

CR 89-119

STATE OF WISCONSIN)
) SS.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Nicholas J. Neher, Administrator, Agricultural Resource Management Division, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending rules relating to pesticide use and control, Chapter Ag 29, Wis. Adm. Code, was duly approved and adopted by the Department on February 12, 1990.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 26th day of February, 1990.

Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management Division



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Date: February 26, 1990

To: Gary Poulson, Revisor of Statutes

From: ^{N.J.N.} Nicholas J. Neher, Administrator
Agricultural Resource Management Division

Subject: Clearinghouse RuleNo. 89-119, Chapter Ag 29 relating to
Pesticide Use and Control

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Agriculture Trade and Consumer Protection

Rule: Chapter Ag 29, Pesticide Use and Control

INTRODUCTION:

During the hearing process for this rule development, the department solicited comments from small businesses. While one person indicated their disdain for any administrative rules, the comments of small businesses were appreciated, and have led to several changes in the draft. This final regulatory analysis includes the text of the initial document, with post hearing actions of the department highlighted in bold print at the end of each area in which comments were received.

1) Types of small businesses that will be affected by the rule change.

Farms where pesticides are used; Dealers of restricted-use pesticides; Commercial pesticide applicators who treat residential structures; Lawn care firms; Cranberry growers using chemigation; Potato and vegetable growers using chemigation; Christmas tree growers using Lindane; Researchers testing genetically engineered microorganisms for pesticidal purposes; Firms which employ persons who only mix and load pesticides; Aerial applicators of pesticides and the persons directing the application of pesticides by licensed pilots; Veterinarians and their assistants; Persons or firms that rent lands for the production of crops and contract for pesticide applications; Concrete contractors; Persons or firms supplying pesticides in reusable containers; Commercial pesticide applicators treating agricultural products; Pesticide labelers and distributors; and Private applicators treating neighbor's crops with pesticides.

2) Reporting, recordkeeping and other procedures required for compliance with the rules.

The proposed rule creates new recordkeeping requirements for distributors and retail dealers of restricted-use pesticides. Currently, distributors and dealers are required to keep records

on the "amounts and kinds" of pesticides sold. Under the proposed rule, distributors and dealers of restricted-use pesticides are required to record the name, the address, the business location license number or applicator certification number of the person purchasing the restricted-use pesticide; the pesticide manufacturer's name or the federal EPA registration number of the restricted-use pesticide; and the quantity of restricted-use pesticide sold or distributed. Several comments were received at the hearing regarding the impact of these recordkeeping changes on businesses. To a large extent many of those testifying indicated that such records are already kept. Those persons not already keeping such records did not offer any alternatives for a regulatory method of tracking distribution of restricted-use pesticides. No substantial changes were made to the draft.

Lindane may currently be used on Christmas trees after an Emergency Use Permit is issued by the department. The proposed rule deregulates lindane use so that an Emergency Use Permit will no longer be required. A fee has not been charged for Emergency Use Permits in the past so growers will not realize significant savings, except for the amount of time spent preparing the application for an Emergency Use Permit.

Researchers studying genetically engineered pesticidal microorganisms will be impacted by the proposed rule changes. Experimental Use Permits would be required for any release of genetically engineered bio-organisms to the outside environment regardless of the size of the area to be treated. An Experimental Use Permit would not be required for preliminary lab screening. The draft has been modified somewhat, in that no experimental use permit will be required if the investigator has already obtained a Federal permit from the U.S. Environmental Protection Agency, (EPA). EPA requires such permits if the experiments involve 10 or more acres. The investigator will still need to file a copy of the permit and register each location in Wisconsin where a field plot will be established.

Another rule change has been proposed which will require some pesticide labelers in the state to pay license fees for two years after distribution of a product is discontinued. The department has been enforcing a similar policy for some time. The proposed revision codifies this policy. A firm may avoid payment of discontinuance fees if evidence is provided that no product remains in trade channels.

A proposal was made by the Ad Hoc Ag 29 Code Revision Committee to provide a temporary certification mechanism for an employe being trained as a commercial applicator. The request to consider this proposal was based on the employee's need for "hands on training" prior to certification. Since the

department's authority to certify and license pesticide applicators is given statutorily, it is not clear whether a temporary certificate or trainee license can be created through a rule change. The proposal provides for issuance of the trainee permit to allow application of certain pesticides under close supervision by a certified applicator. This proposal would provide a period of time for an employer to evaluate an employee prior to investing in a license.

A comment was offered at the hearing questioning the legal authority of the department to issue temporary training registrations. However the Legislative Council did not raise this as an issue. This portion of the rule received an abundance of positive testimony. The draft remains unchanged. Based on the Legislative Council review, the "permit" referred to in the draft was changed to a registration. A trainee may begin to use pesticides upon mailing the registration materials. The 30 day period begins on the department's date of receipt of the registration.

The statutes require commercial application businesses to be licensed before they begin operation. The rule proposal echoes the statutory requirement and clarifies through the definition of a business location that any location where orders for pesticide applications are regularly taken must be licensed. More businesses may be included under this definition than were previously licensed. The fee for the 2 year license is \$100. Currently about 1000 commercial application business licenses have been issued. The number of additional licenses that will be issued as a result of the rule change is unknown. An example of the potential impact of the proposed rule change is a tree service whose headquarters are located out of Wisconsin which employs about 70 applicators throughout the state. Many of these independent applicators will need to obtain a commercial application business location license because they take orders for applications at offices or perhaps at their homes which serve as an office. The \$100 fee is nominal and will not have a great impact on any single business.

Hearing testimony resulted in an exemption to the licensing of cars from which orders may be taken via mobile phones. A business location will be needed for all businesses, but vehicles with mobile phones will not be covered by a separate license.

Individual commercial applicators must be licensed and certified in the appropriate use category before making an application in any pesticide use category. The examination fee for certification is \$10. An applicant who fails an exam must pay a \$5 re-exam fee. Training programs for certification in pesticide use categories are available. Applicants for commercial certification must purchase training materials at a

cost of \$30 per category whether they attend a training session or not. These fees are used to cover costs associated with the overall training program. The training is given at a one day program and an exam is offered at the end of the training session. The license fee is \$50 for a two year period. License fees are established by statute. The department's fees are similar to other professional license and certification fees and probably lower than some. A recent change in the law eliminated the supervision exemption which allowed pesticide application by non-certified applicators working under the supervision of a certified applicator. These individuals will now have to be certified and licensed and pay fees in order to be employed as a commercial pesticide applicator.

The rule proposal exempts certified private applicators from license and certification requirements as a commercial applicator if they operate as a commercial applicator on a limited or incidental basis. Exemptions have also been included for veterinarians and physicians who apply pesticides in the course of their normal practice. Persons who apply sanitizers, disinfectants or germicides as part of a janitorial or cleaning service are also exempt from licensing as a commercial applicator. These exemptions will result in smaller business expenses.

Several veterinarians appeared in support of the veterinarian exemption. They requested that the exemption be extended to their businesses and employees. At this writing, a bill (SB 309), has been introduced to accomplish this expanded exemption. As such the draft has not been modified.

Under the proposal, mini-bulk and other pesticide storage containers may be re-used if the label permits re-use. This may save businesses money and time because it provides an additional alternative to disposal. In the long run, there will be benefits to the environment by reducing the number of containers that have to be disposed.

Based on hearing comments the draft was modified to clarify that containers may only be returned if the dealer involved is willing to accept the containers. Many favorable comments were received regarding the recognition of the use of reusable containers. In addition, support was voiced for any steps that could be taken to come up with new solutions for the problems associated with the disposal of empty pesticide containers.

Applicators treating fields, buildings or other areas with pesticides that have re-entry intervals are responsible for posting warning placards. The proposal is an amendment to existing regulations, which should serve to standardize posting requirements and complies with similar federal regulations. In addition to specifying the physical characteristics of the sign,

the proposed rule also stipulates when the placard must be put up, where it must be used and when it can be removed. Overall, this rule change won't have a significant monetary impact on applicators or on the person controlling the field. This rule change attempts to reduce involuntary pesticide exposure and reduce the potential for lawsuits.

Several persons indicated that the time and expense to comply with posting requirements was a burden. Those persons raising questions about posting did not however offer any other method of providing notice to the public that an application had taken place. Many persons testified that they would like to see all pesticide applications subject to posting. A large amount of testimony indicated that all treated lawn areas should be posted. No mandatory requirement has been added.

Advance notice, if requested, must be provided for applications at residential premises. The advance notice must include information about the amount, kinds and dates of pesticide applications. This gives residents the information necessary to make an informed decision to have an application made. This may result in delaying an application or modifying application rates which could minimally increase costs of application. Many lawn care businesses are already providing this information so it is unlikely there will be any significant impact unless a resident decides not to have an application after reviewing the information.

Post hearing changes have been made to the draft to clarify that the explanation of the advance notice provisions to a customer may be made on an annual basis. The draft also was changed to clarify that a range of pesticide rates that may be used, is to be provided if requested as well as allowing notice of each application to be made verbally, if the customer agrees. A number of lawn care firms are already offering this information to their customers.

Changes in the rule addressing mixing/loading sites will have a significant impact on several kinds of businesses. For those mixing/loading sites that are not exempt from the requirement for a curbed and paved surface, there will be a substantial cost, estimated at \$5000 to \$10,000 to install the required improvements. The paving contractor, engineers, and others involved in the construction will benefit from collection of construction and design charges. The proposed code requirements do not apply to mixing/loading where less than 1500 pounds pesticide active ingredient are annually mixed/loaded at the application site. These exemptions are aimed at reducing costs for smaller growers. In addition, the department's proposal includes a delayed effective date (1993) to allow for technological developments to provide other solutions which could be less costly. These developments should provide cost effective

solutions. Aerial applicators are exempt from the rule requirements until 1991 if the aircraft is loaded over a spill containment basin.

Based on testimony and questions asked at the hearing this section has been redrafted to clarify the mixing/loading site construction requirements.

The proposed rule includes requirements for chemigation systems which will have major economic impact on persons who use chemigation systems. Growers who use chemigation systems to apply chemicals through an irrigation system drawing from surface waters must install anti-pollution devices and automatic shut-off mechanisms to protect against backflow and contamination of water supplies. These required improvements are likely to cost several thousands of dollars, depending upon the design of the existing irrigation system. However, the cost of cleanup if backflow occurs and contaminates a water supply would be considerably higher. The costs associated with installation of backflow protection equipment would be incurred on a one-time basis. These requirements are also being mandated by US EPA required label changes on pesticides being chemigated.

Operators of chemigation systems will be required to develop and maintain an operation and observation plan covering design, operation, maintenance and measures that will be taken to prevent overspray, drift, etc. Observation and operation plans must identify sensitive non-target areas which are potentially subject to drift or overspray. Operators must be on site to monitor operation of the system at all times when sensitive areas may be impacted. Operators must be on-site to monitor operating systems at regular intervals spaced no more than 60 minutes apart. The cost of the observation time is minimal compared to the benefits of preventing accidents.

3) Types of professional skills necessary for compliance with the rules.

Under the existing regulations persons who commercially apply pesticides on a for hire basis, or use restricted-use pesticides need to be certified by the department. No additional skills beyond those needed to obtain such certification are needed.

ORDER OF THE STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

ADOPTING, AMENDING AND REPEALING RULES

The Wisconsin department of agriculture, trade and consumer protection adopts the following order to repeal Ag 29.01(33), Ag 29.04(1)(a)3; Ag 29.05(1)(a), (d) and (e); Ag 29.16(1), (2)(intro.), (a)(title) and (g)(title); Ag 29.16(3) to (6) and (8); and Ag 29.17(3)(b); to renumber Ag 29.01(1) to (32), and (34) to (41); Ag 29.05(1)(b), (c), (f), and (g); Ag 29.16(2)(a) 1 to 3, (b) to (f), (c)2, (g) 1 to 3, (h) to (j); Ag 29.16(7); to amend as renumbered Ag 29.01(8), (12), (13), (39) and (45); Ag 29.04(1)(a)4; Ag 29.16(1), (2), (3)(a), (4)(a), (5)(a), (6)(a), (7)(a), (8)(a), (9)(a), (10)(a), (11), (13)(a), (14)(a), and (15) to amend Ag 29.04(6)(b) and (c); Ag 29.07(4)(b); Ag 29.08(1)(title); Ag 29.08(3)(b); Ag 29.15(2)(a)2 and (3); Ag 29.17(2)(b)1. and 2.; and Ag 29.17(11); to repeal and recreate Ag 29.03(1)(f); Ag 29.04(5); Ag 29.06; Ag 29.07(7); Ag 29.09(2); Ag 29.10; Ag 29.11; Ag 29.15(1); Ag 29.15(2)(b) and (5); Ag 29.15(7)(a)(b) and (d); and Ag 29.16(title); and to create Ag 29.01(3), (4), (5), (7), (9) to (11), (18), (23), (24), (26) to (28), (30), (37), (42), (43), (47), (49) and (59); Ag 29.03(1)(g) to (m); Ag 29.05(1)(c)6 and (e); Ag 29.08(1)(h) to (j), Ag 29.08(3)(a)7. to 11., Ag 29.09(1)(c); Ag 29.13(7); Ag 29.15(7)(e); Ag 29.15(10) to (14); Ag 29.151; Ag 29.152; Ag 29.159; Ag 29.16(intro.); Ag 29.16(12); Ag 29.161; and Ag 29.162 relating to pesticide use and control.

Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 94.69, and 94.705(2), Stats.

Statutes interpreted: ss. 94.67 through 94.71, Stats.

Overview

This rule makes major changes to Ch. Ag 29, Wis. Adm. Code (Pesticide Use and Control). The rule implements recent statutory changes, including those contained in 1987 Wis. Act 27 (biennial budget act), which substantially modified pesticide licensing and certification requirements. The rule also includes major new provisions to protect surface water and groundwater from pesticide contamination, including new requirements for pesticide mixing and loading sites and chemigation systems.

The rule requires pesticide applicators to provide consumers with information about pesticide applications. Upon completing a pesticide application for any person, a commercial applicator for hire is required to give that person certain information, including the type and amount of pesticide applied and any relevant follow-up precautions. The rule also requires commercial pesticide applicators to give advance notice, if requested to residents who may be affected by a residential pesticide application, including a structural or lawn application. Pesticide safety claims are prohibited.

The rule expands current recordkeeping requirements for distributors and dealers of restricted-use pesticides, and makes a number of other substantive and editorial changes to current rules.

Rule changes are described in greater detail below.

Prohibited Pesticides

The rule adds aldrin, chlordane, dieldren, 2,4,5-T, silvex, dinoseb, and heptachlor, to the current Ag 29 list of prohibited pesticides. These pesticides were banned by statute under 1987 Wis. Act 357, published on May 2, 1988.

Limited Use Pesticide Permits and Licenses

The rule updates current Ag 29 provisions related to special local needs registrations, emergency use permits, experimental use permits and licensing of pesticide manufacturers and labelers. Additional information is being required under the proposed rule from applicant's for emergency use permits and special local needs registration. In addition, standards for issuance of emergency use permits and special local needs registration are incorporated in this rule. Current registration requirements for commercial applicators, and current registration requirements for distributors and dealers of restricted-use pesticides are repealed because those persons are now required to be licensed under ss. 94.685, 94.703 and 94.704, Stats. (enacted under 1987 Wis. Act 27).

Under current rules, no experimental use permit is required for experimental pesticide applications on test plots smaller than 1/4 acre. This rule modifies this exemption, to 1/2 acre field plots on a total of less than 5 acres but specifies that the exemption does not apply to pesticidal microorganisms produced by recombinant DNA technology. The rule also implements emergency permit requirements under s. 94.708, Stats., related to the use of pesticides for bat control.

Under current rules, no person may sell or distribute a pesticide product in this state unless the product bears the name and address of a licensed manufacturer or labeler who is responsible for that product. Under this rule, the responsible manufacturer or labeler, or that person's successor in interest, is subject to the license and fee requirements of s. 94.68, Stats., for as long as a pesticide product bearing that person's name remains in trade channels in this state. Pesticide products are rebuttably presumed to remain in trade channels for 2 full license years after they were last introduced in commerce by the manufacturer or labeler.

Under s. 94.703(3), Stats., a "commercial application business" is currently required to pay a supplementary license fee for each additional business location operated by the licensee in this state. Under the rule, "business location" is defined to include any location at which orders for pesticide applications are regularly taken, but does not include motorized vehicles with mobile telephones.

Recordkeeping

The rule creates new recordkeeping requirements for distributors and retail dealers of restricted-use pesticides. Currently, distributors and dealers are required to keep records on the "amounts and kinds" of pesticides sold. Under the rule, distributors and dealers of restricted-use pesticides are required to record the name, the address, and the license number or applicator certification number of the person purchasing the restricted-use pesticide; the pesticide manufacturer's name or the federal EPA registration number of the restricted-use pesticide; and the quantity of restricted-use pesticide sold or distributed.

Commercial applicators are currently required to record information related to each pesticide application. Under this rule, a commercial applicator must also record the location at which the pesticides were mixed and loaded.

Pesticide Safety Claims

The rule prohibits pesticide distributors, dealers and commercial applicators from making any false or misleading safety claims for pesticides. This prohibition is consistent with federal regulations. The prohibition is not intended to prevent the distribution of safety data sheets, factual toxicity data or other technical information.

Prohibited Practices and Preharvest Interval

The rule simplifies the general prohibition language on the use of pesticides. The rule contains a new provision related to the cleanup of spills of pesticides. In addition, under the rule, no person may harvest an agricultural commodity from a pesticide application site during the preharvest interval specified for that commodity on the pesticide label. If the pesticide was applied by a commercial applicator for hire, the commercial applicator for hire may also be held responsible for any violation of the preharvest interval if the applicator failed to inform the contracting party of the preharvest interval prior to application.

Re-Use of Pesticide Storage Containers

The rule allows for the re-use of "mini-bulk" and other pesticide storage containers designed and labeled to allow re-use.

Posting of Areas Treated with Reentry Interval

Areas treated with a pesticide which prescribe a reentry time must be posted under this rule. The rule establishes the size of the placards used for posting the reentry notice and the size of the lettering on the placards. The rule also identifies sensitive areas which may be near the treated areas, thus, requiring the treated area to be posted. The rule provides for an exemption to the posting requirements for aquatic applications posted in accordance with ch. NR 107.

Commercial Applicators for Hire; Post-Application Notice to Contracting Party

Under the rule, whenever a commercial applicator for hire completes a contract application for any person, the applicator must provide that person with a written statement specifying the kinds and amounts of pesticides applied, the date and time of application, and any relevant precautions stated on the pesticide label. Relevant precautions include prescribed re-entry intervals or preharvest intervals.

The rule establishes certain exceptions to the required notification upon completion of the application. The exceptions apply to nonresidential pesticide applications where preapplication information has been provided. The rule also establishes who must be provided with the required information for residential applications where multiresidential structures exist.

Residential and Yard Applications by Commercial Applicators;
Prior Notice to Residents

Under the rule, a commercial applicator must give notice to residents before applying any pesticide to turf, ornamentals or structures on residential premises. The notice must advise residents that if they request they can receive information about the application in writing prior to the application. The information provided must include the kinds of pesticides to be applied; the rate of intended application; the approximate date of application; any pesticide label precautions which may be relevant to the residents; and the name, address and telephone number of a person whom residents may contact for further information. The date of the application may be verbally provided to the resident rather than in writing if the resident agrees to that arrangement. Upon request by any resident, the identified person must provide the resident with supplementary information including label and toxicity information. If a commercial applicator has a yearly contract with a resident calling for more than one application a year, the commercial applicator need give the advance notice to the resident only one time each year prior to the first yearly application.

Under the rule, the notification requirement for residential premises with multi-dwelling units may be satisfied by notifying the party contracting for the application.

Violations by Employer or Contractor

Under the rule, no person who employs a pesticide applicator, or who contracts with an applicator to use a pesticide on that person's behalf, may coerce or compel the applicator to make an illegal pesticide application.

Pesticide Mixing and Loading Sites

Under the rule, if more than 1,500 lbs. of pesticide active ingredients are mixed or loaded during a calendar year at any mixing and loading site, the mixing and loading operations at that site must be conducted over a paved or lined surface and basin designed to catch pesticide spills. The rule spells out design, construction and capacity requirements for the paved surface and basin. Certain limited exemptions have also been established under the proposed rule.

Chemigation

The rule establishes standards for the design, construction and use of chemigation systems, to prevent surface and groundwater contamination. A chemigation system may not draw directly from a potable water well. A chemigation system may draw directly from surface water or a nonpotable water well if the chemigation system is designed, constructed and operated in compliance with the rule.

No pesticide may be applied by means of chemigation unless

the pesticide is suited for that purpose, and unless the pesticide is chemically compatible with the chemigation system and its components. Pesticide supply tanks must be located at least 8 feet from the water supply and must be enclosed in secondary containment. Chemigation systems must be properly calibrated to deliver the correct amount of pesticide.

Chemigation systems must include appropriate anti-pollution devices and automatic shut-off mechanisms prescribed in the rule, to protect against backflow and contamination of water supplies. The department may approve alternative designs which provide equal or greater protection to surface water and groundwater.

Chemigation systems must have an operation and observation plan established prior to being operated. The plan must describe how the system functions, how the system will be observed, what precautions are to be followed, and other information required under the proposed rule. The chemigation system must be operated in accordance with the plan and the plan must be kept either at the chemigation site or in the possession of the person operating the system while it is operating. The operator must be present at the chemigation site at all times when sensitive areas may be subject to pesticide drift or overspray. The operator must be at the site during operation at intervals not to exceed one hour.

If a chemigation system may apply pesticide within 100 feet of a road or other public right-of-way or within 300 feet of sensitive areas, warning placards must be posted along the road or right-of-way at intervals of not more than 1/4 mile. Warning placards must be posted during the entire period of operation, and must conform to specified size and content requirements.

Individual Commercial Applicators; License and Certification

As a result of statutory changes made by 1987 Wis. Act 27, all "individual commercial applicators" must now be licensed and certified by the department. An "individual commercial applicator" means a commercial applicator who uses or directs the use of any pesticide on a "for hire" basis, or who uses or directs the use of a restricted-use pesticide. To be certified, the applicator must pass a written exam. Individual commercial applicators who work under the supervision of other certified applicators are no longer exempt from certification. The rule implements these statutory changes.

Before making an application in any pesticide use category, a licensed applicator must be certified in that pesticide use category. Under the rule, persons mixing and loading pesticides into application equipment must also be licensed and certified in a relevant commercial use category.

Physicians and laboratory researchers who apply pesticides in the course of treatment, or in their research capacity, are exempt from license and certification requirements. Veterinarians who can provide proof of continuing education and competency in the use of pesticides are also exempt. Exemptions are also provided for certified private applicators who operate as commercial applicators only on a limited incidental basis, and for persons who apply only sanitizers, disinfectants or

germicides as part of a janitorial or cleaning service.

The rule clarifies current certification categories, and slightly modifies the standards for certification in some categories. If a candidate for certification fails to pass the written certification exam, the applicant may re-take the exam after a 48-hour waiting period upon paying the required statutory fee. If the applicant fails the reexamination, the application must wait for 30 days before the applicant can take another examination. Under the rule, a certified commercial applicator may no longer be recertified merely by attending a training course, but must again pass a written exam.

Temporary Commercial Applicator Trainee Registration

The rule allows the department to register persons meeting certain qualifications which allows them to use pesticides under a training program conducted by a commercial applicator. Registration allows the person to use pesticides, other than those classified as restricted-use, for 30 days while under the direct supervision of a certified licensed applicator. The rule specifies the information which must be supplied to register and the conditions upon which the person is allowed to use pesticides while receiving training.

Private Applicators; Certification

As a result of statutory changes made by 1987 Wis. Act 27, all private applicators who apply restricted-use pesticides must now be certified by the department, even if they are supervised by another certified applicator. The rule implements this law change. The rule, allows for certification by examination or training. The rule amends current certification standards, and adds new certification standards for private applicators using restricted-use fumigants. A person who mixes or loads restricted-use pesticides for use by a private applicator must also be certified as a private applicator, or as an individual commercial applicator in a relevant pesticide use category.

Pesticide Use

The rule prohibits negligent use of pesticides or any use that is inconsistent with pesticide labeling or that results in pesticide overspray or significant pesticide drift.

Drafting and Organizational Changes

This revision makes a number of non-substantive drafting and organizational changes in the current rules.

SECTION 1. Ag 29.01(33) is repealed.

SECTION 2. Ag 29.01(1) to (32) and (34) to (41) are

renumbered Ag 29.01(17), (1), (2), (6), (8), (12), (15), (16), (14), (13), (20), (19) to (22), (25), (29), (31) to (36), (38) to (41), (44) to (46), (48), (50) to (58), and (60), respectively; and Ag 29.01(8), (12), (13), (39) and (45), as renumbered, are amended to read:

Ag 29.01(8) "Certified applicator" means ~~a person certified by the department to use or supervise the use of restricted-use pesticides as a private or commercial applicator, as defined in s. 94.67(4), Stats.~~ private applicator or individual commercial applicator who is certified by the department under s. 94.705, Stats., and this chapter.

