

Chapter 15.65 RCW
WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

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Agricultural processing and marketing associations: Chapter 24.34 RCW.

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

RCW 15.65.010 Short title. This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

RCW 15.65.020 Definitions. The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

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

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case, the director may in his or her discretion: (a) Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

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

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

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

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

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

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

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

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

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

(20) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

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

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

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

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of

affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement. [2011 c 103 § 23. Prior: 2009 c 549 § 1007; 2002 c 313 § 1; 1993 c 80 § 2; 1986 c 203 § 15; prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

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

Effective dates—2002 c 313: "This act takes effect July 1, 2002, except for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 2002]." [2002 c 313 § 139.]

RCW 15.65.028 Regulating agricultural commodities—Existing comprehensive scheme. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of agricultural products within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its agricultural commodities be properly promoted by (a) enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the commodities they produce and (b) working towards stabilizing the agricultural industry by increasing consumption of agricultural commodities within the state, the nation, and internationally;

(2) That farmers and ranchers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is now in the overriding public interest that support for the agricultural industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that each agricultural commodity be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agricultural commodities;

(b) Increase the sale and use of Washington state's agricultural commodities in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's agricultural commodities;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's agricultural commodities and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of agricultural commodities produced in Washington state;

(4) That the director seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber, and seek to maintain the economic well-being of the agricultural industry in Washington state consistent with its regulatory activities and responsibilities;

(5) That the director is hereby authorized to implement, administer, and enforce this chapter through the adoption of marketing orders that establish commodity boards; and

(6) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. [2002 c 313 § 2.]

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

RCW 15.65.033 Regulating agricultural commodities—Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

Chapter 15.08 RCW Horticultural pests and diseases;

Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;

Chapter 15.14 RCW Planting stock;

Chapter 15.15 RCW Certified seed potatoes;

Chapter 15.17 RCW Standards of grades and packs;

Chapter 15.19 RCW Certification and inspection of ginseng;

Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;

Chapter 15.53 RCW Commercial feed;

Chapter 15.54 RCW Fertilizers, minerals, and limes;

Chapter 15.58 RCW Washington pesticide control act;

Chapter 15.60 RCW Apiaries;

Chapter 15.64 RCW Farm marketing;

Chapter 15.83 RCW Agricultural marketing and fair practices;

Chapter 15.85 RCW Aquaculture marketing;

Chapter 15.86 RCW Organic products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

The food safety and security act under chapter 15.130 RCW;

Chapter 17.24 RCW Insect pests and plant diseases;

Chapter 19.94 RCW Weights and measures;

Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;

Chapter 22.09 RCW Agricultural commodities;

Chapter 69.07 RCW Washington food processing act;

Chapter 69.25 RCW Washington wholesome eggs and egg products act;

Chapter 69.28 RCW Honey;

7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the dry pea and lentil industry is regulated by or must comply with the additional laws and rules adopted under 7 U.S.C., chapter 38,

agricultural marketing act. [2018 c 236 § 706; 2011 c 103 § 24; 2002 c 313 § 3.]

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

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

RCW 15.65.040 Establishing a commodity board—Marketing order—

Purposes. The director may adopt a marketing order that establishes a commodity board under this chapter for any of the following purposes:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state:

(a) To develop, and engage in research for developing, better and more efficient production, irrigation, processing, transportation, handling, marketing, and utilization of agricultural products;

(b) To establish orderly marketing of agricultural commodities;

(c) To provide for uniform grading and proper preparation of agricultural commodities for market;

(d) To provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(e) To eliminate or reduce economic waste in the marketing and/or use of agricultural commodities;

(f) To restore and maintain adequate purchasing power for the agricultural producers of this state;

(g) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(h) To provide marketing information and services for producers of an agricultural commodity;

(i) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(j) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(k) To provide for commodity-related education and training; and

(l) To accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [2002 c 313 § 4; 2001 c 315 § 4; 1961 c 256 § 4.]

