



PROPOSED RULE MAKING

CR-102 (January 2010)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Department of Agriculture

- Preproposal Statement of Inquiry was filed as WSR 07-03-21 & 09-16-068;
or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4).

- Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Chapter 16-228-1010, General Pesticide Rules Definitions; Chapter 16-228-1380, Rules Relating to Vertebrate Control Pesticides; 16-230, 16-231 and 16-232. Amend the definition of a commercial vineyard in the pesticide rules.

Hearing location(s):
Natural Resources Building
Room 205
1111 Washington Street
Olympia, WA 98504-2560
Date: May 24, 2010 Time: 2:00 pm

WSDA Yakima Office
Conference Room 238
21 North First Ave, Suite 226
Yakima, WA 98902
Date: May 26, 2010 Time: 11:00 am

Submit written comments to:
Name: Teresa Norman
Address: PO Box 42560
Olympia, WA 98504-2560
e-mail WSDARulesComments@agr.wa.gov
fax (360)902-2092 by (date) 5:00 pm May 28, 2010

Assistance for persons with disabilities: Contact
Maryann Connell by May 20, 2010
TTY (800)833-6388 or (360) 902-2012

Date of intended adoption: June 30, 2010
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
Areas proposed for modification include:

- The entire Section "WAC 16-228-1380 Rules Relating to Vertebrate Control Pesticides" was revised to match current rule writing language standards. The Title of the Rule now reads "Rules Regulating the Use of Rodenticides".
- Three new definitions were added to WAC 16-228-1010 to clarify the meaning of "Properly Secured", "Loose Bait", and "Aboveground", all in relation to specific rodent control rules. These definitions were necessary to better define how to safely and legally use rodenticides.
- The industry requested a revision to the rules to clarify current industry practices of indoor above floor treatments with rodenticides.
- The language was revised to match EPA bait box requirements for outdoor above ground treatment and directed towards commercial use only. Homeowner use is covered by EPA.
- Lastly, a new permit requirement was added for rodenticide tracking powder use. Rodenticide tracking powder is a very old and rarely used practice. It can be a very dangerous material to handle, and the potential harm if miss-applied is great. Greater control of the distribution and use of these materials was supported by the Department and industry.
- Amend the definition of a commercial vineyard to align with policy.
(Continued on attachment)

Statutory authority for adoption: RCW 15.58; RCW 17.21

Statute being implemented: RCW 15.58; RCW 17.21

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 07, 2010
TIME: 11:23 AM

WSR 10-08-113

DATE:
April 7, 2010

NAME (type or print)
Bob Arrington

SIGNATURE

TITLE: Assistant Director

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

The proposed change would eliminate a possible area lacking regulations that were being enforced by policy.

Name of proponent: (person or organization) Washington State Department of Agriculture, industry

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Robin Schoen-Nessa and Ann Wick	1111 Washington Street SE, Olympia, WA	(360) 902-2038 and (360) 902-2051
Implementation....Robin Schoen-Nessa and Ann Wick	1111 Washington Street SE, Olympia, WA	(360) 902-2038 and (360) 902-2051
Enforcement..... Cliff Weed	1111 Washington Street SE, Olympia, WA	(360) 902-2040

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

RCW 19.85.030(1)(a) requires the department to prepare a Small Business Economic Impact Statement (SBEIS) for proposed rules that impose a more than minor cost on businesses and industry. The department has analyzed the economic impact of the proposed amendments and concluded that the cost imposed by the proposed changes are “not more than minor” and do not have a disproportionate impact on small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: The Washington State Department of Agriculture is not a listed agency under RCW 34.05.328(5)(a)(i).

CR-102 Attachment – Rodenticide

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Areas proposed for modification include: *(Continued)*

The current definition of a commercial vineyard in the pesticides rules does not include properties that both grow their own grapes and then use these grapes for their own winery. When the definition was originally developed to protect grape growers from possible effects due to the drift of certain pesticides, these industries did not exist in Washington. Grapes were grown for the fresh market or for juice and the definition was developed to reflect these uses.

The rules that would use this definition specify the restrictions on aerial application of pesticides in Eastern Washington.

Reasons supporting proposal:

A request was made to the Department of Agriculture's Attorney General to determine if the definition as it currently exists would allow the Department to apply the County Order Restrictions to areas around vineyards that grew their own grapes for processing into wine. The Department was informed that the current definition would not apply in those circumstances.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-228-1010 What are the definitions that apply to this chapter? The definitions in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Above ground" means situated on the surface of the ground, not to include treatment of below ground tunnels, burrows and/or nests.

