

CHAPTER 1505

DEPARTMENT OF AGRICULTURE

PEST AND DISEASE CONTROL

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1505.0980 PRIVATE APPLICATOR CERTIFICATION; PROHIBITIONS; RESTRICTIONS.

Subpart 1. **Certification requirements.** A private applicator is considered certified if the private applicator has, within the past three years, completed one or more of the following state-approved certification programs:

- A. a home study course;
- B. a pesticide training session;
- C. a personal interview by the commissioner; or
- D. a written or oral examination.

Subp. 2. **Prohibition on purchasing or making restricted use pesticides available to uncertified persons.** A person must not purchase a restricted use pesticide for or make a restricted use pesticide available for use by a person who is not licensed or certified.

As used in this subpart, "purchase" means to buy or obtain a restricted use pesticide in exchange for money or something else of value. A purchase has not been completed under this part unless the restricted use pesticide is picked up by or delivered to a person.

Subp. 3. **Restrictions on taking possession of restricted use pesticides by uncertified persons.** A person who is uncertified may take possession of a restricted use pesticide from a pesticide dealer by pick up, delivery, or similar activity for use by a licensed or certified person if:

A. the licensed or certified person to whom the restricted use pesticide is being made available has a valid license or certification as verified by providing the original or facsimile of the licensed or certified person's applicator card to the pesticide dealer, or by providing the licensed or certified person's license or certification number with the expiration date to the pesticide dealer; and

B. the uncertified person discloses the person's name and address to the pesticide dealer.

Statutory Authority: *MS s 18B.06*

History: *20 SR 759*

1505.1100 RESTRICTED USE PESTICIDE DISPLAY; SALES AND DISTRIBUTION; RECORDKEEPING.

Subpart 1. **Display for sale.** No person shall display for sale any restricted use pesticides in any public area of a store or other place to which the general public has access unless displayed by a sign or placard bearing the following statement in capital letters not less than two inches high: "RESTRICTED USE PESTICIDES — USER MUST BE CERTIFIED."

Subp. 2. **Sale and distribution to unlicensed or uncertified persons.** A pesticide dealer licensed under Minnesota Statutes, section 18B.31, may offer for sale, sell, and as provided in subpart 3 make restricted use pesticides available to an unlicensed or uncertified person for application by a person licensed or certified under Minnesota Statutes, sections 18B.29 to 18B.36.

Subp. 3. **Making restricted use pesticides available; recordkeeping.**

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A. A restricted use pesticide is considered to be made available when it is picked up by or delivered to a person.

B. At the time a restricted use pesticide is made available to a person, the pesticide dealer or a person working under the supervision of the pesticide dealer must obtain:

- (1) the date that the restricted use pesticide is made available;
- (2) the name and address of the person to whom the restricted use pesticide is made available if the person is not licensed or certified under Minnesota Statutes, sections 18B.29 to 18B.36;
- (3) the name and the license or certification number of the applicator who will be applying the restricted use pesticide, the expiration date of the applicator's license or certification, and the original or a facsimile copy of the applicator license or certification card if the applicator is licensed or certified by a state other than Minnesota; and
- (4) the pesticide product brand name, EPA registration number, and amount of restricted use pesticide being made available.

C. All information required under item B must be recorded, either manually or on a computer, by the end of the business day in which a restricted use pesticide is made available to a person. All records must be kept on forms provided by the commissioner. Records may be kept by computer if all information required in item B is included in the computer record.

D. Records must be submitted to the commissioner no later than December 1 of the calendar year in which they occur.

Statutory Authority: *MS s 18B.06*

History: *20 SR 759*

1505.4000 PURPOSE.

Parts 1505.4000 to 1505.4130 provide the administrative procedures and requirements for local units of government to develop delegation agreements with the commissioner for local implementation of the state pesticide control law.

