



RULE-MAKING ORDER

2-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Washington State Department of Agriculture

Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule: August 24, 2004

Emergency Rules

Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: The purpose as directed by the legislature is to provide for the purchase of automated labor saving equipment that will strengthen the asparagus post harvest industry, which includes fresh, frozen and pickled asparagus.

Citation of existing rules affected by this order: none

Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 15.04.402

Other authority : ESHB 2459

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- 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.
- 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: Immediate adoption of this rule is required in order to implement the equipment purchase programs in time for equipment to be ordered and delivered before the next asparagus harvest season. If the equipment is not delivered in time this will effect the general welfare of the asparagus industry in Washington State.

Date adopted: August 24, 2004

NAME (TYPE OR PRINT)
Valoria Loveland

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

Stamp area with handwritten date "AUG 24 2004", time "3:22", and number "04-18-029". Includes a circular stamp with "PR" inside.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with: There are ten (10) sections to comply with ESHB 2459 and RCW 15.04.402.

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>10</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>10</u>	Amended	_____	Repealed	_____

EMERGENCY RULES

CHAPTER 16-730 WAC ASPARAGUS EQUIPMENT LEASE PROGRAM

NEW SECTION

WAC 16-730-005 Purpose of the Program.

- (1) This chapter is promulgated pursuant to ESHB 2459 wherein the department is directed to purchase agricultural products packing equipment for use by the agricultural industry and to negotiate an appropriate agreement for that use and RCW 15.04.402 wherein the department is authorized to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber and maintain the economic well being of the agricultural industry.
- (2) The purpose of this chapter is to provide for the purchase of automated labor saving equipment that will strengthen the asparagus post harvest industry, which includes fresh, frozen or pickled asparagus.

NEW SECTION

WAC 16-730-010 Definitions.

- (1) **“Applicant”** means any person who is commercially handling 250,000 pounds or more of asparagus that applies for approval to participate in the equipment-leasing program.
- (2) **“Approved”** means any packer or handler who has submitted an application to the department and met the criteria for participating in the equipment-leasing program.
- (3) **“Automation”** means the technique and equipment used to bring about automatic operation and control of a process.
- (4) **“Department”** means the department of agriculture of the state of Washington.
- (5) **“Director”** means the department of agriculture of the state of Washington.
- (6) **“Handler”** means to sell, arrange for the sale of, represent, process, distribute or package fresh, frozen or pickled asparagus.
- (7) **“Facility”** includes, but is not limited to, any premises, plan, establishment, facilities and the appurtenances thereto, in whole or in part, where fresh asparagus is prepared, handled and packaged fresh, frozen, or pickled for sale.
- (8) **“Labor saving”** means actions or activities designed to decrease the amount of human labor needed.
- (9) **“Leasing”** means to grant or obtain use of equipment through the asparagus equipment-leasing program.
- (10) **“Packing equipment”** means equipment associated with the post harvest fresh, frozen and pickled asparagus handler.
- (11) **“Program administrator”** means the department of agriculture.
- (12) **“Review Committee”** means a group of 5 to 7 persons representing the department, Asparagus Commission staff and members, and an agricultural representative not directly affiliated with the industry nor any of the applicants.

NEW SECTION

WAC 16-730-015 Program Administration.

The department shall administer the asparagus equipment-leasing program using the current guidelines and rules and may develop and implement, as needed any additional processes or guidelines necessary to carry out this program.

NEW SECTION

WAC 16-730-020 Eligibility, application and award process for the equipment leasing program.

- (1) All post harvest handlers who packed a minimum of 250,000 pounds of fresh, frozen or pickled asparagus in Washington in during the award year are eligible to participate in the equipment-leasing program.
- (2) Handlers and their facilities must meet all applicable federal, state, and local laws and rules related to doing business in Washington and handling food products.
- (3) Handlers must obtain and file an application with the department that includes but not necessarily be limited to:
 - (a) Documentation of their business information including the ability to insure proposed equipment;
 - (b) Intent and ability to participate in the program;
 - (c) Ability to provide for the necessary upkeep and maintenance of the leased equipment;
 - (d) Description of the equipment to be leased;
 - (e) Description of how it will automate the handler's operation and what are the reductions in labor costs that will result; and
 - (f) Pounds of asparagus processed for the period of years identified on the application with supporting documentation.
- (4) Handlers must identify what automated labor saving equipment associated with post harvest packing that they want to lease and the cost of the equipment in order to participate in the program. This equipment must automate their current packing process and reduce labor costs.
- (5) The schedule for application, review and selection of participants shall be determined by the department in consultation with the Asparagus Commission, Council and industry. Additional application cycles maybe implemented on an as needed basis in the future in order to insure full participation by handlers in the program.
- (6) Review of the application and awards will be completed by the Review Committee, recommendations for approval from the committee will be reviewed and approved by the director of the department and applicants will be notified within five (5) working days of the results.
- (7) Applicants may request a review of the decision. Reviews will follow an informal process conducted by the director's designee to resolve a request for review. The request for review shall:
 - (a) Specify the date of the decision or action being appealed;

(b) Specify precisely as possible the issue to be resolved by the administrative review;

(c) Include the address of the participant; and

(d) Include a signature of the applicant.

