



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: October 24, 2000

(2) Purpose: Revise rules for purposes of clarity, uniformity and to suffice the rule making requirements of RCW 17.21. Also, this proposal is intended to revise the general rules to specify label requirements for certain pesticide registrations and emergency exemptions from registration.

(3) Citation of existing rules affected by this order: 16-228-1220, 1300, 1320, 1322, 1400, 1420

Repealed:

Amended: 16-228-1220, 1300, 1320, 1400, 1420

Suspended:

(4) Statutory authority for adoption: RCW 15.58 and RCW 17.21

Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 00-18-109 on September 6, 2000 (date).

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

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:

CODE REVISER USE ONLY

Permanent Rules
or Expedited Repeal

Emergency Rules

- 31 days after filing
- Other (specify) _____*
- 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)

Jim Jesernig

Signature

Title

Director

Date

10/26/00

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

OCT 30 2000

TIME

2:59

AM

PM

WSR

00-22074

**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:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	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	<u>1</u>	Amended	<u>5</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:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

WAC 16-228-1220 Restrictions applying to any person holding, handling, using, or disposing of pesticides and their containers. (1) Any person handling, applying, or disposing of pesticides or pesticide containers shall do so in such a manner to minimize hazard to commercially important pollinating insect species. Due care shall be taken to regulate the timing and technique of pesticide applications to or around blossoming plants.

(2) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container or apparatus in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, including humans, desirable plants and animals, or wildlife: Provided, That a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection: Provided further, That disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(3) No person shall pollute streams, lakes, and other water supplies in pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent backsiphoning shall be used.

(4) None of the following pesticides shall be applied by aircraft or airblast sprayers immediately adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises:

(a) Disulfoton (DiSystem)-Liquid

(b) Parathion

(c) Phorate (Thimet)-Liquid

(5) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, including humans, desirable plants or animals.

(6) Requirements for unattended pesticides and their containers:

(a) Good generally accepted housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (7) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., three successive rinsings); shall not apply to categories 2, 3, and 4 pesticide formulations labeled for home and garden use only.

(c) For the purposes of (d) and (e) of this subsection and subsection (7) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals.

(d) (~~Category 1~~) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in one of the following enclosures which, when unattended, shall be so constructed and locked (except (v) below) to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(i) Closed vehicle.

(ii) Closed trailer.

(iii) Building or room or fenced area with a fence at least six feet high.

(iv) Foot locker or other container which can be locked.

(v) Unattended trucks or trailers which have solid side racks and secured tailgate at least six feet above ground, ramp or platform level.

(vi) Bulk storage containers fifty gallons and larger with tight screw-type bungs and/or secured or locked valves.

(e) (~~Category 2~~) Pesticides labeled with the signal word "danger when not accompanied by the signal word poison, pesticides labeled with the signal word "warning" and (~~categories 3 and 4~~) pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in one of the enclosures listed in (d) of this subsection: Provided, That metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves and sealed five gallon containers (requiring tool to unseal) shall be considered secured storage.

(7) Requirements for posting of storage area for (~~category 1~~) pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (or Pesticide or Chemical Storage Area/Keep Out" in letters large enough to be legible at a distance of thirty feet.

(b) Warning signs shall be posted:

(i) On enclosures specified in subsection (6)(d) of this section, when such enclosures are unattended;

(ii) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(iii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each exterior wall of the structure within thirty feet of the pesticide storage area and from the main entrance to the larger structure: Provided, That posting of the main entrance shall not be required, if a sign is visible from the entrance which clearly identifies the possibility that pesticides may be stored on the premises, (i.e., XYZ Pest Control or XYZ Wood Treatment, Inc.);

(8) No person shall disperse a pesticide or pesticide rinsate from any aircraft while in flight except over the target field and at the customary application height for that crop: Provided, That emergency dumping shall not be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1300 Distribution Records (1) Pesticide dealers shall furnish records to the director immediately upon request on the distribution of any pesticide except those labeled only for home and garden. These requests shall be limited to records necessary for investigations of suspected violations, damage complaints, monitoring distribution and use under provisions of special local needs registrations, emergency exemptions from federal registration and experimental use permits, and monitoring of any pesticide suspected of unreasonable adverse effects on the environment. The records shall contain the following information:

- (a) Full Name and address of purchaser;
- (b) Full Name and address of certified applicator (if different from (a) above if applicable);
- (c) Full Name of authorized agent (if applicable);
- (d) Brand and specific pesticide name and/or EPA registration number;
- (e) Number of pounds or gallons of the pesticide distributed;
- (f) Date of distribution;
- (g) Certified applicator number (if applicable) (~~(-)~~);
- (h) Crop and/or site to which pesticide will be applied (if known).

