

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 7/14/2025								
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> ATCP 29, Pesticide Use and Control									
<b>4. Subject</b> Rules governing the Certification of Pesticide Applicators, Certification Categories and Standards, and Recordkeeping for Commercial Pesticide Applicators and Dealers and Distributor of Restricted Use Pesticides.									
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> 20.115(7)(r)								
<b>7. Fiscal Effect of Implementing the Rule</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> No Fiscal Effect</td><td><input type="checkbox"/> Increase Existing Revenues</td><td><input type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
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<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> State's Economy</td><td><input checked="" type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></td></tr></table>		<input type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>			
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<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$348,634									
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
<b>11. Policy Problem Addressed by the Rule</b> 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 (the Department) maintains primacy providing certification and licensing of pesticide applicators under ATCP 29 in a co-regulatory relationship with the EPA. To maintain primacy, the Department must address specific areas where 40 CFR Part 171 and ATCP 29 are no longer aligned.  This rule is proposing all of the following: <ul style="list-style-type: none"><li>• Update pesticide categories/category descriptions for commercial and private applicators</li><li>• Update minimum age requirements to get certified for commercial and private applicators</li><li>• Update pesticide core standards descriptions for commercial and private applicators</li><li>• Update recordkeeping requirements for commercial applicators</li><li>• Update recordkeeping requirements for Restricted Use Pesticide Dealers</li></ul>									
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> This rule will mostly impact commercial pesticide applicators, commercial pesticide application businesses, dealers and distributors of restricted use pesticides, several of whom qualify as small businesses. This rule may also have minor impacts to private pesticide applicators (agricultural producers).  The Department formed a Rule Advisory Committee to collect feedback and comments on this proposed rule change. The ATCP 29 – Pesticide Use and Control - Rule Advisory Committee was made up of twelve diverse industry stakeholders. These included members of fruit and vegetable growers' associations, grain producers, pesticide									

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applicators, and environmental groups. The rule advisory committee allowed the Department to obtain varied viewpoints and advice to aid the Department in developing effective rule language. The rule advisory committee also aided the Department in anticipating issues that could occur with revised language.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

NA. No anticipated impacts to local governments.

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14. 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)

The Department anticipates no economic or fiscal impact for the updates to pesticide applicator certification core standards descriptions for commercial and private applicators.

The Department expects a very low economic impact to implementing minimum age requirements for commercial and private applicator certification. Currently Wisconsin has no minimum age for obtaining pesticide applicator certification. Commercial applicators must be 16 years old to obtain an individual commercial applicators license. From 2015 to 2024 the Department certified an average of 28.8 individuals per year who were under the age of 18 at the time of their certification as private or commercial pesticide applicators. The youngest applicator certified in the last 10 years was 13 years old who became certified as a private applicator allowing them to apply restricted use pesticides. Most commercial pesticide application businesses do not hire individuals under the age of 18 to make pesticide applications. One factor cited was liability insurance policy restrictions for individuals under the age of 18. The aerial application industry indicated that a number of their members employ high school aged individuals to commercially mix and load pesticides which is considered use of a pesticide in ATP 29 and requires certification. The aerial applicator industry may face negative economic impacts by needing to employ individuals over the age of 18 to commercially mix and load pesticides once this rule goes into effect.

The Department anticipates significant positive economic impact for the updates to pesticide categories/category descriptions for commercial and private applicators. The current 5.0 Aquatic and Mosquito category currently forces two different industries to test on materials not applicable to them. Aquatic applicators primarily make aquatic herbicide applications to lakes and rivers to control invasive species. Less than 1% of aquatic applications are to control larval mosquitos in these bodies of water. Over the past twenty years there has been significant growth in the number of residential mosquito adulticide applications. Individuals who would like to make residential mosquito adulticide applications are currently required to know all of the material for making aquatic applications including calculating the volume of treatment area in a lake when they will likely never conduct applications like that. Splitting these two very different types of application into two unique categories will result in significant benefits to both industries. The Department predicts a significant increase in the pass rates for these certification categories once they are split, resulting in considerable savings to both the aquatic pesticide application industry and the mosquito control industry. The ATP 29 Rule Advisory Committee expressed unanimous support for this change.

