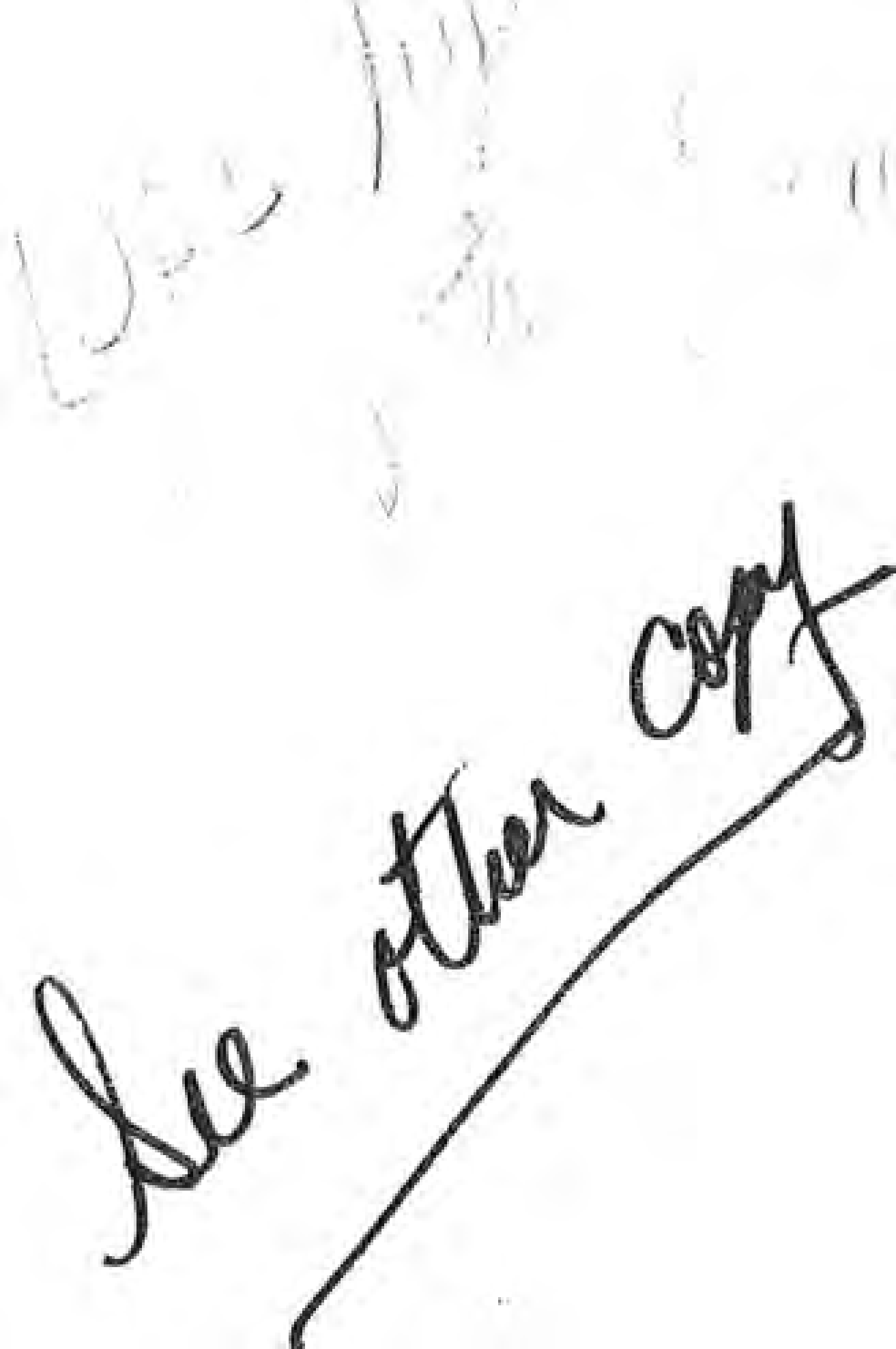
See other card

TRANSMITTAL OF RULES ADOPTED

FROM: Department of Agriculture
(Name of Agency)

TO: CODE REVISER
LEGISLATIVE BLDG (Southwest Corner, Ground Floor)
Olympia 98501

The enclosed Permanent rules [X] , being order No. 1116
Emergency rules [ ]
relating to (Name of rules or description of subject matter)

Marketing Order to Create a Washington Blueberry Commission as per attached.