(2) "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))~~ (3) "Authorized agent" is any individual 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 material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized individuals and nonpest domestic animals from gaining access to the bait. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. 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) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges. This definition shall not apply to plants that are not attractive to bees (e.g., lentils, hops, peas (*Pisum* sp.), pears (second bloom) and potatoes). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

~~((+6))~~ (7) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

~~((+7))~~ (8) "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.

~~((+8+))~~ (9) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

~~((+9+))~~ (10) "Commercial vineyard" means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

~~((+10+))~~ (11) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

~~((+11+))~~ (12) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

~~((+12+))~~ (13) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency. The site must be fenced, barricaded or otherwise enclosed or attended by some person in charge to control the access of domestic animals, pets, and unauthorized persons.

~~((+13+))~~ (14) "Department" means the Washington state department of agriculture.

~~((+14+))~~ (15) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to the application rate for adequate coverage (such as water).

~~((+15+))~~ (16) "Director" means the director of the department or a duly authorized representative.

~~((+16+))~~ (17) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((+17+))~~ (18) "EPA" means the United States Environmental Protection Agency.

~~((+18+))~~ (19) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

~~((+19+))~~ (20) "Fertilizer" as included in this chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

~~((+20+))~~ (21) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 net seq.).

~~((+21+))~~ (22) "Floor level" means the floor upon which people

normally walk--not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

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

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

~~((24))~~ (25) "High volatile esters" are phenoxy hormone-type herbicides with five or less carbon atoms in the ester group, such as, but not limited to, methyl, ethyl, isopropyl, n-butyl, isobutyl and n-pentyl.

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

~~((26))~~ (27) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((27))~~ (28) "Loose bait" means pellet, grain, seed, meal, liquid or any other form of bait that can be spilled or scattered, including bait packaged in a place pack. Loose bait does not include single-block, paste or other single-piece types of bait.

(29) "Low volatile esters" are phenoxy hormone-type herbicides with more than five carbon atoms in the ester group.

~~((28))~~ (30) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((29))~~ (31) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

~~((30))~~ (32) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

~~((31))~~ (33) "Positive identification" means a photo

identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).

~~((+32+))~~ (34) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide 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.

~~((+33+))~~ (35) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((+34+))~~ (36) "Properly secured" means firmly attached and fixed to a floor or other surface so that animals and children cannot overturn the bait box or displace the bait. In the case of liquid baits, the bait container must be firmly attached and fixed to a floor surface only.

(37) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((+35+))~~ (38) "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.

~~((+36+))~~ (39) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

~~((+37+))~~ (40) "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.

~~((+38+))~~ (41) "Use restricted pesticide" means any pesticide determined by the director to need further state restrictions on use under the authority of chapters 17.21 and 15.58 RCW. This designation does not change federal or state restricted use classifications.

~~((+39+))~~ (42) "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.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-665 What are the restrictions on aerial applications near vineyards? (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard: Provided, That the Washington state department of agriculture may approve written requests and issue permit for aerial application of use restricted herbicides that may be applied to lands located one-half to one mile from commercial vineyards: Provided further, That no distance restrictions shall apply to aerial applications of use restricted herbicides near vineyards during the grape dormant season if written permission of the vineyard owner/manager is obtained. EXCEPTIONS are found in Franklin and Grant County restrictions.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-335 What are the restrictions on applications near vineyards? (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards shall be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-835 What are restrictions for aerial applications near vineyards? (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards will be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-030 What are the restrictions on aerial applications near vineyards? (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard: Provided, That aerial application of use restricted herbicides to lands located within one-half to one mile from commercial vineyards will be considered through written request of the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1380 ~~What are the ((regulations))~~ requirements for application of ((vertebrate)) rodent control pesticides? ~~((Vertebrate))~~ Rodent control pesticides shall be used in and around structures only under the following conditions, provided that the use of rodent control baits registered for home and garden use only, is exempt from this section:

(1) ~~((Vertebrate control pesticides))~~ Bait shall only be placed ((only)) in locations ((that are)) not readily accessible to ((nonpest animals,)) children, ((and unauthorized persons, and in a manner that shall preclude contamination of food, feed, drugs, and other consumer commodities. Exposure of rodenticides baits within buildings shall not be above floor levels)) pets and nontarget wildlife, provided that when properly secured, a locked and/or sealed tamper-resistant bait box may be used in accessible locations.

(2) ~~((Baits shall be colored or otherwise formulated so that they will be identifiable from foods common to the establishment in which the bait is placed.))~~ Locked bait boxes are required for all outdoor, aboveground bait placement.

