



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

Concise Explanatory Statement
for amendments to:

Chapter 16-230 WAC

Use of chemicals and chemically treated materials in certain counties

Chapter 16-231 WAC

Use restricted herbicides

Chapter 16-232 WAC

Use restricted herbicides in certain counties

On December 11, 2018, the Washington State Department of Agriculture held a hearing in Spokane, and on December 12, 2018, hearings in Yakima and Kennewick, to accept testimony on its proposal to amend chapters 16-230, 16-231 and 16-232 WAC by:

1. Adopting the ASABE (American Society of Agricultural and Biological Engineers) standards as a national consensus code;
2. Amending nozzle and pressure requirements to reflect current standards that applications must be made by creating a droplet spectrum size (e.g., medium, coarse or very coarse) that is in conformance with ASABE standards;
3. Repealing the requirement in individual counties for landowners to inform aerial applicators of nearby sensitive crops;
4. Repealing the requirement in Spokane County for applicators to inform commercial greenhouses within ½ mile 48 hours in advance of any use restricted herbicide application;
5. Repealing the allowance to use “approved ground rigs” at higher wind speeds;
6. Repealing the redundant prohibition on the use of high volatile and dust formulations of use restricted herbicides that are already prohibited in chapter 16-228 WAC -- General Pesticide Rules;
7. Deleting the reference to “critical weed control” and “2,4-D committees” on the Department’s ability to issue permits;
8. Adding a reminder that applicators in Benton County must comply with statewide rules and general pesticide rules;
9. Repealing the redundant prohibition in individual counties of aerial applications within one mile of commercial vineyards;
10. Repealing the restrictions in Areas 1 and 3 of Whitman County prohibiting application of use restricted herbicides from April 15 to October 31 when wind speed exceeds 7 mph;

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11. Adding a definition for “ready-to-use liquid formulations” and an exception for “ready-to-use liquid formulations” to the definition of use restricted herbicides in individual counties;
12. Repealing the 85 degree Fahrenheit cut-off requirement in individual county rules since it is already a requirement in the statewide rules;
13. Repealing the restriction in statewide rules that limits the addition of oil carriers and adjuvants to one pint per acre;
14. Repealing restrictions in individual county rules that prohibit use of oil type carriers for brush control during certain times of the year;
15. Repealing restriction in statewide rules that prohibits mixing, loading and equipment decontamination (also aircraft takeoff and landing) in a manner that causes damage to susceptible crops;
16. Repealing restrictions in counties and specific “Areas” of counties that limit mixing loading of aircraft to formulations that can be applied in the Area where the airstrip is located;
17. Repealing the prohibition in statewide rules on turning or flying low over cities, towns, residences and other sensitive sites;
18. Repealing the prohibition in the statewide rules for storing use restricted herbicides in “Areas” where their use is prohibited unless they are in a sealed container and the outside of the container is not contaminated;
19. Repealing the provision in the statewide rules that indicates application of use restricted herbicides through irrigation is subject to the same requirements as ground applications except for nozzle size and pressure requirements;
20. Expanding the boundaries of Area 1 in Kittitas County as a result of a petition for rule making; and
21. Changing the section titles that are in a Q&A format to a statement/phrase format to be consistent throughout the chapters.

Reasons for Adopting the Rule

The requirements in chapters 16-230, 16-231 and 16-232 WAC were adopted decades ago mostly for the protection of sensitive crops, especially grapes, from damage by phenoxy herbicides such as 2,4-D. Grapes are extremely sensitive to the phenoxy herbicides and much damage was occurring due to phenoxy applications to grain crops in proximity. The rules helped to greatly reduce these incidents of damage by including restrictions that would help to prevent drift and volatilization.

One of the main amendments to the three WAC chapters involves changing outdated requirements that applicators must use nozzles with specific orifice opening diameters at given pressures, to requirements that applications be made at specific droplet spectrums (medium, coarse or very coarse) according to the American Society of Agricultural and Biological Engineers (ASABE) standards. Nozzles are no longer described by manufacturers and dealers by the size of the orifice opening diameter. Nozzle technology has greatly advanced over the last three decades, and the low pressure maximums required by the existing rules do not always create the largest droplet spectrums. Thus, the rules in some cases put sensitive crops more at risk by not allowing applicators to use nozzles that create larger droplets. Other changes to the rules involve the repeal of requirements that are redundant or are no longer useful for the protection of sensitive crops.

These amendments will update the requirements for application of use restricted herbicides to the current (ASABE) industry standards, which are consistent with nozzle manufacturer/dealer specifications and pesticide labels. The amendments will allow applicators to use the best technology for protection of sensitive crops. The amendments will repeal rules that are redundant or no longer necessary for protection of sensitive crops. By repealing outdated, redundant and complex requirements it will allow applicators to more easily understand and comply with the remaining requirements that are important. Finally, in response to a petition received for rule making, Area 1 of Kittitas County is slightly expanded to protect orchards that currently lie just outside of the boundary.

Agencies have an obligation to keep their rules up to date and these rules are badly in need of updating. The three WAC chapters are very complex and confusing. By making these updates and simplifying the rules it will help applicators to comply with the important requirements that remain.

Summary of Comments and the Department's Response

The public comment period ran from November 7, 2018, until the close of business on December 12, 2018. During that time, there were no written comments received regarding the proposed amendments. One oral comment was received at the public hearing in Kennewick on December 12, 2018.

The following summarizes the testimony:

Jim Ossman – representing himself (previous member of the WSDA Pesticide Advisory Board) submitted oral comment regarding the proposal. Mr. Ossman stated, "I am just here to compliment you on finally getting some common sense rules in the state of Washington, especially the east side. You guys have done a fine job of listening to folks. I know there were some very upset applicators in the beginning, I think you took care of all of that...."

Differences Between the Proposed and Adopted Rule

None