



RULE-MAKING ORDER

CR-103 (7/10/97)

(RCW 34.05.360)

Agency: Department of Agriculture (Potato Commission)

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: May 24, 2000

(2) Purpose:

The amendments will (1) change the 12 month period for the "marketing year" and "fiscal year", (2) reduce the number of signatures required on an election nomination petition, (3) correct an error in the three year term rotation for positions 2 & 3; and (4) align the effective dates of office to correspond with the regular meeting dates fixed by resolution of the commission.

(3) Citation of existing rules affected by this order: chapter 16-516 WAC

Repealed:

Amended: WAC 16-516-010 (9); WAC 16-516-020 (5); WAC 16-516-020 (6)(a)

Suspended:

(4) Statutory authority for adoption: RCW 15.66.020

Other Authority: none

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 00-07-079 on March 15, 2000 (date).

Describe any changes other than editing from proposed to adopted version: none

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

Emergency Rules

or Expedited Repeal

- 31 days after filing
- Other (specify) _____ *
- Immediately
- 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)

Pat Boss

Signature

Title Executive Director

WA Potato Commission

Date

May 24, 2000

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

MAY 24 2000

11:20

00-11-180

FILED

AMENDATORY SECTION (Amending Marketing Order, Article I, effective 7/23/56)

WAC 16-516-010 Definitions. As used in this marketing order, the following terms shall have the following meanings:

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

(2) "Act" means the Washington Agricultural Enabling Act, being chapter 15.66 RCW;

(3) "Person" includes any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals;

(4) "Producer" means any person who is engaged in the business of producing or causing to be produced for market in commercial quantities potatoes as herein defined grown in the state of Washington;

(5) "Commercial quantities" shall mean and include five hundredweight or more;

(6) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;

(7) "Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

(8) "Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

(9) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning (~~June~~) July 1 of any year and ending upon the last day of (~~May~~) June, both dates inclusive;

(10) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing potatoes which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agencies for commodity credit corporation loan to producers, but shall not include a producer engaged in transporting potatoes produced by him for grading, washing, sorting, sacking, or otherwise preparing for marketing or market;

(11) "Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

(12) "Affected area" or "area of production" are synonymous and mean and include all of the state of Washington.

(13) "District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020.

AMENDATORY SECTION (Amending Order 1684, filed 4/28/80, effective 6/1/80)

WAC 16-516-020 Potato commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsection (2) of this section and four members who shall be appointed by the elected producer members. In addition, the director shall be an ex officio member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into five representative districts as follows:

(a) "District No. 1" shall be the east irrigation district of the Columbia project, plus the area of Grant County not included in either the Quincy or south irrigation districts and lies east of R27E, plus the area of Adams County not included in either the south or Quincy irrigation districts, plus the counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be the Quincy irrigation district of the Columbia Basin project, plus the area of Grant County not included in the east or south irrigation districts and lies west of R28E, and the counties of Kittitas, Douglas, Chelan and Okanogan.

(c) "District No. 3" shall be and include the counties of Benton, Yakima and Klickitat.

(d) "District No. 4" shall be the south irrigation district of the Columbia Basin project, plus the areas of Franklin County not included in the south district, plus the counties of Walla Walla, Columbia, Garfield and Asotin.

(e) "District No. 5" shall be and include all other counties in the state of Washington.

(3) Membership. Producer members shall be elected from the districts as follows:

(a) Two of the producer members, being positions 1 and 2 shall be elected from District No. 1.

(b) Two of the producer members, being positions 3 and 4, shall be elected from District No. 2.

(c) Two of the producer members, being positions 5 and 6, shall be elected from District No. 3.

(d) Two of the producer members, being positions 7 and 8, shall be elected from District No. 4.

(e) One of the producer members, being position 9, shall be elected from District No. 5.

Members appointed by the elected producers shall be appointed for positions 10, 11, 12 and 13.

(4) Membership qualifications. Commission members shall be

citizens and residents of this state, over the age of twenty-five years. Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The qualifications of producer members of the commission as herein set forth must continue during their term of office. Members appointed by the elected producers shall be either potato producers, others active in matters relating to potatoes or persons not so related.

(5) Term of office (~~(; initial commission)~~). The term of office of the commission members shall be three years from the date of their election and until their successors are elected and qualified (~~(; Provided, That the initial)~~). Commencing on July 1, 2000, the term of office for members of the commission shall (~~(serve from the effective date of this marketing order in terms terminating)~~) be as follows: Positions 1, 5 and 7 shall terminate (~~(May 31, 1957)~~) June 30, 2002; positions (~~(2)~~) 3, 4 and 6 shall terminate (~~(May 31, 1958)~~) June 30, 2003; and positions (~~(3)~~) 2, 8 and 9 shall terminate (~~(May 31, 1959)~~) June 30, 2001. Appointed members for positions 10 and 11 shall terminate their terms (~~(May 31, 1957)~~) June 30, 2002; position 12 shall terminate (~~(May 31, 1958)~~) June 30, 2003; and position 13 shall terminate (~~(May 31, 1959)~~) June 30, 2001. The appointed members of the (~~(initial)~~) commission shall be elected by a majority of the elected commissioners (~~(at the first meeting of said commission)~~).

(6) Nomination and election of commission members.

(a) Not earlier than February 16 and not later than March 2 of each year, the director shall give notice by mail to all producers, in a district wherein a vacancy will occur in the commission of such vacancy or such vacancies and call for nominations. Nominating petitions shall be signed by (~~(ten)~~) five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall be not earlier than March 7 and not later than March 12 of each year.

(b) The director shall submit ballots by mail to all producers in the district wherein the vacancy will occur not earlier than March 17 and not later than April 1 of each year. Ballots shall be returned not later than May 1 of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules and regulations to be promulgated by the director.

(c) With respect to the initial potato commission, the director shall call for nominations in the notice of his decision following the hearing designated in the act. The ballot specified herein shall be forwarded to the producer at the time the director's proposed marketing order is mailed to the producers for their referendum assent.

(d) Except with respect to the initial potato commission, the members of the commission not elected by the producers shall be elected by a majority of the commission within ninety days prior to the expiration of the term.

(7) Vacancies.

(a) To fill any vacancy occasioned by the failure to qualify of any person elected by the producers as a member of the

commission, or in the event of the death, removal, resignation or disqualification of any member, the director shall call for nominations and conduct such election within the district wherein the vacancy occurred in the manner provided in subsection (6) of this section.

(b) To fill nonelective vacancies caused by other reasons than the expiration of the term, the new members shall be elected by the commission at its first meeting after the occurrence of the vacancy.

(8) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

(i) To make necessary disbursements for routine operating expenses;

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

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

(l) To accept and receive gifts and grants and expend the same to effectuate the purposes of the act and this order;

(m) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

(9) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the

books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the membership.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least eight members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed per day rate set by chapter 15.66 RCW for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expense of the rate allowed by law to state employees.

(10) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission, including employees thereof, 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 member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.