

69.10.025 Application for renewal of license after expiration date—Additional fee.

69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.

69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.

69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.

69.10.045 Disposition of moneys received under this chapter.

69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.

69.10.055 Rules.

69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.

69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.


### RCW 69.10.005 Definitions.

For the purpose of this chapter:

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equipment, and utensils; and other pertinent food safety issues.

[1995 c 374 § 8.]

### RCW 69.10.010 Inspection of food storage warehouses—Powers of director.

The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods.

[1995 c 374 § 9.]

### RCW 69.10.015 Annual license required—Director's duties—Fee—Application—Renewal.

Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for

the license and the location of the food storage warehouse he or she intends to operate. 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 names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and 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 applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW.

[1995 c 374 § 10.]

### RCW 69.10.020 Exemption from licensure—Independent inspection—Report to department.

A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years.

[1995 c 374 § 11.]

### RCW 69.10.025 Application for renewal of license after expiration date—Additional fee.

If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued.

[1995 c 374 § 12.]

### RCW 69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.

The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.10.035.

[1995 c 374 § 13.]

### RCW 69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.

(1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any 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, pending a hearing, a license provided for in this chapter.

(2) Whenever 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) Whenever a license is summarily suspended, food distribution 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.

[1995 c 374 § 14.]

### RCW 69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.

It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse.

[1995 c 374 § 15.]

### RCW 69.10.045 Disposition of moneys received under this chapter.

All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund.

[1995 c 374 § 16.]

### RCW 69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.

(1) Except as provided in subsection (2) of this section, the

department may use all the civil remedies provided under chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total.

[1995 c 374 § 17.]

### RCW 69.10.055 Rules.

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

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act.

[1995 c 374 § 18.]

### RCW 69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.

The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement.

[1995 c 374 § 19.]

### RCW 69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.

See note following RCW 15.36.012.

# CHAPTER 69.25 RCW

## WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

**Sections**


69.25.010 Legislative finding.
69.25.020 Definitions.
69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director.
69.25.040 Application of administrative procedure act.
69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.
69.25.060 Egg handler's or dealer's license—Late renewal fee.
69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance.
69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers.
69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met.
69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal.
69.25.110 Prohibited acts and practices.
69.25.120 Director to cooperate with other agencies—May conduct examinations.
69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required.
69.25.140 Records required, access to and copying of.
69.25.150 Penalties—Liability of employer—Defense.
69.25.155 Interference with person performing official duties.
69.25.160 Notice of violation—May take place of prosecution.
69.25.170 Exemptions permitted by rule of director.
69.25.180 Limiting entry of eggs and egg products into official plants.
69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks.
69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required.
69.25.210 Embargo—Order affirming not required, when.
69.25.220 Embargo—Consolidation of petitions.
69.25.230 Embargo—Sampling of article.
69.25.240 Condemnation—Recovery of damages restricted.
69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency.
69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels.
69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty.
69.25.280 Assessment—Use of proceeds.
69.25.290 Assessment—Exclusions.
69.25.300 Transfer of moneys in state egg account.
69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.
69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.
69.25.900 Savings.
69.25.910 Chapter is cumulative and nonexclusive.
69.25.920 Severability—1975 1st ex.s. c 201.
69.25.930 Short title.


### RCW 69.25.010 Legislative finding.

Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled

or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers.
[1975 1st ex.s. c 201 § 2.]

## RCW 69.25.020 Definitions.

When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

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

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

(3) "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.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) 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 article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is:

(i) A pesticide chemical in or on a raw agricultural commodity;

(ii) a food additive; or

(iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg

products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

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

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

[1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

**NOTES:**

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Severability—1982 c 182:** See RCW 19.02.901.

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## RCW 69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director.

The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with

chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter.

[1975 1st ex.s. c 201 § 4.]

## RCW 69.25.040 Application of administrative procedure act.

The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended.

[1975 1st ex.s. c 201 § 5.]

## RCW 69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.

No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. 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. Such application shall further state the principal business address of the applicant in the state and elsewhere and 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 applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be nontransferable.

[1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Severability—1982 c 182:** See RCW 19.02.901.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

## RCW 69.25.060 Egg handler's or dealer's license—Late renewal fee.

If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued.

[1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

NOTES:

**Severability—1982 c 182:** See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

## RCW 69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance.

The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee.

[1975 1st ex.s. c 201 § 8.]

## RCW 69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers.

(1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be

destroyed for human food purposes under the supervision of an inspector: PROVIDED, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter.

[1975 1st ex.s. c 201 § 9.]

## RCW 69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met.

(1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

[1975 1st ex.s. c 201 § 10.]

## RCW 69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal.

(1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business.

[1975 1st ex.s. c 201 § 11.]

## RCW 69.25.110 Prohibited acts and practices.

(1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark;

or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret.

[1975 1st ex.s. c 201 § 12.]

## RCW 69.25.120 Director to cooperate with other agencies—May conduct examinations.

The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose.

[1975 1st ex.s. c 201 § 13.]

## RCW 69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required.

Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director.

[1975 1st ex.s. c 201 § 14.]

## RCW 69.25.140 Records required, access to and copying of.

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records.

[1975 1st ex.s. c 201 § 15.]

## RCW 69.25.150 Penalties—Liability of employer—Defense.

(1) (a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) 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.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

[2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

NOTES:

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

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.25.155 Interference with person performing official duties.

(1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both.

[2003 c 53 § 318.]

NOTES:

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

## RCW 69.25.160 Notice of violation—May take place of prosecution.

Before any violation of this chapter, other than RCW 69.25.155, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning.

[2003 c 53 § 319; 1975 1st ex.s. c 201 § 17.]

NOTES:

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

## RCW 69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter.

[1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.25.180 Limiting entry of eggs and egg products into official plants.

The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter.

[1975 1st ex.s. c 201 § 19.]

## RCW 69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks.

Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks.

[1975 1st ex.s. c 201 § 20.]