(12) "Commercial applicator" means a person, whether or not a private applicator with respect to some uses, who uses or ~~supervises~~ directs the use of ~~pesticides~~ any pesticide, either directly or through an employe, for any purpose or on any property other than as a private applicator. ~~The term does not apply to persons applying pesticides other than restricted-use pesticides for household purposes in and around their own homes.~~ "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 that person's residence.

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

(13) "Commercial applicator for hire" means a commercial

~~applicator using or applying pesticides in the performance of pesticide control work~~ who uses or directs the use of a pesticide as an independent contractor for hire, either directly or through an employe. "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.

(39) "Pesticide product" means a pesticide ~~which, with its container and labeling, including any supplemental labeling, is offered for distribution and use.~~ , all of the containers of which in commerce are labeled with a unique combination of all of the following:

(a) The brand name of the pesticide.

(b) The pesticide registration number assigned to the pesticide under the federal act.

(c) The name of the pesticide labeler.

(45) "Private applicator" means a person who uses or ~~supervises~~ directs the use of ~~pesticides~~ any pesticide for ~~purposes~~ the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer, or on property of another person if the pesticide is used without compensation other than the trading of goods or services between producers of agricultural commodities on an exchange basis.

SECTION 2. Ag 29.01(3) to (5), (7), (9) to (11), (18), (23), (24), (26) to (28), (30), (37), (42), (43), (47), (49) and (59) are created to read:

(3) "Air gap" means the unobstructed vertical distance

through the free atmosphere between the lowest opening from any pipe supplying water to a tank, vat, reservoir, or other pesticide container and the flood level rim of the tank, vat, reservoir or other container.

(4) "Automatic low pressure drain valve" means a self-activating device which is designed and constructed to drain the water supply pipeline in a chemigation system if water pressure falls or the water supply pump ceases operation.

(5) "Business location," as used under s. Ag 29.11(1), means any place from which a commercial application business operates on a regular basis as a commercial applicator for hire. "Business location" includes a location at which orders for pesticide applications are regularly taken, but does not include motorized vehicles containing mobile telephone units utilized to take pesticide application orders.

(7) "Catch basin" means all structures or containers used to provide the containment capacity required to contain or hold liquids at a site where pesticides are transferred from one container to another. The term may include spill containment surfaces, sumps and above ground storage containers.

(9) "Check valve" means a device designed and constructed to close a water supply pipeline, pesticide injection line, or other conduit in a chemigation system and to prevent reverse flow in that line.

(10) "Chemigation" means the process of applying pesticides with irrigation water during irrigation.

(11) "Chemigation system" means a device or system which

mixes pesticides with irrigation water drawn from any source, and which applies the pesticides with the irrigation water during irrigation.

(18) "Directs the use" means to select a pesticide for use by another person or to instruct or control the application of a pesticide by another person and to be available if and when needed during that application. "Directs the use" may, but does not necessarily, mean to be physically present at the time and place a pesticide is being applied.

(23) "Flow interrupter" means a device designed and constructed to stop the flow through a pesticide injection line if a pesticide injection unit ceases operation.

(24) "Flush time" means the time needed under normal operating conditions to completely fill an irrigation system with water so that all outlets are discharging water.

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

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

(b) Personally uses a restricted-use pesticide as a commercial applicator.

(c) Directs the use of a pesticide by a person specified under par. (a) or (b).

(d) Mixes or directs the mixing of a pesticide for the purpose of commercial application. †

(e) Loads or directs the loading of a pesticide into application or nurse equipment for the purpose of commercial application.

(27) "Injection unit" means a chemical metering pump or device that withdraws pesticide from a supply tank and injects the pesticide into irrigation water during chemigation.

(28) "Irrigation" means the application of water by any means to land, crops or plants in order to supply the water needs of plants or to promote plant growth.

(30) "Nonpotable water supply" means a well or other source of water which is not used for human consumption, hygiene or preparation of food products. "Nonpotable water supply" includes surface water.

(37) "Pesticide mixing and loading site," as used under s. Ag 29.151, means a site or facility where more than 1,500 pounds of pesticide active ingredients, including pesticide active ingredients contained in pesticide-fertilizer mixtures or combinations, are transferred from one container to another, repackaged, or mixed in dry or liquid form during any calendar year. If, during any calendar year, more than 1500 lbs. of pesticide active ingredients are mixed or loaded at 2 or more locations which are within 1/2 mile of each other, and which are under common ownership or control, those locations are collectively considered a "pesticide mixing and loading site" under this subsection. Transfer between containers includes

transfers to pesticide application equipment and nurse tanks.

(42) "Pesticide supply tank" means a container used to hold pesticides for injection into a chemigation system.

(43) "Potable water supply" means a well or other source of water which is used for human consumption, hygiene or preparation of food products.

(47) "Reduced pressure principle backflow preventer" means a backflow prevention device consisting of 2 independently acting check valves, spring-loaded to a closed position and separated by an intermediate chamber in which there is an automatic relief vented to the atmosphere, spring loaded to the open position.

(49) "Residential premises," as used under s. Ag 29.15(10) and (11), means a structure which is used wholly or in part as a human residence, and includes all lawns, grounds, facilities and furnishings pertaining to that structure. "Residential premises" includes a residential structure occupied on a rental basis, and also includes a mobile home and the site on which it is located. "Residential premises" does not include:

(a) A hotel, motel or similar premises occupied on a transient basis.

(b) A hospital, nursing home or similar facility occupied by persons receiving medical care or related services.

(c) A prison, jail or other place of detention.

(59) "Vacuum relief valve" means an atmospheric device designed, constructed and installed to protect against back-siphonage by allowing the entry of air to relieve vacuums in a chemigation system.

SECTION 3. Ag 29.03(1)(f) is repealed and recreated to read:

Ag 29.03(1)(f) Aldrin.

SECTION 4. Ag 29.03(1)(g) to (m) are created to read:

Ag 29.03(1)(g) Chlordane.

(h) Dieldrin.

(i) Heptachlor.

(j) 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T).

(k) 2-(2,4,5-Trichlorophenoxy) propionic acid (silvex).

(l) Dinoseb.

SECTION 5. Ag 29.04(1)(a)3 is repealed.

SECTION 6. Ag 29.04(1)(a)4 is renumbered 3, and as renumbered is amended to read:

Ag 29.04(1)(a)3. Any pesticides used for the control of insects or rodents in public sewers, except when used by ~~or under supervision of certified pest control applicators or government officials trained~~ a commercial applicator trained or certified in public health pest control as defined in s. Ag 29.16(2)(h) under s. Ag 29.16(13), and acting in the course of ~~their~~ his or her employment.

SECTION 7. Ag 29.04(5) is repealed and recreated to read:

Ag 29.04(5) PERMITS FOR USE OF STRYCHNINE; SPECIAL REQUIREMENTS. Special permits for the use of strychnine may be granted only for registered uses involving applications below ground or to control rats and mice.

SECTION 8. Ag 29.04(6)(b) and (c) are amended to read:

Ag 29.04(6)(b) No person may openly display sodium

fluoroacetate (1080) ~~7 or~~ or strychnine ~~or chlordane~~ for sale, or sell or offer to sell them to any person who does not have a permit from the department. Persons selling sodium fluoroacetate (1080) ~~7 or~~ or strychnine ~~or chlordane~~ shall make a record of each sale, ~~to include the date of sale, the name and address of the purchaser, the purchaser's permit number, and the quantity of the pesticide sold~~ as required under s. Ag 29.10(2)(b), and shall also record the purchaser's permit number under this section. Records shall be kept for a period of 2 years and after the date of sale, and shall be made available to the department upon request, for inspection and copying.

(c) No permit holder ~~purchasing any~~ who purchases sodium fluoroacetate (1080) ~~7 or~~ or strychnine ~~or chlordane~~ may resell or give the pesticide to ~~persons who do~~ any person who does not have a permit.

SECTION 9. Ag 29.05(1)(a), (d) and (e) are repealed.

SECTION 10. Ag 29.05(1)(b), (c), (f) and (g) are renumbered (a), (b), (c) and (d) respectively.

SECTION 11. Ag 29.05(1)(c)6 is created to read:

Ag 29.05(1)(c)6. The treatment of Christmas trees in tree plantations for the control of pine root collar weevil, pales weevil and pine root tip weevil, and the treatment of white pine and spruce Christmas trees in tree plantations for the control of white pine weevil.

SECTION 12. Ag 29.05(1)(e) is created to read:

Ag 29.05(1)(e) Daminozide may be used only for treatment of nonfood producing ornamental plants.

SECTION 13. Ag 29.06 is repealed and recreated to read:

Ag 29.06 EMERGENCY USE PERMITS; (1) PERMITS; AUTHORIZATION.

(a) Except as provided under par. (b), the department may issue emergency use permits authorizing the purchase, sale, distribution and use of pesticides for purposes not otherwise permitted under ss. 94.67 through 94.71, Stats., or this chapter, when necessary in an emergency situation to control:

1. Epidemic diseases of humans;
2. Plant or animal diseases or pest infestations which threaten substantial destruction of property; or
3. A rabid bat population. Before any pesticide other than naphthalene may be used under department permit to control rabid bats, a permit is also required from the pesticide review board under s. 94.708(4), Stats.

(b) No permit may be issued under this subsection for any pesticide use unless that use is also authorized under the federal act. Emergency permits for the use of DDT and its isomers and metabolites may not be issued by the department, but may be issued by the pesticide review board under s. 134.67, Stats.

(2) APPLICATIONS FOR PERMIT. Applications for emergency use permits shall be in writing, and include all of the following information:

(a) The name and address of the applicant, including the name and address of the pesticide applicator if different from the applicant.

(b) A detailed description of the nature and scope of the

emergency warranting the pesticide use, including information on the pest to be controlled.

(c) A description of the purpose for which the pesticide will be used.

(d) A detailed description of the potential benefits, adverse effects and hazards which may result from the use of the pesticide.

(e) A description and analysis of feasible alternative pesticides and control measures that could be utilized to control the pest.

(f) The composition and formulation of the pesticide.

(g) The source from which the pesticide is to be purchased or shipped.

(h) The amount of pesticide to be used.

(i) The site of the pesticide application.

(j) The method of pesticide application and any special control measures or precautions that will be taken in the use and disposal of the pesticide.

(k) Any additional information required by the department.

(3) STANDARDS FOR ISSUING PERMITS. The department may issue an emergency use permit if it determines all of the following:

(a) That the pest to be controlled has the potential to cause an epidemic disease among humans or substantial destruction to plants or animals, or that a rabid bat population exists as claimed.

(b) The benefits derived from use of the pesticide exceed

the potential adverse effects on human health, property or the environment which may result from use of the pesticide.

(c) There are no feasible alternative measures available to effectively control the disease, pest infestation or rabid bat population.

(d) Relevant facts and circumstances demonstrate the need for issuing the permit.

(4) PERMIT CONDITIONS AND CONTROLS. (a) The department may impose conditions or limitations on emergency use permits as necessary to protect persons, property, wild animals or the environment, including conditions and limitations on the duration of the permit, the amount of pesticide to be used, the location and size of the application site where the pesticide may be used, the method of pesticide application, and the disposal of unused pesticides and pesticide containers. The department may require that the pesticide be used only by government officials engaged in pest control work, certified applicators, or other qualified personnel. The department may require that pesticide applications made under this section be done under the direct and immediate supervision of government officials specified by the department in the permit.

(b) The department may summarily suspend or revoke an emergency use permit if it appears that any condition of the permit has been violated, or that continued pesticide use under the permit may result in an unreasonable hazard to persons, property, wild animals or the environment.

(5) ACTION ON PERMIT APPLICATION; TIME LIMIT. The

department shall grant or deny an application for an emergency use permit within 20 business days after the application is filed with the department, provided that the application is accompanied by all required information and documentation.

SECTION 14. Ag 29.07(4)(b) is amended to read:

Ag 29.07(4)(b) Permits shall expire on a date set by the department, ~~but shall in no case be effective for more than one year.~~ which shall be the expiration date of the federal experimental use permit for the pesticide. If no federal permit is required, a permit under this section shall expire no more than two years from the date of issuance. Permits may be renewed or amended on basis of the standards and criteria applicable to the issuance of original permits. Permits may also be amended to authorize experimental use on property of persons not identified in the original application.

SECTION 15. Ag 29.07(7) is repealed and recreated to read:

Ag 29.07(7) EXEMPTIONS. (a) Except as provided under par. (c), an experimental use permit is not required for the preliminary screening or testing of a pesticide compound or product by a state or federal agency, an accredited college or university, or a pesticide registrant, if the screening or testing is designed solely to determine whether the material has value as a pesticide for specific purposes. This exemption is limited to the following types of preliminary screening or testing:

1. Screening or testing done in a laboratory or greenhouse.
2. Field screening or testing of a compound or product by a

principal investigator employed by a testing agency, educational institution or pesticide registrant, on a total of not more than 5 acres of land owned or leased by the testing agency, educational institution or pesticide registrant, provided that individual test plots do not exceed 1/2 acre in size and are not contiguous.

