

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

1991 JUN 26 AM 8:59

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12A

TITLE OF RULE BEING AMENDED: Certified Pesticide Applicator
Rules and Regulations (repeal and replace)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 30, 1991 TIME: 1 PM

LOCATION OF PUBLIC HEARING West Virginia Department of Agriculture
J.T. Johnson Conference Room, Building 2
Guthrie Center
Charleston, WV 25312

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Dept. of Agriculture
Pesticide Division

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

1900 Kanawha Blvd., East
Charleston, WV 25305

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



4.20

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1991 JUN 20 AM 9 00

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Summary of Legislative Rule 61-12A

This rule continues previous rules regarding the certification and training of pesticide applicators. The standards for certification have been upgraded to meet Federal standards and enable the State's pesticide program to receive continual approval by the U. S. Environmental Protection Agency.

Statement of Circumstance

The passage of the 1990 Pesticide control Act repealed previous pesticide laws and rules. These rules are necessary for the full implementation of the Act and to meet the new Federal Standard for pesticide applicator certification.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED
1991 JUN 26 AM 9:00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Certified Pesticide Applicator Rules

Type of Rule: X Legislative Interpretive Procedural

Agency Department of Agriculture Address WVDA, Pesticide Division
1900 Kanawha Blvd., East, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:
No increase or decrease is expected as these regulations apply to ongoing program activities.

3. Objectives of these rules:
To establish certification and training requirements for pesticide applicators and to continue the acceptability of our pesticide regulatory program to the United States Environmental Protection Agency.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None - These regulations are a continuation of program activities.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None - These regulations are a continuation of program activities.

C. Economic Impact on Citizens/Public at Large.

None - These regulations are a continuation of program activities.

Date: June 26, 1991

Signature of Agency Head or Authorized Representative

Chris Bessant

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1991 JUN 26 AM 9 00
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SECRETARY OF STATE

Title 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE
SERIES XIIA

Title: Certified Pesticide Applicator Rules

§61-12A-1. General

1.1. Scope - This legislative rule establishes the requirements governing the certification and training, record keeping and general operation of equipment for certified pesticide applicators.

1.2. Authority - West Virginia Code 19 - 16A - 4

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of former rule: This legislative rule repeals and replaces WV61CSR12A "West Virginia Pesticide Use and Application Act" filed April 24, 1987 and effective June 12, 1987.

§61-12A-2. Definitions

2.1. "Act" means the West Virginia Pesticide Control Act (§19-16A).

2.2. "Competent" means properly qualified to perform functions associated with application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

2.3. "Fumigant" means a gaseous or readily volatizable chemical (as sulfuryl fluoride or methyl bromide) used as a disinfectant or pesticide.

2.4. "Fumigation" means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside of a structure, such as a box car, aircraft, truck, ship or any object sealed or covered.

2.5. "Regulated pest" means a specific organism considered by the State or by a federal agency to be a pest requiring regulatory restrictions, regulations or control procedures in

order to protect man or the environment.

§61-12A-3. Certification of Pesticide Applicators

3.1. No person may be certified as a pesticide applicator unless he or she has passed an examination approved by the commissioner or qualifies through reciprocity as contained in §61-12A-11 and §61-12A-12.

3.2. Individuals, employees or representatives of governmental agencies (including but not limited to federal employees under 40 CFR Part 171) who use or supervise the use of pesticides in the performance of their official duties shall meet the requirements of this regulation and be certified as certified public applicators pursuant to this regulation. The certification of such individuals, employees or representatives shall be valid only when applying or supervising the application of pesticides in the performance of their official duties.

3.3. Determination of Competency.

3.3.a. Competence in the use and handling of pesticides shall be determined on the basis of written examination and as appropriate, performance testing based upon the standards set forth in §61-12A-7.

3.3.b. Written examinations shall be given at such time and places as the commissioner may direct. Correctly answering 70% or more shall be considered evidence of competence.

