

Detailed Stakeholder Feedback and Response on the proposed Biosecurity and Agriculture Management (Agricultural Chemical Record Keeping) Regulations

February 2020

	Stakeholder Feedback	Response
1.	4 (e) Exact location: I think on the top everything you have there, mentioning the “GPS points” is one standard way to locate any site any time.	GPS points would certainly give an exact location but not everyone would have that technology. This could be included in the general information we send out when the regulations are complete as an option to determine the exact location.
2.	4 (g) could include: Spraying time, spray volume, atmospheric conditions such as delta T, humidity, sunny or not; is crop canopy /vegetation conditions stressed (from cold or heat) or not? is canopy surface dusty or not?	There was discussion around including more weather information, and it was decided to leave it out, as it is not relevant in all situations. These are minimum national standards. If weather is important, it will be required via a label or permit statement. The regulations then pick this up.
3.	If a product was not being applied to crop or animal is it still covered? Say for instance to a tree plantation or firebreaks around a house, property.	Yes, it covers grains, horticulture, forestry, nurseries, and non-crop use. Note, it only covers agricultural chemicals and does not cover veterinary chemicals, so animal treatments are not included at this stage. There are exemptions, when spraying in and around a dwelling, using a home garden product by hand or using limited quantities.
4.	Would it cover hydrogen peroxide or chlorine used in a sheep trough to kill algae?	Hydrogen peroxide and chlorine water sanitiser products for algae and bacteria control are registered by the Australian Pesticides and Veterinary Medicines Authority (APVMA) as agricultural chemical products and therefore records of their use would be required unless an exempted product.
5.	Are there penalties to be applied for not complying?	Non-compliance is an offence with a maximum penalty of \$20,000.
6.	If a contractor applies the chemical on behalf of a property owner is it the contractor’s responsibility to keep the records?	Licenced operator/contractors are not required to keep records under these regulations, the owner or occupier who is responsible for the property (the “responsible owner or occupier) must keep the record. It is noted that licenced operators/contractors have their own legislated record keeping requirements.

7.	<p>Anyone who is supplying to chains (food) has this covered under schemes such as Freshcare and HARPs. It looks like duplication to me.</p> <p>Compliance will need to be positive to avoid putting growers' off-side. 95% of growers are doing the right thing. How will you get compliance from the 5% who don't belong to any grower groups, don't currently keep records and will be fairly resistant to change and may interpret this as government interference in their business?</p> <p>If farmers feel threatened by the changes will the consequence be to stop using pesticides, undertake less sustainable practices, reduce food production in WA and if so would this be seen as a perverse outcome?</p>	<p>It is correct that most farmers are already keeping records as part of best practice and quality assurance schemes and so there should be no additional impact from the regulations on these farmers.</p> <p>Earlier consultation with farmers suggested that their concern was that the risk of a residue incident in one of their markets is likely to come from the very small percentage of farmers who do not keep records and are not trained. These farmers need a minimum standard to lessen the probability of damaging a market and to meet community expectations. The aim of the compliance strategy would be to support market access. Initially there would be an education program followed by the use of residue incidents to traceback and confirm the keeping of appropriate records of use.</p>
8.	Can you please clarify - this is for State Govt Act, to harmonise nationally?	Yes, these regulations will be under our state Act, the Biosecurity and Agriculture Management Act 2007 , to harmonise with what is occurring in other jurisdictions.
9.	Should batch numbers be included?	Batch numbers were not included as the benefit from this record is mainly for quality assurance and business risk management purposes.
10.	Would flea bombs (pressure release aerosols) used in restaurants be included?	No.
11.	<p>Does engaging a licensed contractor (<i>Health (Pesticides) Regulations 2011</i> or aerial operator under <i>BAM (Aerial Application) Regulations 2018</i>) exempt us from the regulations?</p> <p>What is the client's obligation when engaging these contractors?</p>	<p>The responsible owner or occupier who engaged the contractor is required to keep records under these proposed requirements.</p> <p>It is noted that licenced operators/contractors have their own legislated record keeping requirements.</p>
12.	The time frame for retention of records is quoted as 3 years. Currently we have to keep quality assurance program records & export compliance records for 2 years. Keeping the same timeframe would seem a simpler proposition.	<p>The 3 years has come from the timeframe required for licenced pest management technicians and aerial operators.</p> <p>We have consulted with the major food retailers and they use the standard QA record keeping time of 2 years.</p> <p>The proposed regulations have been amended to align with quality assurance program record keeping requirements of 2 years.</p>
13.	Are you able to provide a copy of the Agvet Code of Western Australia to which the regulations refer? I have been unable to locate it on the web.	The Commonwealth's Agricultural and Veterinary Chemicals Code Act 1994 and the Agvet Code of Western Australia are one and the same.