3. Screening or testing authorized by an experimental use permit issued by the federal environmental protection agency, provided the person issued such permit files with the department a copy of the permit and a list of the locations where the testing is to be conducted prior to commencement of the screening or testing.

(b) No test crops or other products resulting from an exempt screening or testing program may be distributed or used for human or animal consumption, other than for laboratory or experimental animals which are part of the screening or testing program. All products, including crops, resulting from an exempt screening or testing program shall be destroyed in a manner which minimizes exposure to animals and humans of the pesticide compound or product.

(c) The exemption under par. (a) does not apply to any of the following:

1. Release of a microorganism produced or modified by recombinant DNA techniques except for testing authorized by a federal environmental protection agency permit or experiments involving preliminary laboratory or greenhouse screening of the microorganism. A person conducting an experiment under a federal permit shall file a copy of the permit and a list of locations

where the testing will occur with the department prior to commencement of the experiment.

2. A pesticide or pesticide use which is prohibited under this chapter.

3. A pesticide or pesticide use for which federal registration has been denied, suspended or cancelled.

SECTION 16. Ag 29.08(1)(title) is amended to read:

Ag 29.08 (1) STANDARDS FOR REGISTRATION.

SECTION 17. Ag 29.08(1)(h) to (j) are created to read:

Ag 29.08(1)(h) The benefits derived from use of the pesticide exceed the potential adverse effects on human health, property, or the environment.

(i) There are no other federally registered pesticides which are available for use to effectively meet the special local need.

(j) Relevant facts and circumstances demonstrate the need to register the product.

NOTE: Under ch. Ag 170, special local need registrations are subject to the preparation of an environmental assessment.

SECTION 18. Ag 29.08(3)(a)7 to 11 are created to read:

Ag 29.08(3)(a)7. Substantiation from the applicant that use of the product will not result in any unreasonable adverse effects on persons, property, wild animals, or the environment if it is used according to label directions.

8. A description of other methods or available pesticides which may be used to meet the special local need.

9. A description and analysis of the benefits to be derived

from use of the product.

10. A description and analysis of the potential adverse effects on human health, property or the environment resulting from use of the product.

11. An analysis demonstrating that the benefits to be derived from use of the product exceed the potential adverse effects.

SECTION 19. Ag 29.08(3)(b) is amended to read:

Ag 29.08(3)(b) Applications for registration to meet a special local need shall be accompanied by a nonrefundable fee of \$100. If registration is granted under this section, the applicant shall pay the appropriate fees required under s. 94.68(3), Stats., prior to any sale or distribution in this state. If a pesticide product is presently registered with the department, a supplementary license fee of \$150 shall be paid before a special local needs registration is issued for any new or additional use of the pesticide product.

SECTION 20. Ag 29.09(1)(c) is created to read:

Ag 29.09(1)(c). The responsible person under par. (a), or that person's successor in interest, is subject to the license and fee requirements under s. 94.68, Stats., for as long as any pesticide product bearing the responsible person's name and address remains in trade channels in this state. For purposes of this paragraph, some portion of the pesticide products bearing the responsible person's name and address are rebuttably presumed to continue in trade channels for 2 full license years after the pesticide products were last introduced in commerce.

SECTION 21. Ag 29.09(2) is repealed and recreated to read:

Ag 29.09(2) REPORTS BY LICENSEES. As a condition to licensing under s. Ag 94.68, Stats., pesticide manufacturers and labelers shall submit the following information to the department upon request:

(a) Labeling for each pesticide product which the manufacturer or labeler may sell or distribute in this state.

(b) The quantity of each pesticide product sold or distributed by the manufacturer or labeler.

(c) The names and addresses of persons from whom the manufacturer or labeler receives pesticides, or to whom the manufacturer or labeler distributes pesticides.

(d) The identity of pesticide formulation materials and breakdown products for each pesticide product intended for distribution.

(e) Analytical methods which may be used to detect and quantify pesticide formulation materials and breakdown products that may contaminate groundwater.

(f) Information related to toxicology and environmental fate of pesticide formulation materials and breakdown products.

(g) Summaries of all pertinent data, in the possession of the manufacturer or labeler, related to interactive toxicological effects of the pesticide.

(h) Other information which the department may require concerning pesticides sold or distributed by the manufacturer or labeler.

SECTION 22. Ag 29.10 and Ag 29.11 are repealed and

recreated to read:

Ag 29.10 PESTICIDE DEALERS AND DISTRIBUTORS; LICENSE; RECORDKEEPING. (1) DEALERS AND DISTRIBUTORS OF RESTRICTED-USE PESTICIDES; LICENSE REQUIRED. No distributor or retail dealer may sell or offer to sell any restricted-use pesticide in this state, whether or not the sale is made wholly or partially in this state, without a license issued by the department under s. 94.685, Stats. The department shall grant or deny a license application within 30 business days after a complete license application is received by the department.

(2) RECORDKEEPING. (a) General. Distributors and retail dealers of pesticides, whether or not subject to licensing under s. 94.685, Stats., shall keep records of the amounts and kinds of pesticides sold.

(b) Restricted-use pesticides. Distributors and retail dealers of restricted-use pesticides shall maintain a record of each sale or distribution of a restricted-use pesticide. Records shall include all of the following:

1. The date of sale or distribution.
2. The name and address of the purchaser.
3. The purchaser's applicator certification number under ss. Ag 29.159 or 29.162, or the purchaser's license number under sub. (1) if the purchaser is a distributor or retail dealer of restricted-use pesticides, or the purchaser's commercial application business license number under s. 94.703, Stats., if the pesticide is delivered to a commercial application business.
4. The name and address of the person to whom the pesticide

was delivered if other than the purchaser.

5. The brand name of the pesticide.

6. The name of the pesticide manufacturer or the federal environmental protection agency registration number of the pesticide.

7. The quantity of the pesticide sold or distributed.

(c) Records kept for 2 years; inspection and copying.

Records under pars. (a) and (b) shall be kept for 2 years after the date of sale or distribution, and shall be made available to the department for inspection and copying upon request.

Ag 29.11 COMMERCIAL APPLICATORS; LICENSE; RECORDKEEPING.

(1) COMMERCIAL APPLICATION BUSINESS; LICENSE. No commercial application business may operate in this state without paying a fee of \$100 and receiving a license issued by the department under s. 94.703, Stats. If a licensee operates in this state from more than one business location, the licensee is required to pay a supplementary fee of \$100 for each additional location as provided under s. 94.703(3), Stats. The department shall grant or deny a license application within 30 business days after a complete license application is received by the department.

(2) INDIVIDUAL COMMERCIAL APPLICATOR; LICENSE.

(a) Requirement. Except as provided under par. (b), no person may act as an individual commercial applicator in this state without a license issued by the department under s. 94.704, Stats. A person who mixes or loads pesticides, or who directs the mixing and loading of pesticides, into pesticide application equipment or nurse tanks for application by an individual

commercial applicator is considered an individual commercial applicator subject to licensing under this paragraph. The department shall grant or deny a license application within 30 business days after a complete application is received by the department. No license may be issued to a person who is under 16 years of age.

(b) Exemptions. No license is required under par. (a) for:

1. A physician licensed to practice in this state who applies a pesticide solely in the course of a medical treatment.

2. A veterinarian who demonstrates evidence of continuing education and competence in the use of pesticides and is applying a pesticide solely in the course of a veterinary treatment.

3. A laboratory researcher who applies a pesticide solely in the laboratory, as part of a bona fide laboratory research project.

4. A person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.

5. A private applicator who applies pesticides as a commercial applicator solely on an occasional or incidental basis. This exemption does not apply if the private applicator does any of the following:

a. Applies a restricted-use pesticide without being certified as a private applicator.

b. Applies a pesticide as a commercial applicator for any purpose other than to produce an agricultural commodity.

c. Applies pesticides for other persons as a commercial

applicator to more than 500 acres of land during any license year.

d. Applies pesticides for other persons as a commercial applicator on more than 3 separate occasions or applications during any license year.

6. A person who holds a valid temporary commercial applicator trainee registration under s. Ag 29.161.

(3) COMMERCIAL APPLICATORS; RECORDKEEPING.

(a) Requirement. Every commercial applicator, whether or not subject to licensing under sub. (1) or sub. (2), shall keep a record of every pesticide application, except that no record is required for applications of germicides, sanitizers and disinfectants. The record shall be completed on the day of the pesticide application, and shall include all of the following:

1. The name of the individual who applied the pesticide.
2. The name and address of the person for whom the pesticide was applied, if other than the commercial applicator.
3. The location of the site where the pesticide was applied.
4. The pest or pests against which the pesticide was applied.
5. The date and time of application.
6. The brand name of the pesticide applied.
7. The name of the pesticide manufacturer, or the federal environmental protection agency registration number of the pesticide.
8. The rate of application or amount of the pesticide

applied, and the total area treated.

9. The specific types of crops, commodities, plants, animals, structures, equipment, materials or sites treated.

10. The location, if other than a licensed business location, at which the pesticide was loaded into the application equipment or nurse tank. This requirement does not apply to applications made with prepackaged retail containers or to applications utilizing application equipment with a total capacity of 5 gallons or less of liquid pesticide or 50 pounds or less of dry pesticide.

(b) Records kept for 2 years; inspection and copying. The record of a pesticide application under par. (a) shall be kept for 2 years after the application date, and shall be made available to the department for inspection and copying upon request.

SECTION 23. Ag 29.13(7) is created to read:

Ag 29.13(7) No pesticide dealer, distributor or commercial applicator for hire may make any false or misleading verbal or written claim of safety for a pesticide.

SECTION 24. Ag 29.15(1) is repealed and recreated to read:

Ag 29.15(1) IMPROPER USE; GENERAL. No person may mix, handle, store, transport, display, or use a pesticide in a negligent manner or in a manner:

- (a) That is inconsistent with its labeling;
- (b) That results in pesticide overspray; or
- (c) That results in significant pesticide drift.

NOTE: Significant pesticide drift, as used under s. Ag 29.15(1) means pesticide drift which based on

credible evidence has moved to areas outside of the target area in amounts which either:

- (a) Cause actual harm to persons, property or the environment; or
- (b) Could conceivably harm persons, property or the environment, under any foreseeable combination of circumstances. This does not require a finding that actual exposure did occur; or
- (c) Are readily visible.

SECTION 25. Ag 29.15(2)(a)2 is amended to read:

Ag 29.15(2)(a)2. The use of pesticides under special department permit, as provided in s. Ag 29.04, for the treatment of to treat sewers for insect or rodent control by ~~or under the supervision of qualified government officials or certified commercial applicators or government officials trained in public health pest control~~; or

SECTION 26. 29.15(2)(b) is repealed and recreated to read:

Ag 29.15(2)(b) No pesticide application equipment, mix tank or nurse tank may be filled from any waters of the state. This paragraph does not prohibit any person from:

1. Filling pesticide application equipment, mix tanks or nurse tanks from a well or discharge outlet which is fully protected against backflow and backsiphonage under s. ILHR 82.41. The minimum distance for any air gap used under this subsection shall be at least twice the effective opening of the supply outlet but not less than one inch.

2. Applying a pesticide by means of chemigation if the chemigation complies with s. Ag 29.152.

3. Filling a water tank from surface waters if the water tank is used only to carry water. If any pesticide container is

carried on the same vehicle carrying the water tank, the pesticide container must remain at least 8 feet from the surface water while the water tank is being filled.

4. Filling a water tank from surface waters for an aquatic application which complies with ch. NR 107.

SECTION 27. Ag 29.15(3) is amended to read:

Ag 29.15(3) APPLICATION EQUIPMENT. ~~No commercial applicator or person engaged in the rental, sale or furnishing of pesticide application equipment~~ person may use, furnish, rent lease or sell pesticide application equipment which is clogged, unclean, leaking or in disrepair, or which cannot be properly calibrated to apply pesticides at the approved label rate of application. This does not prohibit the sale of pesticide application equipment which is clogged, unclean, leaking or in disrepair, or which cannot be properly calibrated, if the seller discloses those defective conditions to the buyer in writing prior to sale.

SECTION 28. Ag 29.15(5) is repealed and recreated to read:

Ag 29.15(5) DISPOSAL OF PESTICIDES AND CONTAINERS. (a) No person may dispose of, or hold for disposal, any pesticide or pesticide container, including any empty pesticide container, in a manner which:

1. Is inconsistent with label directions;
2. May contaminate the waters of the state; or
3. Creates a hazard to persons, property or the environment.

(b) No pesticide container may be re-used for any purpose.