Statutory Authority: *MS s 118B.06*

History: *20 SR 468*

1505.4010 SCOPE.

Parts 1505.4000 to 1505.4130 apply to all local units of government. No local unit of government is allowed to implement any portion of the state pesticide control law at the local level except by adoption of a delegation agreement which has been signed by the commissioner or as specifically provided by Minnesota Statutes, section 18.81 or 18B.09. Portions of the state pesticide control law which are available for delegation to local units of government are limited to: Minnesota Statutes, section 18B.07, subdivision 3 (identification of proper posting, according to product labeling, of areas where pesticides have been applied); Minnesota Statutes, section 18B.07, subdivision 4 (identification of maintenance of proper safeguards, according to MDA requirements as provided in parts 1505.3010 to 1505.3150, to prevent incidents); Minnesota Statutes, section 18B.07, subdivision 5 (identification of proper backflow prevention devices when public water supplies are used in filling pesticide application equipment); Minnesota Statutes, section 18B.07, subdivision 6 (identification of proper anti-backsiphoning devices when public waters are used for filling pesticide application equipment); Minnesota Statutes, section 18B.07, subdivision 8 (identification of proper disposal of pesticide containers); Minnesota Statutes, section 18B.08, subdivision 1 (confirmation of the holding of valid state permits for chemigation); Minnesota Statutes, section 18B.08, subdivision 3 (identification of proper backflow prevention for chemigation systems); Minnesota Statutes, section 18B.14, subdivision 2, paragraph (a) (confirmation of the holding of valid permitting for bulk storage of pesticides); Minnesota Statutes, section 18B.31, subdivisions 1 to 3 (confirmation of the holding of valid state dealer licensing for wholesale or retail sale of restricted use or bulk pesticides); and Minnesota Statutes, sections 18B.32, subdivisions 1 and 2; 18B.33, subdivisions 1 to 3; 18B.34, subdivisions 1 and 2; and 18B.36, subdivision 1 (confirmation of the holding of valid licensing or certification for commercial application of pesticides or noncommercial or private application of restricted use pesticides). All areas of the pesticide control law related to product registration, issuance

of licenses or permits, or collection of pesticide-related fees or surcharges are retained by the department. Local units of government will not be allowed to ban the use or application of specific pesticide active ingredients or formulations. Ordinances by local units of government that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides are preempted by Minnesota Statutes, section 18B 02.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in Minnesota Statutes, section 18B.01, apply to parts 1505.4000 to 1505.4130.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subp. 3. **Delegation agreement.** "Delegation agreement" means a written agreement between the commissioner and a local unit of government or joint powers organization formed under Minnesota Statutes, section 471.59, for performance of specific regulatory duties.

Subp. 4. **Department.** "Department" means the Department of Agriculture.

Subp. 5. **Local implementation proposal.** "Local implementation proposal" means a document developed by a local unit of government to be submitted to and evaluated by the commissioner regarding merits of a proposed program for the implementation of the state pesticide control law by the local unit of government.

Subp. 6. **Local implementation program.** "Local implementation program" means the program to be carried out by the local unit of government upon completion and adoption of a delegation agreement.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4030 PROCEDURE.

Subpart 1. **Applicability.** A local unit of government that decides to develop a delegation agreement for the implementation of the state pesticide control law must use the procedure provided in this part to facilitate the development of the local implementation proposal, provide for public participation, and promote intergovernmental coordination.

Subp. 2. **Resolution to develop a local implementation proposal.** The governing body, council, or board of a local unit of government that decides to develop a delegation agreement for the purpose of local implementation of the state pesticide control law must adopt a resolution to develop a local implementation proposal.

Subp. 3. **Notice of decision to develop proposal.** Within 30 days after adoption of a resolution to develop a local implementation proposal, the governing body or its agent must:

A. send a copy of the resolution, as adopted, along with any description or supporting documents to the commissioner; and

B. publish the resolution, as adopted, along with any description or supporting documents in a minimum of one newspaper of general circulation that serve the geographic area affected. The resolution, description, or supporting documents must include a name, address, and telephone number of a contact person.

