

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 29, Pesticide Use and Control

Subject

Pesticide Use and Control

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

20.115(7)(r)

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

Chapter ATCP 29, Wisconsin's pesticide use and control rule, has not been updated since 1998. The existing rule contains obsolete regulations, requires outdated business practices and has inconsistencies with other state and federal regulations and statutes. This rule revision is needed to modernize the rule for industry and consumers, remove outdated provisions, and harmonize it with other regulations.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule updates current rules related to pesticide use and control. This rule modifies and clarifies existing rule language to facilitate understanding, compliance, efficiency, and consistency with other state and federal regulations.

Specific Businesses/Business Sectors

This rule will impact certain pesticide application businesses. Most changes to the rule are advantageous to businesses, including small businesses. These changes are discussed under the "Benefits of Implementing the Rule" section of this analysis (below).

This rule may have minimal compliance costs for affected pesticide applicators and pesticide application businesses. However, this rule will not have a significant effect on local markets, on the sale or distribution of pesticide products, or on the overall economy of this state.

Pesticide applicators choosing to obtain certification in the newly titled "right-of-way and natural area pest control" category may experience minimal additional costs every five years to purchase a new training manual (\$45). This additional cost will only apply to pesticide applicators who seek the natural

areas certification and are not already certified in the existing right-of-way category. Many commercial application businesses cover the cost of the training manual for their employees. The average cost per year for the manual is \$9. The restoration of natural areas is considered to be a growth area for business and may positively impact pesticide businesses through increased revenue.

Businesses that are not currently labeling their rodenticide bait stations may have some minimal economic costs to comply with the bait station labeling requirement. Costs may include purchasing stickers or another bait station labeling system (*e.g.*, “luggage tags”) and personnel time to fill out the label. Businesses will have a number of cost-effective ways to meet this requirement, including the ability to design their own or choose from among a wide-variety of labeling systems.

Businesses should not have any direct costs to comply with the non-agricultural chemigation and urban pesticide misting system requirements. Few, if any, pesticide application businesses in Wisconsin currently are known to be using these application systems. If pesticide application businesses do decide to sell these systems in the future, costs to comply with these regulations could be included in the initial cost of the system.

Because ch. ATCP 33, Wis. Adm. Code was revised in 2006, many businesses are already in compliance with the spill containment and sump requirements. Those businesses not required to comply with ch. ATCP 33 may have some minor costs to comply if a spill containment surface fails and a repair would be inadequate. If a new spill containment surface is required, and the facility is not already regulated under ch. ATCP 33, Wis. Adm. Code., there will be some incremental costs to comply with the proposed requirements, which now prohibit some materials (*e.g.*, asphalt) that were previously allowed. These materials are now prohibited because they have been prone to failure and unable to contain spills.

The department is unable to specifically quantify the potential costs of this rule change on the pesticide industry for several reasons. First, some commercial pesticide businesses are already in compliance with the proposed rule changes. Those businesses will have no additional costs. Second, there are a variety of ways to meet some of the proposed regulations, ranging from less to more expensive solutions; businesses have choices about how to meet the regulations. Third, the pest control industry is very diffuse and was unable to provide us with the number of rodenticide bait stations or urban pesticide misting systems set or installed annually. The department does not anticipate any significant expenses imposed upon the regulated community as a result of these changes.

Public Utility Rate Payers

Public utility rate payers as a group will not be affected by this rule.

Local Governments

This rule will not impact local governments. Regulation of pesticide use is entirely a state function, and none of the proposed changes impacts local government use. Therefore, local governments will not have any implementation or compliance costs.

State’s Economy

This rule was developed in consultation with an advisory committee that included a diverse cross-section of affected industry, consumers, and government officials. The advisory committee did not find that this rule will adversely affect in a material way the economy, productivity, jobs or the overall economic competitiveness of the state. The committee endorsed the provisions of this rule, which are designed to update, clarify and modernize the existing rule.

Public Comments on the Economic Impact of the Rule

The agency made available a rule draft to seek comments on the economic impact of this rule on businesses, local governments, and individuals. The agency did not receive any comments during this period.

At the public hearings on the draft rule, several pesticide application businesses testified that the exterior labeling of rodenticide bait stations would be cost-prohibitive, but they would support labeling on the inside of the bait stations. The final draft rule has been revised to allow either interior or exterior labeling of rodenticide bait stations.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule***Benefits of Implementing the Rule***

This rule will benefit pesticide application businesses, pesticide applicators, and the general public.

Pesticide Applicators and Pesticide Application Businesses

Pesticide application businesses may experience cost savings as a result of clarifying existing regulations, improving regulatory consistency and modifying administrative requirements, including the ability to provide certain notices and submit certain permit applications by electronic means. Regulatory consistency and paperwork reduction are a positive development for businesses.

Business also may benefit from the expansion of the right-of-way certification category to include natural areas. The category will now be called “right-of-way and natural areas pest control.” The restoration of natural areas is considered to be a growth area for business and may positively impact pesticide businesses through increased revenue. Businesses with employees who hold this certification will have a marketing advantage and potential new customers.

