

**Chapter 16-520 WAC  
SEED POTATOES**

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**WAC**

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RULES OF THE WASHINGTON STATE SEED POTATO  
COMMISSION

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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

16-520-002	Director's findings and final decision approving a marketing order. [Director's Findings and Decision, effective 8/17/56.] Repealed by WSR 10-22-008, filed 10/21/10, effective 11/21/10. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.
16-520-030	Marketing order purposes. [Marketing Order, Article III, effective 10/1/56.] Repealed by WSR 10-22-008, filed 10/21/10, effective 11/21/10. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.
16-520-070	Effective time. [Marketing Order, Article VII, effective 10/1/56.] Repealed by WSR 10-22-008, filed 10/21/10, effective 11/21/10. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.

**WAC 16-520-003 Director's order creating seed potato commission and making marketing order effective.** (1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in him by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on August 17, 1956, that certain marketing order entitled, "Marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090 and,

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

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said act, do hereby make effective the said marketing order for Washington seed potatoes providing for the creation of a

Washington seed potato commission, said order to be effective at 12:01 a.m. October 1, 1956.

[Order and Findings, issued 9/18/56.]

**WAC 16-520-005 Marketing order—Policy statement.** (1) The marketing of seed potatoes within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its seed potatoes be properly promoted by:

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

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

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

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

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

(d) Increase the public's knowledge of the qualities and value of Washington state's seed potatoes.

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

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

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

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-005, filed 10/21/10, effective 11/21/10; Marketing Order for Washington Seed Potatoes, effective 10/1/56.]

**WAC 16-520-006 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; ensuring a fair regulatory environment; and increasing production efficiency of seed potatoes in Washington state. The Washington state seed potato commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(1) **Research.** The commission may research or enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of seed potatoes.

(2) **Marketing and sales promotion plans.**

(a) Subject to the provisions of the act, the commission is hereby authorized to prepare plans, administer and conduct programs and expend moneys for marketing and sales promotion for promoting the sale of seed potatoes including, but not necessarily limited to, the following:

(i) Increasing the sales of Washington produced seed potatoes through the use of the press, radio, television and all other marketing media.

(ii) Trade promotion, publicity, market development and expansion activities.

(iii) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of seed potatoes produced in this state, and such other activities and programs which are consistent with the objectives of this marketing order and the act.

(b) In carrying out any marketing and sales promotion plans or programs, the commission may engage or hire such marketing medias as may be necessary to accomplish the purposes of the act and this order, arrange for marketing space, display material and other advertising material, or may use any other methods consistent with the act and this marketing order which the commission considers appropriate in promoting or creating new and larger domestic or foreign markets for seed potatoes, or in maintaining existing markets. The commission may also engage in cooperative efforts in the domestic or foreign marketing of seed potato food products.

(c) Programs and plans adopted by the commission under this marketing order shall be directed towards promoting the sale of seed potatoes without reference to any particular private brand or trade name. Sales promotion and marketing programs shall not disparage the value, quality, sale or use of any other agricultural commodity or make use of any unwarranted or false claims regarding seed potatoes.

(d) Marketing plans, programs and projects developed by the commission shall be submitted for director review and approval as required under RCW 15.66.141.

(3) **Labeling.**

(a) Under chapter 15.66 RCW, the commission may adopt rules, subject to the provisions of chapter 34.05 RCW, to define, establish and provide labeling requirements for improving standards and grades of seed potatoes, and may expend money for such purposes. Such requirements shall not be inconsistent with the horticultural laws of this state with respect to seed potatoes.

(b) The commission shall be authorized to cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of seed potatoes.

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

(4) **Unfair trade practices.** The commission may investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder marketing of Washington produced seed potatoes. To the extent permitted under the Public Records Act, chapter 42.56 RCW, information acquired in an inves-

tigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the act.

(5) **Standards, grades, labels, trade practices.** The provisions covering standards, grades, labels and trade practices shall apply with respect to seed potatoes produced in Washington state.

(6) The commission is authorized to provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of seed potatoes produced in Washington state to any elected official or officer or employee of any agency.

(7) **Information and education.** The commission may conduct programs for the purpose of providing information and education including:

(a) Marketing information and services for producers of seed potatoes.

(b) Information and services enabling producers to meet their resource conservation objectives.

