



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

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| Agency: Department of Agriculture      | <input checked="" type="checkbox"/> Permanent Rule |
| (1) Date of adoption: January 31, 1998 | <input type="checkbox"/> Emergency Rule            |
|  | <input type="checkbox"/> Expedited Adoption        |
|  | <input type="checkbox"/> Expedited Repeal          |

(2) Purpose: Establish a commodity commission to represent canola and rapeseed growers in the state of Washington. The commission will have the authority to collect assessments on canola and rapeseed produced in the state of Washington to fund programs in advertising and promotion, research, public information and take necessary action to prevent unfair trade practices.

(3) Citation of existing rules affected by this order: NONE LISTED: New chapter 16-573 WAC  
 Repealed:  
 Amended:  
 Suspended:

(4) Statutory authority for adoption: chapter 15.65 RCW  
 Other Authority: *DM 97-19-002 September 3 DM*

**PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)**  
 Adopted under notice filed as WSR 97-17-063 on Aug. 18, 1997 (date).  
 Describe any changes other than editing from proposed to adopted version: Effective date of the commission and dates for the initial board members terms of office changed from June, 1997 to June, 1998.

**EMERGENCY RULE ONLY**  
 Under 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:

**EXPEDITED REPEAL ONLY**  
 Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date)

(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 or Expedited Repeal                                      | Emergency Rules                          |
|--|--|
| <input type="checkbox"/> 31 days after filing                            | <input type="checkbox"/> Immediately     |
| <input checked="" type="checkbox"/> Other (specify) <u>June 1, 1998*</u> | <input type="checkbox"/> Later (specify) |

\*If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required

Name (Type or Print)  
Jim Jesernig

Signature  
*Jim Jesernig*

Title  
Director

Date  
January 31, 1998

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON

FEB 11 1998

TIME 11:52

WISA 98-04-093

Chapter 16-573 WAC

CANOLA AND RAPESEED COMMISSION

NEW SECTION

**WAC 16-573-010 Definitions 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 State Agriculture 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, or causes to be produced, in commercial quantities, canola or rapeseed, or both in the state of Washington.

(6) "Commercial quantity" means all the canola or rapeseed produced for market in any calendar year by any producer.

(7) "Affected handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing canola or rapeseed not produced by the handler and includes any lending agencies for a commodity credit corporation loan to producers.

(8) "Canola and rapeseed commodity board" referred to as "board" means the canola and rapeseed commodity board formed under WAC 16-573-020.

(9) "Canola or rapeseed" or "canola and rapeseed" means *Brassica Sp.* oilseeds, produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses, and includes mustard.

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

(11) "Producer-handler" is both a "producer" and a "handler" with respect to canola and rapeseed and is covered by this order as a producer when engaged in the business of producing canola or rapeseed or a handler when engaged in processing, selling, marketing or distributing canola or rapeseed.

(12) "Affected area" means the following counties located in the state of Washington: Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Klickitat, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(14) "Affected unit" means one hundred pounds (hundredweight) of canola or rapeseed, or both.

#### NEW SECTION

**WAC 16-573-020 The canola and rapeseed board.** (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of eight members. Six members must be affected producers elected under provisions of this order. One member must be an affected handler appointed by the elected producers. The director shall appoint one member of the board who is neither an affected producer nor an affected 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 of the state of Washington is divided into three representative districts as follows:

(i) District I must have two board members, being positions one and two and include the counties of Adams, Benton, Douglas, Franklin, Grant, Klickitat, Lincoln, and Yakima.

(ii) District II must have two board members, being positions three and four and include the counties of Ferry, Pend Oreille, Spokane, and Stevens.

(iii) District III must have two board members being positions five and six and include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.

(iv) The handler appointed by the elected producers will be position seven.

(3) **Board membership qualifications.**

(a) The affected producer members of the board must be practical producers of canola or rapeseed in the district in and for which they are nominated and elected and must 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 canola or rapeseed 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 who is not engaged in business as a handler or other dealer.

(b) The affected handler member of the board must be a practical handler of canola or rapeseed and must be a citizen and resident of the state of Washington, over the age of twenty-five years and who is and has been, either individually or as an officer or an employee of a corporation, firm, partnership association or cooperative actually engaged in handling canola or rapeseed within the state of Washington for a period of five years and has during that period derived a substantial portion of their income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.**

(a) The term of office for members of the board is three years, and one-third of the membership as nearly as possible must be elected each year.

(b) Membership positions on the board are designated numerically; affected producers will have positions one through six, the affected handler will have position seven and the member appointed by the director will have position eight.

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

Positions one and three - one year, ending on May 31, 1999;  
Positions two and five - two years, ending on May 31, 2000;  
Positions four, six and seven - three years, ending on May 31, 2001.

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

**(5) Nomination and election of board members.**

(a) Each year the director shall call for nomination meetings in those districts whose board members term is about to expire. The meetings must be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every meeting must be published in newspapers of general circulation within the affected district at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers within the affected district according to the list maintained by the director under RCW 15.65.200 of the act. Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting. Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers. At the inception of this order, nominations may be made at the issuance hearing.

(b) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

**(6) Election of board members.**

(a) Members of the board must be elected by secret mail ballot within the month of April under the supervision of the director. Affected producer members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. Each affected producer is entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) Notice of every election for board membership must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the election. At least ten days before every election 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 the affected producers maintained by the director in accordance with

RCW 15.65.200 of the act. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications. Nonreceipt of a ballot by an affected producer will not invalidate the election of any board member.

