

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The passage of the 1990 Pesticide control Act repealed previous pesticide laws and rules.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

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	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

Olve Berntsen

DATE: August 8, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

LEGISLATIVE RULE TITLE: Certified Pesticide Applicator

1. Authorizing statute(s) citation 19-16A-4

2. a. Date filed in State Register with Notice of Hearing:

June 26, 1991

b. What other notice, including advertising, did you give of the hearing?

press release sent to all newspapers in the state; Fred Butler and

Steve Hannah, WV Farm Bureau; George Carenbauer, Steptoe

and Johnson, all "Dealers registered use" and "Businesses for hire".

c. Date of hearing(s): July 30, 1991 lpm

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

August 8, 1991

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert Frame 348-2209

Barbara Smith 348-2226

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

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 a 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. When requested, persons certified in this category may perform incidental treatment to indoor plants in small areas not to exceed 10 square feet.

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. When requested, persons certified in this category may perform incidental treatment to indoor plants in small areas not to exceed 10 square feet.

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.l. **Pesticide Storage and Distribution.**

7.3.l.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.l.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.

No written comments were received regarding the rules for Certified Pesticide Applicators.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

M E M O R A N D U M

TO: The Record

FROM: Robert E. Frame, Director, ^{Pest.} Pesticide Division

SUBJECT: Public Hearing for Rules Titled "Certified Pesticide Applicator Rules"

DATE: August 1, 1991

A public hearing was held on July 30, 1991 at 1:00 p.m. in the conference room of the Guthrie Agriculture Center, to receive comments on the proposed rules titled "Certified Pesticide Applicator Rules". A Notice of Public Hearing was filed with the Secretary of State's office on June 26, 1991. A notice of hearing and summary of the proposed rule was sent to 365 known pesticide businesses and dealers. A general press release was also issued to announce the hearing. A copy of the proposed rule was given to all persons or parties making requests.

On July 30, 1991 at 1:00 p.m., one (1) person was present for the hearing. Mr. Timothy Russell, owner of Prescription Lawn and Pest Control, Bridgeport, WV, and also a member of the Board of Directors of the Pest Control Operators Association of West Virginia, indicated he wished to speak. Mr. Russell expressed concern that as a current operator in ornamental and turf pest control and general pest control in homes, he occasionally has a request to treat an indoor plant. Those treatments are incidental and not a routine part of the business operation. He desired on his behalf and the PCOA of West Virginia that a provision be added to allow these incidental treatments without the need of being certified in Ornamental Pest Control Indoors.

Mr. Russell's request is reasonable and a provision was added to sub-paragraphs 5.2.d.A. and 5.2.h.A. to allow incidental treatments to small areas. The change allows relief for the incidental application and does not diminish the intent of regulating commercial businesses primarily engaged in applying pesticides to indoor ornamentals in shopping malls, banks and other public places.

CERTIFIED PESTICIDE APPLICATOR RULES

No written comments were received regarding this rule.

HEARING TRANSCRIPT

July 30, 1991

1:00 p.m.

Attendees:

Barbara Smith
Robert Frame
Kathy Martin
Timothy Russell

Barbara Smith: This hearing is called to order and this hearing is for the Certified Pesticide Applicator Regulations and called so that oral comments can be received. The date and the time is July 30, 1991 and it's 1:00 p.m. The notice of the hearing was filed in the Secretary of State's office on June 26, 1991 and published in volume 8, number 25 in the State Register. 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 US Environmental Protection Agency. The rule is base on the West Virginia Pesticide Control Act of 1990, which was effective March 30, 1990. I am Barbara Smith the Director of Compliance, and the hearing officer here today. With me today is Bob Frame, who is the Director of the Pesticide Division, and also Kathy Martin, who will be doing the transcription. I have one person here today Timothy Russell and he has said that he would like to make a comment. Tim.

Timothy Russell: What I was wanting to comment about is Section 5.2.D, 5.2.D.a, and 5.2.D.b. My feeling is that there are people that would be covered -- ornamental and turf operators, such as myself --- that would be covered in the outdoor part, but a very incidental part of our business would be doing some indoor treatment. We would like to see an exclusion for incidental treatments. It's not our primary business, but if someone were to ask me to do something on a small scale -- that I would be able to do that without another classification of the indoor operator. Some type of provision would be appreciated. Other than that, that's all I have to say.

Barbara: Thank you Tim. I am going to stop the tape now. We generally wait for half an hour to see if anyone else shows up and if no one else shows up this is the end of the hearing.

Barbara: Now we are back on the hearing and Mr. Russell wishes to make an additional statement.

Timothy Russell: Just that also some type of exclusion be made for pest control people under 5.2.H.a. and any other parts that would be a very incidental part of their business, but to prevent another problem in indoor ornamental situations.

Barbara: Thank you.

JUL 08 1991



Cleve Benedict
Commissioner of Agriculture

NEWS RELEASE

July 8, 1991

Charleston, West Virginia 25305

Public hearings scheduled for new regulations

Agriculture Commissioner Cleve Benedict announced a series of public hearings on new regulations and encouraged public participation in the process.

Benedict said the public hearings give the West Virginia Department of Agriculture (WVDA) the opportunity to modify regulations after taking public input into consideration.

In addition to the public hearings, written comments will be accepted until the time of the hearing. The public hearings will be held on the following days:

July 12, 1 p.m.	Licensing of Pesticide Business
July 12, 3 p.m.	Regulations to Govern Aerial Application of Herbicides to Right of Way
July 29, 10 a.m.	Frozen Desserts and Imitation Frozen Desserts
July 29, 2 p.m.	Commercial Feed
July 30, 10 a.m.	Assessment of Civil Penalties for Consent Agreement or Negotiated Settlements (Pesticides)
July 30, 1 p.m.	Certified Pesticide Applicator
July 31, 10 a.m.	Licensing of Livestock Dealers
August 1, 10 a.m.	Disposal of Dead Poultry

All hearings will be held in the J. T. Johnson Conference Room in Building 2 of the Guthrie Agricultural Center, Charleston, W.Va., except for the Disposal of Dead Poultry hearing. The Dead Poultry hearing will be held at the Moorefield Agricultural Center.

