



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: **December 16, 1994**

(2) Purpose: **The new language adopts the federal definition of an "agricultural emergency" and "substantial economic loss" which will allow the agency to declare conditions that may lead to an ag emergency and place geographic boundaries to the emergency area prior to the actual emergency.**

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

- Repealed:  
Amended: **WAC 16-228-010**  
Suspended:

(4) Authority for adoption:

- Statute: **RCW 15.58 and 17.21**  
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 94-21-087 on October 19, 1994 (date).

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

**In new section WAC 16-228-655 subsection (1), the wording "other than that caused by equipment failure," was removed from the first sentence.**

**The wording in subsection (2)(b) was removed - "The time in treated areas under a restricted entry interval for any worker repairing equipment shall not exceed one hour in any twenty-four hour period."**

(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                                |
| <input checked="" type="checkbox"/> 31 days after filing | <input type="checkbox"/> Immediately           |
| <input type="checkbox"/> Other (specify) _____ *         | <input type="checkbox"/> 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**

DATE

**DIRECTOR**

DATE

**12-16-94**

CODE REVISER USE ONLY

*[Handwritten signature and date: 12-16-94]*

**AMENDATORY SECTION** (Amending WSR 92-07-084, filed 3/17/92)

**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) "Agricultural emergency" means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a pesticide treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss.

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

~~((3))~~ (4) "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))~~ (5) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

~~((5))~~ (6) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

~~((6))~~ (7) "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))~~ (8) "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))~~ (9) "Conducive conditions" means those conditions which may lead to or enhance an infestation of wood destroying organisms.

~~((9))~~ (10) "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.

~~((10))~~ (11) "Department" means the Washington state department of agriculture.

~~((11))~~ (12) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to field strength for adequate coverage (such as water).

~~((12))~~ (13) "Director" means the director of the department or a duly authorized representative.

~~((13))~~ (14) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((14))~~ (15) "EPA" means the United States Environmental Protection Agency.

~~((15))~~ (16) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

~~((16))~~ (17) "Fertilizer" as included in this order means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

~~((17))~~ (18) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

~~((18))~~ (19) "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.

~~((19))~~ (20) "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.

~~((20))~~ (21) "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.

~~((21))~~ (22) "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.

~~((22))~~ (23) "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))~~ (24) "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.

~~((24))~~ (25) "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.

~~((25))~~ (26) "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.

(27) "Substantial economic loss" means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.

~~((26))~~ (28) "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.

~~((27))~~ (29) "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))~~ (30) "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))~~ (31) "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."

## NEW SECTION

**WAC 16-228-650 Declaration of an agricultural emergency.** (1) The Director may declare the existence of circumstances causing an agricultural emergency on a particular establishment or establishments.

(2) The Director may declare an agricultural emergency based on the reasonably expected certainty of circumstances occurring based on weather or other forecasts that would create conditions that would normally be anticipated to cause an agricultural emergency.

(3) The agricultural employer may determine if the establishment under his/her control is subject to the agricultural emergency declared by the Director.

(4) Emergency repair of equipment that is in use and sited within a pesticide treated area under a restricted-entry interval, such as frost protection devices, shall be considered

to be an agricultural emergency. The conditions in WAC 16-228-655 shall be met.

(5) Activities that require immediate response such as fire suppression, relocation of greenhouse plants due to power failure, and similar conditions, shall be considered to be agricultural emergencies. The conditions in WAC 16-228-655 shall be met.

## NEW SECTION

### **WAC 16-228-655 Agricultural activities permitted under an agricultural emergency**

(1) A worker may enter a pesticide treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency if the agricultural employer assures that all the following requirements are met:

(a) No entry is permitted for the first four hours after the pesticide application or the minimum reentry interval allowed by EPA for that product, whichever is less;

(b) The personal protective equipment specified on the product labeling for early entry is provided to the worker;

(c) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use;

(d) The agricultural employer shall assure that the worker wears the proper PPE and that the PPE is in operable condition and that the worker has been trained in its proper use.

(e) The agricultural employer shall assure that measures have been taken, when appropriate, to prevent heat-related illness.

(f) A decontamination site has been provided in accordance with EPA regulations.

(g) The agricultural employer shall not allow or direct any worker to wear home or take home personal protective equipment contaminated with pesticides.

(2) If the agricultural emergency is due to equipment failure, then the agricultural employer shall assure that all the requirements in subsection (1) of this section are met plus the following additional requirement. The only permitted activity until the restricted-entry interval has elapsed is equipment repair that would mitigate the effect of the equipment failure.

## NEW SECTION

**WAC 16-228-660 Record keeping required for agricultural emergencies.** (1) If the employer declares that his/her establishment is affected by an agricultural emergency and that activities regulated by the Worker Protection Standard have been performed, the employer shall keep the following records for seven years from the date of the agricultural emergency:

(a) Date of the agricultural emergency;

- (b) Time of the agricultural emergency, start and end;
- (c) Reason for the agricultural emergency, such as frost, fire, equipment failure, etc.;
- (d) Crop/site;
- (e) Pesticide(s) - name, EPA number, REI;
- (f) Name, date, time of entry and exit of early-entry person(s);
- (g) Estimated potential of economic loss which would have occurred had no early-entry been allowed.

(2) Records shall be completed within twenty-four hours of the early-entry exposure and be available to the department and/or department of health and/or medical facility or treating physician if requested by the above or the employee.