This paragraph does not prohibit any person from:

1. Recycling a container for scrap in compliance with applicable law.
2. Re-using a pesticide storage container which is designed for that purpose, in compliance with label directions.
3. Returning a pesticide container to a pesticide manufacturer, distributor or retail dealer who has agreed to receive the pesticide container.

SECTION 29. Ag 29.15(7)(a), (b) and (d) are repealed and recreated to read:

Ag 29.15(7)(a) General posting requirement. Fields, buildings or other areas treated with pesticides whose labels prescribe time intervals for safe re-entry following application shall be posted with warning placards. The warning placards shall bear the words, "DANGER - AREA TREATED WITH PESTICIDES - DO NOT ENTER," or words or symbols having the same meaning and effect. Placards shall be posted before or immediately after treatment and shall not be removed until the re-entry interval prescribed on the pesticide label has expired. Placards may remain posted indefinitely as long as they are composed of materials that are not subject to deterioration and remain legible for the duration of the posting interval. Placards shall meet the following requirements:

1. Placards for posting of buildings, structures and similar indoor areas shall be at least 8½ by 11 inches in size. Placards shall be white and bear the required words and symbols in red. Words and symbols shall be conspicuous and legible.

2. Placards for posting of fields, right-of-ways and other outdoor areas shall be white and bear the required words and symbols in red. Letters for the required words shall be at least 2½ inches in height and shall be conspicuous and clearly legible.

(b) Posting locations; exceptions. The posting requirement under par. (a) applies to fields or other outdoor areas only to the extent that the target area to be treated with pesticide borders within 100 feet of a public road, or within 300 feet of sensitive areas such as residential areas, labor camps, day care centers, hospitals, medical clinics, nursing homes, school yards, playgrounds, parks or similar public areas or facilities. Placards shall be posted at regular intervals along the border between the treated area and the public road or other sensitive area, and at normal points of access, with at least one placard being posted for each 1/4 mile of border. Treated areas bordering a public road or other sensitive areas for less than 1/4 mile shall be posted with at least one placard. Treated buildings or indoor enclosures shall be posted at each entrance, unless the building or enclosure is otherwise adequately secured against entry.

(d) Responsibility for compliance; exemption.

1. Except as provided under subd. 2, the pesticide applicator is responsible for complying with the posting requirements under this subsection.

2. Under an aerial application contract, the person contracting for the aerial application may agree to assume the applicator's responsibility for posting under this subsection.

An agreement does not relieve the applicator of responsibility unless it is made prior to the aerial application, and clearly informs the contracting party of the re-entry interval and posting requirements under this subsection.

SECTION 30. Ag 29.15(7)(e) is created to read:

Ag 29.15(7)(e) Aquatic applications; exemption. This subsection does not apply to pesticide applications to waters of the state for the management or control of aquatic plants or organisms if the treated area is posted in compliance with ch. NR 107.

SECTION 31. Ag 29.15(10) to (14) are created to read:

Ag 29.15 (10) COMMERCIAL APPLICATORS FOR HIRE; APPLICATION INFORMATION. (a) Applicator to provide information. A commercial applicator for hire who performs a pesticide application for any person, other than a residential or yard application under sub. (11), shall provide that person with a written statement containing the information prescribed under par. (b). Except as provided under par. (c), the statement shall be provided to the contracting person before or immediately after the application is made.

(b) Information required. The statement under par. (a) shall include all of the following information:

1. The name, license number and certification number of the applicator.

2. The telephone number of the applicator or the commercial application business.

3. The common chemical or brand name of the pesticide

applied.

4. The concentration and total quantity of the pesticide applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.

5. Any post-application precautions stated on the pesticide label, including any prescribed time intervals for re-entry, grazing, harvest or swimming.

6. The date and approximate time of application.

(c) Time for providing information; exemption. The statement required under par. (a) may be provided up to 30 days after the pesticide application if the commercial applicator for hire does both of the following before the application is made:

1. Notifies the contracting person of pertinent post-application precautions specified on the pesticide label.

2. Notifies the contracting person of the date or dates on which the pesticide may be applied.

(11) RESIDENTIAL AND YARD APPLICATIONS BY COMMERCIAL APPLICATORS. (a) Notice prior to application. Except as provided under par. (c) or (f), a commercial applicator shall, before applying any pesticide to turf, ornamentals or structures on residential premises, notify residents of the premises that they may obtain the pre-application information specified under par. (b) upon request. If a commercial applicator contracts with a resident to make more than one pesticide application to the same residential premises, notice under this paragraph shall be given prior to the first application in each calendar year.

(b) Pre-application information upon request. If a

resident requests pre-application information under par. (a), the commercial applicator shall provide the following information in writing to the requesting resident before making the pesticide application:

1. The common chemical or brand name of each pesticide which may be applied.

2. The range of concentrations and potential total quantities of pesticide, or the range of amounts of pesticide active ingredients, which may be applied.

3. The pesticide label of each pesticide which may be applied.

4. The date on which the pesticide application will be made. The pesticide application date may be verbally communicated to the resident by the commercial applicator if the resident consents to such notification at the time the advance notice is provided under par. (a).

5. The name, address and telephone number of a person employed by the commercial application business whom residents may contact to obtain further information about the application.

(c) Pre-application notice; exemption. If a pesticide is to be applied to residential premises containing two or more dwelling units, the notification under par. (a) may be provided to the person requesting the pesticide application, rather than to all residents.

(d) Application information; required whether or not requested. Except as provided under par. (f), a commercial applicator who applies pesticides to turf, ornamentals or

structures on residential premises shall provide the following information to residents in the manner prescribed under par. (e) at the time of application, regardless of whether the information is requested:

1. The name of the applicator, and the applicator's license and certification number if applicable.

2. The telephone number of the applicator or the applicator's employer.

3. The common chemical or brand name of the pesticide applied.

4. The concentration and total quantity of the pesticide applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.

5. Any pertinent post-application precautions stated on the pesticide label, including precautions related to re-entry into or use of treated areas.

6. The date and approximate time of application.

(e) Application information; how provided. Information under par. (d) related to pesticide applications to turf, ornamentals or structures on residential premises shall be provided to residents as follows:

1. If an application is made in or around a single family residence or dwelling unit, the information shall be left at that residence or dwelling unit before the applicator leaves the residence or dwelling unit.

2. If an application is made to common areas within structures containing multiple dwelling units, or to turf or

ornamentals on residential premises containing multiple dwelling units, the required information shall be left at each dwelling unit before the applicator leaves the premises. Alternatively, the applicator may post clearly legible notices in common entryways or other conspicuous locations before making the application, so that there is a reasonable likelihood that all residents will be notified.

(f) Paragraphs (a) and (d) do not apply to applications of germicides, sanitizers or disinfectants.

(12) VIOLATIONS BY EMPLOYER OR CONTRACTOR. No person who employs a pesticide applicator, or who contracts with a pesticide applicator to use a pesticide on that person's behalf, may direct, compel or coerce the pesticide applicator in any manner to use a pesticide in violation of ss. 94.67 to 94.71, Stats., or this chapter knowing that there is a reasonable likelihood that the use would be in violation of the law.

NOTE: Nothing in this chapter limits the civil or criminal liability of an employer or contractor for the acts or omissions of a pesticide applicator if the employer or contractor may be held jointly liable with the applicator under this chapter or other applicable law.

(13) VIOLATION OF PREHARVEST INTERVAL. No person may harvest an agricultural commodity from a pesticide application site during the preharvest interval specified for that commodity on the pesticide label. The landowner or person controlling the use of the pesticide application site is responsible for any violation of this paragraph. If a commercial applicator for hire makes the pesticide application, the commercial applicator for hire is also responsible for any violation of this paragraph

unless the applicator clearly informs the contracting party of the preharvest interval and the requirements of this paragraph prior to making the application.

(14) PESTICIDE SPILLS. Pesticide spills shall be immediately contained and recovered in a manner which prevents contamination of the waters of the state, and prevents hazards to persons, property, fish and other animals. Surfaces upon which pesticides have been spilled shall be promptly cleaned to assure the maximum recovery of the material spilled.

NOTE: The department of natural resources administers rules which require reporting of spills. Reporting requirements are based upon the quantity of pesticide spilled.

SECTION 32. Ag 29.151 is created to read:

Ag 29.151 PESTICIDE MIXING AND LOADING. (1) GENERAL.

Except as provided under sub. (6), pesticide mixing and loading operations shall comply with applicable requirements under subs.

(2) to (5) if the mixing or loading operations are conducted:

(a) Within 100 feet of any well or surface water; or

(b) At a pesticide mixing and loading site as defined under s. Ag 29.01(37).

(2) SPILL CONTAINMENT SURFACE. (a) General. Pesticide mixing and loading operations under sub. (1), including operations to impregnate fertilizers with pesticides, shall be conducted over a surface which is designed to catch and contain pesticide spills. Except as provided under par. (c), the surface shall be paved or lined with asphalt, concrete or other materials approved in writing by the department.

NOTE: The department will maintain a list of approved

paving and lining materials for various pesticide compounds, and will provide the current list to interested persons upon request. Additional materials may be approved and added to this list if the person requesting approval provides the department with information demonstrating the adequacy of the materials under intended conditions of use. Information shall include relevant information related to chemical compatibility, permeability, and physical characteristics and durability.

(b) Liquid pesticides; spill containment surface. If any liquid pesticide, including any pesticide mixed with a liquid carrier, is mixed or loaded over a spill containment surface under par. (a), the spill containment surface shall:

1. Be curbed or sloped to contain spillage and prevent liquids from adjacent surfaces from flowing onto the spill containment surface; and

2. Form or drain into a liquid-tight catch basin which meets the capacity requirements under sub. (3).

(c) Nonliquid pesticides; spill containment surface.

1. If no liquid pesticides are mixed or loaded over a spill containment surface, the spill containment surface need not comply with the curbing and catch basin requirements under par. (b). Impregnation of a nonliquid fertilizer with a liquid pesticide constitutes the mixing or loading of a nonliquid pesticide under this paragraph.

2. If nonliquid pesticides are mixed or loaded over a spill containment surface under par. (a), the spill containment surface shall be of adequate size to contain reasonably foreseeable spills or overflow from the largest vehicle to which those pesticides are transferred at that location. The spill

containment surface shall extend beneath the pesticide load-out conveyor, if any, unless the load-out conveyor is fully enclosed within a housing which is adequate to contain any spillage from the conveyor. The spill containment surface shall be constructed to prevent water or other liquids from flowing onto the surface. The spill containment surface for mixing and loading of nonliquid pesticides may consist of a tarpaulin made of nonabsorbent materials which is of adequate thickness and construction to withstand all foreseeable loading conditions.

(3) CATCH BASIN. (a) Minimum capacity; general. Except as provided under par. (b), the catch basin under sub. (2)(b)2 shall have an available capacity of at least 1,500 gallons. To attain the required capacity, the catch basin may include a sump from which liquids are automatically pumped to an above-ground container.

(b) Pesticide containers smaller than 1,000 gallons. If no pesticide is transferred from or into a container larger than 1,000 gallons, including containers on application equipment, the available capacity of the catch basin under sub. (2)(b)2 shall be at least 125% of the capacity of the largest container loaded or unloaded at the site.

(4) RECOVERY OF DISCHARGES. Pesticides spilled or intentionally released onto a spill containment surface under sub. (2) shall be promptly recovered from the spill containment surface or catch basin.

(5) STORAGE OF SPILLS AND RINSATE. Spilled pesticides and spilled materials containing pesticides may not be stored below

ground level. Above ground containers used to hold pesticide spills or rinsate shall be located within secondary containment which complies with s. Ag 163.04.

(6) EXEMPTIONS. Subsections (2) and (3) do not apply to any of the operations identified under pars. (a) to (e) below. If nonexempt operations are conducted at the same location as exempt operations, the location is not exempt.

(a) Pesticide applications to waters of the state for the management or control of aquatic plants or organisms, provided that the application complies with ch. NR 107.

(b) Mixing or loading pesticides into application equipment having a total capacity of 5 gallons or less of liquid pesticide, or 50 pounds or less of nonliquid pesticide.

(c) Pesticide mixing or loading operations conducted before January 1, 1993 at a site owned or controlled by the same person for whom the pesticide is being applied, provided that the mixing or loading is conducted at least 100 feet away from any well or surface water.

(d) Pesticide mixing or loading operations conducted at or immediately adjacent to the pesticide application site, provided that the mixing or loading operation is conducted at least 100 feet away from any well or surface water.

(e) Pesticide mixing and loading operations, including the transfer of pesticides into mixing equipment, conducted before January 1, 1993 at a site where fixed or rotary-wing aircraft are loaded if the aircraft is loaded over a permanent or portable spill containment system that meets all of the following

requirements:

1. The spill containment system will contain any leak or spill that may occur from any portion of the aircraft's pesticide application system excluding the spray boom.