Comment period deadlines for the following regulations (there are no public hearings) will be July 29 at noon:

Plant Pest Act
West Virginia Apiary Law of 1991
Animal Disease Control

For more information on how to comment on the new regulations, contact Barbara Smith, Director of Compliance, WVDA, at 304/348-2226.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

**NOTICE OF PUBLIC HEARING TO RECEIVE
COMMENTS ON PESTICIDE REGULATIONS**

Proposed regulations titled "Certified Pesticide Applicator Rules" and "Assessment of Civil Penalties and Procedures for Consent Agreements or Negotiated Settlements" have been filed with the Secretary of State. Hearings have been scheduled to receive comments on July 30, 1991 in the J. T. Johnson Conference Room, Building 2 of the Guthrie Agriculture Complex, Charleston, WV 25312. The hearing to consider rules for the civil penalties, consent agreements and negotiated settlements is scheduled for 10:00 a.m.

Comments for the Certified Pesticide Applicator Rules are scheduled to be received at 1:00 p.m. Comments on either series of proposed rules will be accepted by oral presentation, written or both. Persons desiring to submit written comments in lieu of attending a hearing may send them to the West Virginia Department of Agriculture, Pesticide Division, 1900 Kanawha Boulevard E., Charleston, WV 25305. An individual desiring to discuss the proposed rules, or needing more information may call 348-2209.

Section 22 of the Pesticide Control Act of 1990 provides civil penalties for violations of the Act and provides authority to promulgate rules to allow for consent agreements or negotiated settlement of these penalties. The proposed rule titled **Assessment of Civil Penalties and Procedures for Consent Agreement or Negotiated Settlement** provides a framework for civil penalty amounts based on the type of violation, potential harm and the frequency of the violation. The consent agreement, negotiated settlement portion of the rule, specifies a mechanism by which a proposed penalty can be settled, discussed and/or amended through informal hearings. Such an arrangement can be advantageous to all practices in settling minor violations, without the time and expense of a formal hearing process.

Certified Pesticide Applicator Rules - This regulation continues under the Pesticide Control Act of 1990 the previous regulations regarding the certification and training of pesticide applicators, record keeping, reciprocity, recertification and

equipment. The changes from the old regulations include an update of certification standards to meet those published by EPA, the creation of criteria for technician training programs, the establishment of a continuing certification credit system for recertification, the requirement for back flow prevention systems and at all mixing loading sites.

There are 16 proposed categories for commercial applicator, as opposed to 14 previous categories. The category changes are: 1) the consolidation of the Public Health-related sub-category with Public Health, 2) the consolidation of the Vegetation Management sub-category with Right of Way, and 3) the creation of a new category Ornamental Pest Control Indoors, Pesticide Storage and Distribution, and Miscellaneous. The Pesticide Storage and Distribution is for dealers of restricted-use pesticides and mirrors the old dealer examination requirements. The Miscellaneous category is reserved for those instances where a special category or certification is needed and none exists.

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-16B

SERIES 12A

TITLE: West Virginia Pesticide Use and Application Act

Section 1. General

1.1 Scope - These Legislative regulations amend and promulgate Section 1 through 20 of the regulations and establish general operating rules and procedures for the enforcement of the West Virginia Pesticide Use and Application Act as Amended 1981 (Article 16B) including, but not limited to, the certification of users of restricted use pesticides, the licensing of firms applying pesticides for hire, restricted use pesticides and the dealers in restricted use pesticides, record keeping and standards for certification and licensing.

1.2 Authority - W.Va. Code 19-16B-4

1.3 Filing Date - April 24, 1987

1.4 Effective Date - June 12, 1987

1.5 Amendment of Former Regulation - This Legislative regulation amends the following West Virginia Pesticide Use and Application Act, Series XIIIa, Section 1.3, 1.4, 13.1, 13.2.

Section 2. Declaration of Policy

Article 16B, Chapter 19, Code of West Virginia places the enforcement of the West Virginia Pesticide Use and Application Act with the Commissioner and empowers him to promulgate rules and regulations for regulation in the public interest of the use and application of pesticides in West Virginia.

Section 3. Definitions

3.1 For the purpose of these regulations, the definitions shall be the same as those appearing in the West Virginia Pesticide Use and Application Act (19-16B-3)

3.1.1 The term "accident" means an unexpected, undesirable event, resulting in the presence of a pesticide, that adversely affects man or the environment.

3.1.2 The term "Act" means the West Virginia Pesticide Use and Application Act (19-16B)

3.1.3 The term "competent" means properly qualified to perform functions associated with pesticide application, the degree of capability

required being directly related to the nature of the activity and the associated responsibility.

3.1.4 The term "fumigant" means a gaseous or readily volatizable chemical (as hydrogen cyanide or methyl bromide) used as a disinfectant or pesticide.

3.1.5 The term "fumigation" means the application of a fumigant to one or more rooms in a structure, or to the entire structure such as a box car, aircraft, truck, ship or any object sealed or covered.

3.1.6 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 man or the environment.

Section 4. Restricted Use Pesticides

4.1 This section is reserved for the West Virginia Restricted Use Pesticide List. (See Appendix Number 1)

Section 5. Categorization of Commercial Applicators

5.1 Procedure -

5.1.1 Categories and sub-categories of applications (other than private applicators) who use or supervise the use of restricted use pesticides are identified below. Public employees using or supervising the use of restricted use pesticides are Certified Public Applicators in the categories and sub-categories identified below and are categorized as Commercial Applicators with respect to Restricted Use Pesticides.

