

**BEFORE THE DIRECTOR OF THE
WASHINGTON STATE DEPARTMENT OF AGRICULTURE**

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| Proposal to Terminate the Washington Fryer Commission Marketing Order (WAC 16-512) |) | Findings, Conclusion, and <u>FINAL DECISION</u> |
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INTRODUCTION

This Final Decision is a summary of the proposal to terminate the Washington Fryer Commission Marketing Order. It documents the need for the termination, summarizes the process that has been followed, recaps the testimony at the public hearing, lists the Director's findings, includes the Director's Final Decision, and directs that the proposal be sent to a referendum of fryer producers.

BACKGROUND AND TECHNICAL REPORT

The Fryer Commission has petitioned the Director requesting to terminate its Marketing Order.

The fryer industry has experienced many challenges and changes over the past several years. In the 1990's, Washington State University cut the poultry program which negated the opportunity for research unique to the poultry industry in Washington. A few years ago the two remaining processors of Washington-grown chicken opted to combine the state of origin information with Oregon's which eliminated the "Grown in Washington" brand. In 2009 the growers voted to reduce the rate they are assessed in recognition of economic struggles as well as the scaled-back functions of the commission (primarily focused on assisting growers with maintaining their businesses, consumer outreach, regulatory services and legislative activities). Although the board of the Fryer Commission has continued to meet since assessments were reduced, no meaningful mission has been crafted to move the Commission forward and it is believed most growers feel the Commission has outlived its usefulness to the industry.

At the public hearing held on March 12, 2010, Sue Broderick, Administrator for the Washington Fryer Commission, presented the above information in the form of a technical report. The Marketing Order termination was explained and an opportunity for questions was provided.

The specific amendments to repeal the Marketing Order are shown in Attachment "A".

PROCEDURAL STEPS

This matter came before the Director of Washington State Department of Agriculture (WSDA) pursuant to a petition filed by the Washington Fryer Commission on January 21, 2010 requesting termination of the Fryers, Broilers, and Roasters Marketing Order (WAC 16-512) under the authority set forth in RCW 15.66, Washington State Agricultural Commodity Commissions.

On January 29, 2010, WSDA filed with the Washington State Code Reviser a Notice of Proposed Rulemaking (CR-102) requesting comments on the proposed Marketing Order termination. The notice was published in the *Washington State Register* on February 17, 2010 (WSR #10-04-060). The Board decision to terminate the marketing order was also included in the February, 2010 edition of the *Coop Scoop*, the newsletter of the Fryer Commission. The repeal of the Marketing Order is set forth in Attachment "A".

Also, on February 19, 2010, a Notice of Public Hearing on the proposed repeal was mailed to affected fryer producers and interested parties. The Notice was published in the *Chronicle* (Lewis County) on March 3 and 4, 2010.

Pursuant to RCW 15.66.070, a public hearing was held on March 12, 2010, beginning at 1:30 p.m. at the Natural Resource Building, 1111 Washington Street NE, Conference Room 205, Olympia, WA. Written comments on the proposal were accepted through the close of business on March 15, 2010.

A Recommended Decision was issued by the Director, WSDA on March 17, 2010. A 15-day period to comment on the Recommended Decision ran from March 17, 2010 (date of Recommended Decision) to 5:00 p.m. on April 5, 2010. No comments were received.

TESTIMONY ON AMENDMENTS

Under RCW 15.66.070 through 15.66.090 and RCW 34.05, Administrative Procedure Act, the Department collected testimony to determine whether affected producers or interested parties supported the proposed termination of the Fryers, Broilers, and Roasters Marketing Order.

Supporters of the proposed repeal cited the following reasons:

- During a suspension in assessments (and ultimately the reduction of assessments) the Fryer Commission has been unsuccessful in redefining the Commission's purpose.
- In discussions with board members and most growers, the Chairman indicates that there is a consensus that the Fryer Commission has outlived its usefulness.
- As the industry continues to struggle financially, it would be a benefit to them to be able to retain the assessment money to help offset production costs.

There was no opposition to the proposed repeal at the public hearing.

A total of 2 individuals signed in at the hearing and both provided oral testimony.

A tally of the attendance at the hearing and the positions of those providing oral testimony on the proposed repeal are as follows:

- Of the 2 individuals who provided oral testimony:
 - 2 supported the proposed repeal
 - 0 opposed the proposed repeal

No written comments were received outside of the public hearing.

RECOMMENDED DECISION

On March 17, 2010, the Director of WSDA issued a Recommended Decision that recommended the proposal as presented in the petition be sent to a referendum pursuant to RCW 15.66.090.

Per RCW 15.66.080, all interested parties had at least fifteen days (from March 17, 2010) to file objections or exceptions to the Recommended Decision with the Director. No objections or exceptions were filed with the Director in opposition to the proposed marketing order repeal.

FINDINGS AND CONCLUSION

Based on the entire record, including facts, testimony, and evidence presented and received at the public hearing, matters of which the Director may take official notice under RCW 15.66.070, including the history and background of the Fryer Commission, the Director makes the following findings and conclusion:

1. The Washington Fryer Commission was formed under a Marketing Order approved by a vote of the affected producers pursuant to the Washington Agricultural Enabling Act of 1955 (Chapter 15.66 RCW) that became effective on March 4, 1957.
2. The Marketing Order establishing the Washington Fryer Commission (WAC 16-512) currently provides the following purpose:

WAC 16-512-030 Marketing order – Policy statement.

