

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF AGRICULTURE

(agency name)

Administrative Order No. 1864

(1) I, Michael V. Schwisow Deputy, director of Department of Agriculture

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

Amending Chapter 16-565 WAC with minimum technical changes as authorized in Chapter 15.65.380 RCW

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 85-11-098 078 dh filed with the code reviser on May 22, 1985. These rules shall take effect: [x] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order 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 public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 15.65.380 and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of

(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED

July 8, 1985

STATE OF WASHINGTON FILED

By

Deputy Director

Title

JUL 8 1985

[Form CR-7: Rev. 7/23/82]

CODE REVISER'S OFFICE

WSR 85-15-018

AMENDATORY SECTION (Amending Order 1713, filed 9/12/80, effective 10/13/80)

WAC 16-565-010 DEFINITION OF TERMS. 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 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 cranberries in the state of Washington, in commercial quantities for fresh market, for processing, or for sale to processors.

(6) "Commercial quantity" means any cranberries 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 cranberries not produced by him.

(8) "Cranberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-565-020.

(9) "Cranberries" means and includes all kinds, varieties, and hybrids of "vaccinium macrocarpon" grown and marketed in the state of Washington.

(10) "Fiscal year" means the twelve-month period beginning with September 1 of any year and ending with the last day of August following, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to cranberries. A producer-handler shall be deemed to be a producer with respect to the cranberries which he produces and a handler with respect to the cranberries 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, other than those sold retail by the producer.

(14) "Affected unit" means one hundred pounds (barrel) net of cranberries.

(15) "Substantial portion" means five percent or more.

(16) "Order" means marketing order.

AMENDATORY SECTION (Amending Order 1713, filed 9/12/80, effective 10/13/80)

WAC 16-565-020 CRANBERRY COMMODITY BOARD. (1) 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.

(2) Board membership.

(a) The board shall consist of eight members. Seven members shall be affected producers elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the department and the public.

(b) For the purpose of nomination and election of producer members of the board, the affected area shall be the state of Washington and shall be divided into three representative districts as follows:

District I shall have two board members, being positions 1 and 2, and shall comprise that portion of Pacific County lying south of the Willapa River.

District II shall have four board members, being positions 3, 4, 5, and 6, and shall comprise that portion of Pacific County and that

portion of Grays Harbor County lying between the Willapa River and the Chehalis River.

District III shall have one board member, being position 7, and shall comprise the rest of the state.

(3) Board membership qualifications. The affected producer members of the board shall be practical producers of cranberries 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 cranberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board. 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, and 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 seven and the member appointed by the director, position eight.

(c) The term of office for the initial board members shall be as follows:

Positions one and three - one year;

Positions four and five - two years;

Positions two, six, seven, and eight - three years.

(d) No elected member of the board may serve more than two full consecutive three-year terms.

(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 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 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.

(6) Election of board members.

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

(8) 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.

(9) Board compensation. No member of the board shall receive any salary or other compensation, but each member ~~((shall))~~ may receive per diem in accordance with RCW 15.65.270 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, ~~((and))~~ together with travel expenses at the rates allowed state employees.

(10) 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 declared policies of the act.

(d) To pay ~~((only))~~ 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 accept grants and gifts and expend the same consistent with the policies and purpose of this order.

~~((f))~~ (f) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

~~((f))~~ (g) To establish a "cranberry 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, shall be deposited each day or ~~((as--often--during--the--day))~~ as advisable.

~~((g))~~ (h) 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.

~~((h))~~ (i) 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))~~ (j) 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))~~ (k) 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))~~ (l) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

~~((l))~~ (m) 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))~~ (n) 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/her by the act or the order.

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

(11) Procedures for board.

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

(b) 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 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: PROVIDED, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.