

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Pesticide Use and Control
Adm. Code Reference: ATCP 29
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 08-R-08

Rule Summary

The Wisconsin Department of Agriculture, Trade and Consumer Protection regulates the sale and use of pesticides in this state. This rule modifies Chapter ATCP 29, Wis. Admin. Code, Wisconsin's pesticide use and control rule. Among other things, this rule:

- Repeals the provision that veterinarians and animal technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses. This change will make the current rule consistent with a recent law change that removes the requirement for veterinary clinics to obtain special veterinary clinic pesticide use permits.
- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas, which is of interest to those committed to rehabilitating or maintaining natural areas and also is an area of business growth for pesticide applicators.
- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way. It also reduces paperwork for some businesses by eliminating duplicative recordkeeping requirements and clarifies that certain paperwork will be submitted to the department primarily by electronic means.
- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.
- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.
- Updates current rules related to non-agricultural chemigation systems. The rule also provides minimum requirements for the installation and use of urban pesticide misting systems.
- Creates labeling requirements for pesticide bait stations that are set out by commercial applicators, such as rodent bait stations, which often are placed outdoors in areas that are accessible to animals and the public.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

- Modernizes the rules related to spill containment and spill containment surfaces. The rule also clarifies that spill containment surface repairs shall be made according to good engineering practices and manufacturer specifications.
- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.
- Updates the administrative rule note regarding current worker protection provisions to remove outdated requirements, which are set by federal regulations.
- Makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Business Impact

This rule will add minimal, if any, costs to affected pesticide applicators and pesticide application businesses. Moreover, 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 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.

Any pesticide applicator who chooses to obtain a natural area certification may experience a minimal additional cost every five years to purchase a new training manual (\$45). Many commercial application businesses cover the cost of training manuals 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 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.*, conforming “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, Wis. Adm. Code 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.

Accommodation for Small Business

Many of the businesses affected by this rule are small businesses. Although this rule will affect some small businesses, in most cases it will have a positive, rather than adverse, impact on them. DATCP estimates that small businesses will incur minimal compliance costs to meet these updated standards.

Conclusion

Overall, this rule will benefit Wisconsin's pesticide use and control industry and the general public by updating and clarifying existing rule language, ensuring consistency between different regulations, and establishing new regulations to protect human health and the environment. Businesses will have few costs to comply with this rule. This rule was developed in cooperation with an advisory body made up of representatives of the Wisconsin pesticide use and control industry, Wisconsin's environmental community and Wisconsin consumers, and is supported by this group.

Dated this _____ day of _____, 2011

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator,
Division of Agricultural Resource Management