The rule includes other minor modifications and language clarifications that will benefit businesses.

General Public

The general public will benefit from this rule as a result of the consumer, human health and environmental protections offered through proper use of pesticide products and the updating of regulations on urban pesticide misting systems, residential chemigation systems, and bait station labeling. Consumers will also benefit from the administrative efficiency provisions of the rule.

Alternative(s) to Implementing the Rule

This rule is designed to clarify and modernize existing rules and ensure regulatory consistency between this rule and ch. ATCP 33, Wis. Adm. Code. If DATCP does not adopt this rule, there will continue to be inconsistencies between regulations. In addition, changes being proposed to clarify existing regulations and provide options for administrative efficiencies for businesses will not be enacted and outdated rule language will remain. Finally, provisions being established to protect human health and the environment, such as new regulations on nonagricultural chemigation systems, urban pesticide misting systems and rodenticide bait stations, will not be enacted, which could lead to unsafe levels of pesticide exposure to humans and non-target wildlife.

Long Range Implications of Implementing the Rule

In the long term, implementing the rule will benefit business, the general public, and the environment. The rule modifications will provide additional options for pesticide-related businesses to meet existing

regulations more efficiently and additional marketing opportunities that could lead to new business. In addition, the rule modifications create consistency between this rule and other existing rules. The rule will also benefit the public and the environment by ensuring reasonable regulations (related to new pesticide application methods) are in effect to protect people, companion animals, wildlife and the environment.

Compare With Approaches Being Used by Federal Government

The United States Environmental Protection Agency (EPA) regulates pesticides at the federal level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and through the use of pesticide product labels. The EPA has delegated authority to Wisconsin to enforce federal pesticide regulations and to assure proper use and handling of pesticides in this state.

EPA recently established new regulations for ten rodenticides to reduce exposure risks to children and non-target wildlife, which prompted Wisconsin's proposed rodenticide bait-station labeling requirement. The regulations were developed after a review of incidents and accidental deaths related to rodenticide use. The new regulations restrict the sale of some rodenticides to certified applicators, limit the distance from a structure that a rodenticide may be placed, permit only "closed-system" rodenticide bait stations to be sold to non-certified applicators, and phase out the use of certain rodenticides altogether. Wisconsin pesticide applicators must already comply with the EPA regulations. In addition to the EPA regulations, this proposed rule would require operators to label, on the interior or exterior, the rodenticide bait station with contact and product information in order to assist emergency responders in the case of an accidental ingestion by non-target animals or persons.

EPA currently is revising its federal regulations concerning the Worker Protection Standard (WPS) for Agricultural Pesticides. The proposed new standard is scheduled to be released for public comment in mid-2013. Section ATCP 29.61, Wis. Adm. Code, adopts the federal WPS by reference and summarizes the current WPS requirements in a note. This rule amends the note by removing the summary of current WPS requirements, in anticipation of the change in federal standards.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Like Wisconsin, surrounding states, including Michigan, Minnesota, Illinois and Iowa are delegated authority by EPA to enforce federal pesticide regulations. Each state also has state-specific pesticide regulations similar to Wisconsin's. The state-specific regulations must be at least as stringent as EPA's regulations, but may be more or less stringent than Wisconsin's regulations, depending on the issue.

Chemigation: Nearly all states have chemigation laws, including Illinois, Michigan and Minnesota. EPA has minimum standards in place for states that do not have their own regulations, such as Iowa. Minnesota's chemigation regulations are more stringent than Wisconsin's and require that applicators obtain a chemigation permit annually before chemigating. This rule updates Wisconsin's chemigation laws to reflect emerging industry practices.

Urban pesticide misting systems are an emerging pesticide application method. Surrounding states have existing regulations that govern the use of these systems, including label, drift, and pesticide applicator certification requirements, although they do not apply only to this specific type of application. Wisconsin's proposed requirements to monitor windspeed and prevent time-delayed applications complement label requirements and will help ensure applicators avoid serious pesticide use violations and help protect human and companion animal health.

Natural Area Certification

No surrounding states have a separate certification category for natural area applications. Some surrounding states include these applicators in the “turf and landscape” certification category. Surrounding states also include these applicators in the field and vegetable crop certification category, when the natural areas are in a grassland-type setting. At the suggestion of Wisconsin’s pesticide industry, and due to similarity of types of pests and pesticide application methods, the rule includes natural areas applications in the current “right-of-way” category. The expanded certification category in the rule will be called “right-of-way and natural area pest control.”

Rodenticide Bait Station Labeling

Many states are considering modifying their rodenticide bait station requirements in response to EPA’s new rodenticide regulations. Iowa does not require rodenticide bait station labeling but does require notification to the Department of Agriculture prior to use of certain hazardous rodenticides (which is more stringent than what this rule proposes). Minnesota, Illinois and Michigan do not require exterior labeling of rodenticide bait stations at this time. Other states, including California, New York and Tennessee, require exterior labeling of rodenticide bait stations. This proposed rule permits either interior or exterior labeling of rodenticide bait stations.

Electronic Information

Surrounding states generally allow electronic transmittal of information between commercial application businesses and customers, as Wisconsin is proposing.