5.1.2 It shall be understood throughout these regulations that, according to 19-16B-8(2), all persons applying any pesticides as, or for, a Licensed Pesticide Application Business, whether or not they are applying or supervising the application of restricted use pesticides, must be a commercial applicator or be under the supervision of a commercial applicator certified in the appropriate category or sub-categories identified below and that the fact that their need for certification, whether or not the pesticides are for restricted use, will not be specifically pointed out in the description of each category or sub-category to follow.

5.2 Agriculture Plant Pest Control Category - This category includes commercial applicators using or supervising the use of restricted use pesticides in the production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and

non-crop agricultural lands.

5.2.1 Sub-Category A - Agricultural Plant Pest Control Aerial Applicator - This sub-category includes commercial applicators using or supervising the use of restricted use pesticides applied by any type of aircraft in the production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans, and forage, vegetables, small fruits, tree fruits, and nuts, as well as on grasslands and non-crop agricultural lands.

5.3 Animal Pest Control - This category includes commercial applicators using or supervising the use of restricted use pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined.

5.3.1 Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators, are included in this category.

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

5.4.1 Sub-Category A - Aerial Forest Pest Control - This category includes commercial applicators using or supervising the use of restricted use pesticides applied by any type of aircraft in forests, forest nurseries and forest seed producing areas.

5.5 Ornamental and Turf Pest Control Category - 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.

5.5.1 Sub-Category A - Aerial Ornamental and Turf Pest Control - This category includes commercial applicators using or supervising the use of restricted use pesticides applied by any type of aircraft to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

5.6 Seed Treatment Category - This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

5.7 Aquatic Pest Control Category - 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 Section 5.10.1 below.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 5

5.7.1 Sub-Category A - Aerial Aquatic Pest Control - This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied by means of any type of aircraft to standing or running water.

5.8 Right-Of-Way Pest Control Category - This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.

5.8.1 Sub-Category A - Aerial Right-of-Way Pest Control includes commercial applicators using or supervising the use of restricted use pesticides applied by any type of aircraft in the maintenance of roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.

5.9 Industrial, Institutional, Structural and Health Related Pest Control - Commercial applicators in this category are sub-categorized as follows:

5.9.1 General Pest Control - This sub-category includes commercial applications using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products except that this sub-category does not include applicators using fumigants (other than fumigants used out-of-doors in rodent burrows that do not lead into dwellings or other structures), nor does it include applicators engaged in termite or other structural pest control.

5.9.1.1 Treating emergency crevices or ant runways to control carpenter ants or treatments made to control carpenter bees or surface application of sprays to control wood borers in furniture of lumber shall be considered to be general pest control.

5.9.2 Structural Pest Control - This sub-category includes commercial applicators using or supervising the use of restricted use pesticides to control termites, powder post beetles, or other wood-destroying pests infesting human dwellings, schools, hospitals, stores, warehouses or any other structure and adjacent areas.

5.9.3 Fumigation Pest Control - This sub-category includes commercial applicators using or supervising the use of restricted use pesticides to fumigate human dwellings, schools, hospitals, stores, warehouses, grain elevators, or any other structure including box cars,

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 5

trucks, automobiles, shipping containers, boats, barges or ships, or other similar objects as well as commodities such as lumber, hay or straw, food products, soil, bags or other objects whether they are in structures or fumigated out-of-doors.

5.9.4 Industrial, Institutional Vegetation Management

- This sub-category includes commercial applicators using or supervising the use of restricted use pesticides to control unwanted vegetation around industrial or institutional structures on grounds, storage yards, substations or other areas exclusive of rights-of-way but may include vegetation management along driveways or access roads to the above type sites. Individuals desiring aerial applicators certification in this sub-category must hold a valid Agricultural Applicator Certification from the United States Federal Aviation Agency.

5.9.5 Health Related Pest Control - This sub-category includes commercial applicators using or supervising the use of restricted use pesticides to control pests having medical or public health importance in other than aquatic sites. Individuals desiring aerial applicator certification in this sub-category must hold a valid Agricultural Applicator Certification from the United States Federal Aviation Agency;.

5.10 Certified Public Applicator Category - In addition to the categories and sub-categories identified above in which a public employee under the law may be classified, the following additional sub-categories are identified below:

5.10.1 Sub-Category A - Public Health Pest Control - This sub-category includes state, federal or other governmental employees using or supervising the use of restricted use pesticides in public health programs for management and control of pests having medical and public health importance.

5-10-2 Sub-Category B - Regulatory Pest Control - This sub-category includes state, federal or other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

5.11 Demonstration and Research Pest Control Category - This category includes individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration.

5.11.1 This category also includes persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides;.

5.11.2 Included in the Demonstration Pest Control category are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The Research Pest Control category includes: State, Federal, commercial and other persons conducting field research on or utilizing restricted use pesticides.

5.12 Other Categories or Sub-Categories - The commissioner may, after a public hearing add additional categories or sub-categories as needed for the certification of commercial applications.

Section 6. Standards for Certification of Commercial Applicators
(Including Certified Public Applicators)

6.1 Determination of Competency - Competency in the use and handling of pesticides shall be determined on the basis of written examination, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Commissioner. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or sub-category (if any) in which an applicator is to be classified. Written examinations shall be given at such times and places as the commissioner may direct. Correctly answering seventy percent or more of the questions shall be considered to be satisfactory evidence of competence. Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification and at least thirty (30) days must pass before an applicant may apply for re-examination.