The Department anticipates minor economic impacts for the updates to recordkeeping requirements for commercial applicators. This would require changes of electronic and paper recordkeeping forms that applicators use. This rule change would add one additional element to the existing recordkeeping requirements for commercial applicators, to record their certification number. All other States that certify pesticide applicators either currently require recording certification number on the application record or are in the process of adding this requirement. As the majority of pesticide applicators in Wisconsin are employed by a pesticide application business that does business in other states, we anticipate these businesses adding this recordkeeping element regardless of Wisconsin's rule change.

The Department anticipates minor economic impacts for the updates to recordkeeping requirements for Restricted Use Pesticide Dealers. This would require in changes of electronic and paper recordkeeping forms that those businesses use. All other States that license the sale of sell restricted use pesticides either currently require these recordkeeping elements or are in the process of adding these record keeping elements to their requirements. As the majority of licensed Restricted Use Pesticide Dealers in Wisconsin do business in other states, we anticipate these companies adding these recordkeeping elements regardless of Wisconsin's rule change. Several members of the ATP 29 Rule Advisory

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Committee representing agricultural Restricted Use Pesticide Dealers expressed concern over these new recordkeeping requirements as it relates to increased liability for ensuring the end user was purchasing a restricted use pesticide that is labeled for use in the correct certification category. The Department's analysis of the existing and proposed rules confirmed that there would be no requirement for a Restricted Use Pesticide Dealer to ensure that the pesticide sold matched the pesticide applicator certification category.

EPA conducted an initial Economic Analysis of the potential impacts associated with the Federal rule change necessitating this ATCP 29 rule change (<https://www.federalregister.gov/documents/2017/01/04/2016-30332/pesticides-certification-of-pesticide-applicators>). In total, EPA's economic estimate for adding these nationwide requirements estimated an average impact of \$46 per commercial applicator. As many of the standards EPA required as a part of the Federal rule change were already in place in Wisconsin this should be considered the upper limit of the estimated economic impact. As of 2024 Wisconsin had 7,579 licensed commercial applicators. This puts the upper limit of the estimated economic impact of this rule change at a cost of \$348,634. The Department estimates no economic impact to private pesticide applicators. The final impact of this rule change should be mitigated by savings associated with the benefits identified below.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The alternative of not implementing this rule would mean that pesticide applicator certifications issued by the Department would no longer meet federal requirements for applicators to use that certification to apply restricted use pesticides. If Wisconsin fails to update their rules to come into compliance with the federal rule changes in 40 CFR part 171, then the conditional approval of Wisconsin's State Pesticide Applicator certification plan would no longer be effective after 1/1/2028. At this time any pesticide applicator certification issued by Wisconsin would no longer authorize a user to apply a restricted use pesticide. Users of restricted use pesticides would need to obtain pesticide applicator certification directly from EPA. This would require both private and commercial applicators who need to use a restricted use pesticide to obtain both Wisconsin pesticide applicator certification and Federal certification directly from EPA. This would result in extreme costs and significant burdens on any user of restricted use pesticides in Wisconsin. This would impact all private applicators (10,398 as of 12/31/24) and several thousand commercial applicators in addition to every industry that relies on restricted use pesticides.

Additionally failure to bring ATCP 29 into compliance with the federal rule change may impact the Department's primary enforcement responsibility (primacy) of Federal pesticide violations. Under Section 26 of FIFRA, the EPA grants states primary enforcement responsibility (primacy) against the misuse of pesticides. In this scenario, EPA may be obligated to take primary enforcement of Federal pesticide violations. The Department would continue to enforce State laws surrounding the use and sale of pesticides.

The Department anticipates the following benefits to implementing this rule.

Continued ability for the Department issued pesticide applicator certifications to allow for the use of restricted use pesticides.

Preventing applicators who wish to use restricted use pesticides from needing to obtain separate certification directly from EPA at significant extra cost and burden to applicators.

Maintain the Department's primary enforcement responsibility (primacy) of Federal pesticide violations.

