

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

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SECRETARY OF STATE  
WEST VIRGINIA

Effective Date

1/22/92

NOTICE OF AN EMERGENCY RULE

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-16A-4

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

see attached sheet

Use Additional Sheets If Necessary.

  
Signature

CERTIFIED PUBLIC APPLICATOR  
Series 12A

Statement of Facts and Circumstances  
Requiring this rule to be filed as an Emergency

This rule is being filed as an emergency for the immediate preservation of public health, safety and welfare. This rule will allow the Department of Agriculture to conduct training and certify pesticide applicators as required by the Pesticide Control Act of 1990. The training and certification will assure the safe and proper use of pesticides in homes, offices, restaurants, hotels, schools and other public buildings, and to protect groundwater. The Department of Agriculture now has procedures in place to allow this rule to be enforced. The implementation of this provision is needed immediately in order to achieve the goals of the Pesticide Control Act of 1990 to protect the public from improper pesticide use.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certified Pesticide Applicator Rules

Type of Rule:  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	Hereafter
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

*Olve Berntsen*

DATE: 12-17-91

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Barbara J. Smith, Director of Compliance, WVD Ag.

EMERGENCY RULE TITLE: Certified Pesticide Applicator Rules and Regulations  
(repeal and replace)

1. Date of filing: 12-20-91
2. Statutory authority for promulgating the emergency rule:  
19-16A-4
3. Date of filing of proposed legislative rule: August 8, 1991  
This rule has been approved by the LRMRC & filed on 10-2-91
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
This repeals and replaces a current legislative rule.
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare  
See statement of facts and circumstances on the previous page.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See statement made under #6.

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Title 61  
WEST VIRGINIA LEGISLATIVE RULE  
CHAPTER 19 - 16A  
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 -

61-12A-2 Definitions

2.1 The term "Act" means the West Virginia Pesticide Control Act (West Virginia 19-16A-1 et seq.).

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

2.3 The term "fumigant" means a gaseous or readily volatilizable chemical (as sulfuryl fluoride or methyl bromide) used as a disinfectant or pesticide.

2.4 The term "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 which is sealed or covered.

2.5 The term "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 the host, man or the environment.

61-12A-3 Certification of Pesticide Applicators

3.1 The commissioner may not certify a person as a pesticide applicator unless he or she has passed an examination approved by the commissioner or he or she qualifies through the reciprocity requirements as contained in section 10 of this rule or qualifies as a federal employee under section 11 of this rule.

3.2 The certification of 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 is 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 is determined on the basis of a written examination and as appropriate, performance testing based upon the standards set forth in section 6 of this rule.

3.3.b. The commissioner shall give written examinations at such time and places as he or she may direct. Correctly answering 70% or more of the examination questions is considered evidence of competence.

3.3.c. The commissioner shall deny certification to an applicant who fails to answer at least 70% of the questions correctly. 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 28 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 in 61 CSR 12. The application form shall contain all the information required by the Act and any other information considered necessary by the commissioner to carry out the purpose of the Act.

### 61-12A-4 Categorization of Commercial Applicators

4.1. Commercial pesticide applicators who are required to be certified applicators are classified in the categories and subcategories set forth in this section. Public employees required to be certified applicators in the categories and subcategories listed in this section are categorized as commercial applicators with respect to the application of restricted use pesticides.

#### 4.2. Commercial Applicator Categories

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

4.2.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.

4.2.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.

4.2.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.

4.2.d.A. Ornamental and Turf Outdoors. This subcategory is for commercial applicators using or supervising the use of restricted use pesticides outdoors in the maintenance and production of ornamental trees, shrubs and flowers. When requested persons certified in this category may perform incidental treatment to indoor plants in small areas not to exceed 10 square feet.

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

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

4.2.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, and excludes public health applicators as defined in sub-division 4.2.i. of this rule.

4.2.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 rights-of-way, fence lines, structural perimeters or other similar areas.

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

4.2.h.A. General. This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in and around residential, commercial, institutional or industrial facilities, including food preparation areas such as kitchens, cafeterias or snack shops. When requested, persons certified in this subcategory may perform incidental treatment to indoor plants in small areas not to exceed 10 square feet.