3.3.c. Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicants who fail to achieve a passing score on their first attempt at examination are eligible to be reexamined in the same category after 10 days from the date of the first examination. Applicants who fail on the second attempt or any subsequent attempt must wait 30 days from the date of the last examination for reexamination.

3.4. Any person applying for certification as a commercial applicator, certified public applicator or private applicator shall submit a completed application form accompanied by the appropriate fee established by Legislative Rules §61-12. The application form shall contain all the information required by the Act and any other information decreed necessary by the commissioner to carry out the purpose of the Act.

§61-12A-4. Restricted Use Pesticides

4.1. The reference to restricted use pesticide in these rules means any pesticides classified for restricted use by the administrator of the United States Environmental Protection

Agency or any pesticide determined to be a state restricted use pesticide.

§61-12A-5. Categorization of Commercial Applicators

5.1. Pesticide applicators other than private applicators required to be certified applicators shall be classified in the categories and subcategories below. Public employees required to be certified applicators in the categories and subcategories listed below are categorized as commercial applicators with respect to restricted use pesticides.

5.2. Commercial Applicator Categories

5.2.a. Agricultural Plant Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and noncrop agricultural lands.

5.2.b. Agricultural Animal Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined.

5.2.c. Forest Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries and forest seed producing areas.

5.2.d. Ornamental and Turf. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

5.2.d.A. Ornamental and Turf Outdoors. This subcategory is for commercial applicators using or supervising the use of restricted use pesticides in the maintenance and production of ornamental trees, shrubs and flowers outdoors.

5.2.d.B. Ornamental Pest Control Indoors. This subcategory is for commercial applicators who use or supervise the use of restricted use pesticides in the maintenance and production of ornamental plants indoors.

5.2.e. Seed Treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

5.2.f. Aquatic Pest Control. This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in §61-12A-5.2.i.

5.2.g. Right of Way/Industrial Weed Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway right-of-way, fence lines, structural perimeters or other similar areas.

5.2.h. Industrial, Institutional, Structural and Health Related Pest Control. Commercial applicators in this category are subcategorized as follows:

5.2.h.A. General. This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in and around residential, commercial/institutional/industrial facilities, including food preparation areas such as kitchens, cafeterias or snack shops.

5.2.h.B. Structural. This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control wood destroying pests in structures.

5.2.h.C. Fumigation. This subcategory includes commercial applicators using or supervising the use of restricted use pesticides, in gaseous form, within enclosed gas tight spaces such as, tents, structures, vehicles or vessels, for a wide range of commodities and conditions.

5.2.h.D. Wood Preservation and Wood Product Treatment. This subcategory includes commercial applicators using or supervising the use of restricted use pesticides, at treating plants and saw mills, for preservative treatment of wood by pressure, dipping, soaking and diffusion processes to product a commodity for sale and/or installation. This subcategory also includes the handling and topical application and injection of wood preservatives, for operations such as, groundline pole treatment, waterproofing, millwork cutoffs, or supplemental field treatment.

5.2.i. Public Health. This category includes commercial applicators using or supervising the use of restricted use pesticides (for Federal, State or other governmental units) in public health programs for the management and control of pests having medical and public health importance.

5.2.j. Regulatory. This category includes commercial applicators using or supervising the use of restricted use pesticides for Federal, State or other governmental units in the

control of regulated pests.

5.2.k. **Demonstration and Research.** This category includes commercial applicators who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstrations. Examples are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. Also included in this category are commercial applicators conducting field research who use or supervise the use of restricted use pesticides. Examples are such persons as State, Federal and others persons conducting field research utilizing restricted use pesticides.

5.2.l. **Pesticide Storage and Distribution (Excluding application).** This category is for commercial applicators who only store, display and distribute pesticides in the operation of pesticide or sales distribution required of dealers of restricted use pesticides. Certification in this category does not permit the application of pesticides for hire.