The commissioner shall, within 30 days of receipt of a copy of the resolution, provide notification of the local unit of government's resolution to the general public through publication of a notice in the State Register.

Subp. 4. **Public informational meetings.** Within 90 days of adoption of the resolution to develop a local implementation proposal, and before the local unit of government submits its proposal to the department for review, the local unit of government must hold at least one public informational meeting for the purpose of public education and receipt of public input. Notice of the public meeting must be published in at least one newspaper of general circulation in the affected geographic area. Public informational meetings must provide:

A. a description of the proposed local implementation program;

- B. the current status of the development of the proposal; and
- C. an opportunity for public input or discussion.

Subp. 5. Meetings with other local units of government. A local unit of government developing a proposal under this part must conduct a meeting or meetings with all other local units of government who exercise authorities in the geographic area affected. This must be accomplished before submittal of the proposal to the department. The purpose of this meeting or meetings will be to inform and seek input from other local units of government in an effort to gain consensus with those potentially affected by the planned local implementation program.

Subp. 6. Record of meetings. A local unit of government shall maintain a record of each meeting held for the purpose of proposal development. The record must include minutes or a transcription and a list of persons in attendance and who they represented. Records of meetings must be supplied to the department with the submittal of the local implementation proposal.

Subp. 7. Public participation. Meetings held for the purpose of public participation must be conducted as required by Minnesota Statutes, section 471.705.

Subp. 8. Initial review. Within 120 days of adoption of a resolution to develop a local implementation proposal, the governing body of the local unit of government must submit for the department's review its proposal, records of meetings held, and supporting documents. The department must complete its review within 90 days of receipt of the proposal. The primary contact person or other officials of the local unit of government bringing the proposal may be asked to meet with the department during the 90-day review period for the purposes of presentation or clarification of points of the local implementation proposal.

The department must inform the governing body of the local unit of government of its findings in writing.

Subp. 9. Review criteria. The department shall review the local implementation proposal based on the criteria in items A to D.

A. Is the proposed local implementation program consistent with the mandates of Minnesota Statutes, chapters 18B and 18D, and rules and orders of the department?

B. Do staff identified to carry out the proposed local implementation program have the education, training, and experience required as identified in part 1505.4070?

C. Has the local unit of government identified a funding source or sources for the proposed local implementation program and is funding adequate to carry out the program as proposed on an ongoing basis?

D. Does the proposed local implementation program demonstrate consistency with department procedures and policies?

Subp. 10. Notice of review. The department shall, within 30 days of receipt of a local implementation proposal, publish the local implementation proposal in the State Register for the purpose of the solicitation of outside opinion. The department may apply information received through this process in the review of the local implementation proposal. Consideration of outside opinion must be based on the same review criteria as the local implementation proposal.

Subp. 11. Negotiation. Upon receipt of a positive finding on the part of the department regarding the local implementation proposal, the local unit of government may enter into negotiations toward the development of the final delegation agreement. A final version of the delegation agreement must be completed within 90 days of notification of the department's positive findings. If the delegation agreement is not completed within the specified time period the proposal is nullified and cannot be resubmitted for consideration for one year from the end of the 90-day negotiation period.

Subp. 12. Completion. The commissioner's signature of a delegation agreement constitutes final department approval. Upon signing of the delegation agreement by the commissioner, the local unit of government has 60 days to adopt the delegation agreement by resolution of its governing body. If the governing body has not adopted the delegation agreement within the 60-day period, the agreement is nullified. Upon adoption, the delegation agreement must be implemented according to the conditions and schedule stipulated in the delegation agreement.

Subp 13. **Notice of adoption.** Within 15 days of adoption of the delegation agreement, the local unit of government must notify the commissioner by sending a notarized copy of the adopting resolution. The department shall, within 30 days of receipt of the copy of the adopting resolution, publish the delegation agreement in the State Register as a means of informing the general public. The local unit of government must publish a copy of the adopting resolution and provide notice of locations where the delegation agreement is available for public review.