## RCW 69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required.

When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall

issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance.

[1975 1st ex.s. c 201 § 21.]

## RCW 69.25.210 Embargo—Order affirming not required, when.

The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order.

[1975 1st ex.s. c 201 § 22.]

## RCW 69.25.220 Embargo—Consolidation of petitions.

Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant.

[1975 1st ex.s. c 201 § 23.]

## RCW 69.25.230 Embargo—Sampling of article.

The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon.

[1975 1st ex.s. c 201 § 24.]

## RCW 69.25.240 Condemnation—Recovery of damages restricted.

No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action.

[1975 1st ex.s. c 201 § 25.]

## RCW 69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency.

There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number.

[1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels.

Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated.

[1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

NOTES:

**Severability—1979 ex.s. c 238:** See note following RCW 15.44.010.

## RCW 69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty.

Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers.

[1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

## RCW 69.25.280 Assessment—Use of proceeds.

The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs.

[1975 1st ex.s. c 201 § 29.]

## RCW 69.25.290 Assessment—Exclusions.

The assessments provided in this chapter shall not apply to:

(1) Sale and shipment to points outside of this state;

(2) Sale to the United States government and its instrumentalities;

(3) Sale to breaking plants for processing into egg products;

(4) Sale between egg dealers.

[1975 1st ex.s. c 201 § 30.]

## RCW 69.25.300 Transfer of moneys in state egg account.

All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter.

[1975 1st ex.s. c 201 § 31.]

NOTES:

***Reviser's note:** RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

## RCW 69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.

(1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers and dealers may use new containers bearing another handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number.

[1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.

(1) In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food handlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture.

[1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

NOTES:

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

## RCW 69.25.900 Savings.

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, 1975.

[1975 1st ex.s. c 201 § 35.]

## RCW 69.25.910 Chapter is cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law.

[1975 1st ex.s. c 201 § 37.]

## RCW 69.25.920 Severability—1975 1st ex.s. c 201.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[1975 1st ex.s. c 201 § 38.]

## RCW 69.25.930 Short title.

This act may be known and cited as the "Washington wholesome eggs and egg products act".

[1975 1st ex.s. c 201 § 39.]

# CHAPTER 69.28 RCW
# HONEY

## Sections


69.28.020 Enforcement power and duty of director and agents.
69.28.025 Rules and regulations have force of law.
69.28.030 Rules prescribing standards.
69.28.040 Right to enter, inspect, and take samples.
69.28.050 Containers to be labeled.
69.28.060 Requisites of markings.
69.28.070 "Marked" defined—When honey need not be marked.
69.28.080 Purchaser to be advised of standards—Exceptions.
69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful.
69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director.
69.28.100 Marks for "slack-filled" container.
69.28.110 Use of used containers.
69.28.120 Floral source labels.
69.28.130 Adulterated honey—Sale or offer unlawful.
69.28.133 Nonconforming honey—Sale or offer unlawful.
69.28.135 Warning-tagged honey—Movement prohibited.
69.28.140 Possession of unlawful honey as evidence.
69.28.170 Inspectors—Prosecutions.
69.28.180 Violation of rules and regulations unlawful.
69.28.185 Penalty.
69.28.190 "Director" defined.
69.28.200 "Container" defined.
69.28.210 "Subcontainer" defined.
69.28.220 "Section box" defined.
69.28.230 "Clean and sound containers" defined.
69.28.240 "Pack", "packing", or "packed" defined.
69.28.250 "Label" defined.
69.28.260 "Person" defined.
69.28.270 "Slack-filled" defined.
69.28.280 "Deceptive arrangement" defined.
69.28.290 "Mislabeled" defined.
69.28.300 "Placard" defined.
69.28.310 "Honey" defined.
69.28.320 "Comb-honey" defined.
69.28.330 "Extracted honey" defined.
69.28.340 "Crystallized honey" defined.
69.28.350 "Honeydew" defined.
69.28.360 "Foreign material" defined.
69.28.370 "Foreign honey" defined.
69.28.380 "Adulterated honey" defined.
69.28.390 "Serious damage" defined.
69.28.400 Labeling requirements for artificial honey or mixtures containing honey.
69.28.410 Embargo on honey or product—Notice by director—Removal.
69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond.
69.28.430 Consolidation of petitions presenting same issue and claimant.
69.28.440 Sample of honey or product may be obtained—Procedure.
69.28.450 Recovery of damages barred if probable cause for embargo.
69.28.900 Severability—1939 c 199.
69.28.910 Short title.


NOTES:

Bees and apiaries: Chapter 15.60 RCW.

Commission merchants, agricultural products: Title 20 RCW.

### RCW 69.28.020 Enforcement power and duty of director and agents.

The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter.

[1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

### RCW 69.28.025 Rules and regulations have force of law.

Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law.

[1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

### RCW 69.28.030 Rules prescribing standards.

The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: PROVIDED, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit.

[1939 c 199 § 24; RRS § 6163-24.]

### RCW 69.28.040 Right to enter, inspect, and take samples.

The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary.

[1939 c 199 § 28; RRS § 6163-28.]

### RCW 69.28.050 Containers to be labeled.

It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend.

[1939 c 199 § 32; RRS § 6163-32.]

### RCW 69.28.060 Requisites of markings.

When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container.

[1939 c 199 § 35; RRS § 6163-35.]

## RCW 69.28.070 "Marked" defined—When honey need not be marked.

The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: PROVIDED, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale.

[1939 c 199 § 21; RRS § 6163-21.]

## RCW 69.28.080 Purchaser to be advised of standards—Exceptions.

It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: PROVIDED, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked.

[1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

## RCW 69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful.

It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter.

[1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

## RCW 69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director.

It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter.

[1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

## RCW 69.28.100 Marks for "slack-filled" container.

Any slack-filled container shall be conspicuously marked "slack-filled".

[1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

## RCW 69.28.110 Use of used containers.

It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any secondhand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased.