(c) Seed potato-related education and training.

(8) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of seed potatoes.

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

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-006, filed 10/21/10, effective 11/21/10.]

**WAC 16-520-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

"Act" means the Washington State Agricultural Commodity Commissions Act, chapter 15.66 RCW;

"Affected area" means and includes all of the state of Washington;

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

"Commercial quantities" means five thousand hundredweight or more;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this marketing order or chapter 15.66 RCW;

"Disclosure" means inspection or copying;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

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

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

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

"Producer" means any person engaged in the business of producing or causing to be produced for market in the state of Washington seed potatoes in commercial quantities. "To produce" means to act as a producer;

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

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

"Seed potato commission" and "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;

"Seed potatoes" means and includes all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes.

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-010, filed 4/19/17, effective 5/20/17. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-010, filed 10/21/10, effective 11/21/10; Marketing Order, Article I, effective 10/1/56.]

**WAC 16-520-020 Seed potato commission—Structure, powers, duties, and procedure.** (1) **Establishment and membership.** A seed potato commission is hereby established to administer this marketing order. The commission shall be composed of two members who shall be affected producers elected by the producers as provided in the act, and two members who shall be appointed by the director. In addition, the director shall be a voting member of the commission.

(a) Elected producer positions on the board shall be designated as positions 2 and 4.

(b) Director-appointed positions on the board shall be designated as positions 1 and 3.

(c) The position representing the director shall be designated as position 5.

(2) **Membership qualifications.** Commission members shall be citizens and residents of this state, over the age of eighteen years and producer members of the commission shall be producers of seed potatoes in the state of Washington. The qualifications of producer members of the commission as herein set forth must continue during their term of office. Members appointed by the director shall be either producers or others active in matters relating to seed potatoes.

(3) **Term of office.** The term of office of commission members shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified so that one-third of the terms will commence as nearly as practicable each year.

(4) **Nomination, appointment and election of commission members.** Nomination, appointment, and election of commission members shall be as set forth in the act and specified by the director. Dates for this process are as follows:

(a) Not earlier than March 19 and not later than April 3 of each year, the director shall give notice by mail to all affected producers that an open commission position(s) will occur in the commission and call for nominations. Nominating petitions shall be signed by three persons qualified to vote for the candidates. The notice shall state the final date for filing nominating petitions which shall be not earlier than April 7 and not later than April 12 of such year.

(b) The director shall conduct an election or advisory vote by mail to all affected producers in the district wherein the open commission position(s) will occur not earlier than April 17 and not later than May 2 of each year. Ballots shall be returned not later than June 1 of each year. An election or advisory vote shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

(d) Except with respect to the initial seed potato commission, the members of the commission not elected by the producers or appointed by the director shall be elected by a majority of the commission within ninety days prior to the expiration of the term.

(5) **Vacancies.**

(a) In the event of a vacancy in an elected position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission'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 chapter 15.66 RCW.

[Statutory Authority: RCW 15.66.055 and chapter 34.05 RCW. WSR 18-01-053, § 16-520-020, filed 12/13/17, effective 1/13/18. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-020, filed 10/21/10, effective 11/21/10. Statutory Authority: Chapter 15.66 RCW. WSR 83-22-019 (Order 1808), § 16-520-020, filed 10/25/83, effective 12/1/83; Marketing Order, Article II, effective 10/1/56.]

**WAC 16-520-025 Powers and duties of commission.** The commission shall have the following powers and duties:

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

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

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

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies

and other persons and firms that it may deem appropriate and pay compensation to the same;

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

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

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

(8) To borrow money and incur indebtedness;

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

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

(11) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least 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;

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

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

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

(15) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use or distribution of seed potatoes;

(16) 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;

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

(18) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, manufacture, regulation, transportation, distribution, sale, or use of seed potatoes including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(19) To maintain a list of names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140;

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

(21) To maintain a list of names and addresses of all affected producers and the amount, by unit, of seed potatoes produced during the past three years pursuant to RCW 15.66.143;

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

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

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

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

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

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-025, filed 10/21/10, effective 11/21/10.]

**WAC 16-520-027 Procedure for commission.** (1) The commission may by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(2) The commission shall hold at least two regular meetings during each fiscal year with the time and date thereof to be fixed by the resolution of the commission. 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 provided in compliance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) The commission may hold special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice 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.