5.2.m. **Miscellaneous Pest Control** - This category is for commercial applicators who may be required to be certified applicators in an area other than those specified. Certification in this category will be on a case by case basis and be restricted to the endeavor declared on the applicator's certification as issued by the commissioner.

5.2.m.A. When any pesticide is declared to be restricted use and a category for the use of that pesticide does not exist, the commissioner may establish an appropriate subcategory under this category.

§61-12A-6. Categorization of Private Applicators

6.1. **Agricultural Pest Control.** This category includes private applicators using or supervising the use of restricted use pesticides, except fumigants, in production of agricultural commodities, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and noncrop agricultural lands. This category also includes private applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock and to places on or in which animals are confined.

6.2. **Agricultural Fumigation.** This category includes private applicators using or supervising the application of restricted use pesticides for soil fumigation in production and on an agricultural commodity and the application of restricted

use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in Agricultural Pest Control.

§61-12A-7. Certification Standards for Pesticide Applicators

7.1. General Standards for private and commercial applicators. All applicators shall demonstrate practical knowledge of the principles and practices of pest control and safety in use of pesticides. Determination of competency shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency:

7.1.a. Label and labeling comprehension.

7.1.a.A. Labels and labeling are legal documents and the directions they contain shall be followed.

7.1.a.B. General format and terminology of labels and labeling.

7.1.a.C. Understanding directions for use, warnings, terms, names, symbols and other information commonly appearing on pesticide labels.

7.1.a.D. Meaning of the term Restricted Use pesticide.

7.1.b. Safety.

7.1.b.A. Understanding the terms acute and chronic toxicity, exposure and how a hazard is determined by exposure and a pesticide's toxicity.

7.1.b.B. Recognition of symptoms of acute toxicity and practical treatment.

7.1.b.C. Precautions to prevent injury to applicators and other individuals in or near treated areas.

7.1.b.D. Need for and use of personal protective equipment.

7.1.b.E. Worker protection, including warnings and reentry restrictions.

7.1.b.F. Transportation, storage, mixing, handling, application and disposal of pesticides including container disposal.

7.1.c. Environmental risk.

7.1.c.A. Climatic factors that cause pesticide drift and runoff.

7.1.c.B. How terrain, soil and substrata influence surface and ground water contamination.

7.1.c.C. Recognition of sensitive areas and organisms affected by pesticide applications, drift and runoff.

7.1.c.D. Precautions for protection of endangered and threatened species.

7.1.c.E. Methods of spill prevention and control.

7.1.d. Pest identification and biology.

7.1.d.A. Principles of pest identification.

7.1.d.B. Recognition of damage or problems caused by pests.

7.1.e. Pesticides and chemical control.

7.1.e.A. Types of pesticides, formulations and adjuvants.

7.1.e.B. Concepts of pesticide compatibility, synergism, persistence and resistance.

7.1.e.C. Factors which affect a pesticide's effectiveness.

7.1.e.D. Selection of the correct formulation and method of application for a site and pest.

7.1.f. Equipment.

7.1.f.A. Characteristics and main uses of typical pesticide application equipment.

7.1.f.B. Selection of the most appropriate equipment for applicable situations.

7.1.f.C. Proper care, maintenance and use of application equipment.

7.1.g. Calibration and calculations.

7.1.g.A. Dilution of concentrate formulations in accordance with label directions.

7.1.g.B. Calculation of area or volume to be

treated and amount of pesticide to be applied.

7.1.g.C. Adjustment of application equipment's nozzle, pressure and speed to obtain correct pesticide output.

7.1.h. Applicator related laws and regulations.

7.1.h.A. Applicable State and Federal laws and regulations.

7.1.h.B. Applicator responsibility for pesticide use consistent with it's label or labeling and supervision of noncertified employees assigned to use a restricted use pesticide.

7.1.h.C. Applicator liability and penalties

7.2. Specific Standards of Private Applicator. Private applicators are required to demonstrate skills and knowledge specific to their category of certification. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticide needed and the ultimate use of many commodities as food and fuel.