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

4.2.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.

4.2.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 produce 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.

4.2.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.

4.2.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.

4.2.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 of such persons are 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 of such persons are State, Federal and other persons conducting field research utilizing restricted use pesticides.

4.2.1. Pesticide Storage and Distribution (Excluding application). This category includes those persons who store, display and distribute restricted use pesticides in the operation of a business selling or distributing pesticides. Certification in this category does not permit the application of pesticides for hire.

4.2.m. Miscellaneous Pest Control - This category includes commercial applicators who may be required to be certified applicators in an area other than those specified. The commissioner shall issue certification in this category on a case by case basis. The commissioner shall restrict the activities of the applicator certification, as he or she considers appropriate, to the applicators experience and demonstration of competency.

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

61-12A-5 Categorization of Private Applicators

5.1 Agricultural Pest Control. This category includes private applicators using or supervising the use of restricted use pesticides, except fumigants, in the 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 and places on or in which animals are confined. Examples of such animals includes, but is not limited to: beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock.

5.2 Agricultural Fumigation. This category includes private applicators using or supervising the application of restricted use pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use pesticides for the fumigation of agricultural products. Certification in this category requires concurrent certification in Agricultural Pest Control as defined in sub-section 5.1 of this rule.

61-12A-6 Certification Standards for Pesticide Applicators

6.1 General Standards for private and commercial applicators. All applicators shall demonstrate a practical knowledge of the principles and practices of pest control and safety in the use of pesticides. The commissioner shall base a determination of

competency on an examination containing examples of problems and situations in the following areas:

6.1.a. Label and labeling comprehension to include:

- 6.1.a.A. the general format and terminology of labels and labeling;
- 6.1.a.B. the understanding of directions for use, warnings, terms, names, symbols and other information commonly appearing on pesticide labels.
- 6.1.a.C. the understanding that labels and labeling are legal documents and the applicator shall follow directions they contain; and
- 6.1.a.D. the meaning of the term Restricted Use pesticide.

6.1.b. Safety factors to include:

- 6.1.b.A. an understanding of the terms acute and chronic toxicity, exposure and how a hazard is determined by exposure to a pesticide and a pesticide's toxicity;
- 6.1.b.B. the recognition of symptoms of acute toxicity and practical treatment;
- 6.1.b.C. the precautions necessary to prevent injury to any applicators and other individuals in or near treated areas;
- 6.1.b.D. the need for and use of personal protective equipment;
- 6.1.b.E. a knowledge of worker protection practices, including warning requirements and reentry restrictions; and
- 6.1.b.F. a knowledge of the safe practices regarding transportation, storage, mixing, handling, application and disposal of pesticides including container disposal.

6.1.c. Environmental risk to include:

- 6.1.c.A. the climatic factors that cause pesticide drift and runoff;

- 6.1.c.B. how terrain, soil and substrata influence surface and ground water contamination;
- 6.1.c.C. the recognition of sensitive areas and the organisms affected by pesticide applications, drift and runoff;
- 6.1.c.D. the precautions necessary for the protection of endangered and threatened species; and
- 6.1.c.E. methods of spill prevention and control.
- 6.1.d. Pest identification and biology to include:
  - 6.1.d.A. the principles of pest identification; and
  - 6.1.d.B. the recognition of damage or problems caused by pests.
- 6.1.e. Pesticides and chemical control to include:
  - 6.1.e.A. the types of pesticides, formulations and adjuvants;
  - 6.1.e.B. the concepts of pesticide compatibility, synergism, persistence and resistance;
  - 6.1.e.C. the factors which affect a pesticide's effectiveness; and
  - 6.1.e.D. the selection of the correct formulation and method of application for a site and pest.
- 6.1.f. Equipment to include:
  - 6.1.f.A. the characteristics and main uses of typical pesticide application equipment;
  - 6.1.f.B. the selection of the most appropriate equipment for applicable situations; and
  - 6.1.f.C. the proper care, maintenance and use of application equipment.
- 6.1.g. Calibration and calculations to include:
  - 6.1.g.A. the dilution of concentrate formulations in accordance with label directions;

