Chapter 16-550 WAC
BLUEBERRY

Last Update: 1/22/25

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

16-550-030 Marketing order purposes. [Order 1116, § 16-550-030, filed 5/14/69, effective 6/15/69.] Repealed by WSR 06-17-078, filed 8/14/06, effective 9/14/06. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW.

WAC 16-550-005 Marketing order for Washington blueberries—Policy statement. (1) The marketing of blueberries within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its blueberries be properly promoted by:

(a) Enabling producers of blueberries to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the blueberries they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of blueberries within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the blueberry industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that blueberries be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's blueberries.

(b) Increase the sale and use of Washington state's blueberries in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's blueberries.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's blueberries and products.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of blueberries produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state blueberry commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to blueberries under the provisions of this marketing order.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-005, filed 8/14/06, effective 9/14/06.]

WAC 16-550-006 Marketing order purposes. This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita consumption of blueberries in Washington state. The Washington state blueberry commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) To carry out the purposes of the order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion and/or other programs for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for blueberries. Such programs shall be directed toward increasing the sale of blueberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of blueberries nor disparage the quality, value, sale or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of blueberries.

(b) Provide for research in the production, processing, irrigation, transportation, handling, and/or marketing of blueberries and expend the necessary funds for such purposes. Insofar as practicable, research shall be carried on by experiment stations of Washington State University, 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 therefor, the project may be carried out by other research agencies selected by the board.

(c) Provide by rules for:

(i) Establishing uniform labels and labeling requirements for blueberries or any products thereof, requiring producers, handlers and other persons to conform to standards for the placing of labels, trademarks, insignia or brands on containers or packages: Provided, That all licensed blueberry dealers and brokers are entitled to use on the face of their product any particular trademark, insignia, brand or label that they may now have or will have. That established brands, labels, trademarks or insignias may be properly used in selling or commercially disposing of blueberries and blueberry products or in offering the same for sale, advertising and/or delivering said blueberries or blueberry products;

(ii) Providing for inspection and enforcement to ascertain and effectuate compliance.

(d) The board may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.

(e) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of blueberries for the verification of grades, standards, weights, tests, and sampling of quality and quantity of blueberries purchased by handlers from affected producers.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) Blueberry-related education and training.

(f) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of blueberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of blueberries.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-006, filed 8/14/06, effective 9/14/06.]

WAC 16-550-010 Definitions of terms. Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

(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 State Agricultural Commodity Boards Act or chapter 15.65 RCW.

(4) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

(5) "Affected producer" or "producer" means any person who produces blueberries in commercial quantities in the state of Washington, or who sells or stores blueberries in the state of Washington for fresh market or for processing. "To produce" means to act as a producer. For the purposes of the blueberry marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Commercial quantity" means any blueberries produced, or stored, 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, or distributing blueberries not produced by them. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Blueberry commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of WAC 16-550-020 of this blueberry order.

(9) "Blueberries" means and includes all kinds, varieties, and hybrids of "vaccinium corym bosum" and "vaccinium australe" grown and marketed in the state of Washington.

(10) "Marketing season" or "fiscal year" means the 12-month period beginning January 1st and ending December 31st, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to blueberries. A producer-handler shall be deemed to be a producer with respect to the blueberries which they produce and a handler with respect to the blueberries which they handle, including those produced by themselves.

(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.

(14) "Affected unit" means one pound net of blueberries.

[Statutory Authority: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060, 43.01.160, and 43.23.025. WSR 25-03-143, s 16-550-010, filed 1/22/25, effective 2/22/25. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-010, filed 8/14/06, effective 9/14/06. Statutory Authority: RCW 15.65.020 and 15.65.140. WSR 91-01-054 (Order 2068), § 16-550-010, filed 12/13/90, effective 1/13/91; Order 1116, § 16-550-010, filed 5/14/69, effective 6/15/69.]

WAC 16-550-020 Blueberry 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 seven members. Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member of the board who is neither an affected producer nor a handler to represent the director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as positions two, four and six.

(ii) Elected affected producer positions on the board shall be designated as positions one, three and five.

(iii) The position representing the director who is neither an affected producer nor a handler shall be designated as position seven.

(b) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be the entire state of Washington.

(3) **Board membership qualifications.** The producer members of the board must be practical producers of blueberries and each must be a citizen and resident of this state, over the age of 18 years. Each producer board member must be and have been actually engaged in producing blueberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of their income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(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 six and the member representing the director position seven.

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

Positions one and two - Until June 30, 1970
Positions three and four - Until June 30, 1971
Positions five, six and seven - Until June 30, 1972

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions two, four and six shall be forwarded to the director for appointment within 30 days of the effective date of this amended marketing order.