6.2 General Standard For All Categories Of Certified Commercial Applicators - All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or sub-category of the applicator's certification and the following areas of competency:

6.2.1 Label and Labeling Comprehension

- 6.2.1.1 The general format and terminology of pesticide labels and labeling;
- 6.2.1.2 The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
- 6.2.1.3 Classification of the product, general or restricted; and

6.2.1.4 Necessity for use consistent with the label.

6.2.2 Safety -

6.2.2.1 Pesticide toxicity and hazard to man and common exposure routes;

6.2.2.2 Common types and causes of pesticide accidents;

6.2.2.3 Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

6.2.2.4 Need for and use of protective clothing and equipment;

6.2.2.5 Symptoms of pesticide poisoning;

6.2.2.6 First aid and other procedures to be followed in case of pesticide accident; and

6.2.2.7 Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and pesticide containers.

6.2.3 Environment - The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

6.2.3.1 Weather and other climatic conditions;

6.2.3.2 Types of terrain, soil or other substrate; or

6.2.3.3 Presence of fish, wildlife and other non-target organisms; and

6.2.3.4 Drainage patterns.

6.2.4 Pests - Factors such as:

6.2.4.1 Common features of pest organisms and characteristics of damage needed for pest recognition;

6.2.4.2 Recognition of relevant pests; and

- 6.2.4.3 Pest development and biology as it may be relevant to problem identification and control.
- 6.2.5 Pesticides - Factors such as:
 - 6.2.5.1 Types of pesticides;
 - 6.2.5.2 Types of formulations;
 - 6.2.5.3 Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
 - 6.2.5.4 Hazards and residues associated with use;
 - 6.2.5.5 Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - 6.2.5.6 Dilution procedures.
- 6.2.6 Equipment - Factors including:
 - 6.2.6.1 Types of equipment and advantages and limitations of each type; and
 - 6.2.6.2 Uses, maintenance and calibration.
- 6.2.7 Application Techniques - Factors including:
 - 6.2.7.1 Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
 - 6.2.7.2 Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - 6.2.7.3 Prevention of drift and pesticide loss into the environment.

6.3 Specific Standards of Competency for Each Category of Commercial Applicators - Some of the factors referenced in this section are of particular importance of the different types of activities carried out by applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not of seed treatment applicators.

The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below:

6.3.1 Agricultural Plant Pest Control Category - Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

6.3.1.1 Sub-Category A - Agricultural Plant Pest Control Aerial Applicator - In addition to demonstrating competence in the specific standards for the category Agricultural Plant Pest Control, the aerial applicator must hold a valid Agricultural Applicator Certification from the Federal Aviation Agency.

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

6.3.3 Forest Pest Control - Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in West Virginia and the pests involved. They should 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. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticides use may be difficult to assess. The applicators must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may related to meteorological factors and adjacent land use.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 6

6.3.3.1 Sub-Category A - Aerial Forest Pest Control - In addition to demonstrating competence in the specific standards for category Forest Pest Control, the aerial applicator must hold a valid Agricultural Applicator Certification from the Federal Aviation Agency.

6.3.4 Ornamental and Turf Pest Control - 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 habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

6.3.4.1 Sub-Category A - Aerial Ornamental and Turf Pest Control - In addition to demonstrating competence in the specific standards for the category Ornamental and Turf Pest Control, the aerial applicator must hold a valid Agricultural Applicator Certification from the Federal Aviation Agency.

6.3.5 Seed Treatment Category - Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers and surface active agents which influence pesticides binding and may affect germination. They must 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.

6.3.6 Aquatic Pest Control Category - Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide 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 applications.

6.3.6.1 Sub-Category A - Aerial Aquatic Pest Control -
In addition to demonstrating competence in the specific standards for the category Aquatic Pest Control, the aerial applicators must hold a valid Agricultural Applicator Certification from the Federal Aviation Agency.

6.3.7 Rights-of-Way Pest Control Category - 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 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 nature 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.

6.3.7.1 Sub-Category A - Aerial Right-of-Way Pest Control - In addition to demonstrating competence in the specific standards for the category Right-of-Way Pest Control, the aerial applicator must hold a valid Agricultural Applicator Certification from the Federal Aviation Agency.

6.3.8 Industrial, Institutional, structural and Health Related Pest Control Category - Applicators in each sub-category of this category (General, Structural, Fumigation and Vegetation Management and Health Related Pest Control), must demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulation appropriate for their control, and methods of application used in the applicators sub-category that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in these sub-categories. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

6.3.9 Certified Public Applicator Category -

6.3.9.1 Sub-Category A - Public Health Pest Control - Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is 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.

6.3.9.2 Sub-Category B - Regulatory Pest Control - Applicators shall demonstrate practical knowledge of regulations 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 introductions, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

6.3.10 Demonstrations and Research Pest Control Category - Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expended 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 should demonstrate an understanding of pesticide-organism inter-actions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing all of the standards detailed in section 6.2 above. In addition, they shall meet the specific standards required for categories 6.3.1 through 6.3.7 of this section as may be applicable to their particular activity.

6.3.10.1 Persons conducting field research or method improvement work with restricted use pesticides would be expected to know the general standards detailed in 6.2 above. In addition, they shall be expected to know the specific standards required for section 6.3.1 through 6.3.9 of this section, applicable to their particular

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 6

activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

6.4 Special Standards - This space reserved for possible issuance of Special Standards, after due public hearing.

6.5 The above standards do not apply to the following persons for purpose of these regulations:

6.5.1 Persons conducting laboratory type research involving restricted use pesticides; and

6.5.2 Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying pesticides as drugs of medication during the course of their normal practice.

6.6 Standards for Licensed Pesticide Application Business License -

6.6.1 Persons applying for a Licensed Pesticide Application Business License shall be expected to demonstrate a knowledge and understanding of the state and federal pesticide laws, safe use and storage of pesticides, and the basis of the work to be done under the classification or classifications for which application for license is being made.