- 6.1.g.B. the calculation of area or volume to be treated and amount of pesticide to be applied; and
- 6.1.g.C. the adjustment of application equipment's nozzle, pressure and speed to obtain correct pesticide output.
- 6.1.h. Applicator related laws and regulations to include:
  - 6.1.h.A. the applicable State and Federal laws and regulations;
  - 6.1.h.B. the applicator's responsibility for pesticide use consistent with it's label or labeling and supervision of non-certified employees assigned to use a restricted use pesticide; and
  - 6.1.h.C. the applicator's liability and penalties.

6.2 Specific Standards of Private Applicator. Private applicators are required to demonstrate by written examination the skills and knowledge specific to their category of certification. The importance of such demonstration is amplified by the use of pesticides on extensive areas, the quantities of pesticide needed and the ultimate use of many agricultural commodities as food and fuel.

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

- 6.2.a.A. the recognition of the common pests to be controlled and damage caused by them;
- 6.2.a.B. the ability to read and understand the pesticide label and labeling information including the common name of pesticides he or she applies; the pests to be controlled; the timing and methods of application; safety precautions; any preharvest or reentry restrictions; and specific disposal procedures;
- 6.2.a.C. the 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 the area to be covered, the speed at which application equipment will be driven and the quantity dispersed in a given period of operation;

- 6.2.a.D. the ability to recognize local environmental situations that must be considered during pesticide application to avoid contaminations;
- 6.2.a.E. the ability to recognize poisoning symptoms and the procedures to follow in case of a pesticide accident; and
- 6.2.a.F. a practical knowledge concerning relevant soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, pesticide toxicity, residue potential and the potential for environmental contamination and non-target injury;

6.2.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 a practical knowledge of the following:

- 6.2.b.A. the use of personal protective equipment for fumigation and general safety procedures, including posting, reentry and aeration; and
- 6.2.b.B. the emergency procedures and application techniques appropriate to his or her farm;

6.3 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 requirements set forth in section 6.1 of this rule. The specific standards set forth in this section are applicable to the commercial applicator categories and subcategories of certification specified in sub-section 4.2 of this rule.

6.3.a. Agricultural Plant Pest Control. Applicators shall demonstrate a practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The applicator must have a practical knowledge

concerning soil and water problems, pre-harvest intervals reentry intervals, phytotoxicity and the potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

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

6.3.c. Forest Pest Control. Applicators shall demonstrate a practical knowledge of the types of forests, forest nurseries and seed production in this State and the pests involved. They shall possess a practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. An applicator must have a practical knowledge of the relative biotic agents and their vulnerability to the pesticides to be applied. The applicator shall demonstrate a practical knowledge of secondary problems such as unintended effects on wildlife. An applicator must demonstrate the proper use of specialized equipment especially as it may relate to meteorological factors and adjacent land use.

6.3.d. Ornamental and Turf Pest Control.

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

6.3.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.

6.3.e. Seed Treatment. Applicators shall demonstrate a practical knowledge of the types of seeds that require chemical protection against pests and factors such as seed coloration,

carriers and surface agents which influence pesticide binding and may affect germination. They shall demonstrate a practical knowledge of hazards associated with the handling, sorting and mixing, and misuse of treated seed such as the introduction of treated seed into food and feed channels, as well as the proper disposal of unused treated seeds.

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

6.3.g. Right-of-Way/Industrial Weed Control. Applicators shall demonstrate a practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate a practical knowledge of problems on runoff, drift and excessive foliage destruction and the ability to recognize target organisms. They shall also demonstrate a 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.

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

6.3.h.A. General. Applicators shall demonstrate a practical knowledge of the control of pests in and around structures excluding fumigation and wood destroying pests. Applicators shall demonstrate a 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 a knowledge of conditions conducive to pest infestations and the selection of appropriate control procedures for each situation. Applicators shall demonstrate a knowledge of the hazards involved with pesticide usage.