(1) The marketing of fryers, broilers, and roasters within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its fryers, broilers, and roasters be properly promoted by:

(a) Enabling producers of fryers, broilers, and roasters to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the fryers, broilers, and roasters they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of fryers, broilers, and roasters within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the fryer, broiler, and roaster industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that fryers, broilers, and roasters be promoted individually, and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's fryers, broilers, and roasters;

(b) Increase the sale and use of Washington state's fryers, broilers, and roasters in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's fryers, broilers, and roasters;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's fryers, broilers, and roasters and products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of fryers, broilers, and roasters produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.66 RCW through the adoption of this marketing order.

(4) The Washington state fryer commission exists primarily for the benefit of the people of the state of

Washington and its economy, and with oversight by the director, the commission is authorized to speak on behalf of Washington state government with regard to fryers, broilers, and roasters under the provisions of this marketing order.

3. Pursuant to RCW 15.66, the Washington Fryer Commission filed a petition requesting repeal of the Fryers, Broilers, and Roasters Marketing Order (WAC 16-512) on January 21, 2010.
4. Pursuant to RCW 15.66 and RCW 34.05, WSDA issued notices, held a hearing, and collected testimony to determine whether affected producers or interested parties supported the proposed repeal of the Fryers, Broilers, and Roasters Marketing Order.
5. The Director finds that all of those attending the hearing and submitting written comments supported the proposed repeal of the Fryers, Broilers, and Roasters Marketing Order. The Director finds it is reasonable send the issue of whether to repeal the marketing order to referendum.
6. The Director finds that it is in the best interests of the fryer industry and the public interest that the fryer industry remains a viable agricultural industry in Washington State.
7. The Director concludes that the evidence supports a finding that the Washington Fryer Commission no longer effectuates the declared policies and purposes of RCW 15.66 and WAC 16-512.

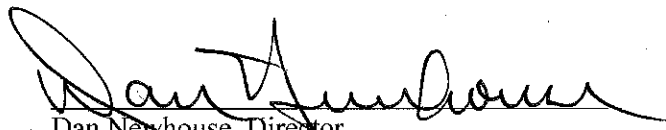
FINAL DECISION

NOW, THEREFORE, based on the entire record in this matter, the Director enters the following Final Decision:

The proposal to repeal the Fryers, Broilers, and Roasters Marketing Order (WAC 16-512) will be sent to a referendum pursuant to RCW 15.66.090. A ballot will be mailed to all fryer producers on the list of affected producers.

If the referendum results approve the repeal of the marketing order, the proposal will be adopted on or about May 14, 2010 and the target effective date would be June 14, 2010. If the referendum results defeat the repeal, the current marketing order will remain in effect.

DATED this 6 day of April, 2010.


Dan Newhouse, Director
Washington State Department of Agriculture

WSR 10-04-060**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed January 29, 2010, 10:54 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Fryers, broilers and roasters, chapter 16-512 WAC, WAC 16-512-005 Marketing order -- Policy statement, 16-512-006 Marketing order purposes, 16-512-010 Definitions, 16-512-020 Fryer commission -- Structure, powers, duties, and procedure, 16-512-040 Assessments and assessment funds, 16-512-050 Information reports, 16-512-060 Separability, and 16-512-070 Effective time.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street S.E., Conference Room 205, Olympia, WA 98504-2560, on March 12, 2010, at 1:30 p.m.

Date of Intended Adoption: May 14, 2010.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., March 15, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by March 3, 2010, TTY 1-800-833-6488 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would terminate the Washington fryer commission. A hearing will be held under the provisions of chapter 15.66 RCW to determine whether termination of the commission would effectuate the declared policy of the statute and the marketing order is not needed.

Reasons Supporting Proposal: The fryer industry has experienced many challenges and changes over the past several years. In the 1990s, Washington State University cut the poultry program which negated the opportunity for research unique to the poultry industry in Washington. A few years ago the two remaining processors of Washington-grown chicken opted to combine the state of origin information with Oregon's which eliminated the "Grown in Washington" brand. In 2009 the growers voted to reduce the rate they are assessed in recognition of economic struggles as well as the scaled-back functions of the commission (primarily focused on assisting growers with maintaining their businesses, consumer outreach, regulatory services and legislative activities). Although the board of the fryer commission has continued to meet since assessments were reduced, no meaningful mission has been crafted to move the commission forward and it is believed most growers feel the commission has outlived its usefulness to the industry. A petition to eliminate the fryer commission was submitted by the board to the director of the department of agriculture.

Statutory Authority for Adoption: RCW 15.66.055 and chapter 34.05 RCW.

Attachment A

Statute Being Implemented: Chapter 15.66 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules are also approved in a referendum of affected fryer producers pursuant to chapter 15.66 RCW.

Name of Proponent: Washington state fryer commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal would eliminate the marketing order for the Washington fryer commission. Under the provisions of chapter 15.66 RCW a referendum of the affected parties would be required to terminate the commission.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington fryer commission are not named agencies in RCW 34.05.328 (5)(a)(i).

January 29, 2010

Dan Newhouse

Director

OTS-3018.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-512-005 Marketing order -- Policy statement.

WAC 16-512-006 Marketing order purposes.

WAC 16-512-010 Definitions.

WAC 16-512-020 Fryer commission -- Structure, powers, duties, and procedure.

WAC 16-512-040 Assessments and assessment funds.

WAC 16-512-050 Information reports.

WAC 16-512-060 Separability.

WAC 16-512-070 Effective time.

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