		<p>The <u><i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995</i></u> is enabling legislation that allows the Commonwealth's <u><i>Agricultural and Veterinary Chemicals Code Act 1994</i></u> to be applied as Western Australian law. The Commonwealth's AgVet Chemicals Code Act can be cited as the Agvet Code of Western Australia.</p>
14.	<p>As part of the Livestock Production Assurance we are required to keep a record of all animal health treatments applied to our sheep. Will this meet the minimum recording requirement?</p>	<p>The proposed Regulations do not include veterinary medicines at this stage, there is a working group still considering veterinary medicines minimum record keeping requirements.</p>
15.	<p>Support the introduction of legislation that requires commercial users of agricultural chemical products to keep appropriate records of chemical application. Our comments on the proposed regulation are provided below.</p> <ul style="list-style-type: none"> • 1 Regulation 6 (a) intends that there is no requirement to keep a record in situations where the use occurs in a dwelling or in the grounds of a dwelling. It is recommended that consideration be given to expanding the wording to include 'inside' a dwelling and in the 'immediate grounds' surrounding the dwelling. • 2 Regulation 6 (b) intends that there is no requirement to keep a record in situations that meet 6b (i) and (ii). It is recommended that in home garden and domestic circumstances, the regulation provides a record keeping exclusion for domestic pest bombs, lures, baits and timed automatic sprays. • 3 Chemical application on property and buildings (public and commercial) managed by local government, State and Commonwealth agencies will be captured under the proposed legislation. It is therefore recommended that detailed consultation be undertaken with those agencies potentially affected. 	<p>1 The current wording is sufficient.</p> <p>2 Agreed. The exclusions have been expanded to cover small scale use of pesticides; use of the pesticide outdoors in quantities of no more than 5 litres/5 kilograms of concentrated product or 20 litres/20 kilograms of ready-to-use product, or use of the pesticide indoors in quantities of no more than 1 litre/1 kilogram of concentrated product or 5 litres/5 kilograms of the ready-to-use product.</p> <p>3 We would expect local, state and Commonwealth governments to already keep records of pesticide applications.</p>
16.	<p>Could a proforma be produced of the records required?</p> <p>Frequently asked questions (FAQs) should be produced giving examples of non-compliance and unwitting breaches. These should be distributed to agronomists and chemical resellers.</p>	<p>Yes, as part of the communications package a proforma will be produced but noting that records can be kept electronically as well.</p> <p>FAQs will be produced as part of the communications package.</p> <p>1080, 4-aminopropiophenone (PAPP), and strychnine have their own provisions (See below).</p>

