

Chapter 15.115 RCW
WASHINGTON GRAIN COMMISSION

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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 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 70A.15 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. [2021 c 65 § 13; 2011 c 103 § 33; 2009 c 33 § 2.]

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

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

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.]

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. [2009 c 33 § 13.]

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 barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

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

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

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

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

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

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with *chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

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

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

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

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

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 17; 2011 c 60 § 4; 2009 c 33 § 14.]

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

(2) This section was amended by 2011 c 60 § 4 and by 2011 c 103 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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 43.19 RCW do not apply to promotional printing and literature for the commission.

(2) All promotional printing contracts entered into by the commission must be executed and performed under conditions of employment that substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such a provision of any contract is grounds for cancellation of the contract. [2015 c 225 § 15; 2009 c 33 § 19.]

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 warehouse operators, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt

issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment, the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley. [2011 c 336 § 417; 2009 c 33 § 28.]

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.]