

Chapter 224-12 WAC
PRACTICE AND PROCEDURE—APPLICABILITY—ASSESSMENTS, ETC.

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WAC

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WAC 224-12-001 Promulgation. Under and by virtue of chapter 15.28 RCW and chapter 11, Laws of 1961, as amended, the Washington state fruit commission does hereby adopt and prescribe the following amended regulations.

[Promulgation clause, filed 5/23/63.]

WAC 224-12-010 Applicability. These regulations apply to growers, dealers, handlers, and processors of soft tree fruits, which include all varieties, subvarieties and "sport" varieties of cherries, apricots, peaches, prunes, plums and Bartlett pears. (Assessments and reporting on tart cherries and plums are suspended at present.) As to such fruit grown in 1963 and subsequent years these regulations hereby repeal and supersede all previous regulations.

[Statutory Authority: Chapter 15.28 RCW. WSR 00-19-007, § 224-12-010, filed 9/6/00, effective 10/7/00; Regulation 1, filed 5/23/63; Regulation 1, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-020 Legal interpretation. These regulations pertain to the Soft Fruit Act of 1947, as amended (chapter 15.28 RCW). The terminology used herein has the same meanings as in the act. Each part of these regulations is separable; except for any part declared by legal constituted authority to be invalid or in conflict with existing law these regulations have the same force and effect as Washington state law, as provided in the act.

[Regulation 2, filed 5/23/63; Regulation 2, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-030 Records. (1) Each dealer, handler, processor, or grower shall keep a complete and accurate record of the soft tree fruits handled, shipped, processed or produced by him. The dealer's or processor's record of fruit received shall include separate accounts

for each grower or dealer who supplied fruit to him and shall show the supplier's name and mailing address, dates of purchase, kind of fruit and quantity of each delivery. There shall also be shown the amounts of any soft tree fruit assessments that were withheld from the supplier's account.

(2) There shall be kept a separate file on each fresh market shipment, with complete and accurate identification and description of the shipment.

(3) There shall be kept a separate account for each dealer, handler, or processor to whom fruit was sold for further handling or processing, and this record shall contain complete and accurate details of the transactions.

(4) The records described in subsections (1), (2), and (3), shall be maintained currently and kept as the principal place of business - subject to audit - for a period of not less than two years and shall be offered for examination at any reasonable time when official request is made by an authorized representative of the commission.

[Statutory Authority: Chapter 15.28 RCW. WSR 00-19-007, § 224-12-030, filed 9/6/00, effective 10/7/00; Regulation 3-6, filed 5/23/63; Regulation 3-6, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-040 Responsibility for payment. The first handler is responsible for payment of soft tree fruit assessments, unless adequate evidence is furnished to him that payment has been made by the grower, but he shall charge the same against the grower, who is finally responsible for such payment. A grower who transports his own fruit to fresh market becomes a first handler under such circumstances.

[Regulation 7, filed 5/23/63; Regulation 7, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-050 Shipments—Growers and dealers—Payment of assessment invoices. Inspection or shipping permit by the Washington state department of agriculture is required on each shipment of soft tree fruits to a fresh market outlet, and this includes shipment to any custom processor outside the area of production. The proper Washington state fruit commission assessments and any applicable federal marketing committee assessments on such shipment shall be remitted to the Washington soft fruit fund (in care of the Washington state department of agriculture or the fruit commission) by the person or firm that applied for inspection or release. The amounts of the assessments shall be determined by current assessment rates and the information contained in the inspection certificates or shipping permits. Payment of assessments shall be made upon inspection or release, or as determined in the reasonable discretion of the department and the commission by prompt payment of invoices issued to some regular accounts. (Combined collection of fruit commission and marketing committee assessments reduces over-all expenses to the industry.)

[Regulation 8, filed 5/23/63; Rules (part), filed 6/1/61 and 2/23/60.]