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

RCW 15.65.043 Board may establish foundation. A commodity board may establish a foundation using commission funds as grant money when the foundation benefits the commodity for which the board was

established. Commission funds may be used for the purposes authorized in the marketing order. [2001 c 315 § 7.]

RCW 15.65.047 Director's duties and responsibilities—Amendments to marketing orders or agreements without a referendum—Rules. (1)

The director may adopt rules necessary to carry out the director's duties and responsibilities under this chapter including:

(a) The issuance, amendment, or termination of marketing orders or agreements;

(b) Procedural, technical, or administrative rules which may address and include, but are not limited to:

(i) The submission of a petition to issue, amend, or terminate a marketing order or agreement under this chapter;

(ii) Nominations conducted under this chapter;

(iii) Elections of board members or referenda conducted under this chapter;

(iv) Actions of the director upon a petition to issue, amend, or terminate a marketing order or agreement;

(c) Rules that provide for a method to fund:

(i) The costs of staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if the position is not directly funded by the legislature; and

(ii) The actual costs related to the specific activity undertaken on behalf of an individual commodity board or commission.

(2) The director may adopt amendments to marketing agreements or orders without conducting a referendum if the amendments are adopted under the following criteria:

(a) The proposed amendments relate only to internal administration of a marketing order or agreement and are not subject to violation by a person;

(b) The proposed amendments adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, or rules of other Washington state agencies, if the material adopted or incorporated regulates the same activities as are authorized under the marketing order or agreement;

(c) The proposed amendments only correct typographical errors, make address or name changes, or clarify language of a rule without changing the marketing order or agreement; and

(d) The content of the proposed amendments is explicitly and specifically dictated by statute.

A marketing order or agreement shall not be amended without a referendum to provide that a majority of the commodity board members be appointed by the director. [2002 c 313 § 7.]

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

RCW 15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, notice, grounds for amendments. The director shall administer and enforce this chapter and it shall be his or her duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, and/or suspension of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever

he or she has reason to believe that the issuance or amendment of a marketing agreement or order will tend to effectuate any declared policy or purpose of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or when a petition for amendment is submitted by majority vote of a commodity board, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance or amendment, and the director shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend the same whenever upon compliance with and on the basis of facts adduced in accordance with the procedural requirements of this chapter he or she shall find that such agreement, order, or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [2002 c 313 § 5; 1961 c 256 § 5.]

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

RCW 15.65.060 Form, filing of marketing agreement, order, amendment, and other proceedings. The director shall cause any marketing agreement, order proposed for issuance, or amendment to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [2002 c 313 § 6; 1961 c 256 § 6.]

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

RCW 15.65.070 Notice of hearing on proposal—Publication—Contents. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department.

[2002 c 313 § 8; 1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

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

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

RCW 15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses. The director shall have the power to issue subpoenas for the production of any books, records, or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he or she may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him or her: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his or her examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of the witness or the production of the papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him or her in accordance with RCW 2.40.020 and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause, or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he or she has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that the witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [2002 c 313 § 9; 1961 c 256 § 9.]

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

RCW 15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies. The director shall make and publish findings based upon the facts, testimony, and evidence received at the public hearings together with any other relevant facts available to him or her from official publications of the United States or any state thereof or any institution of recognized standing and he or she is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his or her findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [2010 c 8 § 6069; 1961 c 256 § 10.]

RCW 15.65.110 Filing objections to recommended decision—Final decision—Waiver. After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his or her final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his or her discretion omit compliance with the provisions of this section. [2010 c 8 § 6070; 1961 c 256 § 11.]

RCW 15.65.120 Contents and scope of recommended and final decision—Delivery of copies. The recommended decision shall contain the text in full of any recommended agreement, order, or amendment, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, or amendment containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, or amendment covered thereby, and the director shall issue and deliver or mail copies of the final decision to all producers and handlers within the affected area who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director. [2002 c 313 § 10; 1985 c 261 § 3; 1961 c 256 § 12.]