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. 2256 ① filed with the code reviser on Feb 10, 1969 ② (date) were regularly adopted as permanent rules of this agency at Olympia (place) on May 14, 1969 (date) and are herewith filed in the office of the code reviser pursuant to chapter 34.04 RCW. The effective date of such rules shall be June 15, 1969 ③

(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding that the immediate adoption of these rules is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, were regularly adopted as emergency rules of this agency at _____ (place) on _____ (date) and are herewith filed in the office of the code reviser pursuant to chapter 34.04 RCW.

Dated this 14th day of May 19 69.

STATE OF WASHINGTON
FILED
MAY 1[illegible] 1969
CODE REVISER'S OFFICE
KET 24[illegible] FILE # 20

WASHINGTON DEPARTMENT OF AGRICULTURE
(AGENCY)

By [signature]

DIRECTOR
Title

① NOTICE NUMBER AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE NO. OF LAST NOTICE)
② STAMPED DATE AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE DATE OF LAST NOTICE)
③ UNLESS A LATER DATE IS SPECIFIED IN THIS ORDER OR IS PRESCRIBED IN ANOTHER STATUTE, RULES ARE EFFECTIVE 30 DAYS AFTER FILING: RCW 34.04.040. LEAVE THIS SPACE BLANK EXCEPT IN SUCH SPECIAL CASES.

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF AGRICULTURE
OF THE STATE OF WASHINGTON

In the Matter of the Application to Create a Blueberry Commodity Board (Commission)	)))	Final Decision and Final Order

WHEREAS, the Director of Agriculture has been directed by the legislature to administer, enforce and carry out the provisions of the Washington State Agricultural Enabling Act, Chapter 15.65 RCW and put them into force in accordance with its terms, and

WHEREAS, the Director of Agriculture was petitioned by producers of blueberries for the issuance of a proposed blueberry marketing order, and whereas, the Director of Agriculture had reason to believe that the issuance of a blueberry marketing order will tend to effectuate the declared policy of the Washington State Agricultural Enabling Act as to blueberries, and

WHEREAS, a public hearing was held by the Director of Agriculture in the City of Puyallup, Washington, March 3, 1969, on the proposed blueberry marketing order, subsequent to the proper publication of notice that such a public hearing was to be held and the mailing of a copy of said proposed order to all blueberry producers and handlers of record with the Department of Agriculture, and

WHEREAS, testimony was offered both in favor and against the proposed blueberry marketing order as written by those in attendance at the said public hearing held in the City of Puyallup, and whereas, the Director of Agriculture allowed written testimony in favor or against to be forwarded to his office in the City of Olympia, for an additional period of ten days, and

WHEREAS, the Director of Agriculture gave due consideration to testimony offered, both oral and written, and issued his recommended decision on March 13, 1969, and mailed copies of said recommended decision to all producers and handlers of record appearing at the said hearing, or their attorneys of record, and

WHEREAS, the Director of Agriculture accepted objections and exceptions for a period of ten days as required under the provisions of the Washington State Agricultural Enabling Act after the issuance of the said recommended order to all parties of record appearing at said hearing, and

WHEREAS, no objections and exceptions to the said recommended decision were received by the Director of Agriculture, and

WHEREAS, the recommended order as written and presented to all the parties of record appearing at said hearing will tend to effectuate the declared policies of the Washington State Agricultural Enabling Act concerning: (1) Advertising and promotion of blueberries; (2) research; (3) labeling requirements; and (4) the distribution of marketing information, and whereas, it is reasonably adopted to accomplish the purposes and objectives for which it is issued and complies with applicable provisions of the said act.

NOW, THEREFORE, the Director of Agriculture adopts the said recommended order and makes it the final decision and marketing order for blueberries to be presented to the producers of blueberries in the State of Washington for their consideration and assent during the period of March 31 through May 10, 1969, if they so desire.

Signed this 25th day of March 1969

Donald W. Moos
Director of Agriculture

FINAL ORDER TO CREATE A

WASHINGTON BLUEBERRY COMMISSION

ARTICLE I

DEFINITION OF TERMS

Section A. For the purpose of this marketing order:

1. "Director" means the Director of Agriculture of the State of Washington or his duly appointed representative.