<p>Record keeping for 1080 products should be exempt from these proposed regulations due to there already being provisions for this under the <i>Medicines and Poisons Act 2014</i> and the related Code of Practice.</p>	<p>“Code of Practice for the Safe Use and Management of Registered Pesticides containing 1080, PAPP and strychnine for vertebrate pest management in Western Australia” Requirements for record keeping and auditing Record keeping policy</p> <p>All persons dealing with 1080, PAPP and Strychnine products must keep records of the storage, transfer and use of these products unless otherwise exempted by the DG, DOH. Records must:</p> <ul style="list-style-type: none"> • Include all 1080, PAPP and Strychnine products, • Include details of receipt from, and consignment to, Licensed manufacturers/wholesalers, Licensed retailers, Licensed Pest Management Technicians and Approved Users • Include a register of all 1080, PAPP and Strychnine products stored. <p>Records of supply to a Receiver or Approved User must include the identification number of the Permit issued by the Authorised Department and must be signed by the person supplying the 1080, PAPP or Strychnine and the person receiving these pesticide products.</p> <p>Licensed manufacturers/wholesalers and licensed retailers must keep these records for at least 5 years. The Health (Pesticides) Regulations 2011, require records of pest management treatments undertaken by LMPT to be kept for 3 years. Other records must be kept for at least 2 years from the date the record was made.”</p>
<p>17. The ‘single national framework’ you refer to arose from a COAG desire to develop a streamlined and harmonised national system of chemicals and plastics regulation. This process is now over 8 years old, when public consultation was last carried out. In fact, the process is even older than that. In 2008, the then Treasurer commissioned the Productivity Commission to produce a Research Report into Chemicals and Plastics Regulation to assist the process.</p> <p>Although the Productivity Commission report covered public health, occupational health and safety, transport, agricultural and veterinary chemicals, the environment and national security, it made no mention of record keeping on farm for agricultural chemicals.</p> <p>The Western Australian Auditor-General reported on the Management of Pesticides in Western Australia in 2015. Again, this report made no mention of record keeping for users of agricultural chemicals amongst its recommendations.</p>	<p>History</p> <p>2006 COAG agvet chemical regulation required reform, sought Productivity Commission (PC) assistance.</p> <p>2008 PC report “Research Study on Chemicals and Plastics Regulation” found inconsistent regulation between states and territories.</p> <p>2010 COAG agreed: National policy framework for agricultural and veterinary chemical registration and control of use.</p> <p>2012 Consultation on the Regulation Impact Statement (RIS) for a National Scheme.</p> <p>2013 RIS complete and intergovernmental agreement signed.</p> <p>2016 Commonwealth consultation with stakeholders on record keeping.</p> <p>2017 Record keeping endorsed.</p> <p>The Auditor-General’s report (p7) included a recommendation that, “The Department of Agriculture and Food WA should ensure:</p> <ul style="list-style-type: none"> ○ they continue their efforts to update or repeal any outdated pesticide related legislation.” <p>Department of Agriculture and Food in its response to the Auditor-General’s report (p8), noted that it would continue updating legislation in line with the national framework for agricultural chemicals.</p>

It did however, say that the then Department of Agriculture and Food WA (DAFWA) was required under legislation to collect aerial spraying records from pilots but did not do so.

The DAFWA response to this finding was to signify their intention to amend the legislation to remove the requirement to collect spraying records. DAFWA records showed only five incidents related to aerial spraying in the last nine years.

It is interesting that exemptions will apply to household situations, and home garden products applied by hand, when the Poisons Information Centre recorded the bulk of the >700 pesticide incidents in 2014 occurring in the home.

It is obvious that these new regulations for record keeping requirements only seek to satisfy some Departmental desire for compulsive list making.

Also notes that this regulation relates to Schedule 7 Poisons under the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP). Resellers of such chemicals in Western Australia require a licence from the WA Department of Health.

Resellers are required to keep a record of all sales. These are kept for 7 years.

Under good agricultural practice farmers keep suitable records of their agricultural chemical spray activities.

These existing records should be more than sufficient to satisfy minimum requirements.

Further, more than 95% of WA wheat production is exported. According to the WA Auditor-General, national food monitoring of exported plant products consistently shows less than one per cent of sampled foods exceed accepted pesticide residue levels.

There appears to be little to no evidence of a need for new regulations for record keeping requirements on farm.

Consequently, we oppose these proposed regulations on the basis that they are unnecessary and of dubious utility.

The requirement for pilots to send all their spray records to the department was an outdated and onerous requirement on industry, so was repealed. Industry supported this repeal.

Under the [Biosecurity and Agriculture Management \(Aerial Application\) Regulations 2018](#), pilots are required to keep records of their pesticide applications and for these to be available for inspection if required.

The Department of Health manages the storage and use of poisons in the home.

The purpose includes; using harmonisation to avoid confusion among chemical users, international trading partners want national consistency, assist with traceback of residues, lower costs for businesses operating across jurisdictions, ensure minimum standards across all users and to meet community expectations.