7.2.a. Agricultural Pest Control. As a minimum requirement a private applicator in this category must demonstrate a practical knowledge of the pest problems and pest control practices associated with his or her agricultural operation and his or her related legal responsibility. This demonstration of knowledge shall include:

7.2.a.A. Recognition of common pests to be controlled and damage caused by them.

7.2.a.B. Ability to read and understand the label and labeling information - including the common name of pesticides he applies; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or reentry restrictions; and specific disposal procedures.

7.2.a.C. Ability to apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven and the quantity dispersed in a given period of operation.

7.2.a.D. Ability to recognize local environmental situations that must be considered during application to avoid contaminations.

7.2.a.E. Ability to recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

7.2.a.F. Practical knowledge concerning relevant soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, pesticide toxicity, residue potential and potential for environmental contamination and non-target injury.

7.2.b. Agricultural Fumigation. In addition to being certified as a private applicator for Agricultural Pest Control, an applicator desiring to use fumigants for soil or agricultural products must demonstrate the following practical knowledge.

7.2.b.A. The use of personal protective equipment for fumigation, general safety procedures, including posting, reentry and aeration.

7.2.b.B. The knowledge of emergency procedures and application techniques appropriate to his farm operation.

7.3. Specific standards for commercial applicators. All commercial applicators are required to demonstrate skills and knowledge specific to their desired category of certification in addition to the general pesticide knowledge set forth in §61-12A-7.1. The specific standards set forth below are applicable to the commercial applicator categories and subcategories of certification specified in §61-12A-5.2.

7.3.a. Agricultural Plant Pest Control. Applicators shall demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. Practical knowledge is required concerning soil and water problems, pre-harvest intervals reentry intervals, phytotoxicity and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

7.3.b. Agricultural Animal Pest Control. Applicators applying pesticides directly to animals shall demonstrate practical knowledge of such animals in their State and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator shall know the relative hazards associated with such factors as formulation, application techniques, age of the animal, stress and extent of treatment.

7.3.c. Forest Pest Control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries and seed production in their State and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as

a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. The applicator shall demonstrate practical knowledge of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

7.3.d. Ornamental and Turf.

7.3.d.A. Ornamental and Turf Outdoors.

Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category shall demonstrate practical knowledge of application methods and the possible hazards to humans, pets and other domestic animals.

7.3.d.B. Ornamental Pest Control Indoors.

Applicants shall demonstrate a knowledge of pesticide problems associated with the production and maintenance of ornamental plants indoors, phytotoxicity, problems associated with drift in the indoor environment and application methods that minimize hazards to humans and pets.

7.3.e. Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers and surface agents which influence pesticide bindings and may affect germination. They shall demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

7.3.f. Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the types of secondary effects which can be caused by improper application rates, incorrect formulations and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

7.3.g. Right-of-Way/Industrial Weed Control.

Applicators shall demonstrate practical knowledge of a wide

variety of environments, since right-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

7.3.h. Industrial, Institutional, Structural and Health Related Pest Control.

7.3.h.A. General. Control of pests in and around structures excluding wood destroying pests and fumigation. Applicators shall demonstrate practical knowledge of household type pests, such as cockroaches, ants, silverfish, spiders, food and fabric insects, rats, bats and other occasional invaders, that infest structures, stored products and food preparation areas, such as kitchens, cafeterias or snack bars. They shall demonstrate knowledge of conditions conducive to pest infestations and selection of appropriate control procedures for each situation. Applicators shall demonstrate knowledge of hazards involved with pesticide usage.

7.3.h.B. Structural. Applicators shall demonstrate practical knowledge of structural wood destroying organisms, such as beetles, termites and fungi, and conditions conducive to infestation. They shall demonstrate knowledge and ability to select; calibrate and use appropriate control procedures including rodding and trenching and topical application of pesticides. Applicators shall demonstrate knowledge of the hazards involved with handling and use of these pesticides and the appropriate application equipment to be used.