2. The capacity of the spill containment system is at least 125% the maximum volume of the aircraft's pesticide application system.

3. The spill containment system is constructed of steel or synthetic materials that are resistant to corrosion, puncture or cracking and that are chemically compatible with the products to be loaded. A written confirmation of compatibility shall be kept at the site of the facility or at the nearest local office of the person responsible for operation of the aircraft.

4. The spill containment system is designed and constructed to withstand all foreseeable loading conditions including a full hydrostatic head of any discharged liquid.

5. All equipment for mixing and loading pesticide including the aircraft are located at least 100 feet away from any well or surface water.

SECTION 33. Ag 29.152 is created to read:

Ag 29.152 CHEMIGATION. (1) GENERAL. No person may apply a pesticide by means of chemigation unless the chemigation system complies with this section. Before initial operation of a chemigation system, the operator shall provide written notice to the department under sub. (15). Chemigation systems shall be designed, constructed, maintained and operated in compliance with this section. The requirements of this section do not apply to

residential lawn and garden pesticide applications, direct injection of pesticides into plants, or direct application of pesticide to roots of ornamental trees and shrubs.

NOTE: For additional requirements related to chemigation systems, see NR 112.15(8) and ILHR 82.41.

(2) WATER SUPPLY FOR CHEMIGATION. (a) General. No person may cause a pesticide to enter the waters of the state directly or through a chemigation system, except as provided under s. Ag 29.15(2).

(b) Potable water supply. No chemigation system may draw water directly from a potable water supply. A chemigation system may draw water from a pond or reservoir to which water has been pumped from a potable water supply, provided that there is an unobstructed vertical air gap between the potable water supply outlet and the flood level of the pond or reservoir. The minimum air gap shall be at least 2 feet, or at least twice the diameter of the effective opening of the water supply outlet, whichever is greater.

(c) Nonpotable water supply. No chemigation system may draw from a nonpotable water supply, unless the system is constructed and operated in compliance with this section. If a chemigation system draws water from a privately owned watertight container or impoundment which is protected by an air gap under par. (b), the chemigation system need not comply with sub. (6).

(3) CHEMIGATION SYSTEM; GENERAL REQUIREMENTS. (a) Design, construction, operation and maintenance. Every chemigation system shall be designed, constructed, operated and maintained to prevent pesticide contamination of the waters of the state, and

to prevent unreasonable hazards to persons, property and the environment. A chemigation system, and every component of the system, shall be installed, operated and maintained in compliance with this section and the manufacturer's specifications to ensure proper operation.

(b) Construction materials. Every component of a chemigation system shall be resistant to corrosion, puncture or cracking. Every component of a chemigation system which may come into contact with pesticides, or with water containing pesticides, shall be chemically compatible with every pesticide used in the system. A written confirmation of chemical compatibility shall be obtained from the manufacturer of the system or component, or from the pesticide manufacturer. The written confirmation shall be kept on file by the operator of the chemigation system, and shall be made available for inspection and copying by the department upon request.

(4) PESTICIDES INJECTED INTO CHEMIGATION SYSTEMS. No pesticide may be injected into a chemigation system unless the pesticide is suited for application by chemigation. No pesticide may be injected into a chemigation system contrary to or inconsistent with label directions. Every chemigation system shall be properly calibrated to apply the pesticide at the application rate specified on the pesticide label. The point at which pesticides are injected into a chemigation system shall be located downstream from all devices required under subs. (6) through (9).

(5) PESTICIDE SUPPLY TANK LOCATION; PESTICIDE CONTAINMENT.

No pesticide container used to hold pesticides for injection into a chemigation system may be located less than eight feet horizontally from any water supply, including any well head or surface water source. The pesticide container, pesticide injection unit and all connections between the pesticide container and injection unit shall be located within secondary containment which complies with s. Ag 163.04.

(6) BACKFLOW PREVENTION; WATER SUPPLY LINE. (a) Reduced pressure principle backflow preventer. Except as provided under par. (b), (c) or (d), a reduced pressure principle backflow preventer shall be installed in every chemigation system. The reduced pressure principle backflow preventer shall comply with ASSE Standard 1013-80, and shall be installed according to the manufacturer's specifications in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected. The reduced pressure principle backflow shall be maintained in fully operational condition. Reduced pressure principle backflow preventers shall be tested at annual intervals for as long as the backflow preventer remains in service by a tester currently listed with the department of industry, labor and human relations as a backflow tester. The operator of the chemigation system shall protect the backflow preventer from freezing.

NOTE: ASSE Standard 1013-80, published by the American Society of Sanitary Engineers, is on file with the secretary of state, the revisor of statutes and the department. A list, by manufacturer and model, of reduced pressure principle backflow preventers which comply with ASSE Standard 1013-80 is available from the department upon request. A list of persons qualified to test reduced pressure principle backflow preventers

is available from the department and the Department of Industry, Labor and Human Relations.

(b) Barometric loop. If a chemigation system is not subject to back pressure, a barometric loop may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The barometric loop shall extend to an elevation of 35 feet above the highest outlet in the chemigation system. The loop shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

(c) Check valves. 1. If a chemigation system draws from surface waters, two check valves connected in series, each preceded by a vacuum relief valve and an automatic low pressure drain valve, may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The check valves shall be quick-closing by spring action. The check valves shall be of a type which have been tested in accordance with the procedures established in underwriters' laboratory (UL) standard 312 and certified as being in compliance with all the standards and requirements contained in underwriters' laboratory (UL) standard 312. Check valves shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

NOTE: A current list of approved check valves, by manufacturer and model, is available from the department. UL Standard 312, published by underwriters' laboratory, is on file with the secretary of state, the revisor of statutes and the department.

2. Each vacuum relief valve required under this paragraph shall be installed on top of the horizontal water supply pipeline

on the supply side of the check valve. The vacuum relief valve shall have a minimum orifice diameter of 3/4 inch if the water supply pipe has a nominal inside diameter of 4 inches or less; a minimum orifice diameter of 1 inch if the pipe diameter is 5 to 8 inches; and a minimum orifice diameter of 2 inches if the pipe diameter is 10 to 12 inches.

3. Each automatic low pressure drain valve required under this paragraph shall be installed on the bottom of the horizontal water supply pipeline on the supply side of the check valve. The automatic low pressure drain valve shall have a minimum orifice diameter of 3/4 inch. The valve shall not extend upward beyond the inside surface of the bottom of the water supply pipeline. The drain outlet shall be located above grade at a distance of at least 2 inches or a distance equal to twice the diameter of the drain outlet, whichever is greater. The drain outlet shall be installed and located so that, when draining occurs, the drained liquid will flow away from any nearby wellhead or surface water.

(d) Gooseneck loop and check valve. If a chemigation system draws water from surface waters, which are higher in elevation than the surface being chemigated, a check valve complying with subd. (c)1, followed by a gooseneck loop, may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The gooseneck loop shall be constructed and installed so that the irrigation pump is located at a higher elevation than the water source, the bottom of the pipe at the apex of the loop is at least 24 inches higher in elevation than the highest outlet in the chemigation system,

and the pesticide injection port is located downstream from the gooseneck loop at a point which is at least 6 inches lower in elevation than the bottom of the pipe at the apex of the loop. A vacuum relief valve complying with subd. (c)2 shall be installed in the top of the pipe at the apex of the loop. The check valve shall be preceded by a low pressure drain complying with subd. (c)3.

(7) FLOW INTERRUPTER; PESTICIDE SUPPLY LINE. In every chemigation system, a flow interrupter shall be installed in the pesticide supply line between the pesticide injection unit and the pesticide supply tank. A flow interrupter may consist of a normally closed, solenoid-operated valve or similar device which forms part of the interlock system under sub. (10).

(8) FLOW SENSOR; INJECTION LINE. A flow sensor or pressure switch shall be installed at or near the outlet of the injection pump on the injection line. The flow sensor or pressure switch shall be installed in such a manner that, if the injection line fails for any reason, the flow sensor or pressure switch shall shut off the injection pump.

(9) CHECK VALVE; PESTICIDE INJECTION LINE. In every chemigation system, a check valve shall be installed in the pesticide injection line between the pesticide injection unit and the point at which pesticides are injected into the irrigation water. The check valve shall be spring loaded and have a minimum opening or cracking pressure of 10 pounds per square inch.

(10) INTERLOCK BETWEEN WATER PUMP AND PESTICIDE INJECTION UNIT. In every chemigation system, there shall be a mechanical

or electrical interlock between the water supply pump and the pesticide injection unit. If the flow of water is interrupted, the interlock shall immediately shut off the pesticide injection unit.

(11) WATER PRESSURE FAILURE; AUTOMATIC SHUT-OFF. In every chemigation system, a low pressure switch shall be installed in the water supply pipeline. The switch shall be effectively designed and installed to shut off the irrigation system's power supply if water pressure decreases to the point where pesticide application is no longer in compliance with the pesticide's label directions.

(12) PURGING A CHEMIGATION SYSTEM. After pesticide injection is completed, water shall be pumped through a chemigation system for at least the flush time of the irrigation system.

(13) OPERATING A CHEMIGATION SYSTEM. (a) Operation and observation plan. The owner or operator of a chemigation system shall, prior to operating a chemigation system, have prepared a written operation and observation plan for the chemigation system. The plan shall be followed by the owner or operator. The plan shall contain the following information:

1. A listing and identification of sensitive areas which may be subject to drift or overspray by the chemigation system. Sensitive areas are nontarget areas and include surface water, wetlands, public roads within 100 feet of the site to be treated and residential areas, labor camps, day care centers, hospitals, medical clinics, nursing homes, school yards, playgrounds, parks

and other similar public areas or facilities within 300 feet of the site to be treated.

2. A description of the methods and procedures to be utilized to prevent drift and overspray.

3. A description of the backflow prevention system and other methods utilized by the chemigation system to prevent backflow.

4. A description of the procedures to be followed and methods to be used to accurately and effectively monitor wind speed and direction for prevention of drift and overspray.

5. A description of the system utilized and methods and procedures followed to disable any sprinkler heads or end guns for the purpose of preventing drift or overspray.

6. A description of the methods and procedures to be followed to assure the chemigation system is properly calibrated and remains properly calibrated.

7. A description of the methods and procedures to be followed to monitor the chemigation system and assure the chemigation system is functioning properly.

8. A statement indicating the flush time for the chemigation system.

9. A description of the manner and method by which proper and effective observations will be made of the chemigation system to assure that it is functioning according to the plan and the law.

10. A description of the safety procedures to be observed and safety equipment to be worn by persons observing the

chemigation system's operation or entering treated areas for the purpose of performing repairs.

(b) Plan location and availability. The operation and observation plan under par. (a) shall be kept at the chemigation site or in the possession of the person operating the chemigation system while the chemigation system is functioning. A copy of the plan shall also be kept at the business office or residence of the owner or operator. When requested by the department, plans shall be provided to department personnel for inspection and copying.

(c) Observation of chemigation systems. If sensitive areas identified under par. (a)1 are subject to potential drift or overspray from a chemigation system, the person operating the chemigation system shall be present at the chemigation site at all times while the system is operating. In other cases, no more than one hour may pass between times when the person operating the system is present at the chemigation site as part of the operation and observation plan. A person is present at the chemigation site if the person is in a position from which the person can effectively observe, monitor and determine that the chemigation system is properly functioning, properly calibrated, not causing pesticide overspray or drift, and not creating an unreasonable hazard to persons, property or the environment. Operators of chemigation systems shall comply with observation requirements specified on the pesticide label if those requirements are more extensive than the requirements under this paragraph.

(14) POSTING OF CHEMIGATED AREAS. (a) General posting requirement. Sites treated with a pesticide by means of chemigation shall be posted with warning placards. Warning placards shall be white and bear the words, "KEEP OUT" below which is a octagonal stop sign symbol at least 8 inches in diameter containing the word "STOP". Below the symbol shall be the words, "PESTICIDES BEING APPLIED IN IRRIGATION WATER". All words shall consist of letters at least 2 1/2 inches in height. The words and symbol shall be conspicuous and legible. Placards shall be posted in compliance with par. (b) before chemigation begins. Placards shall not be removed until chemigation is completed and treated surfaces have dried. If chemigation involves a pesticide with a prescribed re-entry interval, the treated area must also be posted in compliance with s. 29.15(7). Warning placards under this paragraph may remain posted indefinitely as long as they are composed of materials that are not subject to deterioration and remain legible for the duration of the posting interval.