The proposed Biosecurity and Agriculture Management (Agricultural Chemical Record Keeping) Regulations relate to the use of all pesticides registered by the APVMA, not just Schedule 7 products.

Yes, most farmers are already keeping records as part of best practice and quality assurance schemes. Earlier consultation with farmers suggested that their concern is that the risk of a residue incident in one of their markets is likely to come from the very small percentage of farmers who do not keep records and are not trained. These farmers need a minimum standard to lessen the probability of damaging a market and to meet community expectations.

<p>18. Welcome the opportunity to comment on the proposed new regulations for the minimum record keeping requirements for commercial uses of agricultural chemical products.</p> <p>Support efforts for nationally consistent regulation of chemicals; however, there is concern that the increase in regulatory and legislative requirements for chemical users on a State basis will further duplicate, an already highly regulated industry.</p> <p>Comments Continues to support self-regulation of chemical stewardship by agricultural users, and trusts that the industry should be held accountable for keeping accurate and detailed records. The proposed Minimum record keeping requirements, should not replace good on-farm stewardship. In Western Australia, the current legislative requirements already fulfil the proposal for consistent and minimal record keeping. If the proposed Regulations simplify and reduce the record keeping process, then it is likely to have widespread approval. However, it must be future proof and prevent double handling of record keeping information.</p> <p>Supports minimum requirements of:</p> <ul style="list-style-type: none"> • the date and the time of application; • the name and contact details of person who applied the chemical; • the location of the chemical application; • the name of the agricultural chemical product or products used; • the method of application; • the rate of application or other information to allow the determination of application rate; and • the situation, crop or commodity to which the chemical was applied. <p>Do not support requirements of:</p> <ul style="list-style-type: none"> • Records to be made within 48 hours of use <p>Do not find this an adequate timeframe for Western Australian chemical users to record applications.</p> <p>Recommendation <i>Recommend a maximum timeframe of 7 days for recording applications of agricultural chemical products. This recommendation will encourage best practice chemical stewardship.</i></p> <p>Support electronic systems that can comply with the national record keeping systems. The control of use legislation that needs to be well-</p>	<p>Agreed, most farmers are already keeping records as part of best practice and quality assurance schemes. Earlier consultation with farmers suggested that their concern is that the risk of a residue incident in one of their markets is likely to come from the very small percentage of farmers who do not keep records and are not trained. These farmers need a minimum standard to lessen the probability of damaging a market and to meet community expectations.</p> <p>The 48 hours was part of the national minimum requirement but there is some flexibility based on regional need.</p> <p>Agreed, the proposed regulations have been amended from 48 hours to 7 days.</p>
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<p>thought-out is the Health (Pesticides) Regulations 2011, which currently state;</p> <p>Page 49 - Section 85 - requires- Registered pesticides to be in approved and properly labelled containers. <i>Currently the label must specifically be on the container not an electronic or web-based source</i></p> <p>Page 50 - Section 87 (2) - requires - A person must not use a registered pesticide other than in accordance with the requirements set out on the approved label. <i>Other than, attached to the chemical container.</i></p> <p>Industry is receiving feedback from the APVMA in that these specific references are causing difficulty as a paper-based label must be attached to all chemical products. State based regulations should promote national consistency, and the move to incorporate electronic label and record keeping applications would be well received by the Western Australian grains industry.</p>	<p>The Biosecurity and Agriculture Management Act 2007 allows for both written and electronic forms of record keeping.</p> <p>The Health Department is considering its legislation in relation to the use of electronic labels.</p>
<p>19. Regulation 3 – Terms used</p> <p>1. It is noted that the definition of ‘agricultural chemical product’ refers to ‘a chemical product within paragraph (a) of the definition of that term in section 6’ of the Biosecurity and Agriculture Management Act 2007 (BAM Act). However, the definition that is referred to in the BAM Act is ‘agricultural product’. It is recommended that the definition of ‘agricultural chemical product’ be amended to refer to ‘agricultural product’ under the BAM Act as opposed to ‘agricultural chemical product’.</p> <p>2. Clarification is sought on whether a ‘agricultural chemical product’ is intended to include compost, biosolids, or treated waste water used for nutrient enhancement as part of irrigation. It is noted that the definition within the BAM Act is not clear in this regard.</p> <p>3. It is recommended that examples of chemicals that may or may not be regarded as an ‘agricultural chemical product’ are defined in an explanatory note-type of document. This will ensure that requirements to keep records related to use are not duplicated by guidance provided by DWER, or requirements for the application of the aforementioned waste</p>	<p>An agricultural chemical product means a “chemical product” (paragraph (a)) as defined in Section 6 of the Biosecurity and Agriculture Management Act 2007, not an “agricultural product” as defined in the <i>Biosecurity and Agriculture Management Act 2007</i>.</p> <p>An “agricultural chemical product” is defined in the Agvet Code of WA. Put another way, it is the products registered by the Australian Pesticides and Veterinary Medicines Authority.</p> <p>See clarification on definitions above.</p>

