

## Chapter Ag 29

## PESTICIDE USE AND CONTROL

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Ag 29.01 **Definitions.** (1) "Pesticide Review Board" means the board created under section 15.195 (1), Wis. Stats.

(2) "Department" means the State of Wisconsin Department of Agriculture.

(3) A "prohibited use pesticide" is a pesticide the use of which constitutes such a serious hazard to persons or property that its use is prohibited as provided under these rules.

(4) A "restricted use pesticide" is a pesticide certain uses of which constitute a serious hazard to persons or property and may be registered and used only for purposes as provided in these rules.

(5) "Use by permit only pesticide" is a pesticide which may be used only under department permit, as specified in these rules, because of special hazards involved in its use or precautions which may be required under certain conditions of use for the protection of man or his environment, or other useful animals and wildlife. It may include pesticides which under ordinary conditions of use do not create any peculiarized hazard but which may create a hazard when used for certain purposes or under certain conditions.

(6) "Experimental use pesticide" is a pesticide in any stage of testing or development, except screening for pesticidal activity, and includes pesticides registered for certain uses but under testing or development for use other than those for which registered. The screening for pesticidal activity exception is limited to the testing of chemicals, prior to use for experimental purposes, in test plots of less than  $\frac{1}{4}$  acre per test to ascertain biological effect on specific pests, hosts or sites.

(7) "Pesticide registration" means the registration of pesticides with the department under section 94.68, Wis. Stats.

(8) "Commercial applicator" is a person using or applying pesticides in the performance of pest control work for hire.

(9) "Retail dealer" is a person engaged in the sale of pesticides to consumers at retail.

(10) "Distributor" is a person engaged in the sale of pesticides for resale and includes persons selling at both wholesale and retail.

(11) "Storage" means the keeping or holding of pesticides, other than pesticides on display, at any location at which pesticides are

held for distribution, sale, use or disposal, and except for storage as used in section Ag 29.11 (1), excludes pesticides held on residential property for use in and about the home.

(12) "Display" means the exposure or holding open to public view of pesticides in any sales room or business area from which sales are made and to which the public has access.

(13) "Pesticide" is as defined in section 94.67, Wis. Stats., and for purposes of use, storage, transport, disposal and display under these rules, includes seeds, seed pieces and other plant parts treated with a pesticide.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. (5) to (12) to be (6) to (13); cr (5) and am. (6) as renum. Register, April, 1972, No. 196, eff. 5-1-72; am. (13), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.02 Prohibited use pesticides.** The following pesticides are declared to be prohibited use pesticides and their registration, possession, purchase, sale and use are prohibited, except for use as laboratory standards, exhibits by educational institutions, or for research and experimental purposes, or emergency use under permit as provided in these rules; or in the case of DDT and its isomers and metabolites, emergency or experimental uses authorized by the Pesticide Review Board under section 134.67, Wis. Stats.:

- (1) DDT (dichloro diphenyl trichloroethane).
- (2) DDD (TDE) (dichloro diphenyl dichloroethane).
- (3) Endrin (hexachloroepoxyoctahydro-endo, endo-dimethanonaphthalene).
- (4) Cadmium, as used in any pesticide formulation, after July 1, 1973.
- (5) Chromium, as used in any pesticide formulation, after July 1, 1973.
- (6) Mercury, as used in any pesticide formulation, after July 1, 1973, except for human medicinal use.
- (7) Thallium sulfate.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; am. intro. par. and cr. (4) to (7). Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.03 Restricted use pesticides.** The following pesticides are declared to be restricted use pesticides and may be registered, sold and used only for the purposes specified, except for research or experimental purposes, or emergency use under permit, as provided in these rules:

- (1) Aldrin (hexachlorohexahydro-endo, exo-dimethanonaphthalene).
  - (a) Control of termites (*Reticulitermes* Spp.) in structural pest control.
  - (b) Seed treatment.
  - (c) The treatment of tree roots prior to planting.
- (2) Benzene hexachloride (1,2,3,4,5,6-hexachloro-cyclohexane).
  - (a) Treatment of trees for control of pine root collar weevil, pine tip weevil and balsam gall midge.
- (3) Dieldrin (hexachloroepoxyoctahydro-endo, exo-dimethanonaphthalene).
  - (a) Structural pest control as provided under subsection (1) (a).
  - (b) Seed treatment.

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(4) Heptachlor (heptachlorotetrahydro-4,7-methanoindene).

(a) Structural pest control as provided under subsection (1) (a).

(b) Seed treatment.

(5) Lindane (gamma isomer of benzene hexachloride).