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

with the handling and use of these pesticides and the appropriate application equipment to be used.

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

6.3.h.D. Wood Preservation and Wood Product Treatment. Applicators shall demonstrate a practical knowledge of the conditions for which a 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 a knowledge of 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 a knowledge of the hazards involved with the handling and use of these pesticides and the appropriate application equipment to be used.

6.3.i. Public Health Pest Control. 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 the applicator know and recognize the pests and understand the appropriate life cycles and habitats as a basis for control strategy. These applicators shall have a practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have a 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.

6.3.j. Regulatory Pest Control. Applicators shall demonstrate a practical knowledge of regulated pests, including the 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 a knowledge of the 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 are made in new situations.

6.3.k. **Demonstration and Research Pest Control.** Persons demonstrating the safe and effective use of pesticides to other applicators and the public are 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 the demonstration and an applicator must have a practical knowledge of problems, pests and population levels occurring in each demonstration situation. 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 sub-section 6.1. of this rule. In addition, they shall meet the specific standards required in sub-division 6.3.a. through 6.3.h. of this rule as may be applicable to their activity in this State. Persons conducting field research or method improvement work with restricted use pesticides shall know the general standards detailed in section 6.1. of this rule. In addition, they shall know the specific standards required in sub-division 6.3.a. through 6.3.j. of this rule as may be applicable to their particular activity in this State.

6.3.1. **Pesticide Storage and Distribution.**

6.3.1.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 distributing 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.

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

6.3.m. **Miscellaneous.** 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.

6.3.n. Aerial. In addition to demonstrating a knowledge of the specific standards for the applicable categories or subcategories in sub-sections 6.3.a. through 6.3.k. of this rule, persons desiring to apply pesticides by aircraft must hold a valid Agricultural Applicator Certification from the Federal Aviation Administration.

6.4 Registered Technicians. Non-certified employees of a pesticide business performing pesticide application similar to a commercial applicator or certified public applicator must register with the commissioner.

6.4.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 shall complete the training program within 30 days of his or her employment and before the employee registers with the commissioner.

6.4.b. The commissioner may not approve any training program that does not have a method of verification of employee attendance or participation and include instruction in at least the following elements:

- 6.4.b.A. State and Federal Laws and Regulations;
- 6.4.b.B. how to read and interpret a pesticide label;
- 6.4.b.C. the handling of emergencies and spills to include:
  - 6.4.b.C.1. the signs and symptoms of common types of pesticide poisoning;
  - 6.4.b.C.2. the practical emergency treatment for pesticide injuries;
  - 6.4.b.C.3. how to obtain emergency medical care; and
  - 6.4.b.C.4. decontamination procedures.
- 6.4.b.D the proper methods of storing, mixing or loading, transporting, handling, applying and disposing of pesticides;
- 6.4.b.E safety and health measures including the proper use of personal protective equipment;

- 6.4.b.E.1. the hazards of pesticides from toxicity or exposure including acute and delayed reaction; and
- 6.4.b.E.2. the routes of exposure.
- 6.4.b.F. the potential adverse effects caused by various climatic or environmental conditions such as drift, runoff or ground water contamination;
- 6.4.b.G. pesticide application techniques;
- 6.4.b.H. pest identification and control recommendation; and
- 6.4.b.I. the principles of integrated pest management.

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

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

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

6.4.f. On the effective date 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 the effective date of this rule is eligible to apply as a registered technician by completing an application form, paying the required fee and showing such proof of continual employment by employment records or a notarized statement from his or her employer.

#### 61-12A-7 Recertification

7.1 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. The commissioner will grant an applicator a continuing certification unit (ccu) for a 30 minute period of training or the greater portion thereof.

7.2 Commercial/Certified Public Applicators - An approved training session for commercial applicators or certified public applicators shall consist of at least 20 continuing certification units (10 hours) of audience contact or participation on the subject matter contained in sub-sections 6.1 and 6.3 of this rule for each category or subcategory of certification.

