



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/23/95)

Agency: Washington State Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: July 24, 1996

(2) Purpose: To establish a procedure for the Hop Commission Board to grant credit against assessments or refund payment to growers for individual marketing efforts. A credit or refund will require proof of expenditures associated with eligible promotion activities.

(3) Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 16-532-010
 Suspended:

(4) Statutory authority for adoption: RCW 15.65.050 and RCW 15.65.430
Other Authority:

PERMANENT RULE ONLY

Adopted under notice filed as WSR 96-05-086 on February 21, 1996 (date).
 Describe any changes other than editing from proposed to adopted version: (1) The words "Certified Auditor" in WAC 16-532-0410 was changed to "Certified Public Accountant" and references to auditor were changed to accountant, (2) The term "Hosting International Customers" in WAC 16-532-0406(2) was further defined for clarification.

EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes
 - No
- If yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify)*:

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required.)

Emergency Rules

- Immediately
- Later (specify):

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUL 24 1996

TIME: 11:59 
 WSR 96-05-139

Name (Type or Print)

Jim Jesernig

Signature

Title
Director

Date
July 24, 1996

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	-----	Amended	-----	Repealed	-----
Federal rules or standards:	New	-----	Amended	-----	Repealed	-----
Recently enacted* state statutes:	New	-----	Amended	-----	Repealed	-----

*(current calendar year)

The number of sections adopted at the request of nongovernmental entity:

New	<u>7</u>	Amended	<u>1</u>	Repealed	-----
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The number of sections adopted in the agency's own initiative:

New	-----	Amended	-----	Repealed	-----
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	-----	Amended	-----	Repealed	-----
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The number of sections adopted using:

Negotiated rule making:	New	-----	Amended	-----	Repealed	-----
Pilot rule making:	New	-----	Amended	-----	Repealed	-----
Other alternative rule making:	New	<u>7</u>	Amended	<u>1</u>	Repealed	-----

AMENDATORY SECTION (Amending WSR 92-09-068, filed 4/14/92, effective 5/15/92)

WAC 16-532-010 Definitions. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

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

(3) "Act" means the Washington State Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

(4) "Person" means any person, firm, association or corporation.

(5) "Affected producer" or "producer" means any person who produces hops in commercial quantities in the state of Washington.

(6) "Commercial quantity" means any hops produced for market by a producer in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing hops not produced by him.

(8) "Hop commodity board" hereinafter referred to as "board" means the commodity board formed under the provisions of WAC 16-532-020.

(9) "Hops" means and includes all kinds and varieties of "humulus lupulus" grown, picked and dried in the state of Washington, whether loose, packaged or baled and all oils, extracts and/or lupulin derived therefrom.

(10) "Marketing season" (~~(or "fiscal year")~~) means the twelve month period beginning with (~~(July)~~) January 1 of any year and ending (~~(with the last day of June)~~) December 31, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to hops. A producer-handler shall be deemed to be a producer with respect to the hops which he produces and a handler with respect to the hops which he handles, including those produced by himself.

(12) "Affected area" means the state of Washington.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(14) "Affected unit" means two hundred pounds net of hops, or the amount of lupulin, extract or oil produced from two hundred pounds net of hops.

(15) "Promotional hosting" as used in these rules 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 Washington grown hops.

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

(17) "Affiliate" as used in these rules, means a corporation, limited liability company, partnership, or other entity in common ownership with a producer or producer-handler.

NEW SECTION

WAC 16-532-0402 Credit for market promotion activities. (1) As provided in this chapter, a producer, as defined in WAC 16-532-010(5), may receive credit against his annual assessment for eligible promotional activities. Credit will be granted either in the form of a refund payment from the board, or, if eligible promotional activities are conducted, documented and approved by the board prior to the assessment due date, as an offset to the annual assessment. Credit shall be granted in an amount up to sixty-six and two-thirds percent of a producer's documented expenditures for eligible promotional activities. However, in no case shall credit be granted in excess of that portion of the producer's annual assessment from his own production designated for marketing or promotion, including paid advertising.

(2) The portion of the annual assessment for which credit may be received is due and payable as otherwise provided in this chapter unless a producer conducts and documents promotional activities prior to the date assessments are due as provided in subsection (1) of this section. A producer's annual assessment will be reduced according to the amount of proven promotional activities approved by the board as provided in this chapter.