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

RCW 15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective. With respect to marketing agreements, the director shall after publication of his or her final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: PROVIDED, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and PROVIDED, FURTHER, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he or she shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration, and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [2010 c 8 § 6071; 1961 c 256 § 13.]

RCW 15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

RCW 15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly assessing handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least

fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1985 c 261 § 5; 1961 c 256 § 15.]

RCW 15.65.160 Ascertainment of required assent percentages.

After publication of his or her final decision, the director shall ascertain (either by written agreement in accordance with subsection (1) of this section or by referendum in accordance with subsection (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment, or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of subsection (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by

number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: PROVIDED, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [2010 c 8 § 6072; 1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 1961 c 256 § 16.]

RCW 15.65.170 Issuance or amendment of marketing order—Assent—Rules. If the director determines that the requisite assent has been given to issue or amend a marketing order, the issuance or amendment shall be adopted by rule by the director within thirty days of the validation of the vote. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [2002 c 313 § 11; 1987 c 393 § 6; 1961 c 256 § 17.]

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

RCW 15.65.175 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums. The director shall not be required to hold a public hearing or a referendum more than once in any twelve-month period on petitions to issue, amend, or terminate a commodity marketing order if any of the following circumstances are present:

(1) The petition proposes to establish a marketing order or agreement for the same commodity;

(2) The petition proposes the same or a similar amendment to a marketing order or agreement; or

(3) The petition proposes to terminate the same marketing order or agreement. [2002 c 313 § 12.]

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

RCW 15.65.180 Suspension of marketing agreement or order upon advice of commodity board—Certain prerequisites waived. The director may, upon the advice of the commodity board serving under any marketing agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170, suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if the director finds that such suspension will tend to effectuate the declared policy of this chapter. Any suspension of all or substantially all of a marketing agreement or order by the director shall not become effective until the end of the then current marketing season. [2002 c 313 § 13; 1961 c 256 § 18.]

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

RCW 15.65.183 Termination of marketing order or agreement—Petition—Procedure. The director may terminate a marketing order or agreement in accordance with this chapter.

(1) To terminate a marketing order or agreement:

(a) The director must receive a petition by affected producers under this chapter signed by at least ten percent of the affected producers; or

(b) A majority of a commodity board may file a petition with the director.

(2) The petitioners must include in the petition at the time of filing:

(a) A statement of why the marketing order or agreement and the commodity board created under it no longer meets [meet] the purposes of this chapter;

(b) The name of a person designated to represent the petitioners; and

(c) The effective date of a marketing order or agreement termination, which may not be less than one year from the date the petition was filed with the director.

(3) Within sixty days of receipt of a petition meeting the requirements of this section, the director shall commence rule-making proceedings to repeal the marketing order or agreement and, subsequently, a referendum on the issue.

(4) The director shall include a copy of a petition to terminate a marketing order or agreement with the notice to affected producers when rule-making proceedings are commenced.

(5) If the petitioners fail to meet the requirements of this chapter, the director shall deny the petition and a referendum vote will not be conducted. The person designated to represent the petitioners shall be notified if a petition is denied. [2002 c 313 § 14.]

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

RCW 15.65.185 Referendum prior to termination of a marketing order or agreement—Procedure—Exceptions. Except as provided in RCW 15.65.190 or subsection (4) of this section, the director, prior to termination of the marketing order or agreement, shall conduct a referendum as provided in this chapter, the rules adopted by the director, and the applicable marketing order or agreement.

(1) If a referendum on the termination of a marketing order or agreement is assented to, the referendum proposal shall be adopted by the director within thirty days of the count of the ballots and shall go into effect under chapter 34.05 RCW. If those affected producers eligible to vote in the referendum do not assent, no further action shall be taken by the director on the proposal.

(2) The list of affected producers used for conducting a referendum on the termination of a marketing order or agreement shall be kept in the rule-making file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify an affected producer does not invalidate a referendum.

(3) The list of affected producers that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided for in RCW 15.65.190.