(5) **Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members. The meeting(s) shall be held at least 30 days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting shall be published in a newspaper of general circulation within the major production area not less than 10 days in advance of the date of the meeting and, in addition, written notice of every meeting shall be given to all affected producers according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person shall not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meeting(s). Nominations may also be made within five days after the nomination meeting by written petition filed with the director, signed by not less than five affected producers.

(e) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(6) **Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer shall be entitled to one vote. Elected members of the board shall be elected by a majority of the votes cast by the affected producers.

(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) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the major production area not less than 10 days in advance of the date of the election or advisory vote. Not less than 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected pro-

ducer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by any affected producer shall not invalidate the election or advisory vote of any board member.

(7) **Vacancies.**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position became vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(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 except that each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(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, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are 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 reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(f) To establish a "blueberry board marketing revolving fund" and the 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 $100, shall be deposited each day or as often during the day 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. Records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. 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 30 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 a bond or bonds shall be paid by the board from assessments collected. A bond shall not be necessary if any 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. At least 30 days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(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 of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 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 them by the act or 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 work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of blueberries.

(s) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(u) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of blueberries including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the

value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle blueberries within the affected area and data on the amount and value of the blueberries handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of names and addresses of all affected persons who produce blueberries and the amount, by unit, of blueberries produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle blueberries and the amount of blueberries handled by each person during the past three years pursuant to RCW 15.65.295.

(z) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(aa) 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, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least 20 days prior to the rescheduled meeting date.

(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 10 days prior to the meeting by written notice to each producer and by regular wire news services and radio-television press.

(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 to a member of any special meeting may be waived by a waiver thereof from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

[Statutory Authority: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060, 43.01.160, and 43.23.025. WSR 25-03-143, s 16-550-020, filed 1/22/25, effective 2/22/25. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-020, filed 8/14/06, effective 9/14/06. Statutory Authority: RCW 15.65.050. WSR 00-10-022, § 16-550-020, filed 4/24/00, effective 5/25/00. Statutory Authority: RCW 15.65.380. WSR 89-12-054 (Order 002), § 16-550-020, filed 6/6/89; Order 1116, § 16-550-020, filed 5/14/69, effective 6/15/69.]

WAC 16-550-040 Assessments and collections. (1) **Assessments.**

(a) The annual assessment on all varieties of blueberries shall be four-tenths of a cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year, may be refunded on a pro rata basis at the close of the season or year or at the close of a longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in a specified amount as may be determined by the board pursuant to the provisions of the act and the 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 the assessment or other sum on or before the date due, the board may, and is hereby authorized, to add to the unpaid assessment or sum an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of it. In the event of failure of a person or persons to pay any due and payable assessment or other sum, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-040, filed 8/14/06, effective 9/14/06. Statutory Authority: Chapter 15.65 RCW. WSR 01-05-047, § 16-550-040, filed 2/15/01, effective 3/18/01. Statutory Authority: RCW 15.65.020 and 15.65.140. WSR 91-01-054 (Order 2068), § 16-550-040, filed 12/13/90, effective 1/13/91. Statutory Authority: Chapter 15.65 RCW. WSR 79-01-046 (Order 1594), § 16-550-040, filed 12/21/78; Order 1116, § 16-550-040, filed 5/14/69, effective 6/15/69.]

WAC 16-550-050 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.

[Order 1116, § 16-550-050, filed 5/14/69, effective 6/15/69.]

WAC 16-550-060 Termination of the order. Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 06-17-078, § 16-550-060, filed 8/14/06, effective 9/14/06; Order 1116, § 16-550-060, filed 5/14/69, effective 6/15/69.]

WAC 16-550-070 Effective time. This marketing order for blueberries shall become effective on and after June 15, 1969.

[Order 1116, § 16-550-070, filed 5/14/69, effective 6/15/69.]

WAC 16-550-080 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.

[Order 1116, § 16-550-080, filed 5/14/69, effective 6/15/69.]

WAC 16-550-500 Time, place, method for payment and collection of assessments. Effective with the growing season of 1969, the following procedure is established for the reporting and paying assessments levied pursuant to section RCW 15.65.410 and WAC 16-550-040:

(1) All first handlers of blueberries for resale or for processing shall withhold the amount of the assessment from their remittances to growers and transmit same to the commission.

(2) All growers selling blueberries other than to first handlers for resale or processing, whether selling direct or through brokers, and including all sales at retail, shall pay the assessment directly to the commission.

(3) All growers having blueberries in cold storage that are not sold on October 31 of each year, shall compute the assessment due on such berries and pay same to the commission.

(4) All assessments for the crop year are due and payable to the commission on or before October 31 of each year.

(5) Any assessments paid on or after December 1 shall be accompanied with a penalty fee of 10% as provided in RCW 15.65.440 of the act.

[Order 1, § 16-550-500, filed 7/10/69.]