

Chapter 16-516 WAC

WASHINGTON POTATOES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

16-516-002	Director's findings and decision approving a marketing order. [Director's Findings and Final Decision, effective 6/6/56.] Repealed by WSR 06-03-003, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.
16-516-030	Marketing order purposes. [Marketing Order, Article III, effective 7/23/56.] Repealed by WSR 06-03-003, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.
16-516-070	Effective time. [Marketing Order, Article VII, effective 7/23/56.] Repealed by WSR 06-03-003, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.
16-516-140	Conditions for prepayment of assessments and maximum payable. [Order XII, § 16-516-140, filed 7/2/73.] Repealed by WSR 06-03-002, filed 1/4/06, effective 2/4/06. Statutory Authority: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2).

WAC 16-516-003 Director's order making marketing order effective and creating a potato commission. (1)

Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in him by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on June 6, 1956, that certain marketing order entitled, "Marketing Order for Washington Potatoes Providing for the Creation of a Washington Potato Commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090 and,

(2) Whereas, the director of agriculture has found that more than fifty-one percent of the affected producers have replied to the written referendum within the time specified by

(2/8/17)

the director and that said marketing order for Washington potatoes has been assented to in writing by more than sixty-five percent of the producers who produced more than fifty-one percent by volume of the said potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said marketing order for Washington potatoes providing for the creation of a Washington potato commission, said order to be effective at 12:01 a.m. July 23, 1956.

[Order and Findings, effective 7/23/56.]

WAC 16-516-005 Marketing order for Washington potatoes—Policy statement. (1) The production of potatoes 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 potatoes be properly encouraged by enabling producers of potatoes to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the potatoes they produce.

(2) It is in the overriding public interest that support for the potato industry be clearly expressed and that adequate protection be given to the industry and its activities and operations as part of a comprehensive agricultural industry to:

(a) Eliminate or limit impediments affecting the sale and use of Washington state's potatoes in local, domestic, and foreign markets;

(b) Respond to public requests for information regarding the quality, care, and methods used in the production of Washington state's potatoes;

(c) Respond to public requests for information regarding the nutritional, health-giving qualities and dietetic value of Washington state's potatoes and products; and

(d) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, transportation and utilization of potatoes produced in Washington state.

(3) The director is authorized to implement and administer chapter 15.66 RCW through this marketing order.

(4) The Washington state potato commission exists primarily for the benefit of the people of the state of Washington and its economy.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-005, filed 1/4/06, effective 2/4/06. Marketing Order for Washington Potatoes, effective 7/23/56.]

WAC 16-516-006 Marketing order purposes. The purpose of this marketing order is to promote the general welfare of the state and to maintain and protect existing markets, increase production efficiency, and ensure a fair regulatory environment for potatoes produced in Washington. The commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(1) Unfair trade practices and foreign regulatory barriers.

(a) The commission, subject to the provisions of the act, may investigate alleged unfair trade practices and foreign regulatory barriers that hinder the sale, production, transport, or export of Washington-produced potatoes or potato products.

(b) If the commission finds as a result of an investigation that trade or foreign regulatory barriers are restricting the free flow of potatoes produced in this state, the commission may institute appropriate action before any agency or body deemed necessary to correct the situation.

(c) If the commission finds as a result of an investigation that transportation rates and service costs are restricting the free flow of potatoes produced in this state, the commission may institute proper action before the interstate commerce commission or such other agency or body deemed necessary to correct the situation.

(d) Information and records acquired in any such investigation are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute, except that such information may be released, to the extent necessary to effectuate the purposes of the act, in the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the production, irrigation, transport, use, consumption, export, or sale of potatoes grown in this state, as authorized in RCW 15.66.105.

(2) Research.

(a) The commission, subject to the provisions of the act, may carry on or cause to be carried on any necessary and proper production, irrigation, processing, transportation or handling research relating to potatoes and to expend moneys for those purposes.

