

Chapter 15.66 RCW
WASHINGTON STATE AGRICULTURAL 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 43.19 RCW not applicable to promotional printing and literature of commissions.
- 15.66.900 Short title.

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) "Affected commodity" means the agricultural commodity that is specified in the marketing order.

(2) "Affected handler" means any handler of an affected commodity.

(3) "Affected parties" means any producer, affected producer, handler, or commodity commission member.

(4) "Affected producer" means any producer who is subject to a marketing order.

(5) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Assessment" means the monetary amount established in a marketing order that is to be paid by each affected producer to a

commission in accordance with the schedule established in the marketing order.

(7) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

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

(10) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(11) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of an agricultural commodity that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list must contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list must contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list must contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

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

(16) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(17) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

(18) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(19) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any

other organization of individuals or any unit or agency of local, state, or federal government.

(20) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. "To produce" means to act as a producer. For the purposes of this chapter, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(21) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(22) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(23) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(24) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(25) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(26) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order. [2011 c 103 § 25; 2002 c 313 § 39; 1993 c 80 § 3; 1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

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

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

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

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.]

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, Christmas trees, and facilities—Inspection and licensing;
- Chapter 15.14 RCW Planting stock;
- Chapter 15.15 RCW Certified seed potatoes;
- Chapter 15.17 RCW Standards of grades and packs;
- Chapter 15.19 RCW Certification and inspection of ginseng;
- Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;
- Chapter 15.49 RCW Seeds;
- Chapter 15.53 RCW Commercial feed;
- Chapter 15.54 RCW Fertilizers, minerals, and limes;
- Chapter 15.58 RCW Washington pesticide control act;
- Chapter 15.60 RCW Apiaries;
- Chapter 15.64 RCW Farm marketing;
- Chapter 15.83 RCW Agricultural marketing and fair practices;
- Chapter 15.85 RCW Aquaculture marketing;
- Chapter 15.86 RCW Organic products;
- Chapter 15.92 RCW Center for sustaining agriculture and natural resources;
- Chapter 15.130 RCW Food safety and security act;
- Chapter 17.24 RCW Insect pests and plant diseases;
- Chapter 19.94 RCW Weights and measures;
- Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;
- Chapter 22.09 RCW Agricultural commodities;
- Chapter 69.07 RCW Washington food processing act;
- Chapter 69.25 RCW Washington wholesome eggs and egg products act;
- Chapter 69.28 RCW Honey;
- 7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the potato industry is regulated by or must comply with the following additional laws and the rules or regulations adopted thereunder:

(a) 7 C.F.R., Part 51, United States standards for grades of potatoes;

(b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes grown in Washington;

(c) 7 C.F.R., Part 1207, Potato research and promotion plan.

(3) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the wheat and barley industries are regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 7 U.S.C., section 1621, Agricultural marketing act;

(b) Chapter 70A.15 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 [7] U.S.C., chapter 9, Packers and stockyards;
- (c) 7 U.S.C., section 1621, Agricultural marketing act;
- (d) Washington fryer commission labeling standards. [2021 c 65 § 11; 2018 c 236 § 707; 2011 c 103 § 26; 2002 c 313 § 41.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

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

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.]

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.]

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.]

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.]

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.]

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 website.

(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 website. 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 website 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.]

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 website. For amendment and termination petitions, the affected commission may include a link on its website to the department's website.

(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 website 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 website 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 website 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 website 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.]

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.]

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.]

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.]

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 that 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.]

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 applies when the director appoints a majority of the positions of the commission as set forth under RCW 15.66.110(3).

(2) Candidates for director-appointed positions on a commission shall be nominated under RCW 15.66.120(1).

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2011 c 103 § 21; 2002 c 313 § 52.]

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

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.]

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.]

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.]

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 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 15; 2011 c 60 § 2; 2003 c

396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

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

(2) This section was amended by 2011 c 60 § 2 and by 2011 c 103 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Effective date—2011 c 60: See RCW 42.17A.919.

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.]

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.]

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.]

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 or her.

Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored, or delivered for sale, processing, or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his or her bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him or her during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehouse operators and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the

purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [2011 c 336 § 415; 1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

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.]

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.]

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 depository. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or expended. [2002 c 313 § 61; 1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

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.]

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 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [2011 c 103 § 9; 2002 c 313 § 63; 1988 c 54 § 2.]

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

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.]

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.]

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 43.19 RCW not applicable to promotional printing and literature of commissions. The restrictive provisions of chapter 43.19 RCW shall not apply to promotional printing and literature for any commission formed under this chapter. [2015 c 225 § 11; 1972 ex.s. c 112 § 5.]

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.]