(a) Treatment of beef cattle, swine, goats (except dairy goats), sheep and pets for mange and lice; treatment of sheep for fleece-worms; and spot treatment of such animals, including dairy cattle and goats, for the protection of flesh and flesh wounds against insect infestation.

(b) Seed treatment.

(c) Ornamental and forestry uses, in amounts not to exceed  $\frac{1}{4}$  pound per acre.

(d) Household uses for which product is registered.

(e) Medicinal use by physicians or persons acting under their direction.

(6) Alkyl mercury products.

(a) Turf disease control.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; am. (5) (c) and cr. (5) (d) and (e), Register, April, 1972, No. 196, eff. 5-1-72; am. (5) (a), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.04 Use by permit only pesticides; permits.** (1) The following pesticides are declared to be use by permit only pesticides and may be registered, purchased, sold or used only under department permit as specified in these rules:

(a) Sodium Fluoroacetate (1080).

(b) Strychnine or products containing strychnine sold or purchased for use as a pesticide.

(c) Any pesticide used for the control of insects or rodents in public sewers, except when used by or under supervision of qualified government officials in the course of their employment, or qualified pest control operators.

(2) Requests for permits shall be in writing, except in emergencies, and shall specify:

(a) Name and formulation of pesticide for which permit is requested and purposes for which it will be used.

(b) Where and when it is to be used and in what quantity.

(c) Special controls or precautions which will be exercised in its use.

(d) Name and address of applicant for permit, including name and address of applicator if different from applicant.

(e) Any other information requested by the department concerning proposed use.

(3) Permits shall be issued in writing and shall be effective only upon receipt of the permit by the applicant and in accordance with conditions and limitations set forth therein and for the time period specified. Verbal permits granted in emergencies shall be confirmed in writing.

(4) Permits will be issued only when, in the judgment of the department, the proposed use will not create a special hazard and that adequate controls can be established, as set forth in the permit, which will assure the pesticide can be used with relative safety and without undue hazard to the public. As a condition to the issuance of

permits the department may require that use by permit only pesticides be used only by or under the direct and immediate supervision of qualified personnel.

(5) (a) Permits for the use of sodium fluoroacetate (1080) may be issued only to commercial applicators registered with the department under section Ag 29.08 (3) or public officials engaged in pest control. Except in emergency cases permits may not be granted for uses other than the control of rats or mice. Emergency permits may be granted only for use by or under the direction of public officials. The pesticide may be purchased and used only by the permit holder and may not be sold or given by him to any other person. The use of sodium fluoroacetate (1080) in any outdoor location is prohibited except for public health emergencies under emergency permit.

(b) In addition to data required under subsection (2), requests for emergency permits shall include the following information:

1. Description of site (land fill, dump, banks of ditches or sidings, or other) and area surrounding the site (residential, open, farmland, or other).

2. Type of wildlife frequenting the site.

3. Type of bait or form in which the pesticide will be used.

4. Method of application.

5. Method of disposal of carcasses of rats or mice.

(c) The following conditions shall apply to the use of sodium fluoroacetate (1080) under permit:

1. All buildings or portions thereof in which the pesticide is to be used shall be completely closed and sealed off against access by all persons, other than those engaged in the control work, and non-target animals. Control work within building shall be carried on in such a manner as to prevent the contamination of the building or its contents. All remaining and unconsumed pesticides used in the building shall be completely removed after use in any building before the building is opened up for further use.

2. In outdoor applications, the pesticide shall at all times be kept under cover or applied in such a manner as to prevent a hazard to humans or non-target animals, including birds or fish.

3. Carcasses of rats and mice killed by the use of the pesticide shall be picked up immediately after such death and disposed of by burning or burial.

4. Records of each use of the pesticide shall be maintained for a period of one year and made available for inspection by the department on request. Such records shall include a description or designation of the place or area at which the pesticide was used, the form in which it was used (type of bait, solid or liquid), method of application (placement of bait or bait containers), and disposition of carcasses.

(6) (a) No person shall openly display strychnine or products containing strychnine for sale at any business location, or sell or offer to sell such products to any person who does not have a purchaser's permit from the department. Persons selling such products shall maintain a record of each sale, to include the date of sale, the name and address of purchaser, the purchaser's permit number, and the quantity of each product sold. Such records shall be maintained for a

period of two years and be made available to the department for inspection on request.