[1939 c 199 § 37; RRS § 6163-37.]

## RCW 69.28.120 Floral source labels.

Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone.

[1939 c 199 § 34; RRS § 6163-34.]

## RCW 69.28.130 Adulterated honey—Sale or offer unlawful.

It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey.

[1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

## RCW 69.28.133 Nonconforming honey—Sale or offer unlawful.

It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter.

[1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

## RCW 69.28.135 Warning-tagged honey—Movement prohibited.

It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director.

[1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

## RCW 69.28.140 Possession of unlawful honey as evidence.

Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter.

[1939 c 199 § 30; RRS § 6163-30.]

## RCW 69.28.170 Inspectors—Prosecutions.

It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter.

[1939 c 199 § 43; RRS § 6163-43.]

## RCW 69.28.180 Violation of rules and regulations unlawful.

It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter.

[1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

## RCW 69.28.185 Penalty.

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.

[1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

## RCW 69.28.190 "Director" defined.

The term "director" means the director of agriculture of the state

of Washington or his duly authorized representative.
[1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

## RCW 69.28.200 "Container" defined.

The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey.
[1939 c 199 § 3; RRS § 6163-3.]

## RCW 69.28.210 "Subcontainer" defined.

The term "subcontainer" shall mean any section box or other receptacle used within a container.
[1939 c 199 § 4; RRS § 6163-4.]

## RCW 69.28.220 "Section box" defined.

The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey.
[1939 c 199 § 5; RRS § 6163-5.]

## RCW 69.28.230 "Clean and sound containers" defined.

The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks.
[1939 c 199 § 6; RRS § 6163-6.]

## RCW 69.28.240 "Pack", "packing", or "packed" defined.

The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container.
[1939 c 199 § 7; RRS § 6163-7.]

## RCW 69.28.250 "Label" defined.

The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article.
[1939 c 199 § 8; RRS § 6163-8.]

## RCW 69.28.260 "Person" defined.

The term "person" includes individual, partnership, corporation and/or association.
[1939 c 199 § 9; RRS § 6163-9.]

## RCW 69.28.270 "Slack-filled" defined.

The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container.
[1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

## RCW 69.28.280 "Deceptive arrangement" defined.

The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display.
[1939 c 199 § 11; RRS § 6163-11.]

## RCW 69.28.290 "Mislabeled" defined.

The term "mislabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement.
[1939 c 199 § 12; RRS § 6163-12.]

## RCW 69.28.300 "Placard" defined.

The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof.
[1939 c 199 § 13; RRS § 6163-13.]

## RCW 69.28.310 "Honey" defined.

The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (apis mellifica). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit.
[1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

## RCW 69.28.320 "Comb-honey" defined.

The term "comb-honey" means honey which has not been extracted from the comb.
[1939 c 199 § 15; RRS § 6163-15.]

## RCW 69.28.330 "Extracted honey" defined.

The term "extracted honey" means honey which has been removed from the comb.
[1939 c 199 § 16; RRS § 6163-16.]

## RCW 69.28.340 "Crystallized honey" defined.

The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein.
[1939 c 199 § 17; RRS § 6163-17.]

## RCW 69.28.350 "Honeydew" defined.

The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (apis mellifica) and is dextrorotatory.
[1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

## RCW 69.28.360 "Foreign material" defined.

The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees.
[1937 c 199 § 19; RRS § 6163-19.]

## RCW 69.28.370 "Foreign honey" defined.

The term "foreign honey" means any honey not produced within the continental United States.
[1939 c 199 § 20; RRS § 6163-20.]

## RCW 69.28.380 "Adulterated honey" defined.

The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees.

[1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

## RCW 69.28.390 "Serious damage" defined.

The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey.

[1939 c 199 § 23; RRS § 6163-23.]

## RCW 69.28.400 Labeling requirements for artificial honey or mixtures containing honey.

(1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey.

[1975 1st ex.s. c 283 § 1.]

## RCW 69.28.410 Embargo on honey or product—Notice by director—Removal.

Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed.

[1975 1st ex.s. c 283 § 3.]

## RCW 69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond.

When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances.

[1975 1st ex.s. c 283 § 4.]

## RCW 69.28.430 Consolidation of petitions presenting same issue and claimant.

Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant.

[1975 1st ex.s. c 283 § 5.]

## RCW 69.28.440 Sample of honey or product may be obtained—Procedure.

The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon.

[1975 1st ex.s. c 283 § 6.]

## RCW 69.28.450 Recovery of damages barred if probable cause for embargo.

No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action.

[1975 1st ex.s. c 283 § 7.]

## RCW 69.28.900 Severability—1939 c 199.

If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall

not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional.

[1939 c 199 § 45; RRS § 6163-45.]

### RCW 69.28.910 Short title.

This chapter may be known and cited as the Washington state honey act.

[1939 c 199 § 1; RRS § 6163-1.]

# CHAPTER 69.36 RCW
## WASHINGTON CAUSTIC POISON ACT OF 1929

**Sections**


69.36.010 Definitions.
69.36.020 Misbranded sales, etc., prohibited—Exceptions.
69.36.030 Condemnation of misbranded packages.
69.36.040 Enforcement—Approval of labels.
69.36.050 Duty to prosecute.
69.36.060 Penalty.
69.36.070 Short title.


NOTES:

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170, 46.48.175.

### RCW 69.36.010 Definitions.

In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more;

(b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid ($H_2SO_4$) in concentration of ten percent or more;

(c) nitric acid or any preparation containing free or chemically unneutralized nitric acid ($HNO_3$) in a concentration of five percent or more;

(d) carbolic acid ($C_6H_5OH$), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five percent or more;

(e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten percent or more;

(f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more;

(g) acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty percent or more;

(h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime;

(i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more;

(j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more;

(k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five percent or more, and

(l) ammonia water and any preparation yielding free or chemically uncombined ammonia ($NH_3$), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing

(a) the name of the article;

(b) the name and place of business of the manufacturer, packer, seller, or distributor;

(c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and

(d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; PROVIDED, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. PROVIDED FURTHER, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences.