7.3.h.C. Fumigation. Applicators shall demonstrate practical knowledge of conditions requiring the application of fumigants and selection of the most appropriate fumigation methods to use. They shall demonstrate knowledge of equipment used in fumigation, such as application, monitoring, testing, calculating and personal protective devices. Applicators shall demonstrate ability to release, distribute and maintain the correct fumigant concentrations for the product/structure being fumigated, under differing conditions. They shall have knowledge of the hazards involved with the use of fumigants.

7.3.h.D. Wood Preservation and Wood Product Treatment. Applicators shall demonstrate a practical knowledge of conditions for which preservative treatment of wood is used. Applicators shall demonstrate a knowledge of the health and environmental hazards associated with wood treating procedures, and the need for informing purchasers of precautions for

handling, use and disposal of treated wood products. They shall demonstrate a knowledge of all applicable treating and testing equipment. Applicators in this subcategory shall also demonstrate the handling and local injection of specially labeled liquid or solid wood fumigants into infested wood, such as poles, piling and railroad crossties. Applicators shall demonstrate knowledge of the hazards involved with handling and use of these pesticides and the appropriate application equipment to be used.

7.3.i. Public Health. Applicators shall demonstrate a practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests may be involved and it is essential that they be known and recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal and drainage. Applicators shall also be aware of all regulatory requirements for reentry precautions and warnings.

7.3.j. Regulatory. Applicators shall demonstrate practical knowledge of regulated pests, including applicable laws relating to quarantine and other regulation of pests and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgements shall be made in new situations.

7.3.k. Demonstration and Research. Persons demonstrating the safe and effective use of pesticides to other applicators and the public shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration and practical knowledge of problems, pests and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of pesticide-organism interaction and the importance of integrating pesticide use with other control methods. Applicators doing demonstration pest control work shall possess knowledge of all of the standards detailed under §61-12A-7.1. In addition, they shall meet the specific standards required in §61-12A-7.3.a. thru §61-12A-7.3.h of this section as may be applicable to their State. Persons conducting filed research or method improvement work with restricted use pesticides shall know the general standards

detailed in §61-12A-7.1. In addition, they shall know the specific standards required under §61-12A-7.3.a through §61-12A-7.3.j as may be applicable to their particular activity in their State.

7.3.1. Pesticide Storage and Distribution.

7.3.1.A. Persons in this category store, display and distribute restricted use pesticides. Applicants in this category shall demonstrate a knowledge and understanding of the safe and acceptable methods of handling, storing, displaying and distribution of restricted use pesticides; the potential for environmental hazards; the containment of spills; the disposal of pesticide related hazardous waste and an understanding of State and Federal pesticide laws.

7.3.1.B. Persons operating as dealers of restricted use pesticides shall also demonstrate a practical knowledge of the types of pesticides he sells, including but not limited to: labels and label comprehension; classification of pesticides and necessity for use consistent with the label; safety, including safe use and safe environment; symptoms of pesticide poisoning; types of pesticides and pesticide formulations; dilution procedures and application techniques.

7.3.m. Miscellaneous Pest Control. This section is reserved for specific standards to be developed as needed for applicators needing to be certified for restricted use pesticides or activities that may, in the future, be declared needing certification by the U. S. Environmental Protection Agency or the Commissioner.

7.3.n. Aerial. In addition to demonstrating in the specific standards for categories or subcategories §61-12A-7.3.a through §61-12A-k., persons desiring to apply pesticides by aircraft must hold a valid Agricultural Applicator Certification from the Federal Aviation Administration.

7.4. Registered Technicians. Non-certified employees of pesticide business performing pesticide application similar to a commercial applicator or certified public applicator must become registered with the Department.

7.4.a. Training. Each pesticide business is responsible for ensuring that each employee, other than a certified applicator, successfully completes a verifiable training program approved by the commissioner. The employee training shall be completed within 30 days of employment and before the employee's registration with the Department.

