



# RULE-MAKING ORDER

CR-103 (7/10/97)

(RCW 34.05.360)

Agency: Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: October 1, 1997

(2) Purpose: Reduce the assessment rate on farmed salmon raised in the state from one cent (\$.01) per pound (dressed head-on equivalent) to one tenth of one cent (\$.001) per pound (dressed head on equivalent) and reduce the board membership from six to five.

(3) Citation of existing rules affected by this order:

Repealed:  
 Amended: WAC 16-58-020, WAC 16-580-040  
 Suspended:

(4) Statutory authority for adoption: RCW 15.65.050

Other Authority:

### PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 97-17-095 on August 20, 1997 (date).  
 Describe any changes other than editing from proposed to adopted version: WAC 16-580-020 (b) and (c), designating membership positions were modified for clarification.

### EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
  - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

### EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_ on \_\_\_\_ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes     No    If Yes, explain:

(6) Effective date of rule:

Emergency Rules

Permanent Rules  
or Expedited Repeal

- 31 days after filing     Immediately  
 Other (specify) \_\_\_\_\*     Later (specify)

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Jim Jesernig

Signature

Title  
Director of Agriculture

Date  
October 1, 1997

### CODE REVISER USE ONLY

CODE REVISER'S OFFICE  
 STATE OF WASHINGTON  
 FILED

OCT 21 1997

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97-21-110

TIME \_\_\_\_\_ PA

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	Amended	Repealed
<b>Federal rules or standards:</b>	New	Amended	Repealed
<b>Recently enacted state statutes:</b>	New	Amended	Repealed

**The number of sections adopted at the request of nongovernmental entity:**

New	Amended	<u>2</u>	Repealed
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**The number of sections adopted in the agency's own initiative:**

New	Amended	Repealed
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	Amended	Repealed
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	Amended	Repealed
<b>Pilot rule making:</b>	New	Amended	Repealed
<b>Other alternative rule making:</b>	New	Amended	<u>2</u> Repealed

AMENDATORY SECTION (Amending Order 5085, filed 10/25/95, effective 11/25/95)

**WAC 16-580-020 Farmed salmon commodity board.** (1) Administration. The provisions of this marketing order and the applicable provisions of chapter 15.65 RCW shall be administered and enforced by the board as the designee of the director.

(2) Board membership. The board shall consist of five members. Four shall be affected producer representatives elected as provided in this section. The director shall appoint one additional member who is not an affected producer to represent the department and the general public.

(3) Board membership qualifications. The affected producer members of the board shall be residents of the state of Washington, over the age of twenty-five years, each of whom is and has been actually engaged in the activities of an affected producer within the state of Washington for a period of one year and has, during that time, derived a substantial portion of his/her income therefrom. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) Term of office.

(a) The term of office, for members of the board shall be three years, unless the marketing order is terminated earlier. One-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through ~~((five))~~ four and the member appointed by the director, position ~~((six))~~ five.

(c) Commencing on January 1, 1996, the term of office for the board members shall be as follows:

Position one - one year - shall terminate on December 31, 1996.

Positions two and three - two years - shall terminate on December 31, 1997.

Position ~~((s))~~ four ~~((and—five))~~ - three years - shall terminate on December 31, 1998.

(5) Nomination and election of board members. Each year the director shall call for a nomination meeting. Such meeting shall be held at least thirty 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 production area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may nominate a representative for membership on the board at such nomination meeting.

Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not

less than five affected producers. At the inception of this marketing order, nominations may be made at the issuance hearing.

When only one nominee is nominated for any position on the board, and the director deems that said nominee satisfies the requirements of the position, then it shall be deemed that said nominee has been duly elected.

(6) Election of board members.

(a) Members of the board shall be elected by secret mail ballot within the month of October 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.

(b) 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) Notice of every election for board membership shall be published in a newspaper of general circulation within the production area not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on 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 members.

(7) Removal of board members. A board member may be removed by a vote of the board if that member fails to attend any three consecutive meetings of the board, duly noticed.

(8) Vacancies prior to election. In the event of a vacancy on the board, the board shall appoint a qualified person to fill the unexpired term.

(9) 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.

(10) Board compensation. No member of the board shall receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meeting of the board or on special assignment for the board in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(11) 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 as the board determines necessary and proper to carry out the purpose of the order and effectuate the policies of the act.

(d) To pay 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 funds with the director in order to defray the costs of formulating the order.

(f) To establish a 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.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, disbursements, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited 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. 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.

(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 and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 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 the person by the act or the 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 authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.

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

(q) To sue or be sued.

(12) Procedures for board.

(a) The board shall hold regular meetings, at least semiannually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meeting Act).

(b) The board shall hold an annual membership 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 notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members.

AMENDATORY SECTION (Amending Order 5035, filed 4/5/94, effective 5/6/94)

**WAC 16-580-040 Assessments and collections.** (1) The assessment on all farmed salmon products shall be one tenth of one cent (~~(((\$\$.01)))~~)  (\$.001) per pound (~~((on the first fifteen million pounds (dressed head on equivalent); and one half cent (\$\$.005) per pound over fifteen million pounds))~~) (dressed head-on equivalent) produced collectively by affected producers.

(2) The board shall determine the assessment rate each month on the basis of the total production reported, year to date, and bill the producer for his/her production for that month at that rate.

(3) For the purpose of collecting assessments, the board may require the person subject to the assessment to give adequate assurance or security for its payment.

(4) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by producers, the director and the board through its duly authorized employees, shall have access to and the authority to audit such records.

(5) All reports and records furnished or submitted by producers or to, or obtained by the employees of, the board which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular producer or processor from whom received, shall be treated as confidential, and the reports and all information obtained from records shall not be disclosed to board members and shall at all times be kept in the custody and under the control of one or more employees of the board who shall not disclose such information to any person other than the director, or his authorized agents. Compilations of general reports from data and information submitted by producers is authorized subject to the prohibition of disclosure of individual producers' identity or operation.

(6) Any moneys collected or received by the board pursuant to the provisions of the marketing order during or with respect to any year, may be refunded on a pro rata basis at the close of such year

or at the clo. of such period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing 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 year.

(7) 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 marketing 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.

(8) Assessments may, with the concurrence of the affected producer, be collected prospectively.