(b) No permits may be issued for the purchase or use of strychnine or products containing strychnine for purposes other than those for which they have been registered, except under emergency conditions under emergency permit.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72; am. (1) (b) and cr. (5) and (6), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.05 Emergency use permits.** The department may authorize the registration, possession, sale and use of prohibited or restricted use pesticides under permit for purposes otherwise prohibited under these rules, when necessary in an emergency situation to control the outbreak or spread of plant or animal diseases or pest infestations which threaten substantial destruction of property or to control epidemic diseases of humans which can be controlled only by the use of prohibited or restricted use pesticides.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.04 to be Ag 29.05, Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.06 Experimental use pesticides. (1) PERMIT AND NOTICE REQUIREMENTS.** (a) A manufacturer's or shipper's permit from the department is required for the sale of experimental use pesticides for testing or research and no person shall sell, purchase or use such pesticides until a permit has been issued.

(b) No permit shall be required for the distribution of experimental use pesticides furnished free of cost for testing or research but they shall not be shipped or distributed for experimental use without direct notification to the department at or prior to the time actual shipment or delivery is made to the user. Notification shall be submitted on forms prescribed by the department and shall include notice of the fact that certain experimental use pesticides are being shipped or delivered to a named user or users, and other information as the department requires. Such pesticides shall be conspicuously labeled "For Experimental Use Only—Not To Be Sold."

(c) Experimental use pesticides shipped or delivered for use by or under the supervision of any federal or state agency authorized by law to conduct research in the field of pesticides are exempt from permit or notice.

**(2) APPLICATIONS FOR PERMIT.** (a) All applications for permits shall be submitted in duplicate, be signed by the shipper or the person making the delivery and include the following information:

1. Name and address of the shipper and place or places from which the shipment will be made.

2. Proposed date of shipment or in the case of a general permit the shipping period for which a permit is requested, not to exceed one year.

3. The name and address of the person to whom shipment or delivery will be made and under whose supervision the experimental use program will be conducted. In the case of general permits under subsection (2) (b) such information shall be submitted on request.

4. A statement of composition applicable to individual pesticide materials or a group of closely allied formulations of pesticides for which a permit is requested.

5. A statement of the approximate quantity to be shipped.

6. Available data or information, or reference thereto, on the toxicity of the pesticide and precautions to be taken in its use.

7. A statement of the nature of the proposed experimental use program, including the type of pests or organisms toward which the testing program will be directed, the type of crops or animals for which the pesticide is to be used, the locations where the program will be conducted, and the results of previous tests.

8. If food or feed is likely to be contaminated, a statement of action which will be taken to prevent the food or feed from being consumed by man or other animals, except laboratory or experimental animals. The method of analysis for residues shall be included.

9. Proposed labeling to include: a. a conspicuous statement, "For Experimental Use Only," both on the container label and any other labeling matter; b. a warning or caution statement which if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations; c. the name or designation of the formulation; and d. the names and percentages of the principal active ingredients in the product.

(b) Permits are of two types, specific and general. Specific permits are issued for individual shipments of a single pesticide on a specific date to persons named in the permit application and must be secured prior to actual shipment or delivery to the intended experimental user. General permits are issued for multiple shipments of the same product over a given period of time to different experimental users.

(c) If a copy of a valid experimental permit issued under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 135-135k) is submitted with accepted labeling related thereto, the department may exempt the shipper from the requirements of subsection (2) (a) 6 to 9 inclusive.

(3) RESTRICTIONS ON ISSUANCE OF PERMITS. (a) If a pesticide is to be tested for a use which is likely to result in a residue in or on food or feed, a permit for shipment or delivery will be issued only on basis of written assurances that the food or feed will not be used except for laboratory or experimental animals and evidence is submitted that the proposed use will not result in residues which would be hazardous to man or other animals.

(b) A permit for the testing of experimental use pesticides in any place likely to be frequented by persons other than those directly engaged in the experimental use or testing will be granted only if it can be shown in the application that use instructions and controls will reasonably protect persons or property from injury.

(c) The department may limit the quantity of a pesticide to be used under an experimental use permit to a lesser quantity than that requested if in its judgment available information on effectiveness, toxicity, or other hazards is insufficient to justify the scope of experimental use proposed in the application, or impose such other restrictions on use it may consider necessary for the protection of the public.

(d) Permits will be issued only for bona fide experimental programs under the supervision of persons qualified by training or experience to engage in pesticide research work.

(e) A pesticide for which an experimental use permit has been granted shall not be sold or offered for sale to the general public.