7.4.b. The Department may not approve any training program that does not include at least the following elements.

7.4.b.A. Method of Verification

7.4.b.B. State and Federal Laws and Regulations

7.4.b.C. How to read and interpret a pesticide label.

7.4.b.D. Handling of emergencies and spills.

7.4.b.D.1. Signs and symptoms of common types of pesticide poisoning.

7.4.b.D.2. Emergency practical treatment for pesticide injuries.

7.4.b.D.3. How to obtain emergency medical care.

7.4.b.D.4. Decontamination procedures.

7.4.b.E. Proper methods of storing, mixing/loading, transporting, handling, applying and disposing of pesticides.

7.4.b.F. Safety and health including the proper use of personal protective equipment.

7.4.b.F.1. Hazards of pesticides from toxicity or exposure including acute and delayed reaction.

7.4.b.F.2. Routes of exposure

7.4.b.G. Potential adverse effects caused by various climatic or environmental conditions such as drift, runoff or ground water contamination.

7.4.b.H. Pesticide application techniques.

7.4.b.I. Pest identification and control recommendation.

7.4.b.J. Principles of integrated pest management.

7.4.c. Upon request by the commissioner each pesticide business shall produce the records or other means of verification that an employee has completed and approved training program.

7.4.d. Identification. The Department shall issue an identification card to each registered technician. The registered technician shall carry the identification card and show it upon request to any interested person.

7.4.e. Employment termination. Within 30 days of termination, a pesticide business shall give the Department written notice of the termination of the registered technician. The registered technician shall return the identification card to the Department.

7.4.f. Upon the implementation of these regulations any employee who has continually been in the employment of a Licensed Pesticide Application Business for a least 90 days immediately preceding implementation shall be eligible to apply as a registered technician by completing an application form, payment of the required fee and show such proof of continual employment by employment records or a notarized statement from his or her employer.

§61-12A-8 Recertification.

8.1. At no greater than a three year interval each commercial applicator, certified public applicator or private applicator must present evidence or documentation indicating that he or she has attended workshops or training sessions approved by the commissioner. In evaluating training programs a 30 minute period of training or the greater portion thereof will be granted one continuing certification unit (CCU).

8.1.a. Commercial/Certified Public Applicators - An approved training session for commercial applicators or certified public applicators shall consist of at least 10 hours (20 CCU's) of audience contact or participation on the subject matter contained in §61-12A-7.1. and §61-12A-7.3. of these rules for each category or subcategory of certification.

8.1.b. Private Applicator - An approved training session for private applicators shall consist of at least 5 hours (10 CCU's) of audience contact or participation on the subject matter contained in §61-12A-7.1. and §61-12A-7.2. for each category or subcategory of certification.

8.2. A certified applicator may accumulate the required continuing certification units for programs as specified in §61-12A-8.1. and §61-12A-8.2. by attending two or more training sessions.

§61-12A-9 Supervision of Non Certified Applicators

9.1 General. Direct supervision by a certified applicator of a noncertified applicator shall include:

9.1.a. Verifiable instruction to the noncertified applicator;

9.1.b. Provision for contacting the certified

applicator in the event he or she is needed and;

9.1.c. During the noncertified applicator's use of the restricted use product, the certified applicator shall have the capability to be at the use site and with the noncertified applicator, at the point of use of the restricted use product, within a reasonable period of time; ensure that the noncertified applicator has means by which to contact the certified applicator immediately, should the need arise; shall be available to be contacted by the noncertified applicator; and shall arrive at the point of use within a reasonable period of time if summoned by the noncertified applicator. The potential for serious consequences of a delay in arriving at the use site will be taken into consideration when determining what is a reasonable period of time.

9.2. Label Specified Supervision - In some situations the labeling on the pesticide product will require other levels of supervision. These requirements may be the use of the pesticide with a certified applicator on site or use only by a certified applicator. In those situations, the product label will detail the minimum supervision required.