(3) ~~((When the use of bait boxes is necessary to ensure that baits are not readily accessible to nonpest animals, children, and unauthorized persons, the bait boxes shall be of sturdy construction and tamper resistant. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes and such bait boxes shall be secured in such a way that nonpest animals, children and unauthorized persons cannot displace or remove the baits out of such bait boxes. Bait boxes shall be labeled clearly with letters on contrasting background showing the following information:~~

~~(a) Any information required by the EPA or Washington state registered label for the bait or the concentrate from which it was formulated.~~

~~(b) The name of the active ingredient(s).~~

~~(c) The name of the firm and/or certified applicator, address, and the telephone number.)~~ Bait shall not be placed in a manner that can contaminate, or be easily translocated to food, feed, drugs, or other consumer commodities. Spilled bait must be cleaned up immediately.

(4) ~~((Containers used for exposing vertebrate control baits to pests shall be composed of tough, nonabsorbent, corrosion resistant materials and designed so they cannot be readily overturned or carried off by pest animals. Those containers that are used for exposing vertebrate control pesticides outside of bait boxes shall bear a legible warning label with wording not less restrictive than~~

~~requirements on bait boxes being used as per WAC 16-228-1380(3), (except for the size of lettering). Food containers, such as "meat boats" and "souffle cups" are unacceptable. Containers used for liquid bait exposure shall be water and/or liquid impervious.))~~ Loose bait, whether contained in a bait box or not, shall not be placed above floor levels, including but not limited to suspended ceilings, shelves, ledges, cupboards and counters. Except that, loose bait may be placed on the floor of an attic, including unfinished walking surfaces, or bottom surfaces in conformance with all other requirements of this section.

~~(5) All ((vertebrate control pesticide stocks, when not in use or when unattended, shall be kept in locked storage or locked service vehicles))~~ bait boxes and containers used for bait placement shall be of sturdy construction, composed of durable, nonabsorbent, corrosion resistant material and designed to prevent overturning. All bait containers holding liquid bait shall be liquid impervious and shall be properly secured.

~~(6) All~~ bait boxes and containers used for ~~((storing or transporting vertebrate control pesticides shall bear an EPA or department registered label))~~ bait placement shall be labeled with letters on contrasting background and maintained with the following information clearly legible on the outside of the bait box or container:

(a) The name, physical address, and telephone number of the company and/or certified applicator.

(b) The name, Environmental Protection Agency (EPA) registration number, and active ingredient(s) of the rodent control pesticide product.

(7) When detection baits without pesticides are placed in bait containers, the container must clearly identify that the contents are not a pesticide.

~~((7) Applicator's kits which contain vertebrate control pesticides))~~ (8) Rodenticide bait, when in use to fill bait containers shall be handled with ((extra)) caution ((and)) according to the label, shall not be left unattended where children ((or other unauthorized persons)) or nontarget animals might ((remove)) be exposed to the contents and be in a container that bears an EPA registered label.

~~((8))~~ (9) Upon completion of a baiting operation, all bait ((boxes, containers, and/or throw bags)), if ((they)) it may become readily accessible to the public, shall be recovered ((for disposal in an approved manner)) and disposed of according to the product label.

~~((9) Wherever poisoned carcasses jeopardize public sanitation, or create a health hazard to wildlife, domestic animals, or the public, they shall be recovered and disposed of by burning, burying not less than three feet below the soil surface, or placed in proper waste containers and delivered to an approved disposal site.))~~ (10) Rodenticide tracking powders shall not be used in any manner that will expose people, nontarget animals, food, feed, drugs, or other consumer commodities to the powder. The use of rodenticide tracking powders is prohibited in or on

residential structures, except by written permission of the Washington state department of agriculture. Applicators who wish to use a rodenticide tracking powder in or on a residential structure must submit a request in writing to be received by the department at least seven days prior to the intended application date. The written request must include:

(a) The name, address, and telephone number of the occupants of the structure.

(b) The date and time of the intended application.

(c) The specific locations in or on a structure and the means by which the rodenticide tracking powder will be applied.

(d) A justification for the need to use the rodenticide tracking powder.

(e) What steps will be taken to ensure the rodenticide tracking powder does not contaminate any living area or otherwise result in an exposure to people or nontarget animals.

(11) Rodenticide tracking powder that contaminates an unintended location must be immediately and thoroughly cleaned up according to label instructions, or in the absence of label instructions, according to instructions obtained from the manufacturer.