2. "Department" means the Department of Agriculture of the State of Washington.

3. "Act" means the Washington State Agricultural Enabling Act of 1961 or Chapter 15.65 RCW.

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

5. "Affected Producer" means any person who produces blueberries in commercial quantities in the State of Washington.

6. "Commercial Quantity" means any blueberries produced for a market by a producer in any calendar year.

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

8. "Blueberry Commodity Board" hereinafter referred to as "Board" means the Commodity Board formed under the provisions of Article II of this Blueberry Order.

9. "Blueberries" means and includes all kinds, varieties, and hybrids of "VACCINIUM CORYM BOSUM" and "VACCINIUM AUSTRALE" grown and marketed in the State of Washington.

10. "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 following, both dates being inclusive.

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

12. "Affected Area" means the State of Washington.

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

14. "Affected Unit" means one pound net of blueberries.

ARTICLE II

THE COMMODITY BOARD

Section A. 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.

Section B. BOARD MEMBERSHIP.

1. The Board shall consist of seven (7) members. Six (6) members shall be affected producers elected as provided in this Article. The Director shall appoint one (1) member of the Board who is neither an affected producer nor a handler to represent the Department and the public.

2. For the purpose of nomination and election of producer members of the Board, the affected area shall be the entire State of Washington.

Section C. BOARD MEMBERSHIP QUALIFICATIONS.

1. The affected producer members of the Board shall be practical producers of blueberries and shall be citizens and residents of the State of Washington, over the age of twenty-five years, each of whom is and has been actually engaged in producing blueberries within the State of Washington for a period of five (5) years and has, during that time, derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer.

Section D. TERM OF OFFICE.

1. The term of office for members of the Board shall be three (3) years and one-third of the membership as nearly as possible shall be elected each year.

2. Membership positions on the Board shall be designated numerically; affected producers shall have positions one (1) through six (6) and the member appointed by the Director position seven (7).

3. The term of office for the initial Board members shall be as follows:

Positions One and Two	- until June 30, 1970
Positions Three and Four	- until June 30, 1971
Positions Five, Six and Seven	- until June 30, 1972

Section E. NOMINATION AND ELECTION OF BOARD MEMBERS.

Each year the Director shall call for a nomination meeting. Such meeting shall be held at least thirty (30) days in advance of the date set by the Director for the election of Board members. Notice of every such meeting shall be published in a newspaper of general circulation within the major production area not less than ten (10) days in advance of the date of such meeting and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the Director pursuant to RCW 15.65.200 of the Act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may be nominated orally for membership on the Board at such nomination meetings. Nominations may also be made within five (5) days after any such meeting by written petition filed with the Director, signed by not less than five (5) affected producers.

At the inception of this Order, nominations may be made at the issuance hearing.

Section F. ELECTION OF BOARD MEMBERS.

Members of the Board shall be elected by secret mail ballot within the month of May under the supervision of the Director. Affected producer members of the Board shall be elected by a majority of the votes cast by the affected producers. Each affected producer shall be entitled to one vote.

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.

Notice of every election for Board membership shall be published in a newspaper of general circulation within the major production area not less than ten (10) days in advance of the date of such election. Not less than ten (10) days prior to every election 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 Director in accordance with RCW 15.65.200. Any other affected producer entitled to vote may obtain a ballot by application to the Director upon establishing his qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any Board member.

Section G. VACANCIES PRIOR TO ELECTION.

In the event of a vacancy on the Board, the remaining members shall select a qualified person to fill the unexpired term.

Section H. 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.

Section I. BOARD COMPENSATION.

No member of the Board shall receive any salary, but each member shall receive, not to exceed, Fifteen Dollars ($15.00) per day and shall be reimbursed for subsistence and traveling expenses at a rate not to exceed that allowed by law to State employees.

Section J. POWERS AND DUTIES OF THE BOARD.

The Board shall have the following powers and duties:

1. To administer, enforce and control the provisions of this order as the designee of the Director.

2. To elect a chairman and such other officers as the Board deems advisable.

3. 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.