~~((2) Certified applicators may designate authorized agent(s) for the purpose of purchasing or receiving restricted use pesticides by making previous arrangements with the pesticide dealer, or the authorized agent may provide written authorization to the dealer at the time of purchase. At the time of purchase by an authorized agent the pesticide dealer shall require the certified applicator's name and license or certification number.~~

~~(3) Pesticide dealers shall keep records of distribution of state restricted use pesticides for a period of seven years from the date of distribution.)~~

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1320 Applicator requirements. (1) Certified applicators and all persons applying pesticides to more than one acre of agricultural land in a calendar year including public entities engaged in roadside spraying, and all persons making landscape applications of pesticides to types of property listed in RCW 17.21.410 (1), (b), (c), (d) and (e) shall keep records ~~((on a form prescribed by the director))~~ for each application which shall include the following:

(a) The name and address of the person for whom the pesticide was applied.

(b) The address or exact location of the land where the pesticide was applied. If the application is made to one acre or more of agricultural land, the field must be located on the map on the ~~((prescribed))~~ adopted form. Location of agricultural land shall be made using section, township and range or by irrigation block and farm unit numbers.

(c) The year, month, day and start and stop time the pesticide was applied.

(d) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.

(e) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour (mph) and the temperature in degrees Fahrenheit at the time the pesticide was applied: *Provided*, That this subsection (e) shall not apply to applications of baits in bait stations and pesticide applications within structures.

(f) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(g) The amount of pesticide applied per acre or one thousand square feet or other appropriate measure.

(i) For PCO classification or residential ornamental applications, the amount shall be recorded to the nearest ounce of product or to the nearest gallon of liquid spray per site.

(ii) Fumigation records shall include the pounds of gas released per one thousand cubic feet of space, the temperature, and the duration of the exposure period.

(h) The concentration of pesticide that was applied. Liquid applications may be recorded as amount of product per one hundred gallons of liquid spray or other appropriate measure. (Examples include, but are not limited to, the amount of formulation per one hundred gallons of water, percent formulation in the tank mix (i.e.) 1%, or gallons per acre of output volume.)

(i) The pests to be controlled (for PCO classification only).

(j) Specific crop or site to which pesticide was applied.

(k) Apparatus license plate number.

(1) The licensed applicator's name, certified pesticide applicator license number, address, telephone number, and the name and license number(s) if applicable of the individual or individuals making the application.

(m) The number of acres or other appropriate measure to which the pesticide was applied.

(2) Application records shall be completed and available to the department the same day the pesticides were applied.

(3) Application records shall be kept for a period of seven years from the date of the application of the pesticide to which such records refer. The director shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee.

(4) Upon written request, the applicator shall provide the customer with a record of each application of pesticides to his/her land, for the current season, which shall contain the information listed in WAC 16-228-~~((1330))~~ 1320 (1).

(5) Except as stated in subsection (6) of this section, the information required in subsection (1) of this section shall be ~~((kept))~~ provided upon request on the appropriate page of the pesticide record form (figures 1-8): Provided, That computerized records may be maintained as long as the records can be produced in the form and format prescribed by the department.

(6) The department may allow by written permit the information required in subsection (1) of this section to be kept in a different form and format than that described in figures 1-8: *Provided*, That the following criteria are met:

(a) The pesticide application record keeping system is computerized;

(b) ~~((The pesticide application record keeping system was in place and operational prior to July 23, 1989;~~

~~(c))~~ The pesticide application record keeping system contains all the information required by subsection (1) of this section, and can be produced in a form and format acceptable to the department.

(7) All apparatus shall be kept in good repair and only that apparatus capable of performing all functions necessary to ensure proper and thorough application of pesticides shall be used. Apparatus shall be cleaned so that no residue remains which may cause injury to land, including humans, desirable plants and animals, from subsequent applications.

(8) On demand of the director, the applicator shall make immediately available for inspection the pesticides being applied and the apparatus used for the application: *Provided*, That this inspection is made at the site of application or where the apparatus is located.

(9) The applicator shall make available necessary safety equipment in proper working order and advise employees on its use to meet the safety requirements of the pesticide label.

(10) Maintain a uniform mixture at all times in operating apparatus when applying pesticides.

(11) All containers used for prepared mixtures, other than those in an apparatus, shall have a label identifying the contents as a pesticide, the active ingredient, and appropriate cautions.

NEW SECTION

WAC 16-228-1322 Landscape Marker Removal Schedule (1) The marker shall remain in place for a minimum of twenty-four hours from the time the landscape application is originally posted as required by RCW 17.21.410.

(2) In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the certified applicator shall provide the property owner or tenant with the restricted entry interval times

consistent with the label requirements. Markers shall remain in place consistent with the restricted entry interval times as required by the label.

(3) The property owner or tenant shall remove the marker of any landscape posted under the requirements of RCW 17.21.410 consistent with this schedule.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1400 Pesticide labeling requirements. (1) In addition to the requirements set forth in (2) through (5) below, pesticide labeling shall meet the standards or criteria of ((the Federal Insecticide, Fungicide and Rodenticide Act)) FIFRA.