(4) If the director determines that one hundred percent of the affected producers have filed a written application with the director requesting that a marketing order or agreement be terminated, the director may terminate the marketing order or agreement without conducting a referendum. The termination of the marketing order or agreement shall go into effect under chapter 34.05 RCW, but no sooner than at the end of the marketing season then current. [2002 c 313 § 15.]

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

RCW 15.65.190 Termination of agreement or order on assent of producers—Procedure. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him or her for such termination. No such termination shall become effective until the expiration of the marketing season then current. [2010 c 8 § 6073; 1985 c 261 § 7; 1961 c 256 § 19.]

RCW 15.65.193 When marketing order or agreement is terminated—Duties of affected commodity board. If after complying with the procedures outlined in this chapter and a referendum proposal to terminate a marketing order or agreement is assented to, the affected commodity board shall:

(1) Document the details of all measures undertaken to terminate the marketing order and identify and document all closing costs;

(2) Contact the office of the state auditor and arrange for a final audit of the commodity board. Payment for the audit shall be from commodity board funds and identified in the budget for closing costs;

(3) Provide for the reimbursement to affected producers of moneys collected by assessment. Reimbursement shall be made to those considered affected producers over the previous three-year time frame on a pro rata basis and at a percent commensurate with their volume of production over the previous three-year period unless a different time period is specified in the marketing order or agreement. If the commodity board finds that the amounts of moneys are so small as to make impractical the computation and remitting of the pro rata refund, the moneys shall be paid into the state treasury as unclaimed trust moneys; and

(4) Transfer all remaining files to the department for storage and archiving, as appropriate. [2002 c 313 § 16.]

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

RCW 15.65.200 Lists of affected parties—Information used to establish lists—Purpose and use. (1) Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or a designee shall establish a list of affected parties along with volume of production data covering a minimum three-year period, or in such lesser time as the affected party has produced the commodity in question, from information provided by the petitioners, by obtaining information on affected parties from applicable producer, handler, or processor organizations or associations or other sources identified as maintaining the information.

(2) The director shall use the list of affected parties for the purpose of notice, referendum proceedings, and electing and selecting members of commodity boards in accordance with this chapter.

(3) An affected party may at any time file his or her name and mailing address with the director. A list of affected parties may be brought up-to-date by the director up to the day preceding a mailing of a notice or ballot under this chapter and that list is deemed the list of affected parties entitled to vote.

(4) The list of affected parties used for the issuance of a marketing order or agreement shall be kept in a file maintained by the director. The list shall be certified as a true representation of the mailing list. Inadvertent failure to notify an affected party does not invalidate a proceeding conducted under this chapter.

(5) The list of affected parties that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided in this chapter.

(6) The director shall provide the commodity board the list of affected and interested parties once a marketing order or agreement is adopted and a commodity board is established as provided in this chapter. [2002 c 313 § 17; 1985 c 261 § 8; 1961 c 256 § 20.]

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

RCW 15.65.203 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity board records, and department of agriculture records relating to commodity boards and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity board for the purpose of administering this chapter or a marketing order or agreement may be shared between the department and the applicable commodity board. They may also be used, if required, in any suit or administrative hearing involving this chapter or a marketing order or agreement.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order or agreement as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity board of the name of any person violating any marketing order or agreement and a

statement of the manner of the violation by that person. [2005 c 274 § 216; 2002 c 313 § 18.]

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

RCW 15.65.205 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes. (1) Upon completion of any vote, referendum, or nomination and elections, the department shall tally the results of the vote and provide the results to affected parties.

(2) If an affected party disputes the results of a vote, that affected party, within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount.

(3) Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. [2002 c 313 § 19.]

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

RCW 15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel. The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he or she shall include in each order and he or she may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he or she determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal, and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebtedness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [2010 c 8 § 6074; 1977 ex.s. c 26 § 4; 1961 c 256 § 21.]

