

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Agriculture

(agency name)

Administrative Order No. 1808

(1) I, M. Keith Ellis, director of

the Department of Agriculture

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to: Chapter 16-520 WAC, Marketing Order for Washington Seed Potatoes.

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

This action is taken pursuant to Notice No. 83-15-052 filed with the code reviser on July 20, 1983. These rules shall take effect: [ ] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [X] at a later date, such date being December 1, 1983.

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

I, find that an emergency exists and that this 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 the emergency is:

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

(3) Pursuant to the requirements of RCW 34.04.026 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:

[ ] (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

[X] (b) This rule is promulgated pursuant to RCW Chapter 15.66 RCW which directs that the

Department of Agriculture

(agency)

has authority to implement the provisions of

Chapter 15.66 RCW

(name of act or RCW citation)

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

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(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.

APPROVED AND ADOPTED October 21 19 83

OCT 25 1983

By

M. Keith Ellis Director

Title

CODE REVISER'S OFFICE WSR 83-22019

AMENDATORY SECTION (Marketing Order, Article II, effective 10/1/56)

WAC 16-520-020 SEED POTATO COMMISSION—STRUCTURE, POWERS, DUTIES, AND PROCEDURE. (1) Establishment and membership. A seed potato commission is hereby established to administer this marketing order which shall be composed of five members who shall be producers elected by the producers as provided in the act, and two members who shall be appointed by the elected producer members. In addition, the director shall be an ex officio member of the commission.

(2) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of twenty-five years and producer members of the commission shall be producers of seed potatoes in the state of Washington. 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 seed potato producers, others active in matters relating to seed potatoes or persons not so related.

(3) Term of office; initial commission. The term of office of commission members shall be three years from the date of their election and until their successors are elected and qualified so that one-third of the terms will commence as nearly as practicable each year provided, however, that the initial members of the commission shall serve from the effective date of this marketing order in terms terminating as follows: Two producer members, being positions 1 and 2 shall be elected for one year terms terminating June 30, 1957; two producer members, being positions 3 and 4 shall be elected for 2 year terms terminating June 30, 1958; and one producer member, being position 5 shall be elected for a 3 year term terminating June 30, 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. One appointed member being position 6, shall be appointed for a two year term expiring June 30, 1958, and one appointed member, being position 7, shall be appointed for a three year term, expiring June 30, 1959.

(4) Nomination and election of commission members. (a) Not earlier than March 19 and not later than April 3 of each year, the director shall give notice by mail to all producers that a vacancy or vacancies will occur in the commission and call for nominations. Nominating petitions shall be signed by 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 April 7 and not later than April 12 of such year.

(b) The director shall submit ballots by mail to all producers in the district wherein the vacancy will occur not earlier than April 17 and not later than May 2 of each year. Ballots shall be returned not later than June 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 seed 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 producers 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 seed 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.

(5) 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 in the manner provided in subsection (4) 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.

(6) 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.

(7) Procedure for commission.

(a) The commission may 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 at least two regular meetings during each fiscal year 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, 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 ~~((five))~~ four 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 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.

(8) 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.

AMENDATORY SECTION (Marketing Order, Article IV, effective 10/1/56)

WAC 16-520-040 ASSESSMENTS AND ASSESSMENT FUNDS. (1) Assessments levied. (~~On and after the effective date of this order~~) Beginning December 1, 1983, there is hereby levied and there shall be collected by the commission, as provided in (~~the act~~) chapter 15.66 RCW, upon all seed potatoes grown in the state an annual assessment (~~of one cent per hundredweight~~) which shall be paid by the producer thereof upon each and every hundredweight of seed 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~~) is outside the boundaries of this state (~~;- provided, however, that~~). The assessment shall be three cents per hundredweight from December 1, 1983 until August 31, 1984. The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than three cents or more than five cents per hundredweight. No assessment (~~shall~~) may be collected on the following:

- (a) Seed potatoes of a producer's own production used by him on his own premises for seed, feed or personal consumption;
- (b) Seed potatoes donated or shipped for relief or charitable purposes; or
- (c) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed 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 seed 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 seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all monies 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 seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) Payment of producer assessments before the seed 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 payment 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 assessment. 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.

(c) No affected units of seed 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 seed 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 section as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Monies collected by the seed 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 seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state 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.