



## CORRESPONDENCE/MEMORANDUM

Department of Agriculture, Trade and Consumer Protection

STATE OF WISCONSIN

Bureau of Agrichemical Management  
Programs Section

**DATE:** June 23, 2005

**TO:** Pesticide Program and PAT Program

**FROM:** Lori Bowman *L.B.*

**SUBJECT:** Statutory interpretation of certification requirement for volunteers

There has been confusion about whether volunteers need to be certified to make pesticide applications. While we advocate that certification is beneficial to volunteers, they are not required to be certified to make applications unless they are applying restricted-use pesticides. I have outlined below how I came to this interpretation utilizing ch. 94, Stats. and ch. ATCP 29, Wis. Adm. Code.

The key to this interpretation is the definitions of commercial applicator, commercial applicator for hire, and individual commercial applicator. These definitions are found in s. 94.67, Stats., as follows:

(6) "**Commercial applicator**" means a person, whether or not a private applicator with respect to some uses, who uses or directs the use of any pesticide, either directly or through an employee, for any purpose or on any property other than as a private applicator. "Commercial applicator" does not include:

(a) A person who applies a pesticide, other than a restricted-use pesticide, solely for household purposes in and around the person's residence.

(b) A person who contracts with a commercial applicator for hire to apply a pesticide for the person, if the person does not otherwise use or direct the use of a pesticide as a commercial applicator.

(c) A veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(7) "**Commercial applicator for hire**" means a commercial applicator who uses or directs the use of a pesticide as an independent contractor for hire, either directly or through an employee. "Commercial applicator for hire" does not include a provider of janitorial, cleaning or sanitizing services if the provider of the services uses no pesticides other than sanitizers, disinfectants and germicides, or a veterinarian or veterinary technician who uses a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(15m) (a) "**Individual commercial applicator**" means a natural person who does any of the following:

1. Personally uses or directs the use of any pesticide as a commercial applicator for hire, or as an employee of a commercial applicator for hire. This subdivision does not apply to a person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.

2. *Personally uses a restricted-use pesticide as a commercial applicator.*
  3. *Directs the use of a pesticide by a person specified under subd. 1. or 2.*
- (b) *"Individual commercial applicator" does not include a veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.*

Based on these definitions, volunteers are considered commercial applicators.

Wisconsin Statute s. 94.704(1) requires *individual commercial applicators* to be licensed (by definition this means commercial applicators for hire or RUP users). Wisconsin Statutes s. 94.705(1)(a)2 states that no person may act as a *commercial applicator* unless they are certified in the appropriate category and licensed as an *individual commercial applicator* under s. 94.704, Stats.

So based on s. 94.705, Stats., it appears that commercial applicator certification is tied to the need to be licensed as an individual commercial applicator. Volunteers are not required to be licensed because they are not individual commercial applicators (unless using RUP). At this point we need to go to ch. ATCP 29, Wis. Adm. Code for further clarification.

Individual Commercial Applicator licensing requirements are outlined in s. ATCP 29.25, Wis. Adm. Code, which states the following:

*ATCP 29.25 Individual commercial applicator; license. (1) LICENSE REQUIRED. Except as provided under sub. (2), no individual may do any of the following without an annual license from the department:*

- (a) *Use or direct the use of any pesticide as an independent contractor for hire, or as an employee of an independent contractor for hire.*
- (b) *Use or direct the use of a restricted-use pesticide.*

The individual commercial applicator certification requirements are outlined in s. ATCP 29.26, Wis. Adm. Code, which states the following:

*ATCP 29.26 Individual commercial applicator; certification. (1) CERTIFICATION REQUIRED. No individual may engage in any activity for which a license is required under s. ATCP 29.25 unless one of the following applies:*

- (a) *The individual is certified under this section to engage in that activity as a commercial applicator.*
- (b) *The individual is certified as a pesticide mixer and loader under s. ATCP 29.28, and is solely engaged in mixing and loading pesticides for application by others.*

Therefore, certification is required for individual commercial applicators, who are required to be licensed by s. ATCP 29.25, Wis. Adm. Code. Volunteers are commercial applicators, but not commercial applicators for hire. **As long as only general use pesticides are used, volunteers are not required to be licensed, so no certification is required. If a volunteer uses a restricted-use pesticide, he/she would be an individual commercial applicator and would be required to be certified and licensed.**