4. To pay only from monies 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.

5. To reimburse any applicant who has deposited with the Director in order to defray the costs of formulating the Order.

6. To establish a "Blueberry Board Marketing 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 ($100.00), shall be deposited each day or as often during the day as advisable.

7. To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, 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 State of Washington. 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.

8. 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 assess-

ments 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.

9. 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.

10. 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.

11. To adopt rules and regulations of a technical or administrative nature, subject to the provisions of Chapter 34.04 RCW (Administrative Procedures Act).

12. 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.

13. 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.

14. 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.

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

Section K. PROCEDURES FOR BOARD.

1. The Board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the Board.

2. 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 by written notice to each producer and by regular wire news services and radio-television press.

3. The Board shall establish by resolution, the time, place and manner of calling special meetings of the Board with reasonable notice to the members: PROVIDED, That the notice of any special meeting may be waived by a waiver thereof by each member of the Board.

ARTICLE III

Section A. MARKETING ORDER PURPOSES.

The Order is to promote the general welfare of the State, to enable producers of blueberries to help themselves establish orderly, fair, sound, efficient, unhampered marketing; facilitate cultural and harvesting improvements, and regulate unfair trade practices within the industry.

To carry out the purposes of the Order, the Board may provide for a program in one or more of the following areas:

a. Establish plans and conduct programs for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for blueberries. Such programs shall be directed toward increasing the sale of blueberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of blueberries nor disparage the quality, value, sale or use of any other agricultural commodity.

b. Provide for research in the production, processing and/or marketing of blueberries and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by Experiment Stations of Washington State University, but if in the judgment of the Board, said Experiment Stations do not have the 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.

c. Provide by rules and regulations for:

i. establishing uniform labels and labeling requirements for blueberries or any products thereof, requiring producers, handlers and other persons to conform to standards for the placing of labels, trademarks, insignia or brands on containers or packages; Provided, That all licensed blueberry dealers and brokers are entitled to use on the face of their product any particular trademark, insignia, brand or label that they may now have or will have. That established brands, labels, trademarks or insignias may be properly used in selling or commercially disposing of blueberries and blueberry products or in offering the same for sale, advertising and/or delivering said blueberries or blueberry products;

ii. providing for inspection and enforcement to ascertain and effectuate compliance;

iii. establishing rules and regulations respecting the foregoing.

d. The Board may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the State of Washington relating to the prevention of unfair trade practices.

e. Provide for marketing information and services to affected producers, for the verification of grades, standards, weights, tests and sampling of quality and quantity of blueberries purchased by handlers from affected producers.

ARTICLE IV

ASSESSMENTS AND COLLECTIONS

Section A. ASSESSMENTS.

1. The annual assessment on all varieties of blueberries shall be one-fourth cent per affected unit (Pound).

2. For the purpose of collecting assessments, the Board may:

a. Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the Board; or

b. Require the person subject to the assessment to give adequate assurance or security for its payment.

3. Subsequent to the first sale no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

Section B. COLLECTIONS.

Any moneys collected or received by the Board pursuant to the provisions of the Order during or with respect to any season or year, may be refunded on a prorata basis at the close of such 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 such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the Board finds that the same will tend to effectuate such policies and purposes.

Section C. 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 the 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 such 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 same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the Board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

ARTICLE V

Section A. 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 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 of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other 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 VI

Section A. TERMINATION OF THE ORDER.

The order shall be terminated if the Director finds that fifty-one

percent (51%) by numbers and fifty-one percent (51%) by volume of production of the affected producers favor or assent such dissolution. The Director may ascertain without compliance with RCW 15.65.050 through RCW 15.65.130 of the Act whether such termination is so assented to or favored whenever twenty percent (20%) by numbers or twenty percent (20%) by volume of production of the affected producers file written application with him for such termination. The termination shall not, however, become effective until the expiration of the marketing season.

ARTICLE VII

Section A. EFFECTIVE TIME.

This marketing order for blueberries shall become effective on and after June 15, 1969.

ARTICLE VIII

Section A. 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.

# # # # # # # # # # #

I hereby certify that the foregoing is a true and correct copy of the regulations promulgated by the Department of Agriculture.

Signed at Olympia, Washington
March 25, 1969

Donald W. Moos, Director,
Department of Agriculture
State of Washington