RCW 15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes. (1) Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to (a) qualification, (b) nomination, (c) election or appointment by the director, (d) term of office, and (e) powers, duties, and all other matters pertaining to such board.

(2) The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the marketing agreement or order, but in any marketing order or agreement the number of handlers on the board shall not exceed the number of producers thereon. The marketing order or agreement may provide that a majority

of the board be appointed by the director, but in any event, no less than one-third of the board members shall be elected by the affected producers.

(3) In the event that the marketing order or agreement provides that a majority of the commodity board be appointed by the director, the marketing order or agreement shall incorporate the provisions of RCW 15.65.243 for board member selection.

(4) The director shall appoint to every board one member who represents the director. The director shall be a voting member of each commodity board. [2003 c 396 § 9; 2002 c 313 § 20; 1961 c 256 § 22.]

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

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

RCW 15.65.230 Qualifications of members of commodity boards. A producer member of each commodity board must be a practical producer of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each producer board member must be and have been actually engaged in producing such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom and not be engaged in business, directly or indirectly, as a handler or other dealer. A handler member of each board must be a practical handler of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each handler board member must be and have been, either individually or as an officer or employee of a corporation, firm, partnership, association, or cooperative, actually engaged in handling such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom. The qualification of a member of the board as set forth in this section must continue during the term of office. [2002 c 313 § 21; 2001 c 315 § 5; 1961 c 256 § 23.]

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

RCW 15.65.235 Producer-handlers as producers for membership purposes—Exception. Whenever any commodity board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of membership on a commodity board: PROVIDED, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [2002 c 313 § 22; 1971 c 25 § 1.]

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

RCW 15.65.240 Terms of members of commodity boards—Elections or appointment. The term of office of board members shall be three years, and one-third as nearly as may be shall be elected or appointed every year: PROVIDED, That at the inception of any agreement or order the entire board shall be elected or appointed one-third for a term of

one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected or appointed each year.

Any marketing agreement or order may provide for election or appointment of board members by districts, in which case district lines and the number of board members to be elected or appointed from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [2002 c 313 § 23; 1961 c 256 § 24.]

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

RCW 15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the board positions as set forth under RCW 15.65.220(3).

(2) Candidates for director-appointed board positions on a commodity board shall be nominated under RCW 15.65.250.

(3) The director shall cause an advisory vote to be held for the director-appointed positions. Not less than ten days in advance of the vote, advisory ballots shall be mailed to all producers or handlers entitled to vote, if their names appear upon the list of affected parties or affected producers or handlers, whichever is applicable. Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of the vote. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why the candidate wishes to be appointed to the board. The director may select either person for the position. [2011 c 103 § 18; 2002 c 313 § 24.]

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

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

RCW 15.65.250 Nominations for election to commodity board—When only one nominee. For the purpose of nominating candidates for board memberships, the director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts the director shall call separate meetings for

each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all on the list of affected parties or affected producers and/or handlers, whichever is applicable. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order or agreement and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

Not more than one board member may be part of the same "person" as defined by this chapter. When only one nominee is nominated for any position on the board, the director shall determine whether the nominee meets the qualifications for the position and, if so, the director shall declare the nominee elected or appoint the nominee to the position. [2002 c 313 § 26; 1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 1961 c 256 § 25.]

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

RCW 15.65.260 Election of members of commodity board—Procedure.

(1) The elected members of every commodity board shall be elected by secret mail ballot under the supervision of the director. Elected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer within the affected area shall be entitled to one vote. Elected handler members of the board shall be elected by a majority of the votes cast by the affected handlers within the affected area, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler within the affected area shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(2) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list of affected parties or affected producers or handlers, whichever is applicable. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [2002 c 313 § 27; 1985 c 261 § 10; 1961 c 256 § 26.]

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

RCW 15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members and employees.

(1) In the event of a vacancy in an elected position on the board, the remaining board members shall select a qualified person to fill the vacant position for the remainder of the current term or as provided in the marketing order or agreement.

