



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (12/31/00)

Agency: Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: May 1, 2001

(2) Purpose: Chapter 16-557 WAC provides for the marketing order under which the Washington Asparagus Commission is established. The marketing order includes provisions on the goals and objectives of the Commission, obligations of the Commission, membership and representation on the Commission's board, and the grower assessment for funding the Commission's activities. This amendment changes the representation on the Asparagus Commission's Board in District II and District III which reflects a change in production of asparagus in those districts.

(3) Citation of existing rules affected by this order:

Repealed:

Amended: WAC 16-557-020

Suspended:

(4) Statutory authority for adoption: RCW 15.65

Other authority:

### PERMANENT RULE ONLY

Adopted under notice filed as WSR 01-02-094 on January 3, 2001 (date).

Describe any changes other than editing from proposed to adopted version: None

### EMERGENCY RULE ONLY

Under 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:

### EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date)

(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) \_\_\_\_\_ \*

#### Emergency Rules

- Immediately
- Later (specify) \_\_\_\_\_

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

NAME (TYPE OR PRINT)

James M. Jesernig

SIGNATURE

TITLE

Director

DATE

May 1, 2001

### CODE REVISER USE ONLY

CLERK'S OFFICE  
STATE OF WASHINGTON  
FILED

MAY 1 2001

11:55

01-10-087

AM  
PM

**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:**

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	New	_____	Amended	_____	Repealed	_____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	New	_____	Amended	_____	Repealed	_____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	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____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

New	_____	Amended	<u>1</u>	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:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>1</u>	Repealed	_____

**AMENDATORY SECTION (Amending WSR 95-17-116 (Order 5078), filed 8/23/95, effective 9/23/95)**

**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) Effective January 1, 2002, 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))~~ three board members, being positions three, ~~((and))~~ four~~((,))~~ and five, and shall include the counties of Adams, Franklin, and Grant.

(iii) District III shall have ~~((two))~~ one board member~~((s))~~, being position~~((s))~~ ~~((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.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. Nominating petitions for producers shall be signed by not less than five affected producers of the district from which such a candidate will be elected. Nomination petitions for handlers, fresh and processed shall be signed by not less than three affected handlers. The final date for filing nominations which shall not be less than twenty days after the notice was mailed.

(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.