

**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 subsections (2) and (3) of this section and five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall appoint one member to the commission to represent the director as a voting 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 three representative districts as follows:

(a) "District No. 1" shall be and include the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be and include the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) "District No. 3" shall be and include the counties of Skagit and all other counties in the state of Washington.

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

(a) Positions 1, 2, 3, and 4 shall be elected from District No. 1.

(b) Positions 5, 6, 7, and 8 shall be elected from District No. 2.

(c) Position 9 shall be elected from District No. 3.

(4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers as provided in subsections (1) and (5)(b) of this section.

(b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of eighteen years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be potato producers or handlers or others active in matters directly relating to Washington state potatoes and have a demonstrated record of service in the potato industry in Washington state.

(6) Term of office. The term of office of the elected and appointed producer members of the commission shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified. Commencing on July 1, 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, 2008; positions 3, 4 and 6 shall terminate June 30, 2006; positions 2, 8 and 9 shall terminate

June 30, 2007; positions 10 and 11 shall terminate June 30, 2008; positions 12 and 14 shall terminate June 30, 2006; and position 13 shall terminate June 30, 2007.

(7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than March 18 and not later than April 2 of each year, the director shall give notice by mail to all producers in each district in which one or more open positions 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 each year.

(b) Not earlier than April 17 and not later than May 2 of each year, the director shall mail ballots to all affected producers in each district in which one or more open positions will occur. Ballots must be received by the director 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 adopted by the director. An affected producer is entitled to one vote.

(c) Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within ninety days prior to the expiration of the appointed member's term.

(8) Vacancies. In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant. Any member so appointed shall serve until the normal expiration of his or her term.

(9) 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 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, 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. The commission, at least forty-five days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

(n) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use, distribution and trade barriers impacting potatoes and potato products;

(p) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(q) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale or use of potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity;

(s) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity;

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

(z) To check records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid; and

(aa) 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.

(10) 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. Notice of the meetings shall be published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(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 as required in RCW 42.30.080.

(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 nine 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 shall not exceed the compensation rate set by RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

(11) 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.

[Statutory Authority: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW. WSR 06-03-003, § 16-516-020, filed 1/4/06, effective 2/4/06. Statutory Authority: RCW 15.66.020. WSR 00-11-180, § 16-516-020, filed 5/24/00, effective 6/24/00. Statutory Authority: RCW 15.66.090. WSR 80-05-073 (Order 1684), § 16-516-020, filed 4/28/80, effective 6/1/80; Marketing Order, Article II, effective 7/23/56.]