(b) The commission, subject to the provisions of the act, may engage in research that may include, but shall not necessarily be limited to, the following:

(i) Production problems, such as soil, seed, fertilizers, irrigation, insecticides, fungicides, herbicides and the like;

(ii) Developing and testing new potato cultivars with improved disease resistance, processing, nutritional, or horticultural characteristics;

(iii) Improving techniques and methods of harvesting potatoes;

(iv) Developing and improving methods of processing potatoes and potato by-products for the purpose of increasing and expanding their use for food and industrial purposes;

(v) Improving packing and handling techniques which promote more efficient operation in the marketing and distribution of potatoes;

(vi) Determining any special nutritive, nutraceutical or pharmaceutical qualities of potatoes produced in Washington;

(vii) Improving production practices, resource requirements and availability, and similar issues or matters that may impact the continued production of potatoes in Washington.

(c) The commission may, in addition to the activities enumerated above, carry on any other proper and necessary research programs and activities consistent with and subject to the limitations of the act. Such research may include the collection of data and information relating to potatoes; the analysis of such data and information; and the dissemination of such data, information and analysis to potato producers and handlers and in response to public requests.

(d) The commission, subject to the provisions of the act, is authorized to coordinate potato producers' potato crop protection chemical registrations and integrated pest management (IPM) implementation.

(3) Standards and grades.

(a) The potato commission, subject to the provisions of the act and chapter 34.05 RCW, may adopt rules to define, establish and provide labeling requirements for improving standards and grades for potatoes, as provided in the act, not inconsistent with the horticultural laws of this state with respect to the same, and to expend moneys for such purposes.

(b) The commission shall give reasonable written notice to all producers, handlers and persons directly affected by the labeling requirements issued pursuant to this section in accordance with rule-making proceedings conducted under chapter 34.05 RCW.

(c) The commission may cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of potatoes.

(d) Nothing in this section shall be construed as authorizing the commission to set minimum grades, sizes or maturity of potatoes which a producer may sell, offer for sale or ship.

(4) Public education. The commission may respond to requests from the public for information regarding:

(a) The economic, environmental and nutritional value and benefits of potatoes and the Washington potato industry;

(b) The quality, care and methods used in the production of Washington potatoes;

(c) The handling, preparation and utilization of Washington potatoes and potato products;

(d) The effects of trade, transportation and regulatory barriers on the Washington potato industry.

(5) Grower and industry education. The commission, subject to the provisions of the act, may conduct programs to provide information and education to the Washington state potato industry including:

(a) Public opinion or awareness research information for producers of potatoes;

(b) Industry-related education and training;

(c) Information and services enabling producers to meet resource conservation objectives and keep current with issues impacting their business.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-006, filed 1/4/06, effective 2/4/06.]

WAC 16-516-010 Definitions. The following terms shall have the meanings given in RCW 15.66.010, supplemented by the following additional definitions:

"Act" means the Washington state agricultural commodity commissions statute, chapter 15.66 RCW;

"Affected area" or "area of production" are synonymous and mean all of the state of Washington;

"Affected commodity" means potatoes as defined in this section;

"Affected handler" means any handler of potatoes;

"Affected producer" means any producer who is subject to this marketing order;

"Agricultural development" means activities intended to increase the efficiency, productivity, or fair market access of Washington potatoes and potato products;

"Commercial quantities" shall mean and include five hundredweight or more per growing season;

"Disclosure" means inspection or copying;

"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;

"District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, packing, shipping, selling, marketing, or distributing of potatoes that are 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;

"Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;

"Marketing season" or "fiscal year" are synonymous and mean the twelve-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"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;

"Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

"Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

"Producer" means any person engaged in the production of potatoes grown in Washington for market in commercial quantities, and it includes a landowner, landlord, tenant or other person that participates in the growing or producing of the affected commodity and who has a proprietary interest in the potatoes so produced. "To produce" means to act as a producer;

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics;

"Research" means scientific research conducted by a university or other accredited researcher on pest and disease surveys; pest and disease control tools or techniques; planting, harvesting, handling and other production or processing tools or techniques; health or nutritional qualities or benefits of potatoes or potato products; and environmental issues

including, but not limited to, water use, water quality, water quantity, and erosion control related to production of potatoes or potato products. Results of agricultural research conducted under the provisions of this marketing order shall be public information;

"Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

"Unfair trade practice" means any practice that 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 Federal Trade Commission Act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or the violation of or failure to accurately label as to grades and standards in accordance with any lawfully established grades or standards or labels.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-010, filed 2/8/17, effective 3/11/17. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-010, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.020. WSR 00-11-180, § 16-516-010, filed 5/24/00, effective 6/24/00; Marketing Order, Article I, effective 7/23/56.]