7.3 Private Applicator - An approved training session for private applicators shall consist of at least 10 continuing certification units (5 hours) of audience contact or participation on the subject matter contained in sub-sections 6.1 and 6.2 of this rule for each category or subcategory of certification.

7.4 A certified applicator may accumulate the required continuing certification units for programs as required in this section by attending two or more training sessions.

#### 61-12A-8 Supervision of Non Certified Applicators

##### 8.1 General Supervision

8.1.a. All non-certified applicators must be under the direct supervision of a certified applicator.

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

8.2 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 control the minimum supervision required. An applicator must follow these label requirements.

#### 61-12A-9 Record Keeping

##### 9.1 Commercial Applicator/Certified Public Applicator

9.1.a. Each commercial applicator or certified public applicator shall keep for a minimum of two years records detailing the application of all pesticides. Applicators shall maintain the following information at a minimum:

9.1.a.A. the pesticide used, including the EPA registration number;

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

9.1.a.C. the date and the place of application;

9.1.a.D. the pest against which the pesticide was used;

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

9.3 Private Applicator - A private applicator shall keep records for a period of two years detailing the use of restricted use pesticides. A private applicator shall maintain the following minimum information:

9.3.a. the pesticide used, including EPA registration number;

9.3.b. the formulation, the dilution rate and the quantity of the pesticide used;

9.3.c. the date and the place of application;

9.3.d. the pest against which the pesticide was used.

#### 61-12A-10 Reciprocity

10.1 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.

10.2 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, the proper fee and a true copy of the applicant's out-of-state certification.

#### 61-12A-11 Federal Employees

11.1 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 another EPA approved plan judged by the commissioner to be at least equal to the Act and regulations promulgated pursuant to the Act, the commissioner may issue a certification in the same category or categories without the need for a written examination nor for the payment of any fee.

11.2 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 by the commissioner or a State document will be issued which will permit the federal employee to use restricted use pesticides in West Virginia.

11.3 Emergency Situations - If, in an emergency situation, federal employees are brought in to West Virginia to control or eradicate pests, and 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 is considered to be certified in West Virginia. The employee and his or her agency must, within 10 days of entering the state, present qualifying credentials to the commissioner. At this time, the commissioner shall issue State credentials 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 of entering the State, the non-federal applicator certified in another state must apply for West Virginia certification as required by this rule.

61-12A-12 Equipment

12.1 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 pesticide. 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. 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.

12.2 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.

KEN HECHLER  
Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

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Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

January 22, 1992

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

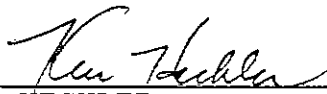
AGENCY: Agriculture

RULE: Amendments, Series 12A, Certified Pesticide Applicator  
Rules and Regulations (Repeal & Replace)

DATE FILED AS AN EMERGENCY RULE: December 20, 1992

DECISION NO. 3-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
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KEN HECHLER  
Secretary of State

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DECISION

EMERGENCY RULE DECISION  
(ERD 3-92)

AGENCY: Department of Agriculture  
RULE: Amendments, Series 12A, Certified Pesticide  
Applicator Rules and Regulations (Repeal & Replace)  
FILED AS AN EMERGENCY RULE: December 20, 1992

- par. 1 The Department of Agriculture (Department) has filed the above emergency amendments to a rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State December 20, 1991 and with the LRMRC December 23, 1991.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §19-16A-4(6) reads:

(6) Promulgate rules pursuant to §29A-1-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department are as follows:

This rule is being filed as an emergency for the immediate preservation of public health, safety and welfare. This rule will allow the Department of Agriculture to conduct training and certify pesticide applicators as required by the Pesticide control Act of 1990. The training and certification will assure the safe and proper use of pesticides in homes, offices, restaurants, hotels, schools and other public buildings, and to protect groundwater. The Department of Agriculture now has procedures in place to allow this rule to be enforced. The implementation of this provision is needed immediately in order to achieve the goals of the Pesticide Control Act of 1990 and to protect the public from improper pesticide use.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public health, safety and welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 3-92 or ERD 3-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.

*Ken Hechler*

KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

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JAN 22 PM 2:17