



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Agriculture

- Permanent Rule
 Emergency Rule

(1) Date of adoption: 3/26/91

(2) Purpose: New Chapter 16-557 WAC. To establish a commodity commission to represent asparagus growers with the authority to collect assessments and to carry out activities in promotion, research, public information, and the prevention of unfair trade practices all related to asparagus.

(3) Citation of existing rules affected by this order: None
 Repealed: New chapter
 Amended:
 Suspended:

(4) Authority for adoption:
 Statute: RCW 15.65.050
 Other Authority: RCW 15.65

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR _____ on _____ (date).
 Describe any changes other than editing from proposed to adopted version:

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) 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.
 (b) 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: That by becoming effective April 1, 1991, before harvest begins, all the 1991 crop will be assessed. If this becomes effective 30 days later, it will be after harvest begins and not all the crop will be assessed. This will make an unfair situation where some of the crop is assessed and some is not.

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
 Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
 Other (specify) _____ *

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Emergency Rules

- Immediately
 Later (specify) 4/1/91

NAME (TYPE OR PRINT)

C. Alan Pettibone

SIGNATURE

C. Alan Pettibone

TITLE

Director of Agriculture

DATE

3/26/91

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAR 27 1991

TIME

4:09

W.R.

91-08-021

Chapter 16-557 WAC

WASHINGTON ASPARAGUS COMMISSION

WAC

16-557-010	Definition of terms.
16-557-020	Asparagus commodity board.
16-557-030	Marketing order purposes.
16-557-040	Assessments and collections.
16-557-041	Time--Place--Method for payment and collection of assessments.
16-557-050	Obligations of the board.
16-557-060	Termination of the order.
16-557-070	Effective time.
16-557-080	Separability.

NEW SECTION

WAC 16-557-010 DEFINITION OF TERMS. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

(4) "Person" means any person, firm, association, or corporation.

(5) "Affected producer" means any person who produces in the state of Washington asparagus in commercial quantities for fresh market, for processing, or for sale to processors.

(6) "Commercial quantity" means any asparagus produced for market in quantities of three tons (6,000 pounds) or more, in any calendar year.

(7) "Affected handler" means both affected handler fresh and affected handler processor.

(8) "Affected handler, fresh" means any person who acts as principal or agent or otherwise in selling, marketing, or distributing fresh asparagus not produced by him.

(9) "Affected handler, processor" means any person who acts as principal or agent or otherwise in processing, freezing asparagus, and selling, marketing, or distributing said processed or frozen asparagus, not produced by him.

(10) "Asparagus commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-557-020.

(11) "Asparagus" means and includes all kinds, varieties, and hybrids of "officinalis" Linn.

(12) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

(13) "Producer-handler" means any person who acts both as a producer and as a handler with respect to asparagus. A producer-handler shall be deemed to be a producer with respect to the asparagus which he produces and a handler with respect to the asparagus which he handles, including those produced by himself.

(14) "Affected area" means the following counties in the state of Washington: Adams, Benton, Columbia, Franklin, Grant, Kittitas, Klickitat, Walla Walla, and Yakima.

(15) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(16) "Affected unit" means one pound net pay weight of asparagus.

NEW SECTION

WAC 16-557-020 ASPARAGUS COMMODITY BOARD. (1) ADMINISTRATION. The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) BOARD MEMBERSHIP.

(a) The board shall consist of nine members. Six members shall be affected producers elected as provided in this section, one member shall be an affected handler, fresh, elected as provided in this section, one member shall be an affected handler processor, as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the department and the public.

(b) For the purpose of nomination and election of producer members of the board, the affected area shall be that portion of the state of Washington located east of the summit of the Cascade Mountains and shall be divided into three representative districts as follows:

(i) District I shall have two board members, being positions one and two, and shall be Benton, Kittitas, Klickitat, and Yakima counties.

(ii) District II shall have two board members, being positions three and four, and shall include the counties of Adams, Franklin, and Grant.

(iii) District III shall have two board members, being positions five and six, and shall include the counties of Columbia and Walla Walla.

(3) BOARD MEMBERSHIP QUALIFICATIONS.

(a) The affected producer members of the board shall be practical producers of asparagus and shall be citizens and residents of the state of Washington, over the age of twenty-five years, each of whom is and has been actively engaged in producing asparagus within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his income therefrom. Producer-handlers shall be considered to be acting only as handlers for purpose of election and membership on a commodity board.

(b) The affected handler member of the board shall be a practical handler of asparagus and shall be a citizen and resident of the state of Washington, over the age of twenty-five years and who is and has been, either individually or as an officer or an employee of a corporation, firm, partnership association or cooperative actually engaged in handling asparagus within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) TERM OF OFFICE.

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six, affected handler member fresh product, position seven, affected handler member, processor, position eight, and the member appointed by the director, position nine.

(c) The term of office for the initial board members shall be as follows:

Positions one, three, and seven - one year, shall terminate on December 31, 1992;

Positions two, four, and five - two years, shall terminate on December 31, 1993;

Positions six and eight - three years, shall terminate on December 31, 1994.

(d) No elected produce member of the board may serve more than two full consecutive three-year terms.

