

WSR 22-07-022
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 9, 2022, 10:43 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-565 WAC, Washington cranberry commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends the Washington cranberry commission marketing order by: (1) Removing term limits from board member term of office; (2) updating public disclosure rules to implement the provisions of RCW 42.56.120; and (3) clarifying language regarding research funded by the commission.

Reasons Supporting Proposal: The changing cranberry industry in Washington and additional state requirements on commission board members make it difficult to seat a board each year. Removing term limits will enable the Washington cranberry commission to retain board members who have served more than two full, consecutive, three-year terms and will provide continuity and the leadership necessary to carry out the purposes of the marketing order. RCW 42.56.120 requires rule making regardless of whether the commission proposes to charge actual costs for producing public records, charge in accordance with the statutory schedule, or waive fees for producing public records. Under RCW 42.56.120, to charge statutory fees the commission must adopt a rule declaring that charging actual costs would be unduly burdensome. Clarifying the language regarding research allows the commission to contract with other researchers if the Washington State University does not have the staff available to conduct the research.

Statutory Authority for Adoption: RCW 15.65.047.

Statute Being Implemented: Chapter 15.65 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington cranberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-2043; Implementation and Enforcement: Jack Stein, 1111 Washington Street S.E., Olympia, 360-902-2043.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Using the expedited rule-making process is appropriate because the subject matter does not rise to the importance of a referendum of affected producers.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Megan Finkenbinder, Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-2043, fax 360-902-2092, email mfinkenbinder@agr.wa.gov, AND RECEIVED BY May 23, 2022.

March 9, 2022

OTS-3655.1

AMENDATORY SECTION (Amending WSR 85-15-018, filed 7/8/85)

WAC 16-565-010 Definition of terms. For the purpose of this marketing order:

~~((1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.~~

~~(2) "Department" means the department of agriculture of the state of Washington.~~

~~(3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.~~

~~(4) "Person" means any person, firm, association, or corporation.~~

~~(5) "Affected producer" means any person who produces cranberries in the state of Washington, in commercial quantities for fresh market, for processing, or for sale to processors.~~

~~(6) "Commercial quantity" means any cranberries produced for a market, by a producer in any calendar year.~~

~~(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing cranberries not produced by him.~~

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

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

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

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

~~(12) "Affected area" means the state of Washington.~~

~~(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, other than those sold retail by the producer.~~

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

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

~~(16) "Order" means marketing order.)~~

"Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

"Affected area" means the state of Washington.

"Affected producer" means any person who produces cranberries in the state of Washington, in commercial quantities for fresh market, for processing, or for sale to processors.

"Affected unit" means 100 pounds (barrel) net of cranberries.

"Commercial quantity" means any cranberries produced for a market, by a producer in any calendar year.

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

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

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of agriculture of the state of Washington or his duly appointed representative.

"Disclosure" means inspection or copying.

"Fiscal year" means the 12-month period beginning with September 1 of any year and ending with the last day of August following, both dates being inclusive.

"Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing cranberries not produced by the handler.

"Order" means marketing order.

"Person" means any person, firm, association, or corporation.

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

"Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, other than those sold retail by the producer.

"Substantial portion" means five percent or more.

[Statutory Authority: RCW 15.65.380. WSR 85-15-018 (Order 1864), § 16-565-010, filed 7/8/85. Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-010, filed 9/12/80, effective 10/13/80.]

AMENDATORY SECTION (Amending WSR 00-10-023, filed 4/24/00, effective 5/25/00)

WAC 16-565-020 Cranberry commodity board. (1) Administration.

The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership.

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

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

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

District II shall have four board members, being Positions 3, 4, 5, and 6, and shall comprise that portion of Pacific County and that portion of Grays Harbor County lying between the Willapa River and the Chehalis River.

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

(3) **Board membership qualifications.** The affected producer members of the board shall be practical producers of cranberries and shall be citizens and residents of the state of Washington, over the age of (~~twenty-five~~) 25 years, each of whom is and has been actually engaged in producing cranberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of (~~his~~) their income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) **Term of office.**

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

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

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

~~Positions one and three — One year;~~

~~Positions four and five — Two years;~~

~~Positions two, six, seven, and eight — Three years.~~

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

(5) **Nomination and election of board members.** Each year the director shall call for a nomination meeting. Such meeting shall be held at least (~~thirty~~) 30 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~~) 10 days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may be nominated orally for membership on the board at such nomination meeting. Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not less than five affected producers. At the inception of this marketing order, nominations may be made at the issuance hearing.

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

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

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar

manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the production area not less than ~~((ten))~~ 10 days in advance of the date of such election. Not less than ~~((ten))~~ 10 days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the list of such affected producers maintained by the director in accordance with RCW 15.65.200. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) **Vacancies prior to election.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

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

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To accept grants and gifts and expend the same consistent with the policies and purpose of this order.

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

(g) To establish a "cranberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not-to-exceed ~~((one hundred dollars))~~ \$100, shall be deposited each day or as advisable.

(h) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited at least every five years 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~~) 30 days after the completion thereof to the governor, the director, the state auditor, and the board.

(i) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(j) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(k) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(l) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(m) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(n) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him/her by the act or the order.

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

(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~~) 10 days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

[Statutory Authority: RCW 15.65.050. WSR 00-10-023, § 16-565-020, filed 4/24/00, effective 5/25/00. Statutory Authority: RCW 15.65.380. WSR 85-15-018 (Order 1864), § 16-565-020, filed 7/8/85. Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-020, filed 9/12/80, effective 10/13/80.]

AMENDATORY SECTION (Amending WSR 80-13-037, filed 9/12/80, effective 10/13/80)

WAC 16-565-030 Marketing order purpose. The order is to promote the general welfare of the state to enable producers of cranberries to help themselves develop production methods and/or programs for the control of diseases, insects, weeds, and other problems associated with cranberry production and to provide for the dissemination of information to the affected producers.

Insofar as practicable, such 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 or the staff for a particular project (~~or if some other research agency has better facilities therefor~~), the project may be carried out by other researchers or research agencies selected by the board.

[Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-030, filed 9/12/80, effective 10/13/80.]

NEW SECTION

WAC 16-565-080 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington Cranberry Commission, P.O. Box 597, Grayland, Washington, 98547. The written request should include:

- (a) The name, address and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

- (a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.
- (b) Inspection of any public record will be conducted in the presence of the public records officer or designee.
- (c) Public records may not be marked or altered in any manner during the inspection.

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

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NEW SECTION

WAC 16-565-085 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

- (a) Making the records available for inspection or copying;
- (b) Providing a link or address for a record available on the internet under RCW 42.56.520;
- (c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;
- (d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or
- (e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify persons or agencies affected by the request; or
- (d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

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NEW SECTION

WAC 16-565-090 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within 15 days of receipt of invoice payable to the Washington cranberry com-

mission. The commission may require that all charges be paid in advance of release of the copies of the records.

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NEW SECTION

WAC 16-565-095 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.65 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.65 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2)).

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NEW SECTION

WAC 16-565-100 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement that constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within 10 business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

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NEW SECTION

WAC 16-565-105 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

- (1) Commission authorizing statute;
- (2) Commission marketing order;
- (3) Minutes of commission meetings;
- (4) Commission board roster; and
- (5) List of research projects.

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