



DATE: December 2, 2015

TO: Bureau of Agrichemical Management

FROM: Mike Murray, Pesticide Certification and Licensing Program Manager

SUBJECT: Interpretation – Sales and distribution of RUP to private applicators

Introduction: The practice of allowing licensed dealer/distributor(s) of restricted use pesticides (RUP) to distribute RUP's to a person who is not certified as a private applicator has become an area of concern. Clarification is needed in determining if an RUP product may be sold/distributed to a person who is not a certified private pesticide applicator.

Definitions of commonly used terms:

ATCP 29.01(6): "Agricultural Producer" means a person who produces agricultural commodities on land which that person owns or controls.

ATCP 29.01(16): "Distribute a pesticide" means to distribute a pesticide for sale or use in this state.

ATCP 29.01(38): "Sell" means to sell, offer for sale, display for sale or hold for sale in this state.

ATCP 29.01(41): "Use" a pesticide means to mix or load a pesticide, apply a pesticide, or engage in any of the following activities which is related to mixing, loading or application of a pesticide:

- (a) Activities which the pesticide label requires of the mixer, loader or applicator.
- (b) Handling an open pesticide container, other than an empty container that has been triple-rinsed or cleaned according to the pesticide label.
- (c) Cleaning or rinsing an open pesticide container, pesticide application equipment, or a mix or nurse tank.
- (d) Disposing of a pesticide or pesticide rinsate.
- (e) Aerating or ventilating spaces treated with a pesticide.

**Assumptions:**

1. Dealers and distributors of restricted use pesticides will hold an active restricted-use dealer/distributor (RU) license, Wis. Adm. Code, ATCP 29.15.
2. Private pesticide applicators are certified in accordance with Wis. Adm. Code, ATCP 29.27.

Determination 1: An agricultural producer is in the field making a restricted use pesticide application. The producer determines, during the application, that he/she will not have enough pesticide product to finish the application. The producer contacts his/her salesperson, and places an order with that person for additional pesticide product. The producer informs the salesperson that one of his/her (producer) employees will pick up the product and bring it to him/her at the field of application.

The employee of the producer is not required to be a certified applicator in order to pick up the pesticide product and take to the site of application. This is determined based upon the definition of use and sale. With regards to "use", the employee is handling a container that is factory sealed, albeit a foil wrapper over the spout of the container, "child resistant" cap with a breakable seal, or an unopened bag of dry pesticide product. Additionally, the employee is delivering/transporting the product to the producer. To address the issue of "sale"; the producer ordered the product and the assumption is that the producer/producer's company will be billed accordingly.

However, prior to the distribution of the product, the RU dealer/distributor will need to record the name and certification information of the person that will apply the RUP (e.g., private applicator) and record the name of the person who took possession of the RUP (e.g., employee of producer).

Determination 2: In December, an agricultural producer who is not certified, orders restricted use pesticides for the next cropping season. When the agricultural producer places the order with the licensed RUP dealer/distributor, the agricultural producer provides a certification number and name for the private applicator that will apply the product for the producer.

The agricultural producer that is placing the order in December does not need to be certified because they will not handle the pesticide or opened pesticide container. This is determined based upon the definition of use and sale. However, the agricultural producer is obligated to provide the dealership with the name and certification number of the individual who will be making the application. At the time of both sale and distribution, the RU dealer/distributor must verify and record the name and certification information of the person that will apply the RUP.