Statutory Authority: *MS s 118B.06*

History: *20 SR 468*

1505.4040 CONTENT OF LOCAL IMPLEMENTATION PROPOSALS.

Subpart 1. **Title sheet.** A local implementation proposal must contain a title sheet that provides the formal title of the proposal, the submittal date, and the title of the governing body submitting the proposal.

Subp. 2. **Table of contents.** A local implementation proposal must contain a table of contents outlining the paragraphs or sections contained within the proposal and the correlating pages on which the paragraphs or sections appear.

Subp. 3. **Map and description of geographic area affected.** A local implementation proposal must contain a map describing the geographic area affected, its location within the state and county, and local geographic setting. The local implementation proposal must also, within the same section, contain a written description, by geographic indicator, of the area affected. The written description must, at a minimum, describe the boundaries of the affected area and may be a legal description.

Subp. 4. **Primary contact.** A local implementation proposal must identify a primary contact for communication with the commissioner, including the contact's name, official title, official address, telephone number, and facsimile number if available.

Subp. 5. **Executive summary.** A local implementation proposal must contain an executive summary briefly describing the substance and salient points of the proposal.

Subp. 6. **Detailed description of proposed program.** A local implementation proposal must present a detailed description of the proposed local implementation program, including implementation measures, a dated schedule, and expected outcomes for the local implementation program on an annual basis. This section must also describe educational and informational efforts, training programs, data collection procedures, data and information management procedures, and coordination efforts with other government units or entities.

Subp. 7. **Administering agency.** A local implementation proposal must describe the agency authorized by the local unit of government to administer the local implementation program. This section must:

A. name the authorized agency;

B. provide an official address and telephone number for contact; and

C. describe the education, training, and experience qualifications of personnel within the authorized agency who will be responsible for the administration of the local implementation program.

Subp. 8. **Administrative procedures.** A local implementation proposal must outline procedures through which the local implementation program will be administered by the authorized agency. Administrative procedures must include, but are not limited to:

A. financial reporting and auditing;

B. document management by the local unit of government and transfer to the department; and

C. program tracking and reporting procedures

Subp. 9. **Implementation procedures.** A local implementation proposal must outline the procedures to be followed in implementation of the proposed program. Implementation procedures must provide for:

A. notice of inspection;

B. documentation of inspections;

C. stages of effort to gain compliance;

D. referral of cases of noncompliance or violation to the department, and

E. demonstration of consistency with department procedures and policies.

Subp. 10. Financial considerations. A local implementation proposal must provide information describing the source of funding for the local implementation program. The funding source must be consistent with part 1505.4010, which stipulates that funds may not be collected from pesticide related fees or surcharges. This section must provide an estimate of the annual budget for the local implementation program and a detailed outline of disbursement of those funds in implementation of the program.

Subp. 11. Draft delegation agreement. A local implementation proposal must present a draft delegation agreement to be used as the basis for the development of a final delegation agreement for signature by the commissioner.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4050 CONTENTS OF DELEGATION AGREEMENT.

The local unit of government shall submit a delegation agreement as described in this part. The delegation agreement must be based on an approved local implementation proposal. The department may produce and provide model delegation agreements to assist local units in the development of specific delegation agreements.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4060 COORDINATION.

To ensure that there is no overlap in carrying out implementation of delegated authority, local units must coordinate activities in regard to local implementation. Two or more local units of government who exercise authorities within the same geographic area may not obtain delegation of the same or separate authorities for each of the local units. In cases where such a multiple delegation is requested, the department may require the local units involved to apply as a group formed under a joint powers agreement pursuant to Minnesota Statutes, section 471.59.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4070 MINIMUM QUALIFICATIONS OF INSPECTION PERSONNEL.

Persons who perform the duties of implementation related to field surveillance, inspection, collection of samples, or other activities regarding the collection, preservation, and documentation of evidence are required to meet minimum requirements of education, training, and experience. The minimum requirement is a score of at least 70 percent on an experience and training rating administered by the department. The experience and training rating must have a possible total score of 100 percent. The experience and training rating must be based on the following criteria.