(3) The board shall grant credit for eligible activities only to the producer, or an affiliate thereof as defined in WAC 16-532-020(17), who performs the activities and who files a claim for credit as provided in this section.

(4) The board shall grant credit only for eligible promotional activities that are conducted and completed during the marketing season for which credit is requested. The marketing season is defined as January 1 through December 31 of the year in which the crop is harvested.

NEW SECTION

WAC 16-532-0404 General requirements for credit. The following requirements apply to credit granted for all promotional activities:

(1) A primary purpose of each activity shall be to promote the sale, consumption, or use of USA produced hops.

(2) Credit shall not be granted for advertising in publications that target the farming or producer trade.

NEW SECTION

WAC 16-532-0406 Eligible activities. Credit shall be granted for the following eligible activities:

(1) Paid advertising directed to end-users, trade or industrial users. Credit shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, and broadcast media, including agency commission.

(2) Travel expenses incurred for hosting international customers, as defined in WAC 16-532-010(16), on visits to the U.S. hop industry. Credit shall not be granted for any other travel expenses.

(3) Other market promotion activities. Credit shall be granted for other market promotion activities as follows:

- (a) Development and printing costs for promotional material;
- (b) Sales and marketing presentation kits;
- (c) Trade fairs and exhibits;
- (d) Trade seminars; and

(e) Other activities deemed acceptable to the board that meet the purpose stated in WAC 16-532-0404(1).

NEW SECTION

WAC 16-532-0408 No duplication of credit. Credit shall be granted for eligible promotional activities only if the producer certifies in writing that he/she was not and will not be reimbursed for the same activity by the Foreign Agricultural Service, United States Department of Agriculture (FAS) or by any other federal or state program.

NEW SECTION

WAC 16-532-0410 Filing of claims. To obtain credit against the promotional assessment paid on his/her own production for promotional expenditures, a producer must file a claim with the board, which must include the documentation set forth in either subsection (1) or (2) of this section.

(1) To obtain credit under this subsection, the claim filed must include:

(a) A description of the activity and when and where it was conducted, including a statement of how this activity promoted USA hops;

(b) Copies of all invoices from suppliers or agencies;

(c) Copies of all canceled checks issued by the producer in payment of these invoices; and

(d) An actual sample, picture or other evidence of the activity.

The board shall grant credit for expenditures claimed under this subsection in accordance with the WAC 16-532-0404 and 16-532-0406.

(2) (a) To obtain credit under this subsection, the claim filed must include a certificate prepared by a certified public accountant stating that he/she has examined the producer's records for the current marketing season and has determined that expenditures eligible for credit under these rules equal or exceed the credit requested by the producer. In accordance with WAC 16-532-0404 and 16-532-0406, the board shall grant credit for expenditures certified by the producer's accountant unless an accountant appointed by the board under (b) of this subsection disputes the claim.

(b) If a producer submits an accountant's certificate under (a) of this subsection, the board may appoint its own certified public accountant to examine the producer's records to verify the claimed expenditures. Any information provided by the producer to the board's accountant shall not be disclosed to the board or any other person without the producer's written consent. In the event that the board's accountant disputes the eligibility of the producer's claimed expenditures, the producer may submit his/her records directly to the board for review or may withdraw his/her claim for credit to the extent of the dispute. The board shall promptly review any further materials provided by the producer and determine whether credit or a refund will be granted.

NEW SECTION

WAC 16-532-0412 Time for filing and determinations. Preliminary claims must be submitted by the last day of the marketing season, subject to final documentation within sixty days. No claims may be submitted retroactively after said marketing season has ended. A producer may receive credit against his/her annual assessment if he/she submits the required documentation for an eligible activity and obtains board approval prior to the date the assessment is due. In all other instances, a producer must remit the full annual assessment to the board when it is due, and a refund payment will be issued following receipt of the required documentation and approval by the board. The board shall promptly notify a producer if a dispute exists as to eligibility of claimed expenditures. Unless a dispute exists, the board shall issue credits or refunds within sixty days after receiving final documentation of eligible expenditures from a producer.

NEW SECTION

WAC 16-532-0414 Appeals. (1) In the event that board staff determines that a particular promotional activity is not eligible for credit because it does not meet the criteria specified herein,

or for any other reason, the board shall review the staff's decision if the affected producer so requests.

(2) The board's denial in whole or in part of a producer's claim constitutes an agency action under chapter 34.05 RCW, the Administrative Procedure Act.