WAC 16-516-020 Potato commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall appoint one member to the commission to represent the director as a voting member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into three representative districts as follows:

(a) "District No. 1" shall be and include the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be and include the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) "District No. 3" shall be and include the counties of Skagit and all other counties in the state of Washington.

(3) Elected membership. Producer members shall be elected from the districts as follows:

(a) Positions 1, 2, 3, and 4 shall be elected from District No. 1.

(b) Positions 5, 6, 7, and 8 shall be elected from District No. 2.

(c) Position 9 shall be elected from District No. 3.

(4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers as provided in subsections (1) and (5)(b) of this section.

(b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of eighteen years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be potato producers or handlers or others active in matters directly relating to Washington state potatoes and have a demonstrated record of service in the potato industry in Washington state.

(6) Term of office. The term of office of the elected and appointed producer members of the commission shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified. Commencing on July 1, 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, 2008; positions 3, 4 and 6 shall terminate June 30, 2006; positions 2, 8 and 9 shall terminate June 30, 2007; positions 10 and 11 shall terminate June 30, 2008; positions 12 and 14 shall terminate June 30, 2006; and position 13 shall terminate June 30, 2007.

(7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than March 18 and not later than April 2 of each year, the director shall give notice by mail to all producers in each district in which one or more open positions will occur in the commission and call for nominations. Nominating petitions shall be signed by five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall be not earlier than April 7 and not later than April 12 of each year.

(b) Not earlier than April 17 and not later than May 2 of each year, the director shall mail ballots to all affected producers in each district in which one or more open positions will occur. Ballots must be received by the director not later than June 1 of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within ninety days prior to the expiration of the appointed member's term.

(8) Vacancies. In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant. Any mem-

ber so appointed shall serve until the normal expiration of his or her term.

(9) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) 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 the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

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

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least forty-five days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

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

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use, distribution and trade barriers impacting potatoes and potato products;

(p) 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 by the office of the attorney general;

(q) 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 potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) 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;

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

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

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) 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 this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

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

(aa) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

(10) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the meetings shall be published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the

time, place and manner of calling such special meetings with reasonable notice as required in RCW 42.30.080.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least nine members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which shall not exceed the compensation rate set by RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

(11) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission 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 the act or the assets thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-020, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.020. WSR 00-11-180, § 16-516-020, filed 5/24/00, effective 6/24/00. Statutory Authority: RCW 15.66.090. WSR 80-05-073 (Order 1684), § 16-516-020, filed 4/28/80, effective 6/1/80; Marketing Order, Article II, effective 7/23/56.]

WAC 16-516-040 Assessments and assessment funds.

(1) Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided in the act, upon all potatoes grown in the state an annual assessment of four cents per hundredweight which shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when storage or delivery for storage shall be outside the boundaries of this state: Provided, That no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of potatoes from a producer's own production.

(b) The commission may provide by rule for an assessment discount not to exceed twenty-five percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore.

(b) Handlers receiving potatoes from the producer, including warehousemen and processors shall collect producer assessments from producers whose production they handle, and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at times required by rule file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(c) Producer assessments may be paid before the potatoes are shipped off the farm or at different or later times. If assessments are paid after the potatoes are shipped off the farm, any person subject to the assessment shall give adequate assurance or security for its payments as the commission shall require by rule.

(d) The commission may adopt rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

(e) No affected units of potatoes 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. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be

plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemptions.

(f) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by the producer in excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer, which may include bills of lading, bills of sale, or receipts.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-040, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.040. WSR 90-09-068, § 16-516-040, filed 4/18/90, effective 7/1/90. Statutory Authority: RCW 15.66.090. WSR 80-05-073 (Order 1684), § 16-516-040, filed 4/28/80, effective 6/1/80; Marketing Order, Article IV, effective 7/23/56.]

WAC 16-516-050 Information reports. All persons subject to the provisions of this marketing order shall make and render reports and furnish information to the director or the commission as required under the act or this order. Information and records obtained by the director or commission are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-050, filed 1/4/06, effective 2/4/06. Marketing Order, Article V, effective 7/23/56.]

WAC 16-516-060 Separability. If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances, or thing shall not be affected thereby.

[Marketing Order, Article VI, effective 7/23/56.]

