

TRANSMITTAL OF RULES ADOPTED

FROM: AGRICULTURE
(Name of Agency)

TO: CODE REVISER
LEGISLATIVE BLDG. (Southwest Corner, Ground Floor)
OLYMPIA 98504

The enclosed rules Permanent rules , being Order No. 1399
Emergency rules

relating to (Name of rules or description of subject matter)

Establishing a standard contract format for the sale or
consignment of horticultural products by persons licensed as
commission merchants under chapter 20.01 RCW.

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

pursuant to Notice No. 5170 ⁵²² ① filed with the code reviser
on 3/26/75 ② were regularly adopted as permanent rules of
(date)
this agency at Olympia, WA. on 5/8/75 and are herewith
(place) (date)
filed in the office of the code reviser pursuant to chapter 34.04
RCW. The effective date of such rules shall be 6/7/75 ③

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

pursuant to its finding in the attached administrative order,
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 _____ on _____ and
(place) (date)
are herewith filed in the office of the code reviser pursuant to
chapter 34.04 RCW.

The undersigned hereby certifies that the requirements of chapter
34.04 RCW and of the Open Public Meetings Act of 1971, chapter
42.30 RCW have been fulfilled.

Dated this 8th day of May 1975

STATE OF WASHINGTON
FILED
MAY 8 1975
CODE REVISER'S OFFICE
DOCKET # 412 FILE # 28

AGRICULTURE
(AGENCY)
Stewart Bledsoe
By Stewart Bledsoe
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.
[FORM CR-2: Rev. 9/21/74]

STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE
Order No. 1399
Effective June 7, 1975

NEW

WAC 16-693-001 PROMULGATION. I, Stewart Bledsoe, director of agriculture of the state of Washington, by the virtue of the authority vested in me under chapter 20.01 RCW, after due notice and a public hearing held in Ellensburg, Washington on April 21, 1975, pursuant to chapter 34.04 RCW, do hereby adopt the following regulation establishing a standard contract format for the sale or consignment of horticultural products by persons licensed as commission merchants under chapter 20.01 RCW.

NEW

WAC 16-693-010 COMMISSION MERCHANT STANDARD CONTRACT FORMAT. On and after the effective date of this regulation every commission merchant, before taking control of any horticultural product for sale as such commission merchant shall, in accordance with RCW 20.01.370, use the following standard contract format and exhibits provided for therein:

THIS AGREEMENT entered into this _____ day of _____, 19____, by and between _____, hereinafter referred to as Consignor, and _____, hereinafter referred to as Commission Merchant, constitutes a contract to handle said consignor's horticultural product or products as a commission merchant as defined in RCW 20.01.010.

I. CONTRACT PRODUCTION

- A. Consignor agrees to deliver to Commission Merchant for handling fruit of marketable grade and quality identified as to kind and variety and as to amount in an exhibit attached hereto.
- B. Consignor agrees Commission Merchant shall handle and market his fruit:
 - (1) In a pool. (Conditions of consignment, including terms by Commission Merchant for handling the fruit, are specified in an exhibit attached hereto.)
 - (2) For consignor's individual account. (Conditions of consignment are specified in an exhibit attached hereto.)

II. CHARGES

- A. The charges to Consignor for handling his fruit shall be not greater than the charges posted at Commission Merchant's premises, and on file with the Director of Agriculture unless the same are mutually agreed to in writing and separately signed in an exhibit attached hereto, or amended and filed as required by RCW 20.01.080. Charges for services rendered and not listed on Commission Merchants schedule of charges and commissions filed with the director shall be rendered only on the basis of actual cost.
- B. Commission Merchant is authorized to use the service of brokers, (including terminal), commission merchants, dealers, joint partners and auctions, and to consign or reconsign; all such charges shall be based on actual services

rendered and shall be charged to the Consignor's account.

- C. Promotion, research and marketing assessments-- Federal and State or otherwise as listed in an exhibit attached hereto--shall be charged to Consignor's account.

III. DELIVERY RECEIPTS

- A. Concurrent with delivery of fruit, Consignor or his agent shall receive from Commission Merchant a delivery receipt which shall state:

- (1) The name of Consignor.
- (2) The date the fruit was received, and the kind, variety and quantity delivered by Consignor.

IV. INSPECTION AND GRADING

- A. Consignor guarantees that all fruit delivered will be in compliance with the Federal Food and Drug and other Federal and State regulations and that he will keep the required records. Commission Merchant shall have the right to reject fruit that does not conform thereto. Consignor warrants his title to the fruit; title thereto shall remain in Consignor until sold and purchaser accepts delivery (final sale). Consignor guarantees that the fruit is not subject to lien, security interests or encumbrance of any nature whatsoever, except _____

- B. Consignor agrees to indemnify Commission Merchant against any other liens or encumbrances against Consignor's fruit.