(2) In the event of a vacancy on the board in a position appointed by the director, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under this chapter and the marketing order or agreement.

(3) A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(4) Each member of the board shall be compensated in accordance with RCW 43.03.230. Members and employees of the board may be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter, as defined under the commodity board's marketing order or agreement. Otherwise, if not defined or referenced in the marketing order or agreement, reimbursement for travel expenses shall be at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [2002 c 313 § 28; 2001 2nd sp.s. c 6 § 1; 1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

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

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

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

RCW 15.65.280 Powers and duties of commodity board—Reservation of power to director. The powers and duties of the board shall be:

(1) To elect a chair and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;

(4) To advise the director upon all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;

(8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with *chapter 39.29 RCW;

(9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;

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

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

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

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

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter.

[2011 c 103 § 14; 2011 c 60 § 1; 2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

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 § 1 and by 2011 c 103 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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

RCW 15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized. Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

RCW 15.65.285 Restrictive provisions of chapter 43.19 RCW not applicable to promotional printing and literature of commodity boards. The restrictive provisions of chapter 43.19 RCW shall not apply to promotional printing and literature for any commodity board. [2015 c 225 § 10; 1972 ex.s. c 112 § 2.]

RCW 15.65.287 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 10.]

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

RCW 15.65.289 Commission speaks for state—Director's oversight.

Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 11.]

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

RCW 15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc.

Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee, or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees, and/or agents in his or her or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or her or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [2010 c 8 § 6076; 1961 c 256 § 29.]

RCW 15.65.295 Lists of all affected producers and handlers—

Affected parties responsible for accuracy—Use of lists. (1) Each commodity board shall prepare a list of all affected producers from any information available from the department, producers, producer associations or organizations, or handlers of the affected commodity. This list shall contain the names and addresses of all affected persons who produce the affected commodity and the amount, by unit, of the affected commodity produced during at least the past three years.

(2) Each commodity board shall prepare a list of all persons who handle the affected commodity and the amount of the commodity handled by each person during at least the past three years.

(3) It is the responsibility of all affected parties to ensure that their correct address is filed with the commodity board. It is also the responsibility of affected parties to submit production data and handling data to the commodity board as prescribed by the board's marketing order or agreement.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commodity board. The lists shall be corrected and brought up-to-date in accordance with evidence and information provided to the commodity board.

(5) At the director's request, the commodity board shall provide the director a list of affected producers or handlers that is certified by the commodity board to be complete according to the commodity board's records. The list shall contain all information required by the director to conduct a referendum or board member election or selection under this chapter and the marketing order or agreement.

(6) For all purposes of giving notice, holding referenda, and electing or selecting members of a commodity board, the applicable list corrected up to the day preceding the date the list is certified by the commodity board and mailed to the director is deemed to be the list of all affected producers or affected handlers, as applicable, entitled to notice or to vote. Inadvertent failure to notify an affected producer or handler does not invalidate a proceeding conducted under this chapter. [2002 c 313 § 30.]

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

RCW 15.65.300 Agreement or order to contain detailed statement of powers and purposes. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

RCW 15.65.305 Promotional hosting expenditures—Rules.

Agricultural commodity boards shall adopt rules governing promotional hosting expenditures by commodity board employees, agents, or board members under RCW 15.04.200. [2002 c 313 § 31.]

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

RCW 15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets

for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

RCW 15.65.320 Agreement and order provisions for research. Any marketing agreement or order may provide for research in the production, processing, and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his or her designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his or her designee. [2010 c 8 § 6077; 1961 c 256 § 32.]

RCW 15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his or her designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages, and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers, and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling, or otherwise commercially disposing of the affected commodity and/or in offering, advertising, and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his or her designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: PROVIDED, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [2010 c 8 § 6078; 1961 c 256 § 33.]

RCW 15.65.340 Agreement and order provisions prohibiting or regulating certain practices. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his or her customer or his or her supplier or of otherwise

dealing or trading with him or her or of diverting trade from a competitor, to wit:

(1) Paying rebates, commissions, or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of markup for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier, or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [2010 c 8 § 6079; 1961 c 256 § 34.]