[1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36.010 and 69.36.020, part.]

### RCW 69.36.020 Misbranded sales, etc., prohibited—Exceptions.

No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel,

package, or container, said parcel, package, or container being designed for household use; PROVIDED, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; PROVIDED FURTHER, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter.

[1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

## RCW 69.36.030 Condemnation of misbranded packages.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: PROVIDED, HOWEVER, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption.

[1929 c 82 § 3; RRS § 2508-3.]

## RCW 69.36.040 Enforcement—Approval of labels.

The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: PROVIDED, HOWEVER, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial.

[1929 c 82 § 5; RRS § 2508-5.]

## RCW 69.36.050 Duty to prosecute.

Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided.

[1929 c 82 § 6; RRS § 2508-6.]

## RCW 69.36.060 Penalty.

Any person violating the provisions of this chapter shall be guilty of a misdemeanor.

[1929 c 82 § 4; RRS § 2508-4.]

## RCW 69.36.070 Short title.

This chapter may be cited as the Washington Caustic Poison Act of 1929.

[1929 c 82 § 7; RRS § 2508-7.]

# TITLE 70 RCW
## PUBLIC HEALTH AND SAFETY

### Chapters

70.106 Poison prevention—labeling and packaging

# CHAPTER 70.106 RCW
## POISON PREVENTION—LABELING AND PACKAGING

### Sections

70.106.010 Purpose.
70.106.020 Short title.
70.106.030 Definitions—Construction.
70.106.040 "Director" defined.
70.106.050 "Sale" defined.
70.106.060 "Household substance" defined.
70.106.070 "Package" defined.
70.106.080 "Special packaging" defined.
70.106.090 "Labeling" defined.
70.106.100 Standards for packaging.
70.106.110 Exceptions from packaging standards.
70.106.120 Adoption of rules and regulations under federal poison prevention packaging act.
70.106.140 Penalties.
70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy.
70.106.900 Severability—1974 ex.s. c 49.
70.106.905 Saving—1974 ex.s. c 49.
70.106.910 Chapter cumulative and nonexclusive.

NOTES:

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

### RCW 70.106.010 Purpose.

The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties.

[1974 ex.s. c 49 § 1.]

### RCW 70.106.020 Short title.

This chapter shall be cited as the Washington Poison Prevention Act of 1974.

[1974 ex.s. c 49 § 2.]

### RCW 70.106.030 Definitions—Construction.

The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter.

[1974 ex.s. c 49 § 3.]

### RCW 70.106.040 "Director" defined.

"Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative.

[1974 ex.s. c 49 § 4.]

### RCW 70.106.050 "Sale" defined.

"Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product.

[1974 ex.s. c 49 § 5.]

### RCW 70.106.060 "Household substance" defined.

"Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means
  (a) any substance or mixture of substances or product which
    (i) is toxic,
    (ii) is corrosive,
    (iii) is an irritant,
    (iv) is a strong sensitizer,
    (v) is flammable or combustible, or
    (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
  (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section;
  (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and
  (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules.

[1974 ex.s. c 49 § 6.]

### RCW 70.106.070 "Package" defined.

"Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or

storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

[1974 ex.s. c 49 § 7.]

## RCW 70.106.080 "Special packaging" defined.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

[1974 ex.s. c 49 § 8.]

## RCW 70.106.090 "Labeling" defined.

"Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance.

[1974 ex.s. c 49 § 9.]

## RCW 70.106.100 Standards for packaging.

(1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

   (a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

   (b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

   (a) The reasonableness of such standard;

   (b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

   (c) The manufacturing practices of industries affected by this chapter; and

   (d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto.

[1974 ex.s. c 49 § 10.]

## RCW 70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

   (a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

   (b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter.

[1974 ex.s. c 49 § 11.]

## RCW 70.106.120 Adoption of rules and regulations under federal poison prevention packaging act.

One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules

and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended.

[1974 ex.s. c 49 § 12.]

## RCW 70.106.140 Penalties.

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

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

[2003 c 53 § 358; 1974 ex.s. c 49 § 16.]

**NOTES:**

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

## RCW 70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy.

The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof.

[1987 c 236 § 1.]

## RCW 70.106.900 Severability—1974 ex.s. c 49.

If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

[1974 ex.s. c 49 § 14.]

## RCW 70.106.905 Saving—1974 ex.s. c 49.

The enactment of this 1974 act 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 24, 1974.

[1974 ex.s. c 49 § 15.]

## RCW 70.106.910 Chapter cumulative and nonexclusive.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.

[1974 ex.s. c 49 § 17.]

# TITLE 90 RCW
## WATER RIGHTS—ENVIRONMENT

### Chapters

90.64 Dairy nutrient management

# CHAPTER 90.64 RCW
## DAIRY NUTRIENT MANAGEMENT

**(Formerly: Dairy waste management)**

### Sections

90.64.005 Findings.
90.64.010 Definitions.
90.64.017 Registration of dairy producers—Information required—Information to producers regarding chapter.
90.64.020 Concentrated dairy animal feeding operation—Designation—Permit.
90.64.023 Inspection program.
90.64.026 Dairy nutrient management plans—Elements—Approval—Timelines—Certification.
90.64.028 Appeals from denial of plan approval or certification—Dairy producer-requested hearings—Extension of timelines.
90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties.
90.64.040 Appeal from actions and orders of the department.
90.64.050 Duties of department—Annual report to commission.
90.64.070 Duties of conservation district.
90.64.080 Duties of conservation commission.
90.64.100 Parties' liability.
90.64.102 Recordkeeping violations—Civil penalty.
90.64.110 Rules.
90.64.120 Department's authority under federal law or chapter 90.48 RCW not affected.
90.64.130 Database.
90.64.150 Livestock nutrient management account.
90.64.170 Livestock nutrient management program—Review of statutory authority—Recommendations for statutory changes—Prerequisite to administering federal program.
90.64.180 Protocol for monitoring waters near dairies and CAFOs.
90.64.190 Information subject to public records disclosure—Rules.
90.64.200 Inspecting and investigating conditions relating to the pollution of waters of the state—Access denied—Application for search warrant.
90.64.800 Reports to the legislature.
90.64.900 Effective date—1998 c 262.
90.64.901 Transfer of powers, duties, and functions to the department of agriculture.