RULES OF THE WASHINGTON STATE POTATO COMMISSION

WAC 16-516-100 Definitions. The following definitions apply to rules in this chapter adopted by the Washington potato commission unless otherwise provided:

"Hosting" may include providing meals, refreshments, lodging, transportation, gifts of nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

"Trade relations hosting" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations for Washington state potatoes and potato products.

[Statutory Authority: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2). WSR 06-03-002, § 16-516-100, filed 1/4/06, effective 2/4/06. Statutory Authority: Chapter 15.66 RCW and RCW 15.04.200. WSR 01-09-028, § 16-516-100, filed 4/10/01, effective 5/11/01.]

WAC 16-516-110 Commission rules—Reporting and paying assessments. Effective with the growing season of 1962, the following procedure is established for the reporting and paying assessments levied pursuant to RCW 15.66.150 and WAC 16-516-040:

(1) The commission shall have the discretion to determine which one or more of the methods hereinafter set forth shall be respectively followed by each respective affected producer and or handler in reporting and paying assessments.

(2) Assessments shall be paid in accordance with one or more of the following methods as prescribed by the commission, in its discretion, for each respective affected producer and or handler:

(a) By means of collection from producers by handlers at the time the potatoes are first handled, and payment by said handlers to the commission of the assessments so collected.

(i) The commission shall bill each handler at such intervals, not less frequently than monthly, as the commission may from time to time determine, for the assessments due upon potatoes handled in the preceding period for which billing has not previously been made, and upon which assessments have not been paid, computed on the basis of the quantity of potatoes so handled as recorded on potato shipping records pertaining to each handler prepared by the state of Washington department of agriculture in behalf of the commission, and filed with the commission, or, with respect to handlers who are packers or processors, on the basis of the quantity of potatoes so handled as recorded on potato shipping records pertaining to such packer or processor prepared by such packer or processor and filed with the commission.

(ii) In the event potatoes subject to assessment are handled by processors or other handlers under circumstances in which no potato shipping record is filed with the commission with respect to the potatoes so handled the handler shall, at the time of submitting the report required by subsection (a)(iii) immediately following, pay in full the assessment on the potatoes so reported.

(iii) Each handler shall, in any event, file a monthly report, under oath, on forms provided by the commission, showing the name and address of the handler making the report, the quantity of potatoes handled during the preceding calendar month, the name, address, handler's lot number, and quantity of potatoes handled, for each respective producer, and the representative district as defined in WAC 16-516-020, within which the potatoes were grown. The report shall be filed with the commission not later than the 20th day of the month following that in which the potatoes were handled.

(b) By means of payment in cash by the producer, or handler, as determined by the commission in each respective instance, prior to the time the potatoes are shipped in either interstate or intrastate commerce.

[Statutory Authority: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2). WSR 06-03-002, § 16-516-110, filed 1/4/06, effective 2/4/06. Rule XII, filed 6/25/62; Rule XII, § 1, filed 4/7/61; Rule XII, filed 3/3/60.]

WAC 16-516-125 Commission rules—Penalty assessments. Pursuant to authority granted by RCW

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15.66.170 and by WAC 16-516-020(8), in the event that any assessment is not paid within 90 days after the date of the billing therefore by the commission, or within 90 days after the due date of the report required by WAC 16-516-110 (b)(iii) and (iv) a sum equal to 10% of such unpaid assessment of unpaid portion thereof shall be added thereto and be due and owing to the commission.

[Commission Rule XI, § 16-516-125, filed 6/26/72; Rule XI, filed 6/25/62; Rule XI, filed 3/3/60.]

WAC 16-516-130 Commission rules—Assessments on field run or ungraded potatoes. Assessments shall be levied upon potatoes sold on a field run or ungraded basis as follows:

(1) If payment to the grower for said potatoes is based upon the gross weight of potatoes sold and not upon the yield of any particular grade of potatoes as determined by any type of sorting or inspection, then upon 90% of the gross hundred weight of potatoes so sold.

(2) If payment to the grower for said potatoes is based upon the net weight of potatoes intended for human consumption derived from the potatoes so sold as determined by any type of sorting or inspection, then upon the total net weight of such potatoes intended for human consumption.

[Order XII, § 16-516-130, filed 7/2/73; Rule XIII, filed 3/3/60.]