6.6.2 The classification of Licensed Pesticide Application Business License shall include agricultural pest control, forest pest control, ornamental and turf pest control, seed treatment, aquatic pest control, right-of-way pest control, general pest control, fumigation pest control, vegetation management, health related and structural pest control. Separate sub-classifications for aerial applicators licensed apply to agricultural pest control, forest pest control, ornamental and turf pest control, aquatic pest control, vegetation management and health related and right-of-way pest control.

Section 7. Standards for Certification of Private Applicators -

7.1 Standards - Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below. As a minimum requirement for certification a private applicator must show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations, and his related legal responsibility. This practical knowledge includes ability to:

7.1.1 Recognize common pests to be controlled and damage caused by them.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 7

7.1.2 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 pre-harvest or re-entry restrictions; and specific disposal procedures.

7.1.3 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.

7.1.4 Recognize local environmental situations that must be considered during application to avoid contamination.

7.1.5 Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

7.2 Determination of Competency - Such competence of each private applicator shall be verified by the administration of a private applicator certification system which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticide under limitations of applicable state and federal laws and regulations. The certification system shall employ a written or oral demonstration of competence, or such other equivalent system as competence by correctly answering at least 70% of the questions asked shall be grounds for denial of certification. However, the applicant may apply for re-examination.

7.3 Provisions for Illiteracy - In any case where a person, at the time of testing for certification, is unable to read a label, the commissioner may employ a testing procedure, previously approved by the Administrator, United States Environmental Protection Agency, which can adequately assess the competence of such person with regard to all of the above standards. Certification must be related and limited to the use and handling of each individual pesticide for which he desires authorized to use only the pesticides for which he has demonstrated competence.

7.3.1 Such demonstration of competence must include the recognition of the common or trade name of the pesticide as well as the label. In addition, the demonstration of competence must include the ability to verbally tell the registered uses of the pesticide as they apply to the applicators intended uses, the recommended doses, the proper times of application for the particular pests to be controlled, safety precautions, handling and disposal of the pesticide and its container. In addition, the applicator must demonstrate that he understands any re-entry or pre-harvest restrictions that apply to the particular or pre-harvest restrictions that apply to the particular pesticide and must know the various sources of advice and guidance available to him to assist him in understanding the safe and

proper use of each pesticide related to his certification.

Section 8. Standards for Supervision of Non-Certified Applicators
by Certified Private and Commercial Applicators -

8.1 General - Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

8.1.1 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator.

8.2 Supervision in Fumigation or Structural Pest Control - In the case of Fumigation Pest Control a certified commercial applicator certified in fumigation pest control must be physically present to apply or supervise the application of fumigants. In the case of Structural Pest Control pesticide applications a certified applicator certified in structural pest control must be physically present to apply or supervise the application of pesticides or must provide the applicator being supervised specific written instruction which shall include but not be limited to:

8.2.1 The address or location of the structure to be treated.

8.2.2 The name (and address if different than 8.2.1) of the owner, manager, tenant or other person ordering the structural pest control work to be done.

8.2.3 The name of the certified commercial applicator supervising the use of the pesticides.

8.2.4 The pest or pests against which the pesticide(s) are to be applied.

8.2.5 The pesticide(s) to be used including the product name.

8.2.6 A diagram of the structure to be treated showing the sites at which pesticides are to be applied, hazard sites, such as wells, the location(s) of actual pest infestation if any exist and any other information pertinent to the application of pesticides at the particular site.

8.2.7 Special precaution orders for the applicator's safety such as the use of protective clothing, respirators or other safety gear.

8.2.8 The name(s) of the persons making the pesticide applications.

8.2.9 The date(s) pesticides are to be applied and the quantity of each pesticide to be used.

8.2.10 Specific instructions for contacting the supervising certified applicator.

8.3 When the persons applying pesticides to a structure must deviate from the written instructions of the supervising certified applicator, such deviation must be noted on or attached to the written instructions and signed by the applicator or on site supervisor. These specific written instructions and other details shall be considered as pesticide use records and shall be maintained for at least three years.

8.4 In other situations the pesticide label may require the certified applicator to be physically present. When the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instructions to the competent person, as follows:

8.4.1 Detailed guidance for applying the pesticide property, and

8.4.2 Provisions for contacting the certified applicator in the event he is needed.

Section 9. Federal Agency Pesticide Applicators -

9.1 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 equal to the West Virginia Plan, such employee will be certified by the commissioner in the same category or categories without the need for a written examination nor for the payment of any fee.

9.2 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 Commission 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.

9.3 Emergency Situations - If, in any emergency situation, federal employees are brought into 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 non-federal employees contracted to perform pesticide application 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 non-federal applicator provided that applicator is properly certified in West Virginia or under the plan of another state. Within 10 days such non-federal applicator certified in another state must apply for West Virginia certification in the normal manner.

Section 10. Reciprocity

10.1 Commercial Applicators - When a 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 approves the credentials, issue a West Virginia certification 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 Applicators Certification on receipt of a properly completed application, proper fee and a true copy of the applicant's out-of-state certification.

Section 11. Standards for Licensing of Dealers of Restricted Use Pesticides.

11.1 Determination of Competency - An applicant for license to sell restricted use pesticides must demonstrate a knowledge and understanding of safe and acceptable methods of handling, storage and distribution of restricted use pesticides as well as knowledge and understanding of the state pesticide laws. Such demonstration of knowledge shall be determined on the basis of a written examination. Failure to correctly answer at least 70% of the questions asked shall be grounds for denial of certification and at least 30 days must pass before the dealer may apply for re-examination.

11.2 General Standards for Dealers of Restricted Use Pesticides - All dealers licensed to sell restricted use pesticides shall 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; type of pesticides and pesticide formulation; dilution procedures and application techniques.

