



LE-MAKING ORDER

(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Washington State Department of Agriculture

Permanent Rule
 Emergency Rule

(1) Date of adoption: October 29, 1992

(2) Purpose: Establish a commodity commission for Washington Farmed Salmon

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Repealed: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

(4) Authority for adoption:
Statute: RCW 15.65
Other Authority:

(5.1) PERMANENT RULE ONLY
Pursuant to notice filed as WSR 92-14-117 on July 1, 1992 (date).
Describe any changes other than editing from proposed to adopted version:
Changes attached

(5.2) EMERGENCY RULE ONLY
Pursuant to 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:

(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:
Permanent Rules Emergency Rules
 31 days after filing Immediately
 Other (specify) 12-1-92 * Later (specify) _____
*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY
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STATE OF WASHINGTON
FILED
OCT 29 1992
TIME 2:32
MSK [Signature]

NAME (TYPE OR PRINT) C. Alan Pettibone
SIGNATURE [Signature]
TITLE Director of Agriculture
DATE 10-29-92

CHANGES FROM THE PROPOSED VERSION
WASHINGTON FARMED SALMON COMMISSION

1. WAC 16-580-020 (4) Term of Office. Added specific dates for termination of position terms for the initial board members, i.e., December 31, 1993; 1994; 1995.
2. WAC 16-580-020 (5) Nominations and Elections of Board Members. Election of board members; (Last sentence) 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)(b) to read: 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 vote."
3. WAC 16-580-040 Assessments and Collections. Inserted: (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." Corrected the paragraph numbers in this section to correlate with the insertion.
4. WAC 16-580-041. Added: (4) The board shall submit an assessment invoice to the affected producers within fourteen days of the last day of each production month.
5. WAC-16-580-060. Corrected to read: The order shall be terminated if the director finds that fifty-one percent by "number and" fifty-one percent by volume of production of the affected producers assent "to" such action.
6. WAC 16-580-070. Changed the effective date to on or after "October 1, 1992." Changed the date for termination to December 31, "1995".

Chapter 16-580 WAC

WASHINGTON FARMED SALMON COMMISSION

NEW SECTION

WAC 16-580-010 Definition of terms. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or the 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 is an aquatic farmer as defined in chapter 15.85 RCW, registered to produce in Washington state farmed salmon (salmonids) in commercial quantities for marketing; or who contracts for the production in Washington state of farmed salmon (salmonids) in commercial quantities. This does not include marketing companies that buy, sell, or distribute salmonids produced by others.

(6) "Permitted" means all required state, local, and federal permits for operating a commercial salmon farm.

(7) "Commercial quantity" means any farmed salmon produced by an affected producer with an annual production of greater than fifty thousand pounds of dressed head-on equivalent.

(8) "Farmed salmon commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of this marketing order.

(9) "Farmed salmon" means native, nonnative, or hybrids of Pacific and Atlantic salmon, and steelhead, that are propagated, farmed, or cultivated for human food on aquatic farms under the supervision and management of a private sector aquatic farmer. Live fish, green eggs and eyed eggs are excluded.

(10) "Fiscal year" means the twelve-month period beginning with January 1 of any year and ending with December 31st, both dates being inclusive.

(11) "Affected area" means the production area.

(12) "Production 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 pounds of salmon farmed for retail and wholesale markets, excluding live fish, green eggs and eyed eggs.

(15) "Order" means this marketing order.

(16) "Dressed head on equivalent" means weight based on whole, head-on gutted weight.

(17) "Processors" means companies engaged in the commercial processing of farmed salmon.

(18) "Processing" means to prepare farmed salmon or manufacture farmed salmon products by canning, cooking, smoking, filleting, heading, gutting, fermenting, dehydrating, drying, or consumer packaging.

NEW SECTION

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 seven producer representatives. 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 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 two - one year - shall terminate on December 31, 1993.

Positions three, four, and five - two years - shall terminate on December 31, 1994.

Positions six, seven, and eight - three years - shall terminate on December 31, 1995.

(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.

NEW SECTION

WAC 16-580-030 Marketing order purposes. The marketing order is to promote the general welfare of the state, to enable producers of farmed salmon products to help themselves establish orderly, fair, sound, efficient, unhampered marketing. To carry out the purposes of the marketing order, the board may provide for programs in the following areas:

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

(2) Provide for research in the production, processing, and/or marketing of farmed salmon products and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by experiment stations of Washington State University or the University of Washington, 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 therefore, the project may be carried out by other research agencies selected by the board.

(3) Provide for marketing information and services to affected producers.

(4) Investigate and take necessary action to prevent unfair trade practices and to correct where possible, trade practices which hinder marketing of Washington produced farmed salmon products.

(5) Allocation of assessments collected from affected producers shall be made by the board using the following formula:

(a) All operating costs will be borne by all affected producers.

(b) All programs, plans, research, and marketing deemed by the board to be in the collective best interest of all affected producers, regardless of crop, will be borne by all affected producers.

NEW SECTION

WAC 16-580-040 Assessments and collections. (1) The assessment on all farmed salmon products shall be one and one-half cents (\$.015) per pound on the first ten million pounds (dressed head-on equivalent); one cent (\$.01) per pound from ten to 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 close 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.

NEW SECTION

WAC 16-580-041 Time--Place--Method for payment and collection of assessments--Production reports. The following procedure is established for the reporting and paying of assessments:

(1) The board shall collect from affected producers a per pound assessment, in accordance with WAC 16-580-040, of dressed head-on weight equivalent on all farmed salmon produced.

(2) In the case where more than one "affected producer" is involved, the person responsible for the cost of processing shall be assessed.

(3) A production report for Washington farmed salmon shall be submitted by processors to the board within seven days of the last day of each production month.

(4) The board shall submit an assessment invoice to the affected producers within fourteen days of the last day of each production month.

(5) Assessments shall be submitted to the board by the affected producer within thirty days of the last day of each production month.

(6) Production reports shall be reviewed by the board each quarter for consistency with Washington state department of fisheries production reports.

NEW SECTION

WAC 16-580-050 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.

NEW SECTION

WAC 16-580-060 Termination of the order. The order shall be terminated if the director finds that fifty-one percent by number and fifty-one percent by volume of production of the affected producers assent to such action. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether termination is assented to whenever twenty percent by number or twenty percent by volume of production of the affected producers file written applications with the director for termination. The termination shall become effective at the end of the fiscal year.

NEW SECTION

WAC 16-580-070 Effective time. This marketing order for farmed salmon products shall become effective on or after October 1, 1992, and remain in full force and effect until December 31, 1995, unless terminated prior thereto under the provisions of chapter 15.65 RCW: *Provided*, That if it remains in effect until December 31, 1995, the director shall conduct a referendum as required for the approval of an order under chapter 15.65 RCW at such time prior to such date so that he may determine if the affected producers desire that the order be terminated on such date or continued in full force and effect beyond such date. All costs of conducting such election shall be defrayed from the funds of the commission.

NEW SECTION

WAC 16-580-080 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.