(b) Posting locations; exceptions. The posting requirement under par. (a) applies to sites treated with pesticides by means of chemigation only to the extent that the target area to be treated with the pesticide borders within 100 feet of a public road or other public right-of-way, or within 300 feet of sensitive areas such as residential areas, labor camps, day care centers, hospitals, medical clinics, nursing homes, school yards, playgrounds, parks or similar public areas or facilities. Placards shall be posted at regular intervals along the border

between the treated area and the public road or other sensitive area, and at normal points of access, with at least one placard being posted for each 1/4 mile of border. Treated areas bordering a public road or other sensitive area for less than 1/4 mile shall be posted with at least one placard.

(c) Responsibility for compliance. The person responsible for operation of the chemigation system shall be responsible for compliance with this subsection.

(15) ADVANCE NOTICE TO OPERATE CHEMIGATION SYSTEM.

(a) Initial notice. Before operating a chemigation system for the first time after January 1, 1990 at any location, the operator shall give a written notice to the department. Notice shall state the following information for each location at which the chemigation system is operated:

1. The name and address of the person who operates and is responsible for the chemigation system.

2. The specific location of the chemigation system.

3. The type of water supply from which the chemigation system will draw.

4. The type of backflow protection to be used in the system, pursuant to sub. (6). If a backflow prevention device, other than a reduced pressure principle backflow preventer, is used in the chemigation system, notice shall specify the type, manufacturer, model, serial number and installed location of the device.

(b) Notice of changes. The operator of a chemigation system shall promptly notify the appropriate department of any

changes in the information provided under par. (a).

NOTE: Information provided under this subsection will be shared between the department, the department of industry, labor, and human relations, and the department of natural resources.

(16) MODIFIED CHEMIGATION SYSTEM; DEPARTMENT AUTHORIZATION.

The department may, for good cause shown, permit an alternative chemigation system design which does not comply with the standards under this section, provided that the alternative design complies with other applicable state and federal law and affords equal or greater protection to the waters of the state. No person may operate an alternative chemigation system which is not in compliance with this section unless the alternative chemigation system has been approved in writing by the department. Applications for department approval shall be submitted to the department in writing. Applications shall be accompanied by all information and design specifications which may be required by the department. The department shall grant or deny an application within 45 days after a complete application is received by the department.

SECTION 34. Ag 29.159 is created to read:

Ag 29.159 CERTIFICATION OF INDIVIDUAL COMMERCIAL APPLICATORS. (1) CERTIFICATION REQUIRED. No individual commercial applicator licensed under s. Ag 29.11(2) may engage in any activity for which that license is required unless the individual commercial applicator is also certified by the department in the applicable pesticide use category under s. Ag 29.16. If a license holder is certified under s. Ag 29.16(1), (2), (4), (5) or (8), that license holder may mix or load

pesticides for application in all of those categories, but may apply pesticides only in the category or categories for which the license holder is specifically certified. Persons exempt from licensing under s. Ag 29.11(2)(b) are also exempt from certification under this section.

(2) QUALIFYING FOR CERTIFICATION. To be certified in any pesticide use category, an individual commercial applicator shall demonstrate through examination under sub. (4) practical knowledge of the nature and proper use of pesticides; practical knowledge of the principles and practices of pest control; and competency in the proper use and handling of pesticides. Practical knowledge and competency shall be demonstrated in the general areas identified under sub. (5), and in the pesticide use category under s. Ag 29.16 for which the applicator seeks certification. An aerial applicator in any pesticide use category shall also demonstrate practical knowledge and competency under sub. (6).

(3) LENGTH OF CERTIFICATION; RENEWAL. Except as provided under s. 94.705(4)(c), Stats., certification is valid for a period of 5 years, unless suspended or revoked by the department. During the 5-year period, the certification may be amended to include additional pesticide use categories under s. Ag 29.16, but all amendments expire concurrently at the end of the 5-year period. An individual commercial applicator may be re-certified in any pesticide use category for an additional 5-year period if the applicator demonstrates continuing practical knowledge and competency as required by sub. (2). Continuing practical

knowledge and competency shall be demonstrated by a written examination under sub. (4).

(4) TESTING FOR CERTIFICATION. (a) Written examination required. Except as provided under s. 94.705(4), Stats., no person may be certified or recertified as an individual commercial applicator in any pesticide use category unless that person passes a written examination administered by the department. The examination shall test the applicator's practical knowledge and competency in each area required under sub. (2). If necessary, the department may require an applicator to undergo a performance test in addition to a written examination. An examination shall be given within 10 business days after the applicator pays the required fee under par. (b), or at a later date if requested by the applicator. Certification shall be issued by the department to applicants within 20 business days after successfully passing the required examination.

(b) Examination fees; reexamination. An individual commercial applicator applying for certification or recertification shall pay an examination fee of \$10 for each pesticide use category in which the applicator applies to be certified or recertified, unless the applicator is exempt from fees under s. 94.705(1)(d), Stats. If an applicator fails to pass an examination in any pesticide use category, the applicator may retake the examination after a 24-hour waiting period. If an applicator fails to pass a reexamination, the applicator may again retake the examination after a 30 day waiting period.

Applicators shall pay a fee of \$5 for each reexamination. No examination may be administered until the required fee is paid.

(5) CERTIFICATION STANDARDS; GENERAL. In order to be certified in any pesticide use category under s. Ag 29.16, an individual commercial applicator shall demonstrate practical knowledge and competency in that pesticide use category, and in each of the following general areas:

(a) Label and labeling comprehension. Knowledge related to the general format and terminology of pesticide labels and labeling; ability to understand instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels; knowledge of pesticide use classifications; and knowledge that pesticide use inconsistent with labeling is prohibited.

(b) Risks and safety measures. Knowledge of risk factors and safety measures including pesticide toxicity; hazards to persons; common exposure routes; common types and causes of pesticide accidents; precautions necessary to guard against injury to applicators and other persons; the need for and use of protective equipment; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide accident; the proper identification, storage, transportation, handling, mixing and loading of pesticides; and the disposal of pesticides and their containers according to label directions and department rules.

(c) Environment. Knowledge of potential environmental consequences resulting from the use or misuse of pesticides. This includes the effect of climatic conditions; terrain;

drainage patterns; soil types; hydrogeologic conditions; and the presence of fish, wildlife and other nontarget organisms including endangered species. Knowledge of potential hazards associated with indoor applications of pesticides including direct exposure to humans or pets and contamination of food and surfaces coming in contact with food.

(d) Pests. Knowledge of pests including the identification of relevant pests, the common features of pest organisms, characteristic damage caused by pest organisms, and pest development and biology as it may be relevant to problem identification and control.

(e) Pesticides. Knowledge of pesticide types and formulations; the compatibility, synergism, persistence, and animal and plant toxicity of different formulations; the hazards and residues associated with the use of different pesticides; factors influencing pesticide effectiveness or pest resistance to pesticides; and the mixing and dilution of pesticides.

(f) Equipment. Knowledge of the types of equipment used in the application of pesticides, including the advantages and limitations of each type of equipment, the use and maintenance of equipment, and the calibration of equipment.

(g) Application techniques. Knowledge of the methods or procedures used to apply different pesticides and pesticide formulations; factors affecting the choice of application method or application rate; the relationship of pesticide discharge and placement to proper use; unnecessary use and misuse of pesticides; and prevention of overspray and drift.

(h) Laws and regulations. Knowledge of state and federal laws and regulations applicable to pesticides and their use, including the federal act; ss. 94.67 to 94.71, Stats.; and chs. Ag 29 and NR 80.

(6) CERTIFICATION STANDARDS; AERIAL APPLICATORS. No individual commercial applicator may apply pesticides by fixed or rotary-wing aircraft unless that applicator is certified as an aerial applicator in the applicable pesticide use category under s. Ag 29.16. To be certified as an aerial applicator in any pesticide use category, the applicator shall comply with all applicable certification requirements under this section. In addition, the applicator shall demonstrate practical knowledge and competency in the application of pesticides by aircraft, including principles and practices of aerial pest control, effects of aerial pest control on the environment, and prevention of pesticide drift and overspray. No person may aerially apply pesticides unless that person is fully trained and licensed to operate the type of aircraft to be used in pesticide applications.

(7) CERTIFICATION STANDARDS; PESTICIDE MIXER-LOADERS.

(a) Except as provided under par. (b), no person may mix or load pesticides for application or direct the mixing or loading of pesticides into application equipment or nurse vehicles unless certified as a mixer-loader. To be certified in this category, the mixer-loader shall, by examination, demonstrate practical knowledge and competency in the mixing and loading of pesticides, including determination of mixing rates and procedures, use of

protective safety equipment, proper spill response procedures, and proper disposal practices.

(b) Persons may mix or load pesticides for application in any category for which the person is specifically certified. In addition, persons certified under s. Ag 29.16(1), (2), (4), (5) or (8) may mix or load pesticides for application in all of those categories, but may apply pesticides only in the category or categories for which the person is specifically certified.

SECTION 35. Ag 29.16(title) is repealed and recreated to read:

Ag 29.16(title) INDIVIDUAL COMMERCIAL APPLICATORS;
CERTIFICATION CATEGORIES.

SECTION 36. Ag 29.16(intro.) is created to read:

Ag 29.16(intro.) In order to be certified under s. Ag 29.159 in any of the pesticide use categories under subs. (1) to (15) below, an individual commercial applicator shall meet the certification requirements provided for that pesticide use category under this section.

SECTION 37. Ag 29.16(1), (2)(intro.) and (2)(a)(title) are repealed.

SECTION 38. Ag 29.16(2)(a)1 to 3 are renumbered Ag 29.16(1) to (3), respectively; and, as renumbered, Ag 29.16(1), (2) and (3)(a) are amended to read:

Ag 29.16(1) FIELD AND VEGETABLE CROP PEST CONTROL.

(a) This ~~subcategory~~ category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests in the production of

agricultural field and vegetable crops, and on grasslands and noncrop agricultural lands.

(b) Applicators shall demonstrate practical knowledge of crops grown, specific pests affecting those crops, types of pesticides which may be used to control such pests, and the effects of such pesticides on the ultimate use of the crop for food or feed purposes. Practical knowledge shall also be demonstrated concerning soil and water problems; human safety considerations; pre-harvest intervals; re-entry intervals; phytotoxicity; and the potential for environmental contamination, non-target injury, and community problems associated with the use of ~~restricted-use~~ pesticides in or on agricultural field and vegetable crops, grasslands and noncrop agricultural lands.

(2) FRUIT CROP PEST CONTROL. (a) This ~~subcategory~~ category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests affecting the production of agricultural fruit crops, including small fruits, tree fruits and nuts.

(b) Applicators shall demonstrate practical knowledge of crops grown; specific pests affecting small fruits, tree fruits and nuts, and the types of ~~restricted-use~~ pesticides which may be used to control such pests; soil and water problems; human safety considerations; pre-harvest and re-entry intervals; phytotoxicity; and the potential for environmental contamination, non-target injury and community problems resulting from the use of ~~restricted-use~~ pesticides in agricultural fruit crop areas and on small fruits, tree fruits and nuts.

(3) ANIMAL PEST CONTROL. (a) This ~~subcategory~~ category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests on animals, including ~~beef and dairy cattle, swine, sheep, goats, horses, poultry and livestock, poultry and pets, and or~~ to control pests in places , other than homes or residences, on or in which where animals are confined. ~~Veterinarians engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large scale use of pesticides are included in this subcategory.~~

SECTION 39. Ag 29.16(2)(b) to (f) are renumbered Ag 29.16(4) to (8), respectively; and, as renumbered, Ag 29.16(4)(a), (5)(a), (6)(a), (7)(a) and (8)(a) are amended to read:

Ag 29.16(4) FOREST PEST CONTROL. (a) This category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests in forests, forest nurseries, Christmas tree plantations and tree seed producing areas.

(5) ORNAMENTAL AND TURF PEST CONTROL. (a) This category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests in the maintenance and production of ornamentals and turf.

(6) SEED TREATMENT PEST CONTROL. (a) This category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests on seeds.

(7) AQUATIC PEST CONTROL. (a) This category includes individual commercial applicators using or ~~supervising~~ directing the use of any ~~restricted-use~~ pesticide applied to in standing or running surface water to control pests, excluding applicators engaged in public health related activities under ~~par. (h)~~ sub. (13).

(8) RIGHT-OF-WAY PEST CONTROL. (a), This category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests in the maintenance of public roads, electric powerlines, pipelines, railway right-of ways or other similar areas.

SECTION 40. Ag 29.16(2)(g)(title) is repealed.

SECTION 41. Ag 29.16(2)(g)1 to 3 are renumbered Ag 29.16(9) to (11), respectively; and, as renumbered, Ag 29.16(9)(a), (10)(a) and (11) are amended to read:

Ag 29.16(9) INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH-RELATED PEST CONTROL; GENERAL. (a) This ~~subcategory~~ category includes individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides for ~~the protection of~~ to protect stored, processed, or manufactured products and ; or to control pests ~~in-en~~ or around food handling establishments, human dwellings, schools, institutions, industrial establishments, warehouses, grain elevators, and any other public or private structures and adjacent areas. It does not include individual commercial applicators under subs. (10) to (14).