### RCW 90.64.005 Findings.

The legislature finds that there is a need to establish a clear and understandable process that provides for the proper and effective management of dairy nutrients that affect the quality of surface or ground waters in the state of Washington. The legislature finds that there is a need for a program that will provide a stable and predictable business climate upon which dairy farms may base future investment decisions.

The legislature finds that federal regulations require a permit program for dairies with over seven hundred head of mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.

It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry. A further purpose is to create a balanced program involving technical assistance, regulation, and enforcement with coordination and oversight of the program by a *committee composed of industry, agency, and other representatives. Furthermore, it is the objective of this chapter to maintain the administration of the water quality program as it relates to dairy operations at the state level.

It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans for the protection of water quality.

[1998 c 262 § 1; 1993 c 221 § 1.]

NOTES:

***Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

### RCW 90.64.010 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "*Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a

dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ecology under chapter 43.21A RCW.

(15) "Director" means the director of the department of ecology, or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c) (i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

[2009 c 143 § 2; 1998 c 262 § 2; 1993 c 221 § 2.]

NOTES:

*Reviser's note: The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

## RCW 90.64.017 Registration of dairy producers—Information required—Information to producers regarding chapter.

(1) Every dairy producer licensed under chapter 15.36 RCW shall register with the department by September 1, 1998, and shall reregister with the department by September 1st of every even-numbered year. Every dairy producer licensed after September 1, 1998, shall register with the department within sixty days of licensing. The purpose of registration is to provide and update baseline information for the dairy nutrient management program.

(2) To facilitate registration, the department shall obtain from the food safety and animal health division of the department of agriculture a current list of all licensed dairy producers in the state and mail a registration form to each licensed dairy producer no later than July 15, 1998.

(3) At a minimum, the form shall require the following information as of the date the form is completed:

(a) The name and address of the operator of the dairy farm;

(b) The name and address of the dairy farm;

(c) The telephone number of the dairy farm;

(d) The number of cows in the dairy farm;

(e) The number of young stock in the dairy farm;

(f) The number of acres owned and rented in the dairy farm;

(g) Whether the dairy producer, to the best of his or her knowledge, has a plan for managing dairy nutrient discharges that is commensurate with the size of his or her herd, and whether the plan is being fully implemented; and

(h) If the fields where dairy nutrients are being applied belong to someone other than the dairy producer whose farm operation generated the nutrients, the name, address, and telephone number of the owners of the property accepting the dairy nutrients.

(4) In the mailing to dairy producers containing the registration form, the department shall also provide clear and comprehensive information regarding the requirements of this chapter.

(5) The department shall require the registrant to provide only information that is not already available from other sources accessible to the department, such as dairy licensing information.

[1998 c 262 § 3.]

## RCW 90.64.020 Concentrated dairy animal feeding operation—Designation—Permit.

(1) The director of the department of ecology may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

[1993 c 221 § 3.]

## RCW 90.64.023 Inspection program.

(1) By October 1, 1998, the department shall initiate an inspection program of all dairy farms in the state. The purpose of the inspections is to:

(a) Survey for evidence of violations;

(b) Identify corrective actions for actual or imminent discharges that violate or could violate the state's water quality standards;

(c) Monitor the development and implementation of dairy nutrient management plans; and

(d) Identify dairy producers who would benefit from technical assistance programs.

(2) Local conservation district employees may, at their discretion, accompany department inspectors on any scheduled inspection of dairy farms except random, unannounced inspections.

(3) Follow-up inspections shall be conducted by the department to ensure that corrective and other actions as identified in the course of initial inspections are being carried out. The department shall also conduct such additional inspections as are necessary to ensure compliance with state and federal water quality requirements, provided that all licensed dairy farms shall be inspected once within two years of the start of this program. The department, in consultation with the *advisory and oversight committee established in section 8 of this act, shall develop performance-based criteria to determine the frequency of inspections.

(4) Dairy farms shall be prioritized for inspection based on the development of criteria that include, but are not limited to, the following factors:

(a) Existence or implementation of a dairy nutrient management plan;

(b) Proximity to impaired waters of the state; and

(c) Proximity to all other waters of the state. The criteria developed to implement this subsection (4) shall be reviewed by the *advisory and oversight committee.

[1998 c 262 § 5.]

NOTES:

***Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

## RCW 90.64.026 Dairy nutrient management plans—Elements—Approval—Timelines—Certification.

(1) Except for those producers who already have a certified dairy nutrient management plan as required under the terms and conditions of an individual or general national pollutant discharge elimination system permit, all dairy producers licensed under chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient management plan. If at any time a dairy nutrient management plan fails to prevent the discharge of pollutants to waters of the state, it shall be required to be updated.

(2) By November 1, 1998, the conservation commission, in conjunction with the *advisory and oversight committee established under section 8 of this act shall develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.

(3) In developing the elements that an approved dairy nutrient management plan must contain, the commission may

authorize the use of other methods and technologies than those developed by the natural resources conservation service when such alternatives have been evaluated by the *advisory and oversight committee. Alternative methods and technologies shall meet the standards and specifications of:

(a) The natural resources conservation service as modified by the geographically based standards developed under **RCW 90.64.140; or

(b) A professional engineer with expertise in the area of dairy nutrient management.