Section 12. Records

12.1 Commercial Applicators and Certified Public Applicators - Commercial applicators including certified public applicators shall, for a period of three years from the date of application, keep records detailing the application of restricted use pesticides applied by them or under their supervision to include:

12.1.1 The pesticide used.

12.1.2 The formulation used and the quantity of that formulation used. In the case of applicators in the sub-category General Pest Control, the records for quantity used may be kept as a total quantity used per day by each applicator when less than 1 gallon of use dilution spray or one pound of dusts, powders or prepared rodenticide baits are used at any one location. When more than these amounts are used at one location, records for that location shall be kept.

12.1.3 The date and place of application.

12.1.4 The pest against which the pesticide was used.

12.1.5 The applicator's name.

12.2 Licensed Pesticide Application Business - Licensed pesticide application businesses shall, for a period of three years from the date of application, keep records detailing the application of pesticides, whether or not the pesticides are classified for restricted use, to include:

12.2.1 The pesticide used.

12.2.2 The formulation used and the quantity of that formulation used. In the case of applicators in the sub-category General 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 one pound of dusts, powders or prepared rodenticide baits are used at any one location. When more than these amounts are used at one location, records for that location shall be kept.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 12

12.2.3 The date and place of application.

12.2.4 The pest against which the pesticide was used.

12.2.5 The applicator's name.

12.3 Dealers of Restricted Use Pesticides - Dealers of restricted use pesticides shall keep and maintain for a period of three years records on the sale or other disposition of restricted use pesticides to include the following:

12.3.1 Pesticides sold, or otherwise disposed of, including formulation. For example, Sevin 80% W.P.

12.3.2 Quantity. For example, 50 pounds.

12.3.3 Date of sale or disposition.

12.3.4 Name and address of purchaser or receiver, including the certified applicator's identification number.

Section 13. Financial Security Required of Licensed Pesticide Application Businesses

13.1 Amounts - The commissioner shall not issue a license pesticide application business license until the applicant has filed evidence of financial security with the commissioner, which may consist of a surety bond or liability insurance policy or certification thereof from an insurance company licensed to do business in West Virginia. Such financial security shall be in the amounts listed for each category of licensed pesticide application business.

The type of insurance coverage shall be in the form of Comprehensive General Liability. If the insurance coverage specifically excludes liability arising from the purposeful use or application of pesticides, an additional insurance rider or surety bond must be secured in the minimum amount of \$25,000.00 to provide such financial security.

13.1.1 Agriculture Plant Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 13

13.1.2 Animal Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage

13.1.3 Forest Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.1.4 Ornamental and Turf Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.1.5 Seed Treatment - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.1.6 Aquatic Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.1.7 Right-of-Way Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.1.8 Industrial, Institutional, Structural and Health Related Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.2 Aerial Applicators - Aerial Applicators in the above categories or sub-categories shall show evidence of financial security for public liability and chemical application in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.3 Liability for Pesticide Use - Nothing in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the commissioner.

Section 14. Storing and Disposal of Pesticides and Pesticide Containers

14.1 Prohibited Acts - No person shall dispose of or store (or receive for disposal or storage) any pesticide, pesticide container or pesticide container residue:

14.1.1 In a manner inconsistent with its label or labeling;

14.1.2 So as to cause or allow the open dumping of pesticides or pesticide containers;

14.1.3 So as to cause or allow open burning of pesticides or pesticide containers: except: the open burning by the user of small quantities of combustible containers (not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorate, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;

14.1.4 So as to cause or allow dumping of pesticides in any stream, river, pond, sewer or lake, except in conformance with permits issued by the West Virginia Department of Natural Resources or other state agency having jurisdiction regarding water pollution;

14.1.5 So as to violate any applicable state or federal pollution control standard.

14.2 Recommended Procedures - Recommended pesticide and pesticide container disposal procedures shall permit the disposal of containers of pesticides registered for use in the home and garden if securely wrapped in several layers of paper and disposed of singly during routine municipal solid waste disposal and disposal of pesticides and pesticide containers on farms where disposal by open-field burial of single containers is undertaken with due regard to the protection of surface and sub-surface waters.

14.2.1 Until such time as the commissioner along with the Pesticide Advisory Board, and any other person as the commissioner may consult, promulgate more specific rules and regulations covering the disposal

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 14

and storage of pesticides and pesticide containers not provided in 14.1 or 14.2 of this section, the recommended procedures for the disposal and storage of pesticides and pesticide containers detailed in Regulations, promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for West Virginia. The commissioner shall make copies of these procedures available to any person needing guidance for proper disposal or storage of pesticides or pesticide containers.

Section 15. Pesticide Advisory Board

15.1 Expenses of Members Not From State Governmental Departments - Pesticide Advisory Board members not from governmental departments shall submit expense accounts to the commissioner no later than the 8th day of the month following the month in which expenses were incurred on forms provided by the commissioner. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging, meals and transportation according to the regulations applicable to department employees.

Section 16. Exemptions

16.1 Experimental Research Exemption - The provisions of Section 5 (5.2) of these regulations relating to categorization of commercial applicators shall not apply to research personnel applying pesticides only to bona fide experimental plots.

Section 17. Restricted Use Pesticide Dealerships

17.1 Each Establishment to be Licensed - Each establishment, store, warehouse or other place where restricted use pesticides are sold or offered for sale shall be considered to be a dealership and at least one person at each dealership shall be licensed as required by the Act.

17.2 Salesmen or Technical Sales Representatives - Salesmen or technical sales representatives for out-of-state pesticide dealers shall be subject to the provisions of Section 13 of the Act.

Section 18. Application Equipment

18.1 General Prohibitions - 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 leak-proof; all spray distribution systems shall be leak-proof and any pumps which such systems may have shall be capable of operating at

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 18

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) non-target areas without contaminating them.