(5) **NOMINATION AND ELECTION OF BOARD MEMBERS.** For the purpose of nominating candidates for election to board membership, the director shall call separate meetings of affected producers, affected handlers, fresh and affected handler processors. Each year the director shall call for nomination meetings in those districts whose board members' term is about to expire. Such meetings shall be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area and all affected handlers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer or affected handler may be nominated orally for membership on the board at such nomination meeting. Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not less than five affected producers or affected handlers. At the inception of this order, nominations may be made at the issuance hearing.

(6) **ELECTION OF BOARD MEMBERS.**

(a) Members of the board shall be elected by secret mail ballot within the month of November under the supervision of the director. Affected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected district. Each affected producer within the affected district shall be entitled to one vote.

Affected handler, fresh, shall be elected by a majority of the votes cast by the affected handlers, fresh. Affected handler, processor, shall be elected by a majority of the votes cast by the affected handlers, processor.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer or affected handler entitled to vote whose name appears on the list of such affected producers and affected handler within the affected area maintained by the director in accordance with RCW 15.65.200. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) **VACANCIES PRIOR TO ELECTION.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) **QUORUM.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **BOARD COMPENSATION.** No member of the board shall receive any salary or other compensation, but each member may receive thirty-five dollars or an amount as provided for in RCW 43.03.230 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, together with travel expenses at the rates allowed state employees.

(10) **POWERS AND DUTIES OF THE BOARD.** The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

- (c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.
- (d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.
- (e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.
- (f) To establish an "asparagus board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except for an amount of petty cash for each days' needs, not to exceed fifty dollars, shall be deposited daily.
- (g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.
- (h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.
- (i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.
- (j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.
- (k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).
- (l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act.
- (m) To bring actions or proceedings, upon joining the director as a party, for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.
- (n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.
- (o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.
- (p) To authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.
- (11) PROCEDURES FOR BOARD.
- (a) The board shall hold regular meetings, at least quarterly, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The budget shall be presented for discussion at the meeting. In addition to such notice as may be required by chapter 42.30 RCW, notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer, and handler and by regular news service.

(c) In accordance with RCW 42.30.080, the board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: PROVIDED, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

NEW SECTION

WAC 16-557-030 MARKETING ORDER PURPOSES. The order is to promote the general welfare of the state, to enable producers of asparagus to help themselves establish orderly, fair, sound, efficient, unhampered marketing; facilitate cultural and harvesting improvements, and regulate unfair trade practices within the industry. To carry out the purposes of the order, the board may provide for a program in one or more of the following areas:

(1) Establish plans and conduct programs for advertising, sales, promotion, and/or other programs for maintaining present markets and/or creating new or larger markets for asparagus. Such programs shall be directed toward increasing the sale of asparagus without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of asparagus nor disparage the quality, value, sale, or use of any other agricultural commodity.

(2) Provide for research in the production, processing, and/or marketing of asparagus and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by Washington State University, but if in the judgment of the board, said university does not have the facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.

(3) Investigate and take necessary action to prevent unfair trade practices as set forth in RCW 15.65.340 and to correct where possible, trade practices which hinder marketing of Washington asparagus.

(4) Prohibit making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons.

NEW SECTION

WAC 16-557-040 ASSESSMENTS AND COLLECTIONS. (1) Assessments.

(a) The annual assessment on all varieties of asparagus shall be one percent of the gross receipts at first point of sale.

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped, or sold, both inside and outside the state.

(2) Collections. Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year, may be refunded on a prorata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) Remedies. Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

NEW SECTION

WAC 16-557-041 TIME--PLACE--METHOD FOR PAYMENT AND COLLECTION OF ASSESSMENTS. Effective with the growing season of 1991, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-557-040:

(1) All first handlers of asparagus for resale or for processing shall withhold the amount of the assessment from their remittance to growers and transmit same to the commission. All such assessments accumulated will be due and payable to the commission within thirty days of collection. With the submission of the assessments, a report listing the name, address, pounds handled or purchased, and amount deducted or collected for each producer shall be submitted to the commission on forms provided by the commission.

(2) All growers selling asparagus other than to first handlers for resale or processing, whether selling direct or through brokers, and including all sales at retail, shall pay the assessment directly to the commission, within thirty days of sale of such product.

(3) Any assessments paid after the above deadlines shall be accompanied by an administrative fee of 10% as provided in RCW 15.65-.440 of the act.

NEW SECTION

WAC 16-557-050 OBLIGATIONS OF THE BOARD. Obligations incurred by the board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required, or permitted them by the act or this order, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under the order were a corporation. No liability for the debts or actions of the board, employee, or agent incurred in their official capacity

under this order shall exist either against the board, officers, employees, and/or agents in their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator, or board (or employee or agent thereof) established pursuant to this act or the assets thereof. The board, and its agents and employees, 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 board, member of the board, or other person. The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.

NEW SECTION

WAC 16-557-060 TERMINATION OF THE ORDER. The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to such dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is so assented to or favored whenever twenty percent by numbers and twenty percent by volume of production of the affected producers file written application with him for such termination. The termination shall not, however, become effective until the expiration of the marketing season.

NEW SECTION

WAC 16-557-070 EFFECTIVE TIME. The marketing order for asparagus shall become effective on April 1, 1991.

NEW SECTION

WAC 16-557-080 SEPARABILITY. If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances, or thing shall not be affected thereby.