(4) In evaluating alternative technologies and methods, the principal objectives of the *committee's evaluation shall be determining:

(a) Whether there is a substantial likelihood that, once implemented, the alternative technologies and methods would not violate water quality requirements;

(b) Whether more cost-effective methods can be successfully implemented in some or all categories of dairy operations; and

(c) Whether the technologies and methods approved or provided by the natural resources conservation service for use by confined animal feeding operations are necessarily required for other categories of dairy operations.

In addition, the *committee shall encourage the conservation commission and the conservation districts to apply in dairy nutrient management plans technologies and methods that are appropriate to the needs of the specific type of operation and the specific farm site and to avoid imposing requirements that are not necessary for the specific dairy producer to achieve compliance with water quality requirements.

(5) Such plans shall be submitted for approval to the local conservation district where the dairy farm is located, and shall be approved by conservation districts no later than by July 1, 2002. The conservation commission, in conjunction with conservation districts, shall develop a statewide schedule of plan development and approval to ensure adequate resources are available to have all plans approved by July 1, 2002.

(6) If a dairy producer leases land for dairy production from an owner who has prohibited the development of capital improvements, such as storage lagoons, on the leased property, the dairy producer shall indicate in his or her dairy nutrient management plan that such improvements are prohibited by the landowner and shall describe other methods, such as land application, that will be employed by the dairy producer to manage dairy nutrients.

(7) Notwithstanding the timelines in this section, any dairy farm licensed after September 1, 1998, shall have six months from the date of licensing to develop a dairy nutrient management plan and another eighteen months to fully implement that plan.

(8) If a plan contains the elements identified in subsection (2) of this section, a conservation district shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the elements identified in subsection (2) of this section, the local conservation district shall notify the dairy producer in writing of modifications needed in the plan no later than ninety days after receiving the plan. The dairy producer shall provide a revised plan that includes the needed modifications within ninety days of the date of the local conservation district notification. If the dairy producer does not agree with, or otherwise takes exception to, the modifications requested by the local conservation district, the dairy producer may initiate the appeals process described in RCW 90.64.028 within thirty days of receiving the letter of notification.

(9) An approved plan shall be certified by a conservation district and a dairy producer when the elements necessary to implement the plan have been constructed or otherwise put in place, and are being used as designed and intended. A certification form shall be developed by the conservation commission for use statewide and shall provide for a signature by both a conservation district representative and a dairy producer. Certification forms shall be signed by December 31, 2003, and a copy provided to the department for recording in the database established in RCW 90.64.130.

(10) The ability of dairy producers to comply with the planning requirements of this chapter depends, in many cases, on the availability of federal and state funding to support technical assistance provided by local conservation districts. Dairy producers shall not be held responsible for noncompliance with the planning requirements of this chapter if conservation districts are unable to perform their duties under this chapter because of insufficient funding.

[1998 c 262 § 6.]

**NOTES:**

**Reviser's note:** *(1) The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**(2) RCW 90.64.140 was repealed by 2009 c 143 § 3.

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## RCW 90.64.028 Appeals from denial of plan approval or certification—Dairy producer-requested hearings—Extension of timelines.

(1) Conservation district decisions pertaining to denial of approval or denial of certification of a dairy nutrient management plan; modification or amendment of a plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and the failure to adhere to plan review and approval timelines identified in RCW 90.64.026 are appealable under this chapter. Department actions pertaining to water quality violations are appealable under chapter 90.48 RCW.

In addition, a dairy producer who is constrained from complying with the planning requirements of this chapter because of financial hardship or local permitting delays may request a hearing before the conservation commission and may request an extension of up to one year beyond the approval and certification dates prescribed in this chapter for plan approval and certification.

(2) Within thirty days of receiving a local conservation district notification regarding any of the decisions identified in subsection (1) of this section, a dairy producer who disagrees with any of these decisions may request an informal hearing before the conservation commission or may appeal directly to the pollution control hearings board. The commission

shall issue a written decision no later than thirty days after the informal hearing.

(3) If the conservation commission reverses the decision of the conservation district, the conservation district may appeal this reversal to the pollution control hearings board according to the procedure in chapter 43.21B RCW within thirty days of receipt of the commission's decision.

(4) When an appeals process is initiated under this section, the length of time extending from the start of the appeals process to its conclusion shall be added onto the timelines provided in this chapter for plan development, approval, and certification only if an appeal is heard by the pollution control hearings board.

[1998 c 262 § 7.]

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## RCW 90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties.

(1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same dairy farm from the same person and the results of its previous inspections, and has the discretion to decide whether to conduct an inspection if:

(a) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

(b) The department made a determination that the activity that was the subject of the prior complaint was not a violation.

(4) If the decision of the department is not to conduct an inspection, it shall document the decision and the reasons for the decision within twenty days. The department shall provide the decision to the complainant if the name and address were provided to the department, and to the dairy producer subject to the complaint, and the department shall place the decision in the department's administrative records.

(5) The report of findings of any inspection conducted as the result of either an oral or a written complaint shall be placed in the department's administrative records. Only findings of violations shall be entered into the database identified in RCW 90.64.130.

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information is subject to the provisions of this chapter and to the enforcement provisions of chapters 43.05 and 90.48 RCW, including civil penalties levied under RCW 90.48.144.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the producer and the district in which the problem is located. When corrective actions are required to address such unresolved water quality problems, the department shall provide copies of all final dairy farm inspection reports and documentation of all formal regulatory and enforcement actions taken by the department against that particular dairy farm to the local conservation district and to the appropriate dairy farm within twenty days.

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a storm water discharge, to surface waters of the state shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department of ecology or a third party, if at the time of the discharge, a violation is not occurring under *RCW 90.64.010(18). In addition, a dairy producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of dairy nutrients to waters of the state resulting from spreading these materials on lands other than where the nutrients were generated, when the nutrients are spread by persons other than the dairy producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy nutrients are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

(11) This section specifically acknowledges that if a holder of a general or individual national pollutant discharge elimination system permit complies with the permit and the dairy nutrient management plan conditions for appropriate land application practices, the permit provides compliance with the federal clean water act and acts as a shield against citizen or agency enforcement for any additions of pollutants to waters of the state or of the United States as authorized by the permit.