(4) **CANCELLATION OF PERMITS.** Permits for shipment of pesticides for experimental use may be cancelled at any time for any violation of this chapter.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.05 to be Ag 29.06, Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.07 Pesticide registration; filing of reports.** As a condition of pesticide registration under section 94.68, Wis. Stats., each registrant shall annually submit to the department a record of the quantities of each pesticide registered by him which he has sold or distributed within the state, including such other data as the department may request concerning pesticide uses. Such records shall be submitted by July 1 of each year for the preceding calendar year.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.06 to be Ag 29.07, Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.08 Registration of commercial applicators and sellers; reports.** (1) Retail dealers of restricted use and use by permit only pesticides in Wisconsin shall register with the department, and upon request submit to the department records of the amounts and kinds of such pesticides sold during the preceding calendar year. Other retail dealers of pesticides shall upon request submit to the department records of the amounts and kinds of pesticides sold during the preceding calendar year.

(2) Distributors of pesticides in Wisconsin shall register with the department, and upon request submit to the department records of the amounts and kinds of pesticides sold during the preceding calendar year.

(3) Commercial applicators of pesticides in Wisconsin shall annually register with the department on or before April 15 of each year, and submit information of the amounts and kinds of pesticides used or sold as required by the department.

(4) Persons required to register under this section shall register on forms furnished by the department, to include the name and address of the applicator or seller and business locations from which sales are made or from which business operations are conducted. Changes in business names and locations shall be reported to the department within 30 days after date of change.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.07 to be Ag 29.08, Register, April, 1972, No. 196, eff. 5-1-72; am. (1), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.09 Storage of pesticides.** (1) Pesticides shall be stored in accordance with temperature and moisture requirements and other precautionary storage instructions contained on the product label, and in a manner which will assure that original labels on the containers are protected from damage or destruction and kept in readable condition.

(2) Pesticides while in storage shall be kept reasonably separated from food, feed, seed, livestock remedies, drugs, or any other products or materials, including other pesticides, which could become contaminated by leakage, breakage or volatilization.

(3) Storage rooms or areas in buildings shall be protected and secured in such manner that they are not readily accessible to children or the general public.

(4) Pesticides stored or held at outdoor locations, including loading or application sites, shall be covered or otherwise protected or secured to avoid damage to or destruction of product labels on the container and to prevent public access or injury to persons or property, including fish and wildlife.

(5) Pesticides removed from original shipping containers prior to storage shall be inspected to assure that caps, lids or other sealing devices on the container are tight or secure, and that the container is sound and unbroken. Defective containers shall be repaired if repairable or be destroyed or disposed of in a safe manner.

(6) Hypochlorite sanitizers held in storage for sale or distribution shall be stored in such a manner that the oldest stocks will be used to replace stock which has been sold.

(7) Bins or areas used for storage of pesticides shall be maintained in a clean condition and be thoroughly inspected and cleaned prior to use for any other purpose.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.08 to be Ag 29.09, Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.10 Sale and display of pesticides.** (1) No pesticide shall be sold or displayed which is not labeled, or on which the label is illegible in any respect.

(2) Pesticides labeled with the precautionary signal words, "POISON", "DANGER" or "WARNING", and pesticides packaged in glass or non-rigid containers, or in containers the caps, lids or dispensing devices of which are not equipped with a protective seal or covering, shall be displayed at a height not less than 42 inches above the floor or otherwise protected to assure they are out of reach of children.

(3) Any pesticide before being sold or displayed shall be examined to assure that caps, lids or other sealing devices on the container are tight or secure and that the container is sound and unbroken. Defective containers shall not be placed on display.

(4) No pesticide shall be displayed in such proximity to food, feed, seed, plants or other products displayed or offered for sale that contamination will result from volatilization, or leakage or breakage of the pesticide container.

(5) No person shall sell a pesticide for uses other than those specifically set forth on the original product label, or supplemental labeling supplied by the manufacturer or registrant for new and approved uses registered with the department and furnished to the purchaser at time of sale. Such labeling shall be considered a part of the product label.

(6) No person shall sell or distribute any pesticide which is not registered with the department, or sell or distribute any poison at retail with instructions for its use in the formulation of a pesticide unless the poison is registered with the department as a pesticide.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.09 to be Ag 29.10, Register, April, 1972, No. 196, eff. 5-1-72; cr. (6), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.11 Removal of pesticides from sale.** (1) The department may by summary order direct the removal from sale of pesticides which are adulterated or misbranded, or held or offered for sale in violation of these rules. Notice of any removal order shall be given to the man-

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manufacturer, distributor or registrant whenever recall of the pesticide or other corrective action is appropriate, unless the removal order was served directly on them. The notice shall include the reasons for the order and such instructions as may be necessary to accomplish the recall or removal of such products from sale.