§61-12A-10. Record Keeping

10.1. Commercial Applicator/Certified Public Applicator

10.1.a. Each commercial applicator or certified public applicator shall keep for a period of two years records detailing the application of all pesticides. The minimum information to be maintained shall be:

10.1.a.A. The pesticide used, including the EPA registration number.

10.1.a.B. The formulation, dilution rate and the quantity used. In case of business in the classification of General Pest and Ornamental and Turf pest control, the records for quantity used may be kept as the total quantity used per day by each applicator when less than 1 gallon of use dilution spray or 1 pound of dust, powder or prepared rodenticide baits are used at any location, the quantity for that location shall be kept.

10.1.a.C. The date and place of application.

10.1.a.D. The pest or pests against which the pesticide was used.

10.2. Records kept by a licensed pesticide application business or registered pesticide business may serve as the records for the individual certified employees of those businesses.

10.3. Private Applicator - Private applicator shall keep records for a period of two years detailing the use of restricted use pesticides. The minimum information to be maintained shall be:

10.3.a. The pesticide used, including EPA registration number.

10.3.b. The formulation, dilution rate and the quantity used.

10.3.c. The date and place of application.

10.3.d. The pest or pests against which the pesticide was used.

§61-12A-11. Reciprocity

11.1. Commercial Applicators - When a non resident commercial applicator is certified under the state plan of another state and desires to operate as a commercial applicator in West Virginia, he shall make application to the commissioner and shall include, along with the proper fee and other details required by the Act, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The commissioner then may, if he or she approves the credentials, issue a West Virginia license to the applicator in the category(ies) for which he is certified in another state, without a written examination, provided that the state having certified the applicator will similarly certify holders of West Virginia certificates.

11.2. Private Applicators - When a private applicator is certified under the state plan of another state and owns, leases or manages land in West Virginia on which restricted use pesticides must be applied to produce agricultural crops, the commissioner will issue a West Virginia Private Applicator Certification on receipt of a properly completed application, proper fee and a true copy of the applicant's out-of-state certification.

§61-12A-12. Federal Employees

12.1. Certification - When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP), or under other plans judged by the commissioner to be at least the same category or categories the commissioner shall accept the certification without the need for a written examination nor for the payment of any fee.

12.2. Qualification for Certification - Federal employees

qualified under an acceptable federal plan to apply restricted use pesticides and who intend to apply restricted use pesticides in West Virginia as a part of their agency work shall present their qualifying documents to the commissioner; and, if acceptable, these documents will be endorsed or a State document will be issued which will permit the federal employee to use restricted use pesticides in West Virginia.

12.3. Emergency Situations - If, in an emergency situation, federal employees are brought in to West Virginia to control or eradicate pests, and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, such employee will be considered to be certified in West Virginia; and he or his agency must, within 10 days, present qualifying credentials to the commissioner. At this time, State credentials will be issued if the employee is to remain in West Virginia as an applicator of restricted use pesticides. The provisions of this section do not apply to nonfederal employees contracted to perform pesticide applications for the federal government. In an emergency, however, and with the concurrence of the commissioner, a properly certified federal applicator may act in a supervisory capacity of a nonfederal applicator provided that applicator is properly certified in West Virginia or under the plan of another state. Within 10 days, such nonfederal applicator certified in another state must apply for West Virginia certification in the normal manner.

§61-12A-13. Equipment

13.1. General - No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage or holding tanks, whether on application equipment or not, shall be leakproof; all spray distribution systems shall be leakproof and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over (or by) nontarget areas without contaminating them.

13.2. Backflow Prevention - All mixing or loading sites for spray equipment shall be equipped with a mechanism to prevent the back siphoning of pesticides into water sources. Mechanisms acceptable are backflow/anti-siphon valves in the plumbing system and/or an air gap between the top of the mixing tank and the water inlet hose.