RCW 15.65.350 Agreement and order to define applicable area

—**"Production area"**—**"Marketing area."** Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 1961 c 256 § 35.]

RCW 15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of

grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

RCW 15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

RCW 15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [2011 c 103 § 8; 2002 c 313 § 32; 1988 c 54 § 1.]

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

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

RCW 15.65.380 Additional agreement or order provisions. Any marketing agreement or order may contain any other, further, and different provisions which are incidental to and not inconsistent with this chapter and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. The provisions shall set forth the detailed application of this chapter to the affected agricultural commodity. [2002 c 313 § 33; 1961 c 256 § 38.]

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

RCW 15.65.390 Annual assessment—Limitation generally. There is hereby levied, and the director or his or her designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him or her, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him or her: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or

as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [2010 c 8 § 6080; 1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

RCW 15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his or her determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [2010 c 8 § 6081; 1987 c 393 § 10; 1961 c 256 § 40.]

RCW 15.65.410 Time, place, method for payment and collection of assessments. The director shall prescribe in each marketing order and agreement the time, place, and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or her or his or her designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his or her designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued. [2010 c 8 § 6082; 1985 c 261 § 14; 1961 c 256 § 41.]

RCW 15.65.420 Use of moneys collected—Departmental expenses.

Moneys collected by the director or his or her designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his or her designee only for the purpose of paying for expenses and costs arising in connection with the formulation, issuance, administration, and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [2010 c 8 § 6083; 1961 c 256 § 42.]

RCW 15.65.430 Refunds of moneys received or collected.

Any moneys collected or received by the director or his or her designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or a designee finds that the same will tend to effectuate such policies and purposes. [2002 c 313 § 34; 1961 c 256 § 43.]

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

RCW 15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his or her designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his or her designee when payment is called for by him or her. In the event any person fails to pay the director or his or her designee the full amount of such assessment or such other sum on or before the date due, the director or his or her designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any

such due and payable assessment or other such sum, the director or his or her designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2010 c 8 § 6084; 1985 c 261 § 15; 1961 c 256 § 44.]

RCW 15.65.450 Deposit to defray department's expenses—Circumstances requiring reimbursement. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him or her such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order.

(1) A commodity board shall reimburse the department for expenses incurred by the department when a commodity board petitions the director to amend or terminate a marketing order or agreement and for other services provided by the department under this chapter. The department shall provide to a commodity board an estimate of expenses that may be incurred to amend or terminate a marketing order or agreement prior to any services taking place.

(2) Petitioners who are not a majority of a commodity board, and who file a petition with the director to issue, amend, or terminate a marketing order or agreement, shall deposit funds with the director to pay for expenses incurred by the department, under rules adopted by the director.

(3) A commodity board shall reimburse petitioners the amount paid to the department under the following circumstances:

(a) If the petition is to issue a marketing order or agreement, the commodity board shall reimburse the petitioners the amount expended by the department when funds become available after establishment of the commodity board; or

(b) If the petition is to amend or terminate a marketing order or agreement and the proposal is assented to by the affected parties or affected producers, the commodity board shall reimburse the petitioners within thirty days of the referendum.

(4) If for any reason a proceeding is discontinued, the commodity board or petitioners, whichever is applicable, shall only reimburse the department for expenses incurred by the department up until the time the proceeding is discontinued. [2002 c 313 § 35; 1961 c 256 § 45.]

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

RCW 15.65.470 Depositaries for revolving fund—Deposits. The director or his or her designee shall designate financial institutions which are qualified public depositaries under chapter 39.58 RCW as depositary or depositaries of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day in a designated depositary. [1987 c 393 § 8; 1961 c 256 § 47.]

RCW 15.65.480 Separate accounts for each agreement or order—Disbursements. The director and each of his or her designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his or her designee. [2010 c 8 § 6085; 1961 c 256 § 48.]