Section 19. Implementation

19.1 Licensed Pesticide Application Business -

19.1.1 Effective July 1, 1981, all persons owning or managing a pesticide application business which is engaged in the business of applying pesticides upon the lands of another (whether or not such person applies restricted use pesticides) and who hold Licensed Applicator licenses valid for 1981, shall make application to the commissioner for license and examination on a regular form supplied by the commissioner prior to December 21, 1981, accompanied by the required annual fee of Fifty Dollars (\$50.00), and the financial security required under Section 14 of the law and Section 13 of these regulations.

19.1.2 Effective July 1, 1981, any person not holding a Licensed Applicator license valid for 1981 and who desires to engage in the business of applying pesticides for hire shall make application to the commissioner on a regular form supplied by the commissioner for a Licensed Pesticide Application Business License. Such applicant, after successfully demonstrating the competency required under Section 6 of these regulations, shall be licensed as a Licensed Pesticide Application Business providing the statutory fee has been paid and the other requirements of the Act and these regulations are satisfied.

19.2 Private Applicators and Other Applicators (Commercial or Certified Public Applicator) Not Engaged in the Business of Applying Pesticides Upon the Land of Another - Private Applicators, certified public applicators and commercial applicators in all categories not engaged in the business of applying pesticides upon the lands of another shall make application for certificate and determination of competency to the commissioner on a regular form provided by the commissioner, accompanied by the required fee of One Dollar (\$1.00) prior to the date they desire to purchase or use restricted use pesticides, and shall maintain current certifications so long as they desire to use restricted use pesticides.

19.3 Dealers - All persons who are dealers in restricted use pesticides shall make application for license and examination to the commissioner on a regular form provided by the commissioner, accompanied by a required fee of Five Dollars (\$5.00) prior to the date they desire to engage in the business of dispensing restricted use pesticides, and shall maintain such license so long as they desire to deal in restricted use pesticides.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, Sec. 20

Section 20. Permits

20.1 Commissioner May Issue - The commissioner may issue a permit to a non-certified applicator to use a restricted use pesticide for a specific use and for a specific period of time providing the person desiring such permit completes an application on a form provided by the commissioner and pays One Dollar (\$1.00) fee and demonstrates competency in the use of that pesticide according to the label directions. Such demonstration of competency shall be by oral examination before the commissioner.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, APPENDIX

APPENDIX 1.

Section 4.1 - The following pesticides are hereby declared to be restricted to use by-applicators certified to use restricted use pesticides.

RESTRICTED USE PESTICIDES LIST

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, APPENDIX 1

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFI-CATION	CRITERIA INFLUENCING RESTRICTION
Acrolein	As sole active ingredient. No mixtures registered.	All uses	Restricted	Inhalation hazard to humans. Residue effects on avian species and aquatic organisms.
Acrylonitrile	In combination with carbon tetrachloride. No registrations as the sole active ingredient.	All uses	Restricted	Other hazards--accident history of both acrylonitrile and carbon tetrachloride products.
Aldicarb	As sole active ingredient. No mixture registered	Ornamental uses. (Indoor and outdoors) Agricultural crop uses.	Restricted Under further evaluation.	Other hazards--accident history.
Allyl alcohol	All formulations.	All uses.	Restricted	Acute dermal toxicity.
Aluminum Phosphide	Detia Tablets	Grain Fumigant	Restricted	U.S. EPA Restricted Use Classification on New Registration EPA Reg. 2548-62.
Aluminum Phosphide	Detia Tablets	Grain Fumigant	Restricted	U.S. EPA Restricted Use Classification on New Registration EPA Reg. 2548-63.
Aluminum Phosphide	Phostoxin Tablets	Grain Fumigant	Restricted	U.S. EPA Restricted Use Classification on New Registration EPA Reg. #40285-1
Aluminum Phosphide	Phostoxin Pellets Prepac	Grain Fumigant	Restricted	U.S. EPA Restricted Use Classification on New Registration EPA Reg. #40285-2.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, APPENDIX

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFI-CATION	CRITERIA INFLUENCING RESTRICTION
Aluminum Phosphide	Phostoxin Pellets Prepac	Grain Fumigant	Restricted	U.S. EPA Restricted Use Classification on New Registration EPA Reg. #40285-3.
Aluminum Phosphide	As sole active ingredient. No mixture registered	All uses.	Restricted	Inhalation hazard to humans.
Azinphos Methyl	All liquids with a concentration greater than 13.5%. All other formulations	All uses.	Restricted	Inhalation hazard to humans.
Calcium Cyanide	As sole active ingredient. No mixture registered.	All uses.	Under further evaluation.	
Chlordimeform	Fundal	Insecticide	Restricted	U.S. EPA restricted use classification on New Registration EPA Reg. #2139-100. Applicants must also take company sponsored training.
Chlordimeform	Galecron	Insecticide	Restricted	U.S. EPA restricted use classification on New Registration EPA Reg. #100-551. Applicants must also take company sponsored training.
Chlorphofos	Killmaster II	All uses.	Restricted	U.S. EPA restricted use classification on New Registration EPA Reg. #26693-2.