WAC 224-12-060 Shipments—Shipper report—Alternate method of paying assessments. (1) By specific written agreement between the fruit commission and any regular shipper, the shipper may elect to supply assessment information and payments based on his own records rather than through payment of assessment invoices supplied by the commission. Shipper report forms for this purpose will be supplied by the commission, or the shipper may report on his own stationary.

(2) The shipper reports shall be prepared from suitable records kept on file by the shipper and shall be based on his total packouts, or on his total shipments if he does not keep packout records. Transmittal of shipper reports and assessments shall be as specified by the agreement. (Objectives are to provide for payment of assessments as soon as reasonably possible and yet reduce the amount of employee time in handling assessments.)

(3) The agreement to transmit assessments by means of shipper reports may be terminated at any time by the shipper upon his written notice to the commission, provided that his shipper reports are up to date; and the commission may terminate the agreement at any time upon written notice to the shipper.

[Regulation 8a, filed 5/23/63.]

WAC 224-12-070 Processing fruit assessments—Reporting and payment—Growers, dealers, processors. (1) Each processor of Washington-grown soft tree fruits shall make an annual processor report to the commission on each soft tree fruit. This report shall show each first handler separately and also in total for individual growers the number of pounds delivered of commercial graded fruit, pounds of cull fruit, and amount of assessment payable on the commercial graded fruit. Processor reports shall also describe utilization of the fruit, showing poundage breakdowns of commercial graded fruit, and culls separately, for the quantities (a) canned, (b) brined, (c) frozen or otherwise processed, (d) resold to any other processor or dealer, and (e) dumped or destroyed.

(2) More than one commodity may be reported on a single processor report, providing time limits for reporting are observed and that the data for each commodity is kept separate and distinct. For each soft tree fruit which he did not process or handle during the current season, the processor shall report "none handled." Processor report forms will be supplied by the commission, laid out in a manner to provide convenient listing of the information desired. Each processor report shall be signed by the owner, executive officer or manager of the firm that is reporting. Washington soft tree fruit assessments shall be deducted by the processor from his growers' accounts, and this may include dealers who are primarily growers.

(3) Transmittal of the processor report and the payable assessments on each commodity shall be made by the processor to the Washington state fruit commission as soon as possible and within 21 days after each season's final delivery of raw fruit at the processor's packing or storing facilities.

(4) Each grower, broker, dealer, or handler of soft tree fruits who sells fruit to a broker, commercial processor or custom processor shall file, separately for each processor or broker to whom he sold, a processor report (or adequate letter of transmittal in lieu thereof) completed in the same manner and time described above as for process-

ors and accompanied by payment of any assessments due the commission on such report. In any case in which the processor or broker does not deduct the proper assessment from the grower's account, the grower shall remit the assessment to the commission at the time he forwards his own processor report.

[Statutory Authority: Chapter 15.28 RCW. WSR 00-19-007, § 224-12-070, filed 9/6/00, effective 10/7/00; Regulation 9-10, filed 5/23/63; Regulation 9-10, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-080 General provisions. (1) The soft fruit act provides that the assessments shall be paid by growers and are due prior to shipment. This includes out-of-state growers whose soft tree fruit is shipped into Washington and packed as Washington soft tree fruit. Packed as Washington soft tree fruit means soft tree fruits packed or processed in the state.

(2) The manner in which assessments shall be transmitted from the growers to commission, however, is established by these regulations, it being understood that when a handler or processor remits assessments to the commission he will have deducted the proper assessments back through the line of purchase and from the growers' accounts.

(3) Soft tree fruit assessments are imposed on the net pounds of commercial graded fruit shipped fresh or delivered to the processors. Cull fruit, except cherries which are brined, is exempt from assessments and also exempted are all sales of five hundred pounds, or less, of commercial graded soft fruit sold by the grower direct to consumer: Provided, however, That any shipment in excess of five hundred pounds shall be subject to said assessments irrespective of the ultimate disposition.

