



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Washington State Department of Agriculture
 Permanent Rule
 Emergency Rule

(1) Date of adoption: March 17, 1992

(2) Purpose:
To establish inspection and reporting criteria as required by HB 1156 which was passed by the 1991 Legislature.

(3) Citation of existing rules affected by this order:
Repealed:
Amended: 16-228-010 and 16-228-180
Suspended:

(4) Authority for adoption:
Statute: 15.58 RCW
Other Authority: 15.58.150 RCW

(5.1) PERMANENT RULE ONLY
Pursuant to notice filed as WSR 92-03-133 on January 22, 1992 (date).
Describe any changes other than editing from proposed to adopted version:
None

(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:

(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 Emergency Rules
 31 days after filing Immediately
 Other (specify) _____ * Later (specify) _____
*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05 380(3) is required)

CODE REVISER USE ONLY
CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAR 17 1992

TIME 2:47 AM
WSR 92-07-084

NAME (TYPE OR PRINT)
Michael W. Schwisow
SIGNATURE
Michael W. Schwisow
TITLE
Deputy Director
DATE
3/17/92

AMENDATORY SECTION (Amending Order 2022, filed 11/30/89, effective 12/31/89)

WAC 16-228-010 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Agricultural commodity" means any plant, or part of a plant or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Authorized agent" is any person who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

(3) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated synthetic material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized persons and domestic animals from gaining access to the bait. The cover shall be provided with a lock that can be unlocked only by a combination, key, special tool, or forced entry. Fragile materials are unacceptable.

(4) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

(5) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

(7) "Complete wood destroying organism inspection" means (a) an inspection of a structure for the purpose of determining (i) evidence of infestation(s), and (ii) damage, and (iii) conducive conditions; or (b) any wood destroying organism inspection which is conducted as the result of a telephone solicitation by an inspection firm or pest control business, even if the inspection would otherwise fall within the definition of a limited wood destroying organism inspection.

(8) "Conducive conditions" means those conditions which may lead to or enhance an infestation of wood destroying organisms.

(9) "Controlled disposal site" means any place where solid or liquid waste is disposed: PROVIDED, That the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency: PROVIDED FURTHER, That the site is fenced, barricaded or otherwise enclosed or attended by some person in charge to facilitate control-access of domestic animals, pets, and unauthorized persons.

~~((8))~~ (10) "Department" means the Washington state department of agriculture.

~~((9))~~ (11) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to field strength for adequate coverage (such as water).

~~((10))~~ (12) "Director" means the director of the department or a duly authorized representative.

~~((11))~~ (13) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((12))~~ (14) "EPA" means the United States Environmental Protection Agency.

~~((13))~~ (15) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

~~((14))~~ (16) "Fertilizer" as included in this order means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

((+5)) (17) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

((+6)) (18) "Floor level" is considered to be the floor upon which people normally walk--not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

((+7)) (19) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

((+8)) (20) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

((+9)) (21) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral inhalation or dermal toxicity.

((+20)) (22) "Limited wood destroying organism inspection" means the inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms.

(23) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of (a) any EPA restricted use pesticide; or (b) any state restricted use pesticide restricted to use only by certified applicators by the director for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

((+21)) (24) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide; or (b) any restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

((+22)) (25) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW that are restricted to use only by certified applicators.

((+23)) (26) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

((+24)) (27) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

(28) "Wood destroying organisms" means those organisms including, but not limited to, subterranean termites, dampwood termites, carpenter ants, wood boring beetles of the family anobiidae (deathwatch beetle), and wood decay fungus (rot). Wood destroying organisms shall not include such organisms which occurred prior to the manufacturing or processing of the lumber, e.g., pocket rot.

(29) "Wood destroying organism inspection" means the service of inspecting a building for the presence of wood destroying organism pests destructive to its structural components, and/or their damage, and/or conducive conditions. For purposes of these rules a wood

destroying organism inspection shall be either a "complete wood destroying organism inspection" or a "limited wood destroying organism inspection."

AMENDATORY SECTION (Amending Order 2022, filed 11/30/89, effective 12/31/89)

WAC 16-228-180 LICENSE DENIED, REVOKED OR SUSPENDED. (1) The director may deny, suspend, or revoke any provision of a license, registration, permit or certification issued under chapters 17.21 and 15.58 RCW if he finds that the applicant or the holder of the license, permit, or certification has committed any of the following acts each of which is declared to be a violation:

- (a) Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be utilized;
- (b) Made a pesticide recommendation or gave advice or used a pesticide inconsistent with the labeling, the EPA or Washington state registration for that pesticide, an EPA or Washington state experimental use permit for that pesticide, an exemption from registration under provisions of section 18 of FIFRA, or in violation of the EPA or Washington state restrictions on the use of that pesticide;
- (c) Applied known ineffective or improper pesticides or materials;
- (d) Operated a faulty or unsafe apparatus;
- (e) Operated in a faulty, careless or negligent manner;
- (f) Refused or neglected to comply with the provisions of the applicable sections of chapters 15.58 and 17.21 RCW, the rules adopted thereunder, or of any lawful order of the director;
- (g) Refused or neglected to keep and maintain records required by chapters 15.58, 17.21 RCW, and rules adopted thereunder, or to make reports when and as required;
- (h) Made false or fraudulent records, invoices, reports, and/or recommendations;
- (i) Caused the application of a pesticide without having a licensed or certified applicator or operator in direct supervision;
- (j) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus as provided for in chapter 17.21 RCW or failed to locate the apparatus license plate on the apparatus in a manner required by the department;
- (k) Failed to properly display, when required, a department issued certified commercial ground applicator vehicle sticker;
- (l) Used, or supervised the use of a pesticide which is restricted to use by certified applicators without having qualified as a certified applicator;
- (m) Used fraud or misrepresentation in making an application for a license, permit, or certification or renewal of a license, permit or certification;
- (n) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;
- (o) Aided or abetted a certified applicator, or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW, conspired with such a certified applicator or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW or allowed one's license, permit, or certification to be used by another person;
- (p) Made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or department investigation;
- (q) Impersonated any state, county, or city inspector or official;

(r) Is not qualified to perform as a pest control consultant or pesticide dealer manager or certified applicator in the classifications in which he/she is licensed to operate or has operated, regardless of whether or not he/she has previously passed an examination provided for in chapter 15.58 RCW; ((or))

(s) To have in his/her possession a department pesticide applicator, operator, dealer manager or pest control consultant examination or to remove or cause to remove any said examination from the department without expressed consent from the department; or

(t) Made or failed to make an inspection, statement, or report in violation of WAC 16-228-400 through 16-228-430.

(2) A penalty fee assessed as a result of a late license or registration renewal does not prevent the department from taking additional regulatory action against the violator.

(3) No pesticide dealer or dealer manager license shall be denied, suspended, or revoked, simply because a pesticide purchased from that dealer was applied in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder, unless the department finds the dealer or dealer manager in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder.

NEW SECTION

WAC 16-228-400 INSPECTION AND REPORTING CRITERIA FOR COMPLETE WOOD DESTROYING ORGANISM INSPECTIONS. All persons licensed to conduct wood destroying organism inspections shall comply with the following criteria when performing complete wood destroying organism inspections.

(1) The inspector shall make a thorough inspection of accessible areas of the subject structure which are not excluded. The inspection shall be conducted by making a careful visual examination, and/or probing with inspection instruments.

(2) Substructural crawl areas shall be inspected when accessible.

(3) Upon completion of an inspection, a wood destroying organism report shall be issued to the person paying for and/or otherwise requesting the inspection. Such report shall include the following: PROVIDED, That all diagrammatic representations may be omitted from the report provided to the person paying for or otherwise requesting the inspection, but shall be maintained on file pursuant to subsection (3)(k) of this section.

(a) Date of inspection;

(b) Name of seller/owner and purchaser (when applicable);

(c) Street address of structure inspected. When there is more than one structure that may be used as a dwelling at a given street address it shall be clearly indicated which structure was inspected;

(d) Name of structural inspector and department pesticide license number;

(e) Substructural crawl areas which are not accessible due to inadequate clearance, or foundation walls/partitions, etc., which block access, shall be clearly indicated on the complete wood destroying organism inspection report including any diagram which is a part of that report. It shall be stated on the report that such areas may be vulnerable to attack by wood destroying organisms, and should be made accessible for inspection if feasible. In the event that it is neither feasible or necessary to make access into such areas, a statement indicating the reason(s) shall be included on the report;

(f) With the exception of areas within the living quarters of an occupied structure, all areas which are excluded from the inspection shall be clearly indicated on any complete wood destroying organism inspection report;

(g) Evidence of infestation of wood destroying organisms which shall include:

(i) Common name of the wood destroying organism(s). Termites shall be described as either dampwoods or subterraneans. Wood boring beetles shall be described by the appropriate family name, i.e., anobiidae (deathwatch beetles). Buprestid and Cerambycid beetles shall not be described as "powder post beetles";

(ii) Statement describing specific evidence of infestation(s) observed;

(iii) If evidence of infestation(s) is observed only in wood which is not normally considered a part of the structure i.e., form boards, cellulose debris, roots, stumps, landscaping wood/lumber, etc., the report shall so state;

(iv) Diagrammatic representation of areas infested sufficient to identify the approximate location of areas infested;

(h) Optional method of control. When infestations of dampwood termites or rot fungus are localized in a structure, or observed only in wood which is not normally considered a part of the structure, such as form boards, cellulose debris, roots, stumps, landscaping wood/lumber, it shall be stated in the report that such infestations may be eliminated by removal of all infested wood and correction of any contributing conducive conditions;

(i) Damage caused by wood destroying organisms:

(i) A statement describing any damage which was observed in accessible areas of the structure which were not excluded from the inspection.

