

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF AGRICULTURE

(agency name)

Administrative Order No. 1684

(1) I, Bob J. Mickelson, director of Washington State Department of Agriculture do promulgate and adopt at Olympia, Washington

(place)

the annexed rules relating to: Amend WAC 16-516-020 and WAC 16-516-040 to realign voting districts and representation, standardize compensation payments to commission board members with rates set by state regulations, and increase the assessment from two cents to three cents per hundredweight.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 79-12-104 filed with the code reviser on December 5, 1979. Such rules shall take effect:

- checkbox pursuant to RCW 34.04.040(2).
checkbox at a later date, such date being 6/1/80

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04. (1977 c 19 § 2) that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

- checkbox (a) This rule is promulgated pursuant to RCW 15.66.090 and is intended to administratively implement that statute.
checkbox (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of

(name of act or RCW citation)

- checkbox (c) This rule is promulgated under the general rule-making authority of the

(agency) as authorized in RCW

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this agency is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON FILED April 24 1980

APR 28 1980

By Bob J. Mickelson Director

Title

CODE REVISER'S OFFICE WSR 80-05-073

[Form CR-7: Effective 12/1/77]

DEPARTMENT OF AGRICULTURE
OLYMPIA, WASHINGTON

This statement relates to Order No. 1684 of the Department of Agriculture and is filed pursuant to Chapter 84, Laws of 1977, 1st Extraordinary Session.

- A. 1. Re: AMD WAC 16-516-020 and WAC 16-516-040.
2. Purpose of these rule changes is to realign voting districts and representation, standardize compensation payments to commission board members with rates set by state regulations, and increase the assessment from two cents to three cents per hundredweight.
3. Statutory authority for this action is found in Chapter 15.66 RCW.

B. Summary of the rule or rule change:

1. Increase the assessment from two cents to three cents per hundredweight;
2. Realign the voting districts and representation; and
3. Specify that compensation payments to commission board members shall not exceed rates set by state regulations.

C. Person responsible for drafting the rule:

1. Name: Roger L. Roberts
2. Title: Special Programs Administrator
3. Office: Agricultural Development Division
Phone: 3-5046
Mail Stop: AX-41

4. Inquiries regarding implementation and enforcement of the rule or rules should be addressed to:
Same as above.

D. 1. Persons or organizations known to be proponents of the rule or rules are:

Washington Potato Growers Association and Washington Potato Commission.

2. Persons or organizations known to be opponents of the rule or rules are:

The only opponents were those who voted against this amendment in the referendum.

E. Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule:

The assessment increase is the first since the Commission was formed in 1956. The new voting districts match the present production areas.

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

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 ~~((and--include--the--counties--of Chelan,--Okanogan,--Grant,--Douglas,--Ferry,--Stevens,--Pend--Oreille, Spokane,--Lincoln--and--Adams))~~ 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 ~~((and--include--the--county--of Kittitas))~~ 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 ~~((and--include--the--counties--of Benton,--Franklin,--Walla--Walla,--Columbia,--Garfield,--Asotin--and--Whitman))~~ 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) ~~((Three))~~ Two of the producer members, being positions 1 ~~((7))~~ and 2 ~~((and--3,))~~ shall be elected from district No. 1.

(b) ~~((One))~~ Two of the producer members, being positions No. 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, ((HOWEVER,)) That the initial members of the commission shall serve from the effective date of this marketing order in terms terminating as follows: positions 1, 5 and 7 shall terminate May 31, 1957; positions 2, 4 and 6 shall terminate May 31, 1958; and positions 3, 8 and 9 shall terminate May 31, 1959. Appointed members for positions

10 ((7)) and 11 shall terminate their terms May 31, 1957; position No. 12 shall terminate May 31, 1958; and position No. 13 shall terminate May 31, 1959. 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 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, (~~revis~~) 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((7)); PROVIDED, ((HOWEVER,)) 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 ((\$20-00)) 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.

[Marketing Order, Article II, effective 7/23/56.]

((NOTES:--Meetings:--See-also-WAC-16-546-440:
 -----See-Appointed-commission-members:--See-also-WAC-16-546-200:
 -----Powers-and-duties:--See-also-WAC-16-546-480:
 -----Compensation-and-expense:--See-also-WAC-16-546-490:
 -----Procedure:--See-also-WAC-16-546-470:))

WAC 16-516-040 ASSESSMENTS AND ASSESSMENT FUNDS. (1) Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided in the act, upon all potatoes grown in the state an annual assessment of (~~(two)~~) three cents per hundredweight which shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by him or stored or delivered for storage when such storage or delivery for storage shall be outside the boundaries of this state: PROVIDED, (~~(HOWEVER)~~) That no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by him on his own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of potatoes from a producer's own production.

(b) The commission is authorized to provide by rule and regulation for an assessment discount not to exceed (~~(25%)~~) twenty-five percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect such assessments, the commission may require:

(i) Stamps to be known as "Washington potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any such stamps shall be canceled immediately upon being attached or fixed and the date of such cancellation shall be placed thereon;

(ii) Handlers receiving potatoes from the producer, including warehousemen and processors to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at such times as by rule and regulation required, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission;

(iii) Payment of producer assessments before the potatoes are shipped off the farm or payments of assessments at different or later times and in such event, any person subject to the assessment shall give such adequate assurance or security for its payments as the commission shall require.

(b) The commission is authorized to make reasonable rules and regulations in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of

the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

(c) No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued or stamp canceled, but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for such exemptions.

(d) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) (~~Monies~~) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the director. [Marketing Order, Article IV, effective 7/23/56.]

((NOTES:

-----Assessments:--See--also--WAC-46-546-210,-46-546-220,-and-46-546-230-))