



EXPEDITED RULE MAKING

CR-105 (August 2017) (Implements RCW 34.05.353)

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FILED

DATE: August 19, 2024

TIME: 8:45 AM

WSR 24-17-096

Agency: Dept. of Agriculture

Title of rule and other identifying information: (describe subject) Chapter 16-229 WAC, SECONDARY AND OPERATIONAL AREA CONTAINMENT FOR BULK PESTICIDES

Purpose of the proposal and its anticipated effects, including any changes in existing rules: In response to a petition for rule making, the Department is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Reasons supporting proposal: RCW 43.01.160 requires state agencies to use gender-neutral terms in rules unless a specification of gender is intended. Replacing gender-specific terminology supports the Department's commitment to integrate inclusive policies and procedures as outlined in the agency's 22-25 strategic plan.

Gender-inclusive pronouns are pronouns that are not specifically gendered and can be utilized when referring to each other in the third person. They are linguistic tools that we use to refer to people. Using gender-neutral pronouns can help create a more inclusive and welcoming environment and show respect for people's gender identities.

Statutory authority for adoption: RCW 17.21.030, RCW 43.01.160,

Statute being implemented: Chapter 17.21 RCW)

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

Name of proponent: (person or organization) Skye Theriot

☒ Private

☐ Public

☐ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- ☐ Relates only to internal governmental operations that are not subject to violation by a person;
- ☐ Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- ☒ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- ☐ Content is explicitly and specifically dictated by statute;
- ☐ Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- ☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- ☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- ☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- ☐ The rule is no longer necessary because of changed circumstances; or
- ☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The amendments in this proposal meet the criteria for expedited rule-making specified in RCW 34.05.353(1)(c) by clarifying the rule, without changing its effect, by replacing gender-specific pronouns with gender-inclusive pronouns.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) 10/22/2024

Date: 08/19/2024

Name: Jason Ferrante

Title: Deputy Director

Signature:



WAC 16-229-010 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context otherwise requires:

(1) **"Approved air gap"** means a physical separation between the free-flowing end of a water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an approved air gap, the separation must be at least:

(a) Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); or

(b) Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

(2) **"Approved reduced pressure principle backflow prevention assembly (RPBA)"** means an RPBA of a make, model and size that is approved by the Washington state department of health.

(3) **"Appurtenances"** means all valves, pumps, fittings, pipes, hoses, metering devices, and mechanical devices which are connected to a storage container, or which are used to transfer a material into or out of such container.

(4) **"Bulk pesticide"** means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than ((~~fifty-five~~)) 55 U.S. gallons liquid measure or ((~~one hundred~~)) 100 pounds net dry weight.

(5) **"Certified engineer"** means a licensed professional engineer, registered in the state of Washington in the discipline in which ((~~he/she is~~)) they are practicing.

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

(7) **"Discharge"** means a spill, leak, or release, accidental or otherwise, from a storage container, container or appurtenance. It does not include a fully contained transfer of pesticide which is made pursuant to sale, storage, distribution or use.

(8) **"Dry pesticide"** means pesticide which is in solid form prior to any application or mixing for application, and includes formulations such as dusts, wettable powders, dry flowable powders, granules, and water dispersible granules.

(9) **"Liquid pesticide"** means pesticide in liquid form, and includes solutions, emulsions, suspensions, slurries, and pesticide rinsates.

(10) **"Mini bulk pesticide"** means an amount of liquid pesticide greater than ((~~fifty-five~~)) 55 gallons but not exceeding ((~~five hundred~~)) 500 gallons which is held in a single container designed for ready handling and transport, which has been filled by the original pesticide manufacturer or repackager, and to which no substance has been added by any person.

(11) **"Not technically feasible"** means compliance is not physically or technically possible or feasible, and/or compliance cannot be achieved without compromising operational safety, and/or significantly

compromising operational access. Monetary cost of compliance alone shall not be sufficient for the department to determine that compliance is not technically feasible.

(12) **"Operational area"** means an area or areas where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, or rinsed from containers or application, handling, storage or transportation equipment.

(13) **"Operational area containment"** means any structure or system designed and constructed to intercept and contain discharges, including storage container or equipment wash water, rinsates, and rainwater from the operational area(s).

(14) **"Permanent mixing/loading site"** means a site (location) at which more than ~~((three-hundred))~~ 300 gallons of liquid pesticide (formulated product) or ~~((three-thousand))~~ 3,000 pounds of dry pesticide or at which a total of ~~((fifteen-hundred))~~ 1,500 pounds of pesticides as active ingredients are being mixed, repackaged or transferred from one container to another within a calendar year: Provided, that wood preservative application systems already regulated by 40 C.F.R., Parts 264.570-575 and Parts 265.440-445 shall be exempt.

(15) **"Permanent storage facility"** means a location at which liquid bulk pesticide in a single container or aggregate quantities in excess of ~~((five-hundred))~~ 500 U.S. gallons or dry bulk pesticide in undivided quantities in excess of ~~((two-thousand))~~ 2,000 pounds is held in storage: Provided, that mini-bulk pesticide containers are exempt from this chapter.

(16) **"Pesticide"** means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(d) For the purpose of establishing permanent mixing/loading site threshold values petroleum oils and products containing only Kaolin clay as the active ingredient are exempt from this chapter.

(17) **"Primary containment"** means the storage of liquid or dry bulk pesticide in storage containers at a permanent storage facility.

(18) **"Rinsate"** means the liquid generated from the rinsing of any equipment or container that has come in direct contact with any pesticide, including: Recovered sedimentation, washwater, contaminated precipitation, or other contaminated debris.

(19) **"Secondary containment"** means a device or structure designed, constructed, and maintained to hold or confine a discharge of a liquid pesticide from a permanent storage facility.

(20) **"Storage container"** means a container, including a rail car, nurse tank or other mobile container, that is used or intended for the storage of bulk liquid or dry pesticide. It does not include a mobile container at a storage facility for less than ~~((fifteen))~~ 15 days if this storage is incidental to the loading or unloading of a storage container at the bulk pesticide storage facility. Storage container does not include underground storage containers or surface impoundments such as lined ponds or pits.

(21) **"Substantially similar protection"** means alternative containment and management practices that prevent or control releases to

the environment to the same or similar degree as the protections afforded by full compliance with this chapter.

(22) **"Temporary field storage"** means a storage container with the capacity to store (~~((two thousand five hundred))~~) 2,500 gallons or less of bulk liquid pesticide that remains in the same location for no more than (~~((fourteen))~~) 14 consecutive days in any six-month period. Provided, that temporary field storage containers used to store soil fumigants shall be allowed a maximum capacity of (~~((ten thousand))~~) 10,000 gallons or less. Containers must be chemically compatible with the material, which is being stored. Such containers can remain in the same location for no more than (~~((fourteen))~~) 14 consecutive days in any six-month period. Liquid bulk pesticide application tanks directly attached to an apparatus for the purpose of chemigation are exempt from this chapter.

(23) **"Washwater"** means the liquid generated from the rinsing of the exterior of any equipment, containers or secondary containment or operational areas which have or may have come in direct contact with any pesticide.