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

(5) A quorum of the commission shall consist of at least three members.

(6) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed the compensation rate set by RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses in accordance with RCW 43.03.050 and 43.03.060. The commission may adopt by resolution



provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

[Statutory Authority: RCW 15.66.055 and chapter 34.05 RCW. WSR 18-01-053, § 16-520-027, filed 12/13/17, effective 1/13/18. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-027, filed 10/21/10, effective 11/21/10.]

**WAC 16-520-035 Limitation of liability of commission members and employees.** Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his or her individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for his or her own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-035, filed 10/21/10, effective 11/21/10.]

**WAC 16-520-040 Assessments and assessment funds. (1) Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ten cents per hundredweight. No assessment may be collected on the following:

- (a) Seed potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;
- (b) Seed potatoes donated or shipped for relief or charitable purposes; or
- (c) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of seed potatoes from a producer's own production.

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

(2) **Collection of assessment.**

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

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

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

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

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

(3) **Funds.**

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

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or

stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.

[Statutory Authority: RCW 15.66.055 and chapter 34.05 RCW. WSR 18-01-053, § 16-520-040, filed 12/13/17, effective 1/13/18. Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-040, filed 10/21/10, effective 11/21/10. Statutory Authority: RCW 15.66.050. WSR 92-22-007, § 16-520-040, filed 10/21/92, effective 12/1/92. Statutory Authority: Chapter 15.66 RCW. WSR 83-22-019 (Order 1808), § 16-520-040, filed 10/25/83, effective 12/1/83; Marketing Order, Article IV, effective 10/1/56.]

**WAC 16-520-050 Information reports.** All persons subject to the provisions of this marketing order shall make and render reports and furnish such information to the director or the commission as may be necessary or required under the act or this order to effectuate the purposes thereof. Any financial or commercial information and records obtained by the director or commission are exempted from public disclosure under the provisions of RCW 15.66.105 and 42.56.380 and shall not be disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the director or the commission to give legal advice thereon or by court order.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 10-22-008, § 16-520-050, filed 10/21/10, effective 11/21/10; Marketing Order, Article V, effective 10/1/56.]

**WAC 16-520-060 Separability.** If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances, or thing shall not be affected thereby.

[Marketing Order, Article VI, effective 10/1/56.]

**WAC 16-520-071 Requests for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington State Seed Potato Commission, P.O. Box 286, Lynden, WA 98264. The request may also be submitted by fax to 360-354-7619. The written request should include:

- (a) The name, address and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

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

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

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

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

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

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-071, filed 4/19/17, effective 5/20/17.]

**WAC 16-520-075 Response to public records requests.** (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

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

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

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

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

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

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

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

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

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

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-075, filed 4/19/17, effective 5/20/17.]

**WAC 16-520-080 Fees—Inspection and copying.** (1) No fee will be charged for the inspection of public records.

(2) The commission charges a fee of fifteen cents per page of black and white photocopy plus postage for reimbursement of the costs of providing public records.

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

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

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-080, filed 4/19/17, effective 5/20/17.]

**WAC 16-520-085 Exemptions.** The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

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

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

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

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

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

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

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-085, filed 4/19/17, effective 5/20/17.]

**WAC 16-520-090 Review of denial of public records requests.** (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial

within ten business days following the commission's receipt of the written request for review of the original denial.

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

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

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-090, filed 4/19/17, effective 5/20/17.]

**WAC 16-520-095 Records index.** The commission shall establish a records index, which shall be made available for public review.

[Statutory Authority: RCW 15.66.055, 42.56.040 and chapter 34.05 RCW. WSR 17-09-074, § 16-520-095, filed 4/19/17, effective 5/20/17.]

#### **RULES OF THE WASHINGTON STATE SEED POTATO COMMISSION**

**WAC 16-520-110 Collection of assessments.** Such assessments shall become due and payable within thirty days after levy of same and, if such fees are not paid within the prescribed time, the state department of agriculture, division of horticulture, may withdraw inspection or refuse to perform any inspection or certification service for the person in arrears: Provided, Such horticultural inspector in behalf of the commission may demand and collect the assessment prior to inspecting and certifying any seed potatoes for such person.

[Rule, filed 12/8/64; Emergency Rule, filed 9/16/64.]