(2) A pesticide, the labeling of which was acceptable at the time of registration but which at a later date is determined to be defective or deficient because of changes in approved uses, directions for use, warning or precautionary statements or for any other reason, may be ordered removed from sale by the department. The product may be released from the removal order if relabeled to correct existing deficiencies.

(3) Pesticides not registered with the department or for which registration has expired, been discontinued or cancelled shall be removed from sale or display by retail dealers and distributors. Such pesticides, including pesticides ordered removed from sale by the department for any reason, shall not be sold or displayed until registered or brought into compliance with the law.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.10 to be Ag 29.11, Register, April, 1972, No. 196, eff. 5-1-72.

**Ag 29.12 Application, use and disposal of pesticides.** (1) No person shall use, store, transport or display pesticides contrary to label directions, or in a careless or reckless manner. Any use, storage, transportation, or display is careless or reckless if the person knows or ought to know it creates a risk and probability of injury or damage to other persons or their property or wild animals other than those declared pests under section Ag 29.13 and ch. NR 80.

(2) No person shall apply to or cause a pesticide to enter waters of the state directly or through sewage systems. This does not apply to persons engaged in fish management or the treatment of waters under the supervision or rules of the department of natural resources, the use of use by permit only pesticides for the treatment of sewers for insect or rodent control by or under the supervision of qualified government officials or pest control operators, or under department permit, or to chemicals accepted and registered for use in root control in sewage lines or in the cleaning, sanitizing, algaeciding, slimiciding, or disinfection of toilets, urinals, sewers, sinks, swimming pools, food processing equipment, dishes, utensils, hospital equipment, walls, floors, or other surfaces or materials in any building or area where such uses are necessary for the protection of persons, animals or property.

(3) No person shall fill pesticide spray equipment, including mix or nurse tanks, from any waters of the state, except public water supplies, farm ponds and wells, or clean any pesticide spray equipment in such waters. This does not prohibit the filling of tanks used for water supply only from waters of the state, provided no pesticide containers are carried on the tank vehicle. Pesticide spray equipment shall not be filled or cleaned adjacent to public surface waters where, because of the slope or other condition of the bank, spray materials could readily enter the water in case of overflow, leaks or other causes, or rising waters could reach the filling or cleaning area and become contaminated as a result of prior surface contamination or other reasons.

(4) No commercial applicator or person engaged in the rental, sale or furnishing of pesticide application equipment shall use, furnish, rent or sell pesticide application equipment which is clogged, unclean or in disrepair, or which cannot be properly calibrated.

(5) No person shall apply a pesticide by aircraft unless the aircraft meets the requirements of and is operated according to the regulations of the federal aviation administration and the Wisconsin department of transportation.

(6) No person shall dispose of or hold pesticides or their containers for disposal contrary to directions on the label or in a manner which may contaminate waters of the state or create a hazard to persons or property, including fish or wildlife.

(7) Treated seeds shall be incorporated into the soil during planting and shall not be used for or mixed with any food or feed, or be exposed in such a manner that birds or other wildlife have access to them.

(8) Pesticides and their containers temporarily held at loading and spraying sites in connection with their use shall be secured or guarded in such a manner as to reasonably prevent access thereto by children, the general public or wildlife, or the contamination of waters of the state.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. Ag 29.11 to be Ag 29.12; (2) as renum. is am. Register, April, 1972, No. 196, eff. 6-1-72; am. (1), (2), (3), (5) and (6) and cr. (8), Register, May, 1973, No. 209, eff. 6-1-73.

**Ag 29.13 Declaration of pests.** Under authority of sections 94.67 (1) (a) and 94.69 (1), Wis. Stats., each of the following named forms of plant or animal life or viruses are declared to be a pest and subject to destruction or control by use of pesticides when present under circumstances where they may be injurious to plants, man, domestic animals, other useful vertebrates or invertebrates, or other property:

(1) Mammals, other than humans, including but not limited to dogs, cats, moles, bats, wild carnivores, and deer.

(2) Birds, including but not limited to starlings, house sparrows, crows, pigeons, and redwing blackbirds.

(3) Fishes, including but not limited to the jawless fishes such as the sea lamprey, and the bony fishes such as the carp.

(4) Amphibians and reptiles, including but not limited to poisonous snakes.

(5) Aquatic and terrestrial invertebrates, including but not limited to slugs, snails, and crayfish.

(6) Roots and other plant parts growing where not wanted.

(7) Viruses, other than those on or in living man or other animals.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.

**NOTE:** See Wis. Adm. Code chapter NR 80 for pesticide rules of the Wisconsin department of natural resources.

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