(ii) A diagrammatic representation indicating such areas of damage;

(j) Conducive conditions for an infestation of wood destroying organisms. Written statements and diagrammatic representation of the following shall be provided:

(i) Inadequate clearance: Where there is less than eighteen inches clear space between the bottom of floor joists and the unimproved ground area in any crawl space or portion thereof.

(ii) Earth-wood contact: Where wood of the structure is in direct contact with the soil. This does not include wood that has been treated for direct soil contact.

(iii) Cellulose debris: Where wood by-product material can be raked or is larger than can be raked, or where any stumps, roots, form boards, etc., are on the ground of a crawl space.

(iv) Excess moisture: Where there is standing water or evidence of seasonal standing water in crawl space or basement. Plumbing and other moisture leaks.

(v) Inadequate ventilation: Where there is detectable excessive moisture content in the wood of a substructure, and/or an active infestation of wood destroying organisms which can be attributed to the lack of sufficient ventilation in the substructure;

(k) A record of the complete wood destroying organism inspection report shall be maintained on file by the structural inspector or employer for a period of seven years. Such record shall be made available to the department upon request.

NEW SECTION

WAC 16-228-410 INSPECTION AND REPORT PREREQUISITE TO WOOD DESTROYING ORGANISM TREATMENT. All persons licensed to conduct wood destroying organism inspections shall conduct either a limited or complete wood destroying organism inspection prior to treatment.

(1) A limited or complete wood destroying organism inspection shall be conducted and a report issued to the person paying for and/or otherwise requesting the inspection prior to the contracting of any treatment for wood destroying organisms, except when the treatment is for preventative purposes only. In situations when treatment is for preventative purposes, the person requesting treatment shall provide the following preauthorization:

I have requested that perform a preventative treatment for control of on the structure located at I acknowledge that this preventative treatment may be performed without inspection.

.....
Signed (property owner or custodian)

(2) A limited or complete wood destroying organism inspection report or treatment preauthorization form shall accompany or be included within any proposal/estimate for treatment of wood destroying organisms.

(3) When no evidence of infestation is observed, and any proposed treatment is for preventative purposes only, a limited or complete wood destroying organism inspection report shall include:

(a) A statement describing that no evidence of infestation was observed, and the treatment proposed is for preventative purposes only. Such statement shall stand out by having larger print than the main body of the report, or by being highlighted or underlined.

(b) The initials of the person, or representative thereof, that requested the inspection shall be inscribed directly under or adjacent to the statement as described in (a) of this subsection. Such initials shall be obtained prior to the commencement of any preventative treatment.

(4) Treatment performed for wood destroying organisms under an existing warranty shall not require the preparation of a limited or complete wood destroying organism inspection report.

NEW SECTION

WAC 16-228-420 LIMITED WOOD DESTROYING ORGANISM INSPECTIONS. A limited wood destroying organism inspection shall not be construed as a complete wood destroying organism inspection. In no case shall a limited wood destroying organism inspection report be submitted in lieu of a complete wood destroying organism inspection report to a lending institution, title company, real estate office or agent, or other person, when a complete wood destroying organism inspection has been requested for the purpose of verifying that a structure is free of visible evidence of wood destroying organisms, their damage, or conducive conditions.

NEW SECTION

WAC 16-228-430 REPORTING CRITERIA FOR LIMITED WOOD DESTROYING ORGANISM INSPECTIONS. All persons licensed to conduct wood destroying organism inspections shall comply with the following criteria when performing a limited wood destroying organism inspection.

(1) A limited wood destroying organism inspection report shall include the following: PROVIDED, That all diagrammatic representations may be omitted from the report provided to the person paying for or otherwise requesting the inspection, but shall be maintained on file pursuant to subsection (2) of this section:

- (a) Date of inspection;
- (b) Name of person or agency requesting the inspection, proposal, or estimate;
- (c) Address of structure inspected;
- (d) Name of structural inspector and WSDA license number;

(e) A statement describing specific evidence of infestation(s) observed;

(f) If evidence of infestation(s) is observed only in wood which is not normally considered a part of the structure, i.e., form boards, cellulose debris, roots, stumps, landscaping wood/lumber, etc., the report shall so state;

(g) Common name of wood destroying organisms. Termites shall be described as either dampwoods or subterraneans. Wood boring beetles shall be described by the appropriate family name, i.e., anobiidae (deathwatch beetles). Buprestid and Cerambycid beetles shall not be described as "powder post beetles";

(h) A diagrammatic representation of area of infestation sufficient to identify the appropriate location of areas infested: PROVIDED, That a diagram shall not be necessary when the homeowner/caretaker presents an insect and/or wood sample to the inspector, and this is the only evidence of infestation(s) observed;

(i) Optional method of control: When infestations of dampwood termites or rot fungus are localized in a structure, or observed only in wood which is not normally considered a part of the structure, such as form boards, cellulose debris, roots, stumps, landscaping wood/lumber, it shall be stated in the report that such infestations may be eliminated by removal of all infested wood and correction of any contributing conducive conditions.

(2) A record of the limited wood destroying organism inspection report shall be maintained on file by the structural inspector or employer for a period of one year. Such records shall be made available to the department upon request.