V. SALES REPORTING AND REMITTANCE (Sales other than pools)

- A. Commission Merchant shall remit to Consignor the full price for which Consignor's fruit was sold, less charges, within thirty days of such sale (acceptance of fruit by the buyer) unless otherwise mutually agreed between Consignor and Commission Merchant and specified in an exhibit attached hereto. The remittance to Consignor shall include all collections, overcharges and damages, less the agreed commission and other charges, and a complete account of sale. No uniform exception to the requirement of payment within thirty days of sale shall be effective unless the clause providing for the exception is separately signed by Consignor in an exhibit attached hereto.

B. Commission Merchant shall promptly make and keep the following records on the handling, storage or sale of each kind and variety of fruit:

- (1) The name and address of Consignor.
- (2) The date received.
- (3) The quantity and variety delivered by Consignor, and where applicable, the dockage, tare, grade, size and net weight, or quality.
- (4) Date of such sale for account of Consignor.
- (5) The terms of the sale.
- (6) The terms of payment to Consignor.
- (7) An itemized statement of the charges to be paid by Consignor in connection with the sale.
- (8) The names and addresses of all purchasers if said Commission Merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said Commission Merchant, directly or indirectly, as holder of the other's corporate stock, as co-partner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.
- (9) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the fruit actually sold for.
- (10) Any claim or claims which have been or may be filed by Commission Merchant against any person for overcharges or for damages resulting from the injury or deterioration of such fruit by the act, neglect or failure of such person, and such records shall be open to the inspection of the Director and Consignor of fruit for whom such claim or claims are made.

VI. POOLING

A. Commission Merchant shall be subject to the following conditions when accepting Consignor's fruit for pooling:

- (1) Written authority to commingle Consignor's fruit in a specific pool shall be provided in an exhibit attached hereto together with

standards for such pool and how Consignor's fruit will be handled.

- (2) Commission Merchant shall furnish Consignor with a delivery receipt which shall indicate the variety of fruit delivered by Consignor and the number of containers or the weight and tare thereof.
- (3) Consignor's fruit received for handling and sale in the fresh market shall be accounted for to Consignor with individual pack-out records which shall include the variety, grade, size and date of delivery. Individual daily packing summaries shall be available to Consignor within forty-eight hours after Consignor's fruit is packed: PROVIDED, That if Consignor agrees as to small deliveries of fruit, Commission Merchant may use platform inspection to determine, where applicable, the grade or size. The agreement as to the amount of fruit qualifying as a small delivery shall be specified in an exhibit attached hereto.
- (4) Terms by which Commission Merchant may use his judgment in regard to the sale of the pooled fruit shall be attached as an exhibit attached hereto.
- (5) Terms setting forth charges as filed with the Director of Agriculture or lesser charges than said filed charges as charged all other like consignors to said pool.
- (6) Consignor shall be paid for his pool contribution by Commission Merchant when the pool is in the process of being marketed, in direct proportion up to eighty percent of Consignor's interest, and within thirty days of sale, (acceptance of fruit by the buyer), unless otherwise mutually agreed between Consignor and Commission Merchant and specified in an exhibit attached hereto and separately signed by Consignor. Payment shall be less expenses directly incurred, prior liens and other advances on Consignor's fruit crop. Remittance to Consignor for his remaining interest in the pool shall be within thirty days of final sale from the pool, unless otherwise mutually agreed and specified in an exhibit attached hereto and separately signed by Consignor.
- (7) The final remittance to the Consignor shall include:
 - (a) The average price received by Commission Merchant for fruit in that pool by variety and grade or size;

- (b) The total house charges deducted from Consignor's share of that pool;
 - (c) The industry check-off charges deducted from Consignor's share;
 - (d) The net price to Consignor by variety and grade or size;
 - (e) If Consignor is paid on a basis other than variety and grade, the net price to Consignor on the basis used.
- (8) Commission Merchant shall for a period of one year keep records as follows on pools for the information of pool consignors and shall supply such records to pool consignors upon request:
- (a) Date of sale for account of pool.
 - (b) The terms of sale.
 - (c) The terms of payment to Consignors.
 - (d) An itemized statement of the charges to be paid by Consignors in connection with the sale.
 - (e) A lot number or mark identifying each consignment to the pool and a record of the prices received for the fruit in the pool.
- (9) Commission Merchant shall notify Consignor whenever he does not include his fruit grown in the same district as the Consignors in the same pools.