<p>products under the Environmental Protection Act 1986 and the Western Australian guidelines for biosolids management.</p> <p>4. It is recommended that 'Agvet Code' is defined for completeness and accuracy.</p> <p>Regulation 4(1)(d) and (e) – Records must be kept by users of agricultural chemical products</p> <p>5. Further clarity be provided on what aspects of the crop or other thing to which the agricultural chemical is applied is required to be described under regulation 4(1)(d) noting that 4(1)(e) implies location is an aspect of the description of the crop or other thing to which the agricultural chemical is applied. Under the current wording of regulation 4(1)(d) it is not clear whether the name of the crop or other thing to which the agricultural chemical is applied is sufficient or whether there are other aspects required such as the volume, surface area, condition, location of the crop or other thing to which the agricultural chemical is applied.</p> <p>6. In the application of regulation 4(1)(d)(ii), it might be useful to include a non-exhaustive definition of what constitutes the method of application (e.g. method of application is defined as but not limited to boom spray, hand spray, wiping, aerial spray, baiting, fumigation, mister, timber treatment, injection, dusts, foams, soil drenching, pump systems, dipping, flood spraying and irrigation systems.</p>	<p>The Agricultural and Veterinary Chemicals (Western Australia) Act 1995 recognises the Commonwealth's Agricultural and Veterinary Chemicals Code Act 1994 (Agvet Code) as WA law and relates to the evaluation, registration and control of agricultural and veterinary chemical products.</p> <p>Yes, under 4(1)(d) a description of the crop or thing is required. Examples of expected descriptions will be included in a communications package about the regulations. E.g. Wheat at the 8 leaf stage, canola at stem elongation stage.</p> <p>This may more appropriately be part of a communications package, including a proforma.</p>
<p>20. 1) Support for additional information and transparency Developed and operates FeedSafe as our industry quality assurance accreditation program. Compliance with FeedSafe is compulsory for our members and requires annual onsite audits by third party, qualified food safety auditors. FeedSafe places a very strong emphasis on mitigating food safety risks and having procedures in place to detect and manage feed and food safety incidents should these occur. This includes having robust procedures in place to ensure traceability and manage the quality of all feed inputs and of the feed produced. Supportive of the proposed changes to the regulatory framework, which, provided they are adequately monitored and enforced, will provide stock feed manufacturers with increased capacity to manage feed/food safety risks associated with chemical residues in feed ingredients and will</p>	<p>1) Noted</p>

<p>improve traceability should contamination be detected or a food safety incident occur.</p> <p>2) Additional full disclosure clause Recommend the inclusion of a clause that enables, upon request of the purchaser, the full disclosure of all agricultural and veterinary chemicals used in the production of feed ingredients, including those applied directly to grain and forage crops, to machinery and infrastructure used in their production, storage and transport, and to the premises where these commodities are processed, stored or transported.</p>	<p>2) Disclosure of agricultural chemicals used on a commodity is outside the intent and scope of the proposed regulations. It is also not part of the nationally agreed record keeping requirements.</p> <p>The Department will continue discussion on this matter to find alternative approaches, like commodity vendor declarations.</p>
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