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or

plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department.

[2003 c 325 § 3; 2002 c 327 § 1; 1998 c 262 § 11; 1993 c 221 § 4.]

NOTES:

***Reviser's note:** RCW 90.64.010 was amended by 2009 c 143 § 2, changing subsection (18) to subsection (17).

**Intent—Finding—2003 c 325:** "A livestock nutrient management program is essential to ensuring a healthy and productive livestock industry in Washington state. The goal of the program must be to provide clear guidance to livestock farms as to their responsibilities under state and federal law to protect water quality while maintaining a healthy business climate for these farms. The program should develop reasonable financial assistance resources, educational and technical assistance to meet these responsibilities, and provide for periodic inspection and enforcement actions to ensure compliance with state and federal water quality laws. The legislature intends that by 2006, there will be a fully functioning state program for concentrated animal feeding operations in the state, and that this program will be a single program for all livestock sectors.

The legislature finds that a livestock nutrient management program is necessary to address the federal rule changes with which livestock operations must comply. Furthermore, budgetary conditions demand efficient and effective governance. In addition, many of the existing requirements and goals for dairy farms will be completed by December 2003, and revisions will be needed."

[2003 c 325 § 1.]

## RCW 90.64.040 Appeal from actions and orders of the department.

Enforcement actions and administrative orders issued by the department of ecology may be appealed to the pollution control hearings board in accordance with the provisions of chapter 43.21B RCW.

[1993 c 221 § 5.]

## RCW 90.64.050 Duties of department—Annual report to commission.

(1) The department has the following duties:

(a) Identify existing or potential water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;

(b) Inspect a dairy farm upon the request of a dairy producer;

(c) Receive, process, and verify complaints concerning discharge of pollutants from all dairy farms;

(d) Determine if a dairy-related water quality problem requires immediate corrective action under the Washington state water pollution control laws, chapter 90.48 RCW, or the Washington state water quality standards adopted under chapter 90.48 RCW. The department shall maintain the lead enforcement responsibility;

(e) Administer and enforce national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations and state laws or upon request of a dairy producer;

(f) Participate on the *advisory and oversight committee;

(g) Encourage communication and cooperation between local department personnel and the appropriate conservation district personnel;

(h) Require the use of dairy nutrient management plans as required under this chapter for entities required to plan under this chapter; and

(i) Provide to the commission and the *advisory and oversight committee an annual report of dairy farm inspection and enforcement activities.

(2) The department may not delegate its responsibilities in enforcement.

[1998 c 262 § 12; 1993 c 221 § 6.]

NOTES:

***Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

## RCW 90.64.070 Duties of conservation district.

(1) The conservation district has the following duties:

(a) Provide technical assistance to the department in identifying and correcting existing water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;

(b) Immediately refer complaints received from the public regarding discharge of pollutants to the department;

(c) Encourage communication and cooperation between the conservation district personnel and local department personnel;

(d) Provide technical assistance to dairy producers in developing and implementing a dairy nutrient management plan; and

(e) Review, approve, and certify dairy nutrient management plans that meet the minimum standards developed under this chapter.

(2) The district's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy nutrient management program.

[1998 c 262 § 13; 1993 c 221 § 8.]

## RCW 90.64.080 Duties of conservation commission.

(1) The conservation commission has the following duties:

(a) Provide assistance as may be appropriate to the conservation districts in the discharge of their responsibilities as management agencies in dairy nutrient management program implementation;

(b) Provide coordination for conservation district programs at the state level through special arrangements with appropriate federal and state agencies, including oversight of the review, approval, and certification of dairy nutrient management plans;

(c) Inform conservation districts of activities and experiences of other conservation districts relative to agricultural water quality protection, and facilitate an interchange of advice, experience, and cooperation between the districts;

(d) Provide an informal hearing for disputes between dairy producers and local conservation districts pertaining to:

(i) Denial of approval or denial of certification of dairy nutrient management plans;

(ii) modification or amendment of plans;

(iii) conditions contained in plans;

(iv) application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and

(v) the failure to adhere to the plan review and approval timelines identified in RCW 90.64.026. An informal hearing may also provide an opportunity for dairy producers who are constrained from timely compliance with the planning requirements of this chapter because of financial hardship or local permitting delays to petition for additional time to comply;

(e) Encourage communication between the conservation district personnel and local department personnel;

(f) Accept nominations and appoint members to serve on the *advisory and oversight committee with advice of the Washington association of conservation districts and the department;

(g) Provide a cochair to the *advisory and oversight committee;

(h) Report to the legislature by December 1st of each year until 2003 on the status of dairy nutrient management planning and on the technical assistance provided to dairy producers in carrying out the requirements of this chapter; and

(i) Work with the department to provide communication outreach to representatives of agricultural and environmental organizations to receive feedback on implementation of this chapter.

(2) The commission's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy nutrient management program.

[1998 c 262 § 14; 1993 c 221 § 9.]

NOTES:

***Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

## RCW 90.64.100 Parties' liability.

A party acting under this chapter is not liable for another party's actions under this chapter.

[1993 c 221 § 11.]

## RCW 90.64.102 Recordkeeping violations—Civil penalty.

(1) Except as provided in chapter 43.05 RCW, the department of agriculture may impose a civil penalty on a dairy producer in an amount of not more than five thousand dollars for failure to comply with recordkeeping requirements in RCW 90.64.010(17)(c). The aggregate amount of the civil penalties issued under this section shall not exceed five thousand dollars in a calendar year.

(2) In determining the amount of the civil penalty to be levied, the department of agriculture shall take into consideration:

(a) The gravity and magnitude of the violation;

(b) Whether the violation was repeated or is continuous;

(c) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;

(d) The violator's efforts to correct the violation; and

(e) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(3) The department of agriculture may establish by rule a graduated civil penalty schedule that includes the factors listed in this section.

[2010 c 84 § 1.]

