

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Wednesday, December 18, 2019

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

A. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to be Considered Pending Suspension of the Rules.

1. DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD (Mr. Wes Ward, Mr. Scott Bray, Mr. Wade Hodge)

a. SUBJECT: Pesticide Classification and Enforcement Rule Amendments (Dicamba)

DESCRIPTION: The Arkansas State Plant Board Pesticide rules put pesticides into certain classes and outline the use for each class. The proposed amendments deal with Class “H” pesticides, specifically dicamba. Amendments to the rule were proposed to the Board by the Board’s Pesticide Committee, which met twice in September to specifically discuss potential amendments to the existing rule.

Amendments to the rules:

- Clarify that certain provisions of the existing rule apply only to special late season permits for use of dicamba on Arkansas land east of the Mississippi river levee.
- Add early season burndown provisions to the permanent rule that were previously adopted as an emergency rule.
- Amend the definition of “egregious violation” to conform to current law.

In addition to the above, the Pesticide Committee’s recommendation included extending the cutoff date for use of dicamba to the end of May and expanding the buffer zone around University research stations from one to two miles. However, the Board voted to keep the existing cutoff date and buffers.

The Board initially proposed adding additional requirements for an automated registration of dicamba usage along with requiring producers to

provide a GPS map made at the time of application for further documentation of the precise location of dicamba applications and buffer zone compliance. Following the public comment hearing, the Board voted to strike those requirements from the proposed amendments.

The section that was previously adopted as an emergency rule, which expired in August, allowing use of dicamba in early season burndown, is added to the permanent rule.

The definition of “egregious violation” for misuse of dicamba and similar pesticides is amended to conform to the changes required by Act 423 of 2019. The definition makes it clear that only those violations occurring after the effective date of that Act will be subject to the new definition.

PUBLIC COMMENT: The public comment period expired on November 30, 2019. A public hearing was held on December 11, 2019. The Board provided the following summary of the comments that it received and its responses thereto:

497 comments were received. Of those, 463 comments contained some combination of the following: extend the buffer zones, restrict use when temperature reaches 80 degrees, go back to an April 15 cutoff date, and they supported the new record keeping and online dicamba registry requirements. Therefore, these comments were for the rule in part, and against the rule in part. However, it should be noted that extended buffer zones, temperature restrictions, and changing the cutoff date were not part of the proposed changes to the rule. Therefore, the only part of the proposed changes to the rule to which these comments applied were record-keeping and registry.

Eleven comments contained one or more of the following: follow the federal label, extend the cutoff date, decrease the buffer zones, against the GPS mapping requirements, and against the online registry. Therefore, these comments were for the rule in part and against the rule in part. As previously noted, cutoff dates and buffer zones were not part of the proposed amendments.

Fourteen comments requested a ban of dicamba. Eight comments expressed that they were against the rule without further explanation. One comment was in favor of the rule without further explanation.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Within the proposed changes, it appears that the term “regulations” has remained. I just wanted to make mention of Act 315 of 2019,

§ 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act, which was July 24, 2019. Is there a reason that the SPB has retained the term “regulations” for the time being?

RESPONSE: The Department is currently undertaking a review of all rules. We will be making the change from “regulation” to “rule,” and have already done so with some rules. With dicamba being such a controversial issue, we simply wanted to focus on the subject matter this time.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The State Plant Board shall administer and enforce the Arkansas Pesticide Use and Application Act (“Act”), codified at Arkansas Code Annotated §§ 20-20-201 through 20-20-227, and shall have authority to issue rules after a public hearing following due notice to all interested persons to carry out the provisions of the Act. *See* Ark. Code Ann. § 20-20-206(a)(1). When the Board finds it necessary to carry out the purpose and intent of the Act, rules may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to: plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, or beneficial insects. *See* Ark. Code Ann. § 20-20-206(a)(1)(A)–(D). In issuing rules, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources. *See* Ark. Code Ann. § 20-20-206(a)(2).

With respect to penalties, the Board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under Ark. Code Ann. § 2-16-203 for violation of each statute, rule, or order over which the Board has regulatory control. *See* Ark. Code Ann. § 2-16-203(b)(2)(A). The Board may further promulgate any other rule necessary to carry out the intent of the statute. *See* Ark. Code Ann. § 2-16-203(b)(2)(B).

The proposed revisions include those made in light of Act 423 of 2019, sponsored by Representative David Hillman, which amended the Arkansas

Plant Act of 1971 and clarified an egregious violation in relation to certain herbicides.

B. Adjournment.