



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

- Permanent Rule
 Emergency Rule

Agency: Washington State Department of Agriculture

(1) Date of adoption: April 30, 1993

(2) Purpose: To provide for board members or their agents to participate in proceedings concerning the regulation of agricultural chemicals affecting strawberries, and to provide for expansion of the affected area to the entire state. (Also correct a typographical error.)

(3) Citation of existing rules affected by this order:
Repealed:
Amended: WAC 16-555-010 and WAC 16-555-020
Suspended:

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

(5.1) PERMANENT RULE ONLY
Pursuant to notice filed as WSR 93-04-094 on Feb. 2, 1993 (date).
Describe any changes other than editing from proposed to adopted version: NONE

(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 6.3.93 Emergency Rules
 31 days after filing 7-1-93 Immediately
 Other (specify) 7-1-93 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
CODE REVISER'S OFFICE
STATE OF WASHINGTON
MAY 03 1993
TRM 1125
WSR 93-10-003

NAME (TYPE OR PRINT)
Peter J. Goldmark
SIGNATURE
TITLE Director DATE

AMENDATORY SECTION (Amending Order 2038, filed 5/3/90, effective 6/3/90)

WAC 16-555-010 Definition of terms. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or the director's 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 strawberries in commercial quantities in (~~that portion of~~) the state of Washington (~~located west of the summit of the Cascade Mountains~~), for fresh market, for processing, or for sale to processors.

(6) "Commercial quantity" means any strawberries 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, storing, freezing, or distributing strawberries not produced by him.

(8) "Strawberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-555-020.

(9) "Strawberries" means and includes all kinds, varieties, and hybrids of "FRAGARIA-X-ANANASSA" grown and marketed in the state of Washington.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to strawberries. A producer-handler shall be deemed to be a producer with respect to the strawberries which he/she (~~produces and a handler with respect to the strawberries which he/she~~) produces and a handler with respect to the strawberries which he/she handles, including those produced by himself/herself.

(12) "Affected area" means (~~that portion of~~) the state of Washington (~~located west of the summit of the Cascade Mountains~~).

(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 strawberries.

WAC 16-555-020 Strawberry commodity board. (1) Administration. The provisions of this marketing 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 ~~((six))~~ seven members ~~((Five))~~ Six 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 ~~((that portion of))~~ the state of Washington ~~((located west of the summit of the Cascade Mountains))~~, and shall be divided into ~~((three))~~ four representative districts as follows:

(i) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Island, San Juan, Skagit, and Whatcom.

(ii) District II shall have two board members, being Positions 3 and 4, and shall include the counties of King, Clallam, Jefferson, Kitsap, Pierce, and Snohomish.

(iii) District III shall have one board member, being Position 5, and shall include the counties of Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum, Grays Harbor, Mason, and Thurston.

(iv) District IV shall have one board member, being Position 6, and shall include the remaining counties in the state of Washington.

(3) **Board membership qualifications.** The affected producer members of the board shall be practical producers of strawberries 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 strawberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his/her 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 ~~((five))~~ six and the member appointed by the director, position ~~((six))~~ seven.

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

Position one - shall terminate on August 31, 1986;

Positions three and five - shall terminate on August 31, 1987;

Positions two and four - shall terminate on August 31, 1988.

(d) The term of office for the initial board member in Position 6, shall terminate on August 31, 1995.

(5) **Nominati - 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.

When only one nominee is nominated for any position on the board, the director shall deem that said nominee satisfies the requirements of the position and 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 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.

(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/her 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 may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, 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 marketing order and effectuate the declared policies of the act.
- (d) To pay from moneys collected as assessments, contributions, or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the marketing 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 with the director in marketing order to defray the costs of formulating the marketing order.
- (f) To establish a "strawberry 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, shall be deposited each day or as often as advisable.
- (g) 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 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 calendar 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 calendar 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 marketing 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 him by the act or the marketing 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 the 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 15.58.030(1) or any agricultural chemical which is of use or potential use in producing strawberries, 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.

(11) 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 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 regular news services.

(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.