

## PROPOSED RULE MARK-UP

Agency No. 209.02

### SECTION X Class F

Products with this designation shall be used in accordance with all other applicable federal or state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, the applicable requirements identified for Class A, B, C, D, and E above, and the following additional restrictions.

- A. Dealers may not store or transport products with this designation in the same room or vehicle with seeds, other pesticides that do not have this designation, or fertilizers except in leak-proof containers not to be opened while in storage and must observe all other precautions necessary to prevent contamination of these products.
- B. The use of esters of the products with this designation, except low-volatile esters, is prohibited.
- C. No product with this designation may be applied within the 1/4 mile of susceptible crops at any time except as otherwise indicated by this regulation.
- D. From April 15<sup>th</sup> through September 15<sup>th</sup> of each year, the following conditions shall apply:
  1. Pesticides labeled for agricultural use that contain the active ingredient(s) assigned to this Class, may not be applied by ground or air in Clay, Greene, Craighead, Poinsett, Cross, Crittenden, St. Francis, Lee, Phillips, and Mississippi Counties.
  2. Where no viable alternative is believed to exist, an annual permit may be obtained from the Plant Board to allow an exemption to these restrictions. Said permit must be obtained prior to application and will require a permit application fee in the amount of \$100. The application for the permit must be on forms authorized by the Plant Board. This exemption is conditioned on the producer complying with the following requirements:
    - a. The permittee must have the permit in his/her possession prior to making the application and it must be made available to the Plant Board or its designee upon request.
    - b. For each application the following information must be recorded:
      - i. A physical description of the location of the field;
      - ii. Date of the application;
      - iii. Start and stop time for each load applied to the field;

- iv. Wind speed (may not be less than 2 mph), wind direction, ambient temperature, and precipitation condition at ten minute intervals during the application of each load. Said measurements must be made at the field of application;
  - v. The producer must be present during the application and sign the document containing the information.
- c. The above information must be filed with the Plant Board's Pesticide Division along with a GPS map of the application to the field within 10 days of the date of application.
  - d. Applications made within four (4) miles of susceptible crops (defined as cotton when applying 2,4-D) must be done when the wind is blowing at least two (2) mph away from the susceptible crop.
  - e. **~~Effective April 15, 2012 for Rice levee spraying shall not require a permit will not be required in Cross, and Poinsett, Clay, Greene, Craighead, Crittenden, St. Francis, Lee, Phillips, and Mississippi~~ counties west of the approximate north-south center line of Crowley's Ridge. However, paragraphs b(i) through b(v) and paragraph d above must be complied with. The records for each application must be maintained by the producer for a period of three years and be made available to the Plant Board upon request by a Plant Board representative. The application device must 1) generate a spray with a droplet spectrum such that no more than 10 % of the spray droplets are smaller than 300 microns, 2) the boom width may not exceed 10 feet, 3) during application the spray nozzle height may not exceed 30 inches above the top of the levee, and 4) the spray vehicle may not exceed 8 miles per hour. No 2,4 - D Esters may be used.**

**~~Since it is the intent of this paragraph to obtain "real world" data to determine the feasibility of this relaxation of the restrictions on the use of 2,4-D containing products, this relaxation of the restrictions will terminate August 15, 2012.~~**

- 3. In the remainder of the State the following conditions shall apply:
  - a. A buffer zone between the field to be treated and susceptible crops (susceptible crops is cotton when applying 2,4-D containing products) of four (4) miles for aerial application and one (1) mile for ground application shall be maintained.
  - b. Applications made within four (4) miles of susceptible crops must be done when the wind is blowing at least two (2) miles per hour away from the susceptible crop.

- c. Applications may be made within the applicable buffer zones if the owner or supervisor of the sprayed or treated field has obtained a waiver from the producers of all susceptible crops within the buffer zone. The waiver shall be developed by the Plant Board and provided to said producers by the owner or supervisor of the sprayed or treated field. A copy of the waiver must be provided to the applicator who sprays or treats the field. The applicator shall retain the record for a period of three (3) years. When making an application within the applicable buffer zone, at the time of application, the wind must be blowing away from susceptible crops.
- 4. Failure to comply with the requirements for a Class F product when using a Class F product will result in enforcement action being taken against the producer and the applicator in accordance with the Plant Board's Penalty Matrix. Any penalty mandated by the Penalty Matrix may have additional civil penalty added to it to bring the amount of the assessment up to the maximum amount allowed by law.
- E. Any custom applicator who violates the buffer zones defined in Section (X)(D) shall be subject to a civil penalty as prescribed by the penalty matrix for the violation plus \$1000. However, the total civil penalty for one violation may not exceed \$2000. Failure to comply with the decontamination requirements of Section (IX)(B)(9) of these regulations before making an application of a product with a Class A, B, C or D designation inside a designated buffer zone for Class E and F products will be considered a buffer zone violation.
- F. Products with this designation shall be applied in accordance with the application equipment set up required for herbicide applications to field crops itemized in the regulations written pursuant the Pesticide Use and Application Act of 1975, as amended. Except that these conditions will apply, in addition to field crops, to pastures, rights-of-way, drainage ditches, brush and forest land.
- G. The wind velocity during the application shall not exceed eight (8) mph and the temperature may not exceed 90 degrees F.
- H. Applications of products with this classification shall not be made unless the following condition exists:
  - 1. For applications made before noon, the air temperature at the field of application at the beginning of the application must be a minimum of three (3) degrees Fahrenheit above the morning low measured at the applicator's air strip or mixing/loading facility. If the applicator has knowledge that the temperature measurement at his/her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application.

2. For applications made after noon, the temperature at the field of application must not have decreased more than five (5) degrees Fahrenheit from the afternoon high measured at the applicator's air strip or mixing/loading facility. If the applicator has knowledge that the temperature measurement at his/her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application.

All temperature measurements referenced above must be maintained by the grower as well as the applicator and be made available to the Plant Board upon request.