(2) Any pesticide exempted from registration under the provisions of section 18 of FIFRA must be labeled as follows:

(a) Pesticides distributed under section 18 of FIFRA must be accompanied by a label approved by the department prior to distribution. All conditions set forth in the document granting the emergency exemption and all other requirements determined to be necessary by the department must be included on the label.

(b) In situations where a label cannot be developed and approved prior to the intended use period, the department may allow the use of the document granting the emergency exemption in lieu of labeling. Conditions set forth as part of ((an exemption from registration under provisions of section 18 of FIFRA)) the granting document, and any attached or associated documentation from the department shall be considered labeling for purposes of enforcement.

(3) Labels for spray adjuvants must include the following:

(a) The product brand name.

(b) The type or function of principal functioning agents. Terms used to describe adjuvant functions must be consistent with American Society for Testing and Materials (ASTM) Standard E 1519, unless ASTM has not defined a term. In the absence of an ASTM definition, the department will determine the appropriate term(s). Functions claimed must be consistent with the principal functioning agents. If two or more functions are claimed, then the functions must be listed in descending order (starting with the primary function).

(c) An ingredient statement that shall include the following:

(i) "Principal functioning agents." The principal functioning agents must be listed by chemical name in descending order of composition with either individual or total percentage(s). If more than 3 functioning agents are present, only the 3 principal agents need to be listed;

(ii) The percentage of "Constituents ineffective as spray adjuvants,"
and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and recommended use rates.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children."

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data; and

(iii) A statement prohibiting aquatic use, unless the registrant provides data to demonstrate that the proposed use will not cause unreasonable adverse effects to fish and aquatic invertebrates.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) Optional information: The spray adjuvant label may also include an exemption from tolerance statement (if applicable), an unsulfonated residue (UR) value (if applicable), the Washington registration number and a label identification code (such as the revision date).

(4) Special local need (SLN) labels issued under section 24c of FIFRA must include the following:

(a) A federal or state Restricted Use Pesticide (RUP) designation statement (when applicable).

(b) The statement "FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF WASHINGTON."

(c) The product brand name.

(d) The EPA and SLN registration numbers of the product.

(e) The statement: "It is a violation of federal law to use this product in a manner inconsistent with its labeling."

(f) The statement: "This labeling must be in the possession of the user at the time of application."

(g) One of the following statements:

(i) For agricultural use SLN labels the statement: "Follow all applicable directions, restrictions, worker protection standard requirements, and precautions on the EPA registered label"; or

(ii) For non-agricultural use SLN labels the statement: "Follow all applicable directions, restrictions, and precautions on the EPA registered label."

(h) Directions for use that must include the following: crop or site to be treated, pest(s) to be controlled, application rate and concentration, method of application, frequency and timing of application, and pre-harvest interval.

(i) All restriction or precaution statements (e.g. pollinator protection, herbicide drift, aquatic toxicity, chemigation, seed crop requirements) applicable to the use.

(j) The statement: "This label for (Product name) expires and must not be distributed or used in accordance with this SLN registration after December 31, Fifth year." Fifth year means the fifth year after issuance of the SLN label.

(k) The name and address of the SLN registrant.

(l) A label identification code (such as the revision date).

(m) Any other applicable information required by the EPA or the department.

(n) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(o) Optional information: The SLN label may also include a waiver of liability statement (if applicable). The waiver of liability statement must be consistent with EPA requirements.

(5) Labels for minimum risk pesticides exempted from federal registration under section 25(b) of FIFRA must include the following:

(a) The product brand name.

(b) The product function. The function(s) claimed must be consistent with product ingredients.

(c) An ingredient statement that shall include the following:

(i) "Active ingredients." These ingredients must be listed by name (in descending order of composition) with individual percentage(s). Only active ingredients listed in 40CFR152.25(q) are permitted;

(ii) "Inert ingredients" or "Other ingredients." These ingredients must be listed by name with the cumulative percentage of all inert ingredients stated on the label. Only inert ingredients on EPA Inerts List 4A are permitted; and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and use rates. The label must not bear claims either to control or mitigate microorganisms that pose a threat to human health.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children," and

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) Optional information: The minimum risk pesticide label may also include the Washington registration number and a label identification code (such as the revision date).

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1420 Complete pesticide formula. The complete pesticide formula shall include a listing of each active and inert ingredient and the percentage of each ingredient. This information will be kept confidential and is exempt from disclosure as a public record as provided by RCW 15.58.065 except for names of inert ingredients of pesticides exempt under section 25b of FIFRA which according to CFR 152.25(g)(3)(i) must have this information on the label. Information required by this section may be submitted on company letterhead marked "confidential" in red ink on each sheet or each "EPA confidential statement of formula" information sheet.