Dept. of Agri.
Leg. Regs., 19-16B
SERIES 12A, APPENDIX

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Demeton	1% fertilizer formulation, 1.985% granular formulation.	All uses, including domestic uses.	Restricted	Domestic uses: Acute oral toxicity. Acute dermal toxicity. Nondomestic outdoor uses Residue effects on avian & mammalian species.
	All granular formulations, Emulsifiable concentrates & concentrated solutions.	All uses.	Restricted	Acute dermal toxicity. Residue effects on mammalian and avian species.
Endrin	All emulsion, dusts, wettable powders, pastes & granular formulation 2% & above. All concentrations less than 2%.	All uses.	Restricted	Acute dermal toxicity. Hazard to non-target organisms.
Ethyl Parathion	All granular and dust formulations greater than 2% fertilizer formulations, wettable powder emulsifiable concentrated suspensions. Con. solutions. Smoke Fumigants. Dust & granular formulation 2% and below.	All uses	Restricted	Hazard to non-target organisms
		All uses	Restricted	Inhalation hazard to humans. Acute dermal toxicity. Residue effect on mammalian, aquatic, avian species.
		All uses	Restricted	Inhalation hazard to humans. Other hazards-accident history
		All uses	Restricted	

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Ethylene Oxide	10% Ethylene oxide 10% Carbon Dioxide Under WVDA label OXICARB	Fumigation of disease infected bees and bee equipment.	Restricted Use restricted to only WVDA employees.	Inhalation hazard.
Fluoroacetamide/1081	As sole active ingredient in baits. No mixtures registered.	All uses	Restricted	Acute oral toxicity.
Hydrocyanic acid	As sole active ingredient. No mixtures registered.	All uses	Restricted	Inhalation hazard to humans.
Mesuroil	Borderland Black Repellent Hopkins Mesrepel	Bird Repellent Bird Repellent	Restricted Restricted	U.S. EPA restricted use classification on New Registration EPA Reg. #7832-4. U.S. EPA restricted use classification on New Registration EPA Reg. 323930-337.
Methomyl	As sole active ingredient in 1% to 2.5% baits (except 1% fly bait) All concentrated solution formulations 90% wettable powder formulations (not in water soluble bags.)	Nondomestic outdoors-agricultural crops, ornamental & turf All other registered uses.	Restricted Restricted	Residue effects on mammalian species. Other hazards-accident history Other hazards-accident history

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Methomyl (continued)	90% wettable powder formulation in water soluble bags. All granular formulations 25% wettable powder formulation. In 1.24% to 2.5% dust as sole ingredient and in mixtures with fungicides and chlorinated hydrocarbon, inorganic phosphate and biological insecticides.		Unclassified Unclassified Unclassified	Other hazards--accident history.
Methyl Bromide	All formulations in containers greater than 1.5 pound. Containers with not more than 1.5 lb. of methyl bromide with 0.25% to 1.0% chloropicrin as an indicator. Container with not more than 1.5 lb. having no indicator.	All uses Single applications (non-domestic use) for soil treatment in closed systems.	Restricted Unclassified	Other hazards--accident history

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Methyl parathion	All dust and granular formulation less than 5%.	All uses	Restricted	Other hazards-accident history All foliar applications restricted based on residue effects on mammalian and avian species.
	Microencapsulated	All uses	Restricted	Residue effects on avian species. Hazard to bees.
	All dust and granular formulations 5% and greater and all wettable powders and liquids.	All uses	Restricted	Acute dermal toxicity. Residue effects on mammalian and avian species.
Mevinphos	All emulsifiable concentrates and liquid concentrates. Psycodid Filter fly liquid formulations. 2% dusts.	All uses	Restricted	Acute dermal toxicity. Residue effects on mammalian and avian species.
		All uses	Restricted	Acute dermal toxicity.
		All uses	Restricted	Residue effects on mammalian and avian species.
Paraquat (dichloride) and paraquat bis (methyl sulfate)	All formulations and concentrations except those listed below. Pressurized spray formulations containing 0.44% Paraquat bis(methyl sulfate & 15% petroleum distillates as active ingredients.	All uses Spot Weed and grass control.	Restricted Unclassified	Other hazards, use and accident history, human toxicological data.

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Paraquat (di-chloride) and paraquat bis (methyl sulfate) (Continued)	Liquid fertilizers containing concentrations of 0.025% paraquat dichloride and 0.03% atrazine; 0.03% paraquat dichloride and 0.37% atrazine, 0.04% paraquat dichloride and 0.49% atrazine.	All uses	Unclassified	
Picloram	All formulations and concentrations except Tordon 101 R and other EPA registered labels of the same information.	All uses	Restricted	Hazard to non-target organisms (specifically nontarget plants both crop & noncrop; & aquatic organisms). It should be noted that in addition to the above criteria considerable emphasis for restriction was based on the existing stewardship program restricting certain uses by the principal registrant and recurring reports of phytotoxicity to such crops as tomatoes, potatoes, tobacco, legumes and succulent ornamentals caused by contaminated water supplies (1 ppb range) from runoff and leaching.
	Tordon 101 R Forestry herbicide containing 5.4% Picloram and 29.9% 2,4-D,	Control of unwanted trees by cut surface treatment.	Unclassified	

RESTRICTED USE PESTICIDES

ACTIVE INGREDIENT	FORMULATION	USE PATTERN	CLASSIFICATION	CRITERIA INFLUENCING RESTRICTION
Sodium cyanide*	All capsules and ball formulations.	All uses	Restricted	Inhalation hazard to humans.
Sodium fluoroacetate	All solutions and dry baits.	All uses	Restricted	Acute oral toxicity. Hazard to nontarget organisms. Use and accident history.
Strychnine	All dry baits pellets and powder formulations greater than 0.5% All dry baits, pellets and powder formulations. All dry baits, pellets and powder formulations 0.5% and below.	All uses All uses calling for burrow builders. All uses except subsoil	Restricted Restricted Restricted	Acute oral toxicity. Hazard to nontarget avian species. Use & accident history. Hazard to nontarget organisms. Hazard to nontarget organisms.
Sulfostepp	Sprays and smoke generators.	All uses	Restricted	Inhalation hazard to humans.
Tepp	Emulsifiable Concentrate Formulations.	All uses	Restricted	Inhalation hazard to humans. Dermal hazard to humans. Residue effects on mammalian and avian species.
Zinc Phosphide	ZP Tracking Powder	Rodenticide	Restricted	US EPA Restricted Use Classification on New Registration, EPA Reg. #12455-16.

*(Note - M-44 sodium cyanide capsules may only be used by certified applicators who have also taken the required additional training.)