(d) The appointed handler member of the initial board shall be elected by a majority of the elected members at the first meeting.

(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 is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No member of the board will 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, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(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 chair and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the 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 execute 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. The expenses and costs may be paid by check, draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish a "canola and rapeseed board marketing revolving fund" and to deposit the fund 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) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the state of Washington. A copy of the audit shall be delivered within thirty days after completion 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 may deem

necessary. The premium for the bond or bonds must be paid by the board from assessments collected. The bond may 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.

(j) To establish by resolution a headquarters which shall continue unless changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the 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 by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States to obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To execute 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 fixed by resolution of the board and 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 must be presented for discussion at the meeting. Notice of the annual meeting must 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. The notice of any special meeting may be waived by a written waiver from each member of the board.

NEW SECTION

**WAC 16-573-030 Marketing order purposes.** The order is to promote the general welfare of the state, to enable producers of canola and rapeseed to help themselves establish orderly, fair, sound, efficient, unhampered marketing, grading and standardization of canola or rapeseed, or both. To execute the purposes of the order, the board shall provide for a program in one or more of the following areas:

(1) Establish plans and conduct programs for advertising, sales, promotion or other programs for maintaining present markets or creating new or larger markets for canola or rapeseed, or both.

The programs shall be directed toward increasing the sale of canola and rapeseed without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of canola or rapeseed nor disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provide for research in the production, processing or distribution of canola and rapeseed and expend the necessary funds for the purposes. Insofar as practicable, the research must be carried out by experiment stations of Washington State University, but if in the judgment of the board that the experiment stations do not have adequate 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.

(3) Provide by rules for:

(a) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and, or label for canola and rapeseed or any products thereof;

(b) Requiring producers, handlers or other persons to conform to the grades and, or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of canola or rapeseed in offering, advertising and delivering it therefor;

(c) Providing for inspection and enforcement to ascertain and effectuate compliance;

(d) Establishing rules respecting the foregoing;

(e) Providing that the board shall execute inspection and enforcement of, and may (within the general provisions of the order) establish detailed provisions relating to, the standards and grades and the rules. Any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing and shall not be considered an amendment for the purposes of the act and order.

(4) Provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market.

(5) Provide for marketing information and services to affected producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of canola and rapeseed purchased by handlers from affected producers.

(6) Prohibit making or publishing false or misleading advertising. The regulation may authorize uniform trade practices applicable to all similarly situated handlers and, or other persons.

#### NEW SECTION

##### **WAC 16-573-040 Assessments and collections. (1) Assessments.**

(a) The assessment on all varieties of canola or rapeseed subject to this marketing order shall be ten cents per hundredweight and shall be deducted by the first purchaser from the price paid to the grower. The assessment shall be remitted to the board in accordance with procedures adopted by the board.

(b) The assessments shall not be payable on any canola or rapeseed used by the affected producer on their premises for feed, seed and personal consumption.

(2) **Collections.** Excess moneys collected by the board under the order during the fiscal year may be carried over and used during the next successive fiscal year. The board may also recommend that excess moneys at the close of a fiscal year be refunded on a pro rata basis to the affected producers from whom the moneys were collected.

(3) **Penalties.** Any due and payable assessment levied in the specified amount as may be determined by the board under the act and the order is a personal debt of the person assessed or who owes the debt, and it is due and payable to the board when payment is called for by the board. If a person fails to pay the board the full amount of the assessment by the date due, the board may add to the unpaid assessment or sum an amount not exceeding ten percent of the amount owed. In the event of failure of the person or persons to pay the full amount due, 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 thereon, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

NEW SECTION

**WAC 16-573-041 Time--Place--Method for payment and collection of assessments.** Effective with the growing season of 1998, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-573-040:

(1) All first handlers of canola and rapeseed grown in the state of Washington, or the person acting on behalf of a first buyer, shall withhold the amount of assessment from their remittance to growers of canola or rapeseed and transmit it to the board.

(2) All assessments will be due and payable to the board within thirty days of collection. With the submission of the assessments, a report listing the name, address, volume handled or purchased and amount deducted or collected for each producer must be submitted to the board on forms provided by or approved by the board.

(3) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of ten percent in accordance with RCW 15.65.440 of the act.



NEW SECTION

**WAC 16-573-050 Obligations of the board.** Obligations incurred by the board or employee or agent 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 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) established under this act or the assets thereof. The board, and its agents and employees, shall not be held responsible individually in any way whatever 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 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 16-573-060 Termination of the order.** The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to the dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether the termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of the affected producers file written application with the director for the termination. The termination shall not, however, become effective until the expiration of the marketing season.

NEW SECTION

**WAC 16-573-070 Effective time.** (1) This marketing order for canola and rapeseed shall become effective after May 31, 1998.

(2) This order shall remain in full force and effect until May 31, 2003, unless terminated before under chapter 15.65 RCW as set forth in WAC 16-536-060. If the order remains in effect until May 31, 2003, the director shall conduct a referendum election as required for the approval of an order under chapter 15.65 RCW at a

time before that date to determine if the affected producers desire that the order be terminated on that date or continued in full force and effect beyond the date. All the costs of conducting the election shall be defrayed from the funds of the board.

NEW SECTION

**WAC 16-573-080 Separability.** If any provisions of the order are declared invalid, or the applicability to any person, circumstances or thing is held invalid, the validity of the remainder provisions or of the applicability to any other person, circumstances or thing shall not be affected.