By updating Wisconsin's pesticide applicator certification core standards descriptions for commercial and private applicators to comply with new federal standards, the Department expects a greater ability for pesticide applicator certification reciprocity with other states. This would allow an applicator certified in Wisconsin to do business in a greater number of other states under their Wisconsin issued certification.

As other states finalize their adoption of these standards the Department anticipates accepting pesticide applicator certification reciprocity from an increased number of states.

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Splitting the currently combined Aquatic and Mosquito category will result in several kinds of savings. Applicators in

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both the Aquatic pesticide application industry and the Mosquito control industry will be trained and tested on more relevant material to the type of work that they will be doing. Reduction in the number of failed exams by providing a more relevant exam to both industries. Each exam retake comes with considerable costs for a pesticide applicator and business as that individual cannot make applications until they pass the exam and become licensed. The Department explored alternatives to a standalone commercial mosquito control category with the ATPC 29 Rules Advisory Committee. The ATPC 29 Rules Advisory Committee determined that a standalone subcategory as proposed in this rule would be the best option.

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#### 16. Long Range Implications of Implementing the Rule

The long range impacts of the rule will be to bring Wisconsin into compliance with Federal requirements and meet new nationwide standards for pesticide applicator certification.

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#### 17. Compare With Approaches Being Used by Federal Government

The reason for this rule change is to bring ATPC 29 into compliance with the Federal requirements. Specifically to update alignment of Wisconsin Administrative Code Chapter ATPC 29 (ATPC 29) to revisions within Title 40 of the U.S. Code of Federal Regulations, Part 171 (40 CFR Part 171).

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

All States that certify pesticide applicators including Illinois, Iowa, Michigan and Minnesota are either in the process of or have completed updating their rules to match new Federal standards. The current status for each of these states as of 7/1/2025 is the following. Iowa is currently on the final steps of implementing the new rule changes. All applicators are projected to be certified/trained to the new standards within the date range 1/1/2027-1/1/2029. Illinois is currently working on updating requirements and expects the regulatory changes to be completed by 12/31/2026 with complete implementation of the changes by 12/31/2030. Minnesota has implemented their rule change which went into effect in August of 2024. They plan to fully implement these changes by end of 2027. Michigan is in the early stages of rule changes and are hoping to meet with their legislative liaison within the next year to start the process and work on law revisions between 2027 and 2028 depending on the department and legislative objectives.

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<h4>19. Contact Name</h4> <p>Otto Oemig</p>	<h4>20. Contact Phone Number</h4> <p>608-224-4515</p>
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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Small businesses impacted by this rule change include commercial pesticide application businesses and Dealers and Distributors of Restricted Use Pesticides. Minor additional recordkeeping requirements will result in a small impact to these businesses. These impacts primarily come from increased recordkeeping requirement elements for commercial pesticide application records (adding a requirement to record certification number) and additional recordkeeping elements for records of sales of restricted use pesticides.

Estimated implementation costs are expected to range from negligible to a maximum of \$1,150. This range was determined using the EPA's figure of \$46 per applicator from their Economic Analysis for this Federal Rule (<https://www.federalregister.gov/documents/2017/01/04/2016-30332/pesticides-certification-of-pesticide-applicators>) and the maximum number of employees (25) to meet the small business definition under s. 227.485 (2) (c), Stats.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

<https://www.federalregister.gov/documents/2017/01/04/2016-30332/pesticides-certification-of-pesticide-applicators>

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☐ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The Department intends to conduct outreach to these businesses in advance of the Rule becoming finalized in order to allow applicators to use up existing stocks of recordkeeping forms to minimize the impact of new recordkeeping requirements. The Department intends to conduct compliance assistance for several years with businesses as it relates to these recordkeeping requirements to help bring them into compliance with new requirements.

Small businesses in the aquatic application industry or the mosquito control industry may have a net gain from this rule due to the benefits from splitting the combined Aquatic and Mosquito certification category into separate categories.

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5. Describe the Rule's Enforcement Provisions

Wisconsin Statute 94.71 Pesticides; penalties; enforcement.

(1) PENALTIES. (a) 1. Any person who violates ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 shall forfeit not less than \$100 nor more than \$500 for the first violation and not less than \$200 nor more than \$1,000 for any subsequent violation within 5 years.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No

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