An administrative review will be conducted within thirty days after submission of the request for review and a conclusion provided to the participant with ten days. The rights of the department, provided in this section shall be exclusive and be in addition to any other rights and remedies provided by law.

(8) Applicants who were not approved for their initial equipment request may re-apply to the department within ten days for the date the announcement of decisions were made for review by the Review Committee. When re-applying the handler must request equipment not included on the first application and/or a different mix of equipment from the original application.

NEW SECTION

WAC 16-730-025 Distribution of program benefits for equipment leasing.

(1) Program benefits will be distributed to eligible applicants who have completed the application and review process and been approved for an allocation of dollars being provided to a leasing company for purchase and subsequent lease to approved applicants of the equipment.

(2) Benefits will be determined by the department in consultation with the Asparagus Commission, Council and asparagus industry.

(3) The initial benefits for 2004 will be distributed based on documented pounds handled over a four-year period. Appropriate documentation can include Asparagus Commission assessments and other accepted industry documentation. The initial benefits will be distributed based on an average of pounds documented per year reported from 2001 through 2004. The department to address any additional application cycles that may be held to administer current and future allocations may adjust the four-year period.

(4) All eligible and approved applicants will receive a base amount of not less than \$75,000 for the initial program offering in 2004 or an amount adjusted to reflect an appropriate base for future program offerings unless it is determined by the department in consultation with the Asparagus Commission, Council and asparagus industry that the benefit distribution be changed. If the distribution formula is changed after consultation, the department will notify asparagus handlers and industry.

(5) Categories are established for the initial offering that groups handlers into small, medium, large and extra large. These categories could change in future offerings and handlers and the industry will be notified by the department of any changes. The categories for this initial offering are as follows:

Small	less than 1 million pounds
Medium	1 to 2 million pounds
Large	2 to 5 million pounds
Extra Large	5 million and above

(6) The base distribution for this first offering for a small handler(s) will be \$75,000 per handler and no handler will receive greater than \$195,000 for this current allocation. Allocation distribution other than the "small handler(s)" will be determined based on the amount of funds available after administrative and contract leasing costs are subtracted by the department from the total amount allocated. The department will work with the Review Committee to assure that the allocations are done based on the pounds processed formula in a fair and equitable manner. Each categories above the small handler will be adjusted by the following sequence:

- (a) Small to medium a minimum \$20,000 increment adjustment
- (b) Medium to large up to a \$40,000 increment adjustment and
- (c) Large to extra large up to a \$60,000 increment adjustment.

If the reduced allocation available is not adequate to accommodate the above sequence for this offering then an adjustment will be made to reflect a reduction to all increments of the formula except the small handler.

NEW SECTION

WAC 16-730-030 Leasing Program.

- (1) Handlers approved to participate in the leasing program will complete an agreement with the leasing firm selected by the department. The leasing company will purchase and manage the equipment leasing for all approved handlers.
- (2) All lease agreements shall be exclusive to the approved handler for the term of the contract with the leasing company and are nontransferable without the written approval of the department.
- (3) Lease agreements cannot be paid off in advance of the leasing company's contract termination date.
- (4) Other lease requirements for handlers will be identified in the department's contract with the leasing company and handlers will be required to follow any of the requirements in that contract.

NEW SECTION

WAC 16-730-035 Length of program.

The length of the initial equipment purchase leasing program shall be determined by the department based on the OFM approved depreciation schedule for each type of equipment and the period of time needed to surplus and transfer equipment and complete program closeout activities. The department will finalize the schedule. The department for any subsequent offerings may modify the program length, depreciation schedule and any other necessary contracts or agreements.

NEW SECTION

WAC 16-730-040 Depreciation and surplus equipment process.

Depreciation schedules for this program shall be determined by the department upon approval from OFM on appropriate useful life determination for asparagus processing and handling equipment. Equipment will be surplusd at the end of the depreciation period only and will be offered for sale to the handler who has leased the equipment or his/her designee. A handler must complete a designee form and have it approved by the department.

NEW SECTION

WAC 16-730-045 Program Compliance.

To ensure that all participants are in compliance with the terms of this program and to ensure that the equipment is being utilized for packing and processing of fresh, frozen or pickled asparagus only, the participating handlers will provide the department with a letter annually that certifies that they equipment is being used for the intended program purpose and a summary of costs and labor savings for that period.

NEW SECTION

WAC 16-83-050 Equipment Default.

In the event that a handler defaults on a lease agreement, the department retains ownership of the equipment and will make the equipment available to other asparagus handlers through a selection process determined by the Department in cooperation with the Washington Asparagus Commission, Council and the asparagus industry representatives. The selection process shall comply with any applicable State and Federal laws and regulations.