WAC 16-516-150 Notice to director. The commission shall notify the director in writing of any handler who has not established a record of prompt payment, and such handler shall be subject to the provisions of WAC 16-516-040 (2)(e) which states as follows: No affected units of potatoes 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. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for such exemptions.

[Statutory Authority: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2). WSR 06-03-002, § 16-516-150, filed 1/4/06, effective 2/4/06. Order XII, § 16-516-150, filed 7/2/73.]

WAC 16-516-160 Exemption from prepayment. Any handler who has established a record of prompt payment during the entire previous potato shipping season and continues to maintain such record of prompt payment shall not be subject to the prepayment requirements set forth in WAC 16-516-140, such handler shall however at all times be subject to WAC 16-516-125.

[Order XII, § 16-516-160, filed 7/2/73.]

WAC 16-516-170 Rules for implementation of hosting by the Washington state potato commission. The laws of section 1, chapter 26, Laws of 1985 (RCW 15.04.200) provide that agricultural commodity commission shall adopt rules governing hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing agricultural development or trade rela-

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tions hosting expenditures for the Washington state potato commission shall be as follows:

(1) Budget approval: Commission expenditures for agricultural development or trade relations hosting shall be pursuant to specific budget items as approved by the commission at annual public hearings on the commission budget.

(2) Officials and agents authorized to make expenditures: Individual commissioners and commission staff shall make agricultural development or trade relations hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be as identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position of each person hosted, provided that in case of a group of twenty-five or more persons, then only the name of the group hosting shall be required;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) To whom payment was or will be made;

(e) Signature of person seeking payment or reimbursement;

(4) The chairman of the commission and/or the executive director or assistant executive director are authorized to approve direct payment or reimbursements submitted in accordance with these rules.

(5) The following persons may be hosted when it is reasonably believed such hosting will cultivate trade relations for the Washington state potato industry, provided that such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business and accompanying interpreter or interpreters;

(b) Foreign government officials and accompanying interpreter or interpreters;

(c) Federal, state, and local officials, provided lodging, meals, and transportation will not be provided when such officials may obtain reimbursement for these expenses from their government employer;

(d) The general public, at meetings and gatherings open to the general public;

(e) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted will cultivate trade relations for the Washington state potato industry.

[Statutory Authority: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2), WSR 06-03-002, § 16-516-170, filed 1/4/06, effective 2/4/06. Statutory Authority: Chapter 15.66 RCW and RCW 15.04.200. WSR 01-09-028, § 16-516-170, filed 4/10/01, effective 5/11/01.]

WAC 16-516-200 Public records officer. The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding dis-

closure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-200, filed 2/8/17, effective 3/11/17.]

WAC 16-516-205 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at 108 Interlake Road, Moses Lake, WA 98837, or by email at publicrecords@potatoes.com. The written request should include:

(a) The name of the person requesting the record and his or her contact information;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify the records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the department's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-205, filed 2/8/17, effective 3/11/17.]

WAC 16-516-210 Response to public records request. (1) The public records officer shall respond to public records requests within five business days by:

(a) Providing the record;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or

(d) Denying the public record request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-210, filed 2/8/17, effective 3/11/17.]

WAC 16-516-215 Fees—Inspection and copying. (1) No fee shall be charged for the inspection of public records.

(2) The commission shall charge thirty cents per black and white copy plus postage to reimburse itself for the costs of providing copies of public records.

(3) Requests for records in special formatting, including color copies, will be charged at the amount necessary to reimburse the commission for its actual production costs. If the public records officer deems it more efficient to have copying or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying or duplicating service. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington potato commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-215, filed 2/8/17, effective 3/11/17.]

WAC 16-516-220 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.66 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.66 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

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[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-220, filed 2/8/17, effective 3/11/17.]

WAC 16-516-225 Review of denials of public records requests. (1) Any person who objects to the denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within ten business days following receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-225, filed 2/8/17, effective 3/11/17.]

WAC 16-516-230 Records index. The commission shall establish a records index, which shall be made available for public review. The records index may be accessed on the commission's web site at www.potatoes.com.

[Statutory Authority: RCW 15.66.055, 42.56.040, and chapter 34.05 RCW. WSR 17-05-033, § 16-516-230, filed 2/8/17, effective 3/11/17.]