(10) FUMIGATION PEST CONTROL. (a) This ~~subcategory~~

category includes individual commercial applicators using or ~~supervising directing~~ the use of ~~restricted-use~~ pesticides as fumigants for the control of pests in industrial, institutional, structural, or health related pest control application by means of fumigation, including general, spot, tarpaulin, chamber, vehicle, or ~~in-transit, or any other form, process, or method of~~ fumigation.

(11) WOOD DESTROYING PEST CONTROL. (a) This subcategory category includes individual commercial applicators using or ~~supervising directing~~ the use of ~~restricted-use~~ pesticides for the ~~control of pests in, on, or around wood products, including~~ the prevention or control of termites. ~~true or false powder post beetles, death watch beetles, carpenter ants, carpenter bees, wood rotting fungi and other pests that may damage or destroy wood.~~

(b) Applicators shall demonstrate practical knowledge of a ~~variety of and their~~ the life cycles of termites; the types of pesticides and pesticide formulations which may be used ~~for their control to control termites;~~ and methods of application that avoid damage and contamination of habitat and the exposure of people and pets to pesticides. Applicators shall also demonstrate practical knowledge of specific factors which may lead to hazardous conditions, including continuous exposure of humans to pesticides, and environmental factors related to the control of ~~wood-destroying pests~~ termites.

SECTION 42. Ag 29.16(12) is created to read:

Ag 29.16(12) WOOD PRESERVATION. (a) This category includes

individual commercial applicators using or directing the use of pesticides to preserve and protect wood or wood based materials against damage from insects, fungi, surface molds and mildew, marine crustaceans, shipworms and other pests.

(b) Applicators shall demonstrate practical knowledge of wood species and wood structure, wood destroying pests and their biology, types and uses of wood preservatives and methods of application. Applicators shall also demonstrate knowledge of safe handling and disposal practices, and hazards to humans and the environment associated with use of wood preservatives.

SECTION 43. Ag 29.16(2)(h) to (j) are renumbered Ag 29.16(13) to (15), respectively; and, as renumbered, Ag 29.16(13)(a), (14)(a) and (15) are amended to read:

Ag 29.16(13) PUBLIC HEALTH PEST CONTROL (a) This category includes ~~state, federal, or other governmental employees~~ individual commercial applicators using or ~~supervising~~ directing the use of ~~restricted-use~~ pesticides to control pests in public health programs for the management and control of pests having medical and public health importance.

(14) REGULATORY PEST CONTROL. (a) This category includes ~~state, federal and other governmental employees~~ individual commercial applicators who use or ~~supervise~~ direct the use of ~~restricted-use~~ pesticides in the control of regulated pests.

(15) DEMONSTRATION AND RESEARCH PEST CONTROL. (a) This category includes ~~individuals~~ individual commercial applicators who demonstrate ~~to the public~~ the proper use and techniques of application of ~~restricted-use~~ pesticides, or ~~supervise~~ who direct

such demonstrations, ~~and extends to.~~ This category includes extension specialists and county agents, commercial representatives demonstrating pesticide products, and individuals demonstrating methods used in public programs, or who otherwise demonstrate the use and application of restricted-use pesticides or supervise direct such demonstrations other individual commercial applicators who demonstrate the use and application of pesticides. This category also includes ~~state, federal, commercial and other individuals conducting field research with or on pesticides and in so doing use or supervise the use of restricted-use pesticides~~ individual commercial applicators who use pesticides pursuant to any field research project.

(b) Applicators in this category who demonstrate the use and application of pesticides shall meet comprehensive standards reflecting demonstrate practical knowledge and competency in a broad spectrum of pesticide uses. They shall demonstrate practical knowledge of pests and pesticides which may be used for the control of pests, population levels occurring in each demonstration situation, and of potential problems which may be encountered ~~in the course of activities~~ associated with demonstration pest control demonstrations. They shall also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators engaged in ~~demonstration pest control work~~ pesticide demonstrations or field research shall demonstrate practical knowledge and competency in ~~all general areas specified under sub. (2) and all the specific areas~~

~~specified under sub. (3)(a) through (g) which may be applicable to their particular activity all pest control categories under this section which are relevant to that demonstration or research. Persons conducting field research or method improvement work with restricted-use pesticides shall demonstrate practical knowledge and competency in all general areas specified under sub. (2). In addition, persons conducting field research or method improvement work with restricted-use pesticides shall demonstrate practical knowledge and competency in all specific areas specified under sub. (3)(a) through (i) which may be applicable to their particular activity, or alternatively, meet the more inclusive requirements under this paragraph.~~

SECTION 44. Ag 29.16(3) to (6) and (8) are repealed.

SECTION 45. Ag 29.16(7) is renumbered Ag 29.16(16).

SECTION 46. Ag 29.161 is created to read:

Ag 29.161 COMMERCIAL APPLICATOR TRAINEE REGISTRATION.

(1) REGISTRATION; AUTHORIZATION. (a) A competent person, not certified as a commercial applicator under s. 94.705, Stats., and not licensed under s. 94.704, Stats., may commercially use pesticides for not more than 30 days as a registered trainee under this section, subject to the conditions specified under sub. (3). Registration under this section allows a registered trainee to apply pesticides only as part of a bona fide training program conducted by the trainee's employer in preparation for the trainee becoming certified and licensed as an individual commercial applicator.

(b) To be registered as a commercial applicator trainee

under this section, a person shall:

1. Have the ability to understand and follow oral instructions and read and comprehend written instructions including pesticide labels and labeling information;

2. Be at least 16 years of age;

3. Be capable of performing functions associated with the proper use and application of pesticides on the basis of prior training and experience, to the satisfaction of the employer and the certified applicator under whose supervision the trainee will be acting; and

4. Be capable of carrying out assignments and instructions in a responsible manner.

(2) REGISTRATION PROCEDURE. To register as a commercial applicator trainee under this section, a trainee shall file with the department a completed registration form prescribed by the department. The completed registration form shall include the following information:

(a) The name and address of the applicant and the commercial application business employing the applicant.

(b) The name, certification number, pesticide use categories for which the certification is valid, and expiration date of certification, for each commercial applicator responsible for supervising the trainee under sub. (3)(c).

(c) The pesticide use category or categories under which the trainee will be using pesticides during the training period.

(d) The trade name and either the manufacturer's name or the EPA (federal environmental protection agency) registration

number of each pesticide which may be applied by the trainee during the training period.

(e) The date on which the registration form is signed, and the signatures of the trainee and each of the certified and licensed applicators identified under sub. (2)(b).

(f) Other information required by the department.

(3) CONDITIONS AND CONTROLS. A registered trainee shall comply with all of the following conditions:

(a) A registered trainee may only use pesticides for a 30-day period beginning on the date that a complete registration form is filed with the department.

(b) A registered trainee may not use any pesticide classified as restricted-use unless authorized in writing by the department.

(c) A registered trainee may only use pesticides under the direct, on-site supervision of a certified, licensed applicator identified under sub. (2)(b), in pesticide use categories for which the supervisor is certified as a commercial applicator.

(d) A person may register as a trainee no more than once annually, except that a person may register twice within a year if the person is employed by a different commercial application business at the time of the second registration.

(e) A registered trainee may only commercially use pesticides if they have a dated copy of their registration form in their immediate possession.

(4) SUSPENSION OR REVOCATION. The department may summarily suspend or revoke a registration under this section if any

condition or requirement under which a person was registered is violated.

SECTION 47. Ag 29.162 is created to read:

Ag 29.162 CERTIFICATION OF PRIVATE APPLICATORS.

(1) RESTRICTED-USE PESTICIDES; CERTIFICATION REQUIRED. No person may use or direct the use of a restricted-use pesticide as a private applicator unless that person is certified as a private applicator under this section. A person who mixes or loads a restricted-use pesticide, or who directs the mixing or loading of a restricted-use pesticide into pesticide application equipment or nurse tanks for application by a private applicator shall be certified as a private applicator under this section, or as an individual commercial applicator in a relevant pesticide use category under s. Ag 29.159 and Ag 29.16. No person under 16 years of age may be certified as a private applicator.

(2) STANDARDS FOR CERTIFICATION. To be certified under this section, a private applicator shall demonstrate practical knowledge and competency in the proper use and application of restricted-use pesticides. An applicant for certification shall demonstrate practical knowledge and competency in each of the following areas:

(a) Pest control problems and practices associated with the production of agricultural commodities, including recognition of common pests and the damage caused by those pests.

(b) Reading and understanding pesticide labels and labeling information, including the common or generic names of pesticides; the types of pests that they are intended to control; pesticide

use classifications and directions for use; pesticide application methods and timing of pesticide applications; appropriate safety measures and precautions; pre-harvest and re-entry restrictions; and pesticide disposal instructions and procedures.

(c) Applying pesticides according to label directions.

(d) Preparing correct pesticide concentrations under various circumstances, taking into account relevant factors such as the area to be covered, the speed of the application equipment, the rate of application, and the quantity dispersed during a given period of operation.

(e) Proper handling, storage and disposal of pesticides and their containers.

(f) Recognizing potential human health hazards, including hazards to farm workers, and taking appropriate precautions.

(g) Recognizing potential environmental hazards, including hazards to groundwater and endangered species, and taking appropriate precautions.

(h) Recognizing poisoning symptoms, antidotes, and procedures to follow in case of a pesticide accident.

(i) Recognizing the legal liabilities and responsibilities of a private applicator, including those provided under the federal act, ss. 94.67 to 94.71, Stats., and chs. Ag 29 and NR 80.

(3) SUPPLEMENTARY STANDARDS FOR CERTIFICATION; PRIVATE APPLICATORS APPLYING FUMIGANTS. In addition to meeting the requirements under sub. (2), a private applicator who wishes to use or direct the use of a restricted-use fumigant pesticide

shall demonstrate a practical knowledge of the pests against which the fumigants may be used, the life cycles of those pests, the types of fumigants that are available for use, methods of fumigation, and potential hazards to persons and the environment from the use of fumigants. The applicant shall also demonstrate practical knowledge and competency related to the use of fumigation equipment including safety procedures; monitoring devices; re-entry intervals and posting requirements; and other measures needed to ensure the safety of persons, property and the environment. Practical knowledge and competency under this subsection shall be demonstrated by means of a written examination under sub. (5).

(4) CERTIFICATION BY TRAINING. Pursuant to s. 94.705(5)(a), Stats., an applicant for private applicator certification may attend a training session approved by the department. The training shall cover the areas of practical knowledge and competency required for certification. A private applicator shall be certified within 10 business days after the applicator successfully completes the training session. Certification is good for 5 years, unless suspended or revoked for cause.

(5) CERTIFICATION BY EXAMINATION. Pursuant to s. 94.705(5)(b), Stats., an applicant for private applicator certification may take a written examination approved by the department. The examination shall cover the areas of practical knowledge and competency required for certification. A private applicator shall be certified within 10 business days after the

applicator successfully completes the examination. Certification is good for 5 years unless suspended or revoked for cause.

(6) EMERGENCY USE CERTIFICATION. The department may issue an emergency use certification for a specific one-time use of a restricted-use pesticide, pursuant to s. 94.705(5)(c), Stats.

(7) CERTIFICATION FOR PERSONS OF LIMITED ENGLISH LANGUAGE ABILITY. The department may certify persons of limited English language ability pursuant to s. 94.705(5)(d), Stats.

(8) NON-RESIDENT CERTIFICATION. The department may certify a non-resident private applicator pursuant to s. 94.705(4), Stats.

(9) RENEWAL OF CERTIFICATION. A person certified under sub. (4) or (5) may renew the certification for an additional 5 year period by either of the certification methods prescribed under sub. (4) or (5).

SECTION 48. Ag 29.17(2)(b)1. and 2. are amended to read:

Ag 29.17(2)(b)1. A An individual commercial applicator certified in the pest control category pertaining to the type of application being made.

2. A certified private applicator, ~~or a person acting under the direct supervision of a certified private applicator, if the application is not a commercial application.~~

SECTION 49. Ag 29.17(3)(b) is repealed.

SECTION 50. Ag 29.17(11) is amended to read:

Ag 29.17(11) GREENHOUSE AND RESEARCH APPLICATIONS;
EXEMPTION. This section does not apply to greenhouse applications of aldicarb or to research applications made

pursuant to an experimental use permit issued by the department.

SECTION 51.. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.026(1), Stats., except that ss. Ag 29.151(1)(b) and Ag 29.162(3) shall take effect on January 1, 1991.

Dated: Feb 5, 1990.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Nicholas J. Neher, Administrator
Agricultural Resource
Management Division

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