A. a passing score on the commercial pesticide applicator certification examination or a currently valid license as a commercial pesticide applicator in categories appropriate to the local implementation program, and

B. a bachelor's degree in agronomy, chemistry, ecology, entomology, horticulture, plant pathology, geology, hydrology, public health, environmental health, soil science, or a similar field of study; or

C. a master's degree in one of the fields listed in item B; or

D. experience enforcing or ensuring compliance with laws, rules, and regulations pertaining to pesticides; or

E. experience providing technical advice in the use, storage, handling, and disposal of pesticides; or

F. professional research or analytical experience pertaining to properties, use, effectiveness, safety, or regulation of pesticides.

Bonus points will be awarded, if a passing score of 70 percent is achieved, for possession of six or more quarter credits or four or more semester credits in pesticide-related courses.

A resume that details the qualifications of identified inspection personnel of the local unit of government must be submitted for department review when submitting the delegation agreement for the commissioner's signature.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4080 ENFORCEMENT.

The commissioner of agriculture has sole responsibility and authority for enforcement of the State Pesticide Control Law pursuant to Minnesota Statutes, chapter 18D. Any compliance issue or alleged violation referred from a locally implemented program to the department for enforcement shall be reviewed, prioritized, and processed according to standards and timelines of the Agronomy Services Division, Enforcement Unit. Local units of government must be apprised of the disposition of a case referred from their respective local implementation program.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4090 REPORTING REQUIREMENTS.

A local unit of government shall submit a two-part annual report to the commissioner. Part one must provide the planned activities for the local implementation program for the upcoming year. Part two must provide information describing the accomplishments and activities of the local implementation program for the preceding year. Inspection personnel, their resumes and training programs, and all schedules, implementation measures, and outcomes must be identified for the local implementation program for both parts one and two.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4100 PERFORMANCE REVIEW AND EVALUATION.

Review and evaluation of the performance on the part of a local unit of government in implementation of the delegation agreement will be carried out by the department. The review and evaluation of the delegation agreement and the local implementation program will be accomplished in the following manner:

- A. verification of the qualifications of staff on an annual basis;
- B. performance of joint inspections with department field staff;
- C. spot check inspections by department field staff; and
- D. verification of ongoing education and training of staff.

A complete on-site program evaluation must be performed between the department and the local unit of government within every third year of the adoption of the delegation agreement.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4110 COMPLIANCE.

The commissioner may inspect documents and monitor activities of the local unit of government associated with the local implementation program. The commissioner shall determine compliance of the local unit of government regarding the local implementation program based on the agreement, annual reports, and other records regarding the local implementation program of the local unit of government. The contact person must be notified in the case of noncompliance and procedures that must be undertaken by the local unit of government regarding the noncompliance must be presented in writing. The local unit of government has 90 days from the time of notification regarding noncompliance with the delegation agreement to meet the requirements of the agreement according to the guidance provided by the department.

Statutory Authority: *MS s 118B.06*

History: 20 SR 468

1505.4120 APPEALS.

A delegation agreement receives departmental approval upon signature by the commissioner. This shall be considered a final agency action. Any appeals must be filed with the Minnesota Court of Appeals.

Statutory Authority: *MS s 118B.06*

History: *20 SR 468*

1505.4130 TERMINATION.

Subpart 1. **Termination.** Either party to the delegation agreement may dissolve the agreement and void the local implementation program upon 60 days' notification of the other party or parties of the delegation agreement.

Subp. 2. **Notice of termination.** The department must publish notification of termination of a delegation agreement in the State Register within 30 days of termination of the delegation agreement. The local unit of government must publish a notice of termination in one newspaper of general circulation within the affected geographic area within 30 days of termination of the delegation agreement.

Statutory Authority: *MS s 118B.06*

History: *20 SR 468*