RCW 15.65.490 Records of financial transactions to be kept by director—Audits. The director and each of his or her designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys, and other financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. [2010 c 8 § 6086; 1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

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

RCW 15.65.500 Bonds of administrator, board, employee. The director or his or her designee shall require that a bond be given by every administrator, administrative board, and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his or her designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: PROVIDED, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [2010 c 8 § 6087; 1961 c 256 § 50.]

RCW 15.65.510 Information and inspections required—Hearings—

Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

- (1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or
- (2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or
- (3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or the director's designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

- (1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or
- (2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner

of the violation of the marketing agreement or order so violated by such person. [2011 c 103 § 19; 1989 c 354 § 29; 1961 c 256 § 51.]

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

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

RCW 15.65.520 Criminal acts and penalties. It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement, or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement, or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his or her designee or his or her duly authorized agents, upon request, information concerning the name and address of the person from whom he or she has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade, standard, quality, or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: PROVIDED, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under subsection (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [2010 c 8 § 6088; 1961 c 256 § 52.]

RCW 15.65.530 Civil liability—Use of moneys recovered. Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his or her designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this section shall be allocated to and used for the purposes of the agreement or order concerned. [2010 c 8 § 6089; 1961 c 256 § 53.]

RCW 15.65.540 Jurisdiction of superior courts—Who may bring action. The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain, and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition, and provision thereof, regardless of the existence of any other remedy at law;

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him or her by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him or her by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [2010 c 8 § 6090; 1961 c 256 § 54.]

RCW 15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director. Upon the request of the director or his or her designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his or her designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his or her designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [2011 c 103 § 20; 2010 c 8 § 6091; 1961 c 256 § 55.]

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

RCW 15.65.560 Remedies additional. The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent

and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

RCW 15.65.570 Proceedings subject to administrative procedure act—Exemptions. (1) All proceedings conducted under this chapter shall be subject to the provisions of chapter 34.05 RCW unless otherwise provided for in this chapter.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. [2002 c 313 § 36; 1961 c 256 § 57.]

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

RCW 15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board. In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel: PROVIDED, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

RCW 15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity. The director and his or her designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [2010 c 8 § 6092; 1961 c 256 § 59.]

RCW 15.65.600 Public interest to be protected—Establishment of prices prohibited. The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued

pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

RCW 15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter. Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), to [the] dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to the grain commission (chapter 15.115 RCW). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [2009 c 33 § 34; 1961 c 256 § 62.]

RCW 15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 1961 c 256 § 63.]

RCW 15.65.640 Chapter not to apply to green pea grower or processor. Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

RCW 15.65.650 Hop commodity board—Powers. In order to ensure a viable and stable hop industry within the state of Washington and to further the policies set forth in RCW 15.65.040(2) (d) and (f), the legislature specifically recognizes that the hop commodity board has the power to enter into contracts, at its discretion, with individual producers of hops to set aside or remove from production existing planted hop acreage until such time as the need to contract with individual producers of hops is eliminated based on the adoption of a

federal marketing order. This section does not limit the director's duty under RCW 15.65.600. [2002 c 313 § 138.]

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

RCW 15.65.670 Costs of implementing RCW 15.65.287. The costs incurred by the department associated with the implementation of RCW 15.65.287 shall be paid for by the affected commodity commissions. [2003 c 396 § 12.]

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

RCW 15.65.680 Appointment of nonvoting advisory members. (1) A commodity board may appoint up to two nonvoting advisory members to the board who have expertise in marketing, operations, or other topics relevant to the work of the board. The term of office for each nonvoting advisory member must be established in each board's marketing order or agreement, but may not exceed three years. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(2) Nonvoting advisory members do not count toward establishing a quorum of the board.

(3) Nonvoting advisory members must be compensated in the same manner as board members under RCW 15.65.270(4). [2013 c 40 § 1.]

RCW 15.65.900 Savings—1961 c 256. This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

Reviser's note: The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.