

# Chapter 16-540 WAC

## MINT

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

16-540-030	Marketing order purposes. [Article III, § A, filed 12/20/66, effective 2/1/67.] Repealed by WSR 05-09-013, filed 4/8/05, effective 5/9/05. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW.
16-540-070	Effective time. [Article VII, filed 12/20/66, effective 2/1/67.] Repealed by WSR 05-09-013, filed 4/8/05, effective 5/9/05. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW.

**WAC 16-540-005 Marketing order for Washington mint—Policy statement.** (1) The marketing of mint 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 mint be properly promoted by:

(a) Enabling producers of mint to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the mint they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of mint within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the mint industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that mint be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's mint.

(b) Increase the sale and use of Washington state's mint 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 mint.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's mint and products.

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

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(12/30/11)

(4) The Washington state mint commodity board exists primarily for the benefit of the people of the state of Washington and its economy and, with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to mint under the provisions of this marketing order.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-005, filed 4/8/05, effective 5/9/05.]

**WAC 16-540-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency of mint in Washington state. The Washington state mint commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) To enable producers of mint plants to help themselves develop improved production methods and/or programs for the control of disease, insects, and weeds associated with mint plant culture and to provide for the dissemination of information to affected producers.

(2) To carry out the purposes of the order the board shall provide for a program in one or more of the following areas:

(a) Provide for aid in research in the production of mint plants and the distilling of mint oil by producers and to expend the necessary funds 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 board 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 board.

(b) Provide for collection and dissemination of information pertaining to mint.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-006, filed 4/8/05, effective 5/9/05.]

**WAC 16-540-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agriculture Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

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

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

(3) "Act" means the Washington State Agricultural Commodity Boards Act or chapter 15.65 RCW.

(4) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership,

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

(5) "Affected producer" or "producer" means any person who produces, or causes to be produced in commercial quantities, in the state of Washington, any variety of mint plant from which the essential oil is distilled or extracted. "To produce" means to act as a producer. For the purposes of the mint marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the essential oil and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Commercial quantity" means all of the mint plants produced in any calendar year by any producer, from which the essential oil is distilled or extracted.

(7) "Affected handler" means any person who acts as principal or agent or otherwise in buying, selling, marketing or distributing mint oils produced from mint plants not grown by him/her. "Affected handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

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

(9) "Mint oil" means essential oil that is distilled from any variety of mint plant.

(10) "Mint commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under WAC 16-540-020.

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

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

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

(14) "Affected unit" means one pound of mint oil as distilled from mint plants grown by an affected producer.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-010, filed 4/8/05, effective 5/9/05. Article I, § A, filed 12/20/66, effective 2/1/67.]

**WAC 16-540-020 The mint commodity board. (1) Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

**(2) Board membership.**

(a) The board shall consist of eight members. Seven members shall be affected producers appointed or elected as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as position 1, position 2, position 6, and position 7.

(ii) Elected affected producer positions on the board shall be designated as position 3, position 4, and position 5.

(iii) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

(b) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into two representative districts as follows:

(i) District I shall have four board members, being positions 1, 2, 3 and 4 and shall include the counties of Kittitas, Yakima and Benton.

(ii) District II shall have three board members, being positions 5, 6 and 7 and shall include all other counties located in the state of Washington.

**(3) Board membership qualifications.**

(a) The affected producer members of the board must be practical producers of mint plants in the district in and for which they are nominated and appointed or elected and each shall be a citizen and resident of the state of Washington, over the age of eighteen years. Each affected producer board member must be and have been actually engaged in producing mint plants within the state of Washington for a period of five years and has during that time derived a substantial portion of his/her income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) The qualifications of members of the board must continue during their term of office.

**(4) Term of office.**

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed or elected each year.

(b) The term of office for the initial board members shall be as follows:

Positions one and two - One year

Positions three, four and eight - Two years

Positions five, six and seven - Three years

(c) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms.

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions one, two, six and seven shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

**(5) Nomination of elected or director-appointed board members.**

(a) For the purpose of nominating candidates for appointment or election to board membership the director shall call separate meetings of affected producers.