VII. DUTY TO INFORM AND SELL FRUIT IN CONSIGNOR'S BEST INTEREST

- A. With regard to loose fruit, whenever Consignor requests Commission Merchant shall inform the Consignor as to the current selling price of the fruit and whether it will cover the market preparation and selling costs. Whenever such costs exceed the market price, Consignor shall be free to sell his fruit to any other buyer and Commission Merchant shall have the right to refuse to accept delivery and/or pack the fruit.
- B. Commission Merchant shall notify Consignor whenever, because of lack of space or other conditions in the physical facilities, Consignor's fruit cannot be properly handled.
- C. Commission Merchant is authorized to sell for Consignor's account, at times and in quantities the market will accept, as he deems in the best

interest of Consignor. Both parties recognize and agree that Commission Merchant may have to sell Consignor's fruit even though the price may be lower than desirable, where condition (quality) is, or may become a factor; PROVIDED, That the provisions of this section shall not affect the minimum guaranteed to a Consignor where such minimum return is agreed to by both Consignor and Commission Merchant.

- D. Commission Merchant is authorized to establish standards for packs and these standards may be higher than the minimum State or Federal grades.

VIII. EXCUSE FOR NON-PERFORMANCE

- A. Upon payment by Consignor of all of Commission Merchant's earned commissions and charges Consignor shall be excused for non-performance of his obligations under the terms of this contract in the event the destruction of his fruit is caused by flood, frost, hail, rain, wind or any other act of nature beyond his control and/or in the event of strikes or the destruction of equipment and facilities beyond his control which would impair the delivery of his fruit to Commission Merchant.
- B. Commission Merchant shall not be responsible for the performance of his obligations under this contract in the event of flood, wind or act of nature beyond his control, or in the event of strikes, fire, embargoes or other conditions beyond the control of Commission Merchant and which would prevent the proper handling of Consignor's fruit.

IX. RISK OF LOSS

- A. Commission Merchant shall provide casualty insurance covering loss or destruction of any fruit delivered to Commission Merchant from fire, lightning, windstorm, hail, vehicle and aircraft, riot and civil commotions, smoke, vandalism, explosion, ammonia contamination or sprinkler leakage. The coverage shall continue through and until the time of shipment. The value of the fruit involved shall be that established at the time of loss.

X. COMMISSION MERCHANT LIEN

- A. Commission Merchant shall have a lien against all of fruit handled in behalf of Consignor for advances, assessment charges and expenses herein authorized by Consignor.

XI. ADJUSTMENTS

- A. Consignor authorizes Commission Merchant to extend credit insofar as it will not abrogate

Consignor's right to payment within thirty days of sale of his fruit. Consignor authorizes Commission Merchant to make reasonable adjustments in price at destination, subject to USDA inspection, where reasonably available and without inspection if not reasonably available.

- B. Consignor authorizes Commission Merchant to settle claims and collect the proceeds in either Consignor's or Commission Merchant's name, this authority to include specifically the rights to handle, settle and collect carrier claims.

XII. DIVERSION

- A. Fruit received from Consignor for fresh market sale, except fruit for processing and culls, shall not be diverted to any other market by Commission Merchant unless written permission has been received from the Consignor, or has been made a part of an exhibit attached hereto.

XIII. MINIMUM GUARANTEED RETURN

- A. In the instance where a Commission Merchant agrees to a minimum guaranteed return: The minimum guaranteed return shall be specified in an exhibit attached hereto and shall show:
 - (1) The minimum guaranteed return to Consignor for each kind and variety, or
 - (2) If the minimum guaranteed return to Consignor includes more than one variety, how the minimum guaranteed price for each variety shall be determined:
 - (a) On the basis of the average of all sales of all such varieties or on the basis of sales of each single variety.

XIV. DURATION OF CONTRACT

- A. This contract shall continue in effect from year to year, unless cancelled as to any kind or variety of fruit by either party by giving written notice to the other at least 60 days prior to harvest of that kind or variety of fruit in the year following the year in which this contract is signed or any year thereafter. Such cancellation shall not apply to any uncompleted preparation for market or marketing or other matters arising out of this agreement.

XV. LICENSE REVOCATION

- A. This contract is assignable only by mutual consent, and Consignor is released from compliance with its terms if the license of Commission Merchant is suspended or revoked.

XVI. ENTIRE CONTRACT

This contract and the appended exhibits constitute the entire agreement between the parties and may be modified only in writing, and, further, it shall in no way be construed to impair any mandatory provisions of Chapter 20.01 RCW, the Washington Commission Merchants Act, governing either party hereto.

Both parties to this contract acknowledge that they have read and understand its provisions including attached exhibits which are identified as _____ before signing the same.

DATED this _____ day of _____ 19 ____.

COMMISSION MERCHANT


CONSIGNOR

ADDRESS

Department of Agriculture
Standard Contract Format No. I

NEW WAC 16-693-020 STANDARD CONTRACT FORMAT - TITLE. The Standard Contract format adopted in WAC 16-693-010 shall be known and identified as Commission Merchant Standard Contract Format No. I.

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



STEWART BLEDSOE
Director of Agriculture
State of Washington

Signed at Olympia, WA

Date: May 8, 1975