## RCW 90.64.110 Rules.

The department may adopt rules as necessary to implement this chapter.

[1993 c 221 § 12.]

## RCW 90.64.120 Department's authority under federal law or chapter 90.48 RCW not affected.

(1) Nothing in this chapter shall affect the department of ecology's authority or responsibility to administer or enforce the national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations or to administer the provisions of chapter 90.48 RCW.

(2) Unless the department of ecology delegates its authority under chapter 90.48 RCW to the department of agriculture pursuant to RCW 90.48.260, and until any such delegation of authority receives federal approval, the transfer specified in RCW 90.64.901 shall not preclude the department of ecology from taking action related to animal feeding operations or concentrated animal feeding operations to protect water quality pursuant to its authority in chapter 90.48 RCW. Before taking such actions, the department of ecology shall notify the department of agriculture.

[2003 c 325 § 4; 1993 c 221 § 13.]

NOTES:

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.

## RCW 90.64.130 Database.

(1) By October 1, 1998, the department, in consultation with the *advisory and oversight committee, shall develop and maintain a database to account for the implementation of this chapter.

(2) The database shall track registrations; inspection dates and results, including findings of violations; regulatory and enforcement actions; and the status of dairy nutrient management plans. In addition, the number of dairy farm inspections by inspector shall be tallied by month. A summary of database information shall be provided quarterly to the *advisory and oversight committee.

(3) Any information entered into the database by the department about any aspect of a particular dairy operation may be reviewed by the affected dairy producer upon request. The department shall correct any information in the database upon a showing that the information is faulty or inaccurate. Complaints that have been filed with the department and determined to be unfounded, invalid, or without merit shall

not be recorded in the database. Appeals of decisions related to dairy nutrient management plans to the pollution control hearings board or to any court shall be recorded, as well as the decisions of those bodies.

[1998 c 262 § 9.]

NOTES:

*Reviser's note: The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

## RCW 90.64.150 Livestock nutrient management account.

The livestock nutrient management account is created in the custody of the state treasurer. All receipts from monetary penalties levied pursuant to violations of this chapter must be deposited into the account. Expenditures from the account may be used only to provide grants for research or education proposals that assist livestock operations to achieve compliance with state and federal water quality laws. The director of agriculture shall accept and prioritize research proposals and education proposals. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

[2003 c 325 § 5; 1998 c 262 § 15.]

NOTES:

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

## RCW 90.64.170 Livestock nutrient management program—Review of statutory authority—Recommendations for statutory changes—Prerequisite to administering federal program.

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The departments of agriculture and ecology shall examine their current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department of agriculture for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260, *90.64.813, and 90.64.901. In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in *RCW 90.64.813. The recommendations must be submitted to the legislature by the departments of agriculture and ecology prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

[2005 c 510 § 1.]

NOTES:

*Reviser's note: RCW 90.64.813 expired June 30, 2006.

## RCW 90.64.180 Protocol for monitoring waters near dairies and CAFOs.

(1) The department of ecology shall develop and maintain a standard protocol for water quality monitoring of the waters of the state within the vicinity of dairies and CAFOs. The protocol shall include sampling methods and procedures and identify the water quality constituents to be monitored.

(2) The department of ecology shall submit the initial protocol developed according to this section to the appropriate committees of the legislature by December 1, 2005.

[2005 c 510 § 3.]

## RCW 90.64.190 Information subject to public records disclosure—Rules.

This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.56 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

[2006 c 209 § 14; 2005 c 510 § 4.]

NOTES:

Effective date—2006 c 209: See RCW 42.56.903.

## RCW 90.64.200 Inspecting and investigating conditions relating to the pollution of waters of the state—Access denied—Application for search warrant.

The director of agriculture may enter at all reasonable times in or upon dairy farms for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state.

If the director of agriculture or the director's duly appointed agent is denied access to a dairy farm, he or she may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities at a reasonable time for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director of agriculture shall file with the court an affidavit or declarations 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.

[2009 c 143 § 1.]

## RCW 90.64.800 Reports to the legislature.

The department, in conjunction with the conservation commission and *advisory and oversight committee, shall report to the legislature by December 1st of each year until 2003, on progress made in implementing chapter 262, Laws of 1998. At a minimum, the reports shall include data on inspections, the

status of dairy nutrient planning, compliance with water quality standards, and enforcement actions. The report shall also provide recommendations on how implementation of chapter 262, Laws of 1998 could be facilitated for dairy producers and generally improved.

The conservation commission shall include in the report to the legislature filed December 1, 1999, an evaluation of whether the fiscal resources available to the commission, to conservation districts, and to Washington State University dairy nutrient management experts are adequate to fund the technical assistance teams established under **RCW 90.64.140 and to develop and certify plans as required by the schedule established in RCW 90.64.026. If the funding is insufficient, the report shall include an estimate of the amount of funding necessary to accomplish the schedule contained in RCW 90.64.026.

[1998 c 262 § 17.]

NOTES:

**Reviser's note:** *(1) The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**(2) RCW 90.64.140 was repealed by 2009 c 143 § 3.

## RCW 90.64.900 Effective date—1998 c 262.

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 [April 1, 1998].

[1998 c 262 § 22.]

## RCW 90.64.901 Transfer of powers, duties, and functions to the department of agriculture.

(1) All powers, duties, and functions of the department of ecology pertaining to chapter 90.64 RCW are transferred to the department of agriculture. All references to the director of ecology or the department of ecology in the Revised Code of Washington shall be construed to mean the director of agriculture or the department of agriculture when referring to the functions transferred in this section.

(2) (a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of agriculture. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available to the department of agriculture. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of agriculture.

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on July 1, 2003, be transferred and credited to the department of agriculture.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(4) The transfer of the powers, duties, and functions of the department of ecology shall not affect the validity of any act performed before July 1, 2003.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

[2003 c 325 § 6.]

NOTES:

**Effective date—2003 c 325 §§ 2 and 6:** "Sections 2 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003."

[2003 c 325 § 9.]

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.