

STATEMENT OF SCOPE

Department of Agriculture, Trade, and Consumer Protection

Rule No.: Ch. ATCP 29, Wis. Admin. Code (Existing)

Relating to: Pesticide Use and Control

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

[N/A]

2. Detailed description of the objective of the proposed rule:

Rule changes are needed to update alignment of Wisconsin Administrative Code Chapter ATCP 29 (ATCP 29) to revisions within Title 40 of the U.S. Code of Federal Regulations, Part 171 (40 CFR Part 171). The United States Environmental Protection Agency (EPA) regulates pesticides nationwide, including certification of competency of pesticide applicators under 40 CFR Part 171. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) maintains primacy providing certification and licensing of pesticide applicators under ATCP 29 in a co-regulatory relationship with the EPA. To maintain primacy, DATCP must address specific areas where 40 CFR Part 171 and ATCP 29 are no longer aligned.

The proposed rule may seek to do the following:

- Update pesticide categories/ category descriptions for commercial and private applicators
- Update minimum age requirements to get certified for commercially and private applicators
- Update pesticide core standards descriptions for commercial and private applicators
- Update recordkeeping requirements for commercial applicators
- Update recordkeeping requirements for Restricted Use Dealers

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The existing provisions in ATCP 29, establish pesticide use and control methods to meet the federal standards set in 40 CFR Part 171- Certification of Pesticide Applicators. The rule lays out the authority to apply pesticides in a commercial or private setting and the proper recordkeeping requirements and proper use methods. The proposed rule examines existing policies in ATCP 29. Potential updates intend to bring our code up to date with the current federal requirements.

If the department takes no action, Wisconsin would lose primacy to administer pesticide applicator certification in Wisconsin under federal law. If this occurred, the only option for applicators to obtain pesticide applicator certification in Wisconsin would be to obtain certification from EPA.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

— Wisconsin Statute Section [94.705](#) ,Pesticides; certification requirements and standards.

— Wisconsin Statute Section [94.705\(2\)](#) ; The department shall, by rule, adopt standards for the training and certification of private and commercial applicators, at least equal to but not to exceed federal standards adopted under the federal act. In the adoption of the standards, separate categories of pesticide use and application may be established for certification purposes depending on the specific types of pesticides used, the purposes for which they are used, types of equipment required in their application, the degree of knowledge and skill required and other factors which may warrant the creation of different categories. The standards shall provide that individuals to be certified must be competent with respect to the use and application of pesticides in the various categories of pesticide use and application for which certification is desired. For commercial applicators, competence in the use and handling of pesticides shall be determined on the basis of written examinations.

— Wisconsin Statute Section [94.705\(3\)](#) ; Certified commercial applicators, including nonresident commercial applicators, shall maintain records of amounts, dates, types, places and uses of all pesticides as prescribed by the department. Records shall be kept for 2 years and shall be open to and available for inspection at all reasonable times by the department or cooperating governmental enforcement agencies

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that it will use 0.5 FTE to revise this rule. This anticipates time for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule :

University of Wisconsin Pesticide Applicator Training Program. The proposed rule may affect the training material written for the program and adjust some live trainings.

Commercial Pesticide Businesses: Companies may have applicators that will need to get certified in other categories.

Dealers and Distributors of Restricted Use Pesticides: The proposed rule may update recordkeeping requirements.

Commercial Applicators: The proposed rule may have applicators that will need updated ~~or~~ new certification categories to conduct specific pesticide applications.

Private Applicators: The proposed rule may prevent private applicators under the age of 18 from obtaining private applicator certification to apply restricted use pesticides.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

40 CFR Part 171 was revised in 2017. Every state is to be in compliance with the new federal rule changes that occurred.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)

The overall economic impact is expected to be low. Currently, Wisconsin does not have a minimum age requirement in order to become a certified pesticide applicator. However, an applicator must be at least 16 years old to obtain an Individual Commercial Applicators license. 40 CFR Part 171 requires a minimum age of 18 to obtain pesticide applicator certification. Very few individuals pursue pesticide applicator certification prior to being 18 years old. This is expected to have a very small negative impact to on industry.

Rule changes to category descriptions are expected to have a positive impact on industry by splitting up a combined category with very little overlap.

The proposed rule changes to recordkeeping may have a small impact to Dealers and Distributors of Restricted Use Pesticides by adding additional recordkeeping elements to existing recordkeeping requirements.

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