(4) On December 31 of each year, every Washington state soft tree fruit dealer, handler or processor shall file with the commission a written statement that he has—to the best of his knowledge—paid in full to the commission all soft tree fruit assessments properly due from him for the past season on both fresh market fruit and processing fruit. Or in the event that any assessments remain unpaid, such written statement shall describe the unpaid assessments, the reason for nonpayment, and make a definite commitment as to the date or dates when the assessment will be paid.

(5) These revised regulations, as provided in said act, have the force and effect of law, and any person who violates or aids in the violation of any of these regulations is in violation of Washington state law and is guilty of a misdemeanor.

(6) Ten percent per annum interest as a delinquent penalty is payable on assessments which are more than thirty days past due (to help cover extra costs of accounting and correspondence).

(7) The seal of the commission shall be circular in form and contain the following inscription: "WASHINGTON STATE FRUIT COMMISSION" around the outside of the seal and the word "SEAL" in the center thereof.

[Statutory Authority: Chapter 15.28 RCW. WSR 00-19-007, § 224-12-080, filed 9/6/00, effective 10/7/00; Regulations 11-15, filed 5/23/63; Regulations 11-14, filed 6/1/61; Regulations (part), filed 2/23/60.]

WAC 224-12-090 Bartlett pear assessment rate. As provided for by RCW 15.28.160 and 15.28.180, there is hereby levied on Bartlett pears, an assessment of up to a maximum of eighteen dollars per two thousand pounds of Bartlett pears shipped fresh, and an assessment of six dollars for each two thousand pounds of Bartlett pears delivered to processors.

[Statutory Authority: Chapter 15.28 RCW, 1997 c 303. WSR 98-14-108, § 224-12-090, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 15.28.160 and 15.28.180. WSR 81-16-034 (Order 4, Resolution 4), § 224-12-090, filed 7/29/81; WSR 80-06-058 (Order 3, Resolution 3), § 224-12-090, filed 5/20/80, effective 7/1/80; Order 2, § 224-12-090, filed 11/29/77, effective 1/1/78; Order 1, § 224-12-090, filed 5/13/74, effective 7/1/74.]

WAC 224-12-100 Description of commission, address and telephone number of the Washington state fruit commission. Headquartered at 105 S. 18th Street, Suite 205, Yakima, WA 98901, the Washington state fruit commission serves Washington soft tree fruit producers by supporting the industry in the areas of education, research, and marketing. The telephone number is 509-453-4837.

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-100, filed 12/30/19, effective 1/30/20.]

WAC 224-12-105 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its president may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-105, filed 12/30/19, effective 1/30/20.]

WAC 224-12-110 Request 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 Fruit Commission, 105 S. 18th Street, Suite 205, Yakima, WA 98901. The request may also be submitted by fax to 509-453-4880 or by email to legal@wastatefruit.com. The written request must 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; and

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

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-110, filed 12/30/19, effective 1/30/20.]

WAC 224-12-115 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.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-115, filed 12/30/19, effective 1/30/20.]

WAC 224-12-120 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state fruit 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.

(5) For email requests that encompass more than twenty separate emails the commission may deliver said emails via electronic storage device; the commission works with third-party computer technicians who may be required to help fulfill public record solicitations. The commission may charge actual technician time fees to the requestor.

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-120, filed 12/30/19, effective 1/30/20.]

WAC 224-12-125 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 15.28 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 15.28 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).

(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 communi-

cations between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-125, filed 12/30/19, effective 1/30/20.]

WAC 224-12-130 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 the statement which constituted or accompanied the denial.

(2) The commission's president 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 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-130, filed 12/30/19, effective 1/30/20.]

WAC 224-12-135 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

- (1) Commission authorizing statute;
- (2) Commission rules;
- (3) Minutes of commission meetings; and
- (4) Commission board roster.

[Statutory Authority: RCW 42.56.040, 42.56.120, and chapter 34.05 RCW. WSR 20-02-086, § 224-12-135, filed 12/30/19, effective 1/30/20.]