(b) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer board members in those districts whose board members' term are about to expire. The meeting shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(c) Notice of a nomination meeting shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the meeting and in addition, written notice of every such meeting shall be given to all affected producers within such affected district

according to the list maintained by the board pursuant to RCW 15.65.295.

(d) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(e) Any qualified affected producer may be nominated orally for membership on the board at the nomination meeting. Nominations may also be made within five days after the nomination meeting by written petition filed with the director signed by not less than five affected producers.

(f) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

**(6) Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of June. Each affected producer shall be entitled to one vote.

(b) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for affected producer board members appointed by the director under the provisions of RCW 15.65.243. 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.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(e) Nonreceipt of a ballot by an affected producer shall not invalidate the election or advisory vote of any board member.

**(7) Vacancies.**

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

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

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

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated in accordance with RCW 43.03.230 and

shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

**(10) Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order.

(f) To establish a "mint board revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept 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 this order. Such records, books and accounts shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the commission. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least sixty days 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.

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

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) 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.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contract or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of mint.

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

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

(u) 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 mint including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle mint within the affected area and data on the amount and value of the mint handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of the names and addresses of all affected persons who produce mint and the amount, by unit, of mint produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle mint and the amount of mint handled by each person during the past three years pursuant to RCW 15.65.295.

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

(aa) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

#### (11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting through regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-020, filed 4/8/05, effective 5/9/05. Article II, §§ A-K, filed 12/20/66, effective 2/1/67.]

#### **WAC 16-540-040 Assessments and collections. (1) Assessments.**

(a) The fixed annual assessment on all varieties of mint oil subject to this marketing order shall be five cents per pound of oil as weighed by first purchaser until June 30, 2012. Effective July 1, 2012, the fixed annual assessment shall be nine cents per pound of oil as weighed by first purchaser.

(b) First purchasers shall collect assessments at time of payment for oil, from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board. Producers and producer-handlers who ship their oil direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year may be refunded on a pro rata basis at the close of the season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of the marketing order to all persons from whom 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 board finds that the same will tend to effectuate the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and this 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 board when payment is called for by it. In the event any person fails to pay the board the full amount of the assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of it. In the event of failure of a person or persons to pay any due and payable assessment or other sum, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 12-02-042, § 16-540-040, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-040, filed 4/8/05, effective 5/9/05. Statutory Authority: RCW 15.65.050. WSR 96-03-150 (Order 5091), § 16-540-040, filed 1/24/96, effective 2/24/96. Statutory Authority: Chapter 15.65 RCW. WSR 84-10-046 (Order 1823), § 16-540-040, filed 5/2/84; Order 1406, § 16-540-040, filed 7/23/75; Article IV, §§ A-C, filed 12/20/66, effective 2/1/67.]

**WAC 16-540-050 Obligations of the board.** Obligations incurred by the board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted by them by the act or this order, 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 the order were a corporation. No liability for the debts or actions of the board, employee or agent incurred in their official capacity under this order shall exist either against the board, officers, employees and/or agents in 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 act or the assets thereof. The board, and its 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 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 board, member of the board, or other person. The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.

[Article V, § A, filed 12/20/66, effective 2/1/67.]

**WAC 16-540-060 Termination of the order.** Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-09-013, § 16-540-060, filed 4/8/05, effective 5/9/05. Article VI, § A, filed 12/20/66, effective 2/1/67.]

(12/30/11)

**WAC 16-540-080 Separability.** If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances or thing shall not be affected thereby.

[Article VIII, § A, filed 12/20/66, effective 2/1/67.]

**WAC 16-540-110 Time and procedure for reporting and remitting assessments.** Each first purchaser shall file a report on or before the 20th of each month covering mint oil purchased during the preceding month. Assessment reports shall contain the following information: Name and mailing address of first purchaser filing the report; name, mailing address, pounds of oil, and total assessment withheld for each producer from whom mint oil was purchased during the reporting period; total pounds of oil reported and total assessment remitted.

[Order 1, § 16-540-110, filed 3/9/70.]