

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES X, NO

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

TITLE OF RULE BEING AMENDED: Certified Pesticide Applicator Rules &
Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SBI

SECTION 64-9-1 (dd), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 27, 1992



3.90

FILED

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DEPARTMENT OF AGRICULTURE
MARTINSBURG, WEST VIRGINIA

TITLE 61

WEST VIRGINIA DEPARTMENT OF AGRICULTURE

LEGISLATIVE RULE

SERIES XIIA

Title: Certified Pesticide Applicator Rules

§61-12A-1 General

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

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

1.3. Filing Date -

1.4. Effective Date -

§61-12A-2 Definitions

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

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

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

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

2.5. The term "regulated pest" means a specific organism considered by the State or by a federal agency to be a pest

requiring regulatory restrictions, regulations or control procedures in order to protect the host, man or the environment.

§61-12A-3 Certification of Pesticide Applicators

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

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

3.3. Determination of Competency

3.3.a. Competence in the use and handling of pesticides is determined on the basis of a written examination and as appropriate, performance testing based upon the standards set forth in section 6 of this rule.

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

3.3.c. The commissioner shall deny certification to an applicant who fails to answer at least 70% of the questions correctly. Applicants who fail to achieve a passing score on their first attempt at examination are eligible to be reexamined in the same category after 10 days from the date of the first examination. Applicants who fail on the second attempt or any subsequent attempt must wait 28 days from the date of the last examination for reexamination.

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

§61-12A-4 Categorization of Commercial Applicators

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

4.2. Commercial Applicator Categories

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

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

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

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

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

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

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

4.2.f. Aquatic Pest Control. This category includes

commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, and excludes public health applicators as defined in sub-division 4.2.i. of this rule.

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

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

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

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

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

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

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

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

control of regulated pests.

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

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

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

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

§61-12A-5 Categorization of Private Applicators

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

5.2. Agricultural Fumigation. This category includes private applicators using or supervising the application of restricted use

pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use pesticides for the fumigation of agricultural products. Certification in this category requires concurrent certification in Agricultural Pest Control as defined in sub-section 5.1 of this rule.

§61-12A-6 Certification Standards for Pesticide Applicators

6.1. General Standards for private and commercial applicators. All applicators shall demonstrate a practical knowledge of the principles and practices of pest control and safety in the use of pesticides. The commissioner shall base a determination of competency on an examination containing examples of problems and situations in the following areas:

6.1.a. Label and labeling comprehension to include:

6.1.a.A. the general format and terminology of labels and labeling;

6.1.a.B. the understanding of directions for use, warnings, terms, names, symbols and other information commonly appearing on pesticide labels;

6.1.a.C. the understanding that labels and labeling are legal documents and the applicator shall follow directions they contain; and

6.1.a.D. the meaning of the term Restricted Use pesticide.

6.1.b. Safety factors to include:

6.1.b.A. an understanding of the terms acute and chronic toxicity, exposure and how a hazard is determined by exposure to a pesticide and a pesticide's toxicity;

6.1.b.B. the recognition of symptoms of acute toxicity and practical treatment;

6.1.b.C. the precautions necessary to prevent injury to any applicators and other individuals in or near treated areas;

6.1.b.D. the need for and use of personal protective equipment;

6.1.b.E. a knowledge of worker protection practices, including warning requirements and reentry restrictions; and

6.1.b.F. a knowledge of the safe practices regarding transportation, storage, mixing, handling, application and disposal of pesticides including container disposal.

6.1.c. Environmental risk to include:

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

6.1.c.B. how terrain, soil and substrata influence surface and ground water contamination;

6.1.c.C. the recognition of sensitive areas and the organisms affected by pesticide applications, drift and runoff;

6.1.c.D. the precautions necessary for the protection of endangered and threatened species; and

6.1.c.E. methods of spill prevention and control.

6.1.d. Pest identification and biology to include:

6.1.d.A. the principles of pest identification; and

6.1.d.B. the recognition of damage or problems caused by pests.

6.1.e. Pesticides and chemical control to include:

6.1.e.A. the types of pesticides, formulations and adjuvants;

6.1.e.B. the concepts of pesticide compatibility, synergism, persistence and resistance;

6.1.e.C. the factors which affect a pesticide's effectiveness; and

6.1.e.D. the selection of the correct formulation and method of application for a site and pest.

6.1.f. Equipment to include:

6.1.f.A. the characteristics and main uses of typical pesticide application equipment;

6.1.f.B. the selection of the most appropriate equipment for applicable situations; and

6.1.f.C. the proper care, maintenance and use of application equipment.

6.1.g. Calibration and calculations to include:

6.1.g.A. the dilution of concentrate formulations in accordance with label directions;

6.1.g.B. the calculation of area or volume to be treated and amount of pesticide to be applied; and

6.1.g.C. the adjustment of application equipment's nozzle, pressure and speed to obtain correct pesticide output.

6.1.h. Applicator related laws and regulations to include:

6.1.h.A. the applicable State and Federal laws and regulations;

6.1.h.B. the applicator's responsibility for pesticide use consistent with it's label or labeling and supervision of non-certified employees assigned to use a restricted use pesticide; and

6.1.h.C. the applicator's liability and penalties.

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

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

6.2.a.A. the recognition of the common pests to be controlled and damage caused by them;

6.2.a.B. the ability to read and understand the pesticide label and labeling information - including the common name of pesticides he or she applies; the pests to be controlled; the timing and methods of application; safety precautions; any preharvest or reentry restrictions; and specific disposal procedures;

6.2.a.C. the ability to apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used

under particular circumstances taking into account such factors as the area to be covered, the speed at which application equipment will be driven and the quantity dispersed in a given period of operation;

6.2.a.D. the ability to recognize local environmental situations that must be considered during pesticide application to avoid contaminations;

6.2.a.E. the ability to recognize poisoning symptoms and the procedures to follow in case of a pesticide accident; and

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

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

6.2.b.A. the use of personal protective equipment for fumigation and general safety procedures, including posting, reentry and aeration; and

6.2.b.B. the emergency procedures and application techniques appropriate to his or her farm.

6.3. Specific standards for commercial applicators. All commercial applicators are required to demonstrate skills and knowledge specific to their desired category of certification in addition to the general requirements set forth in section 6.1 of this rule. The specific standards set forth in this section are applicable to the commercial applicator categories and subcategories of certification specified in sub-section 4.2 of this rule.

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

6.3.b. Agricultural Animal Pest Control. Applicators applying pesticides directly to animals shall demonstrate a practical knowledge of the animals in this State and their associated pests. An applicator must also have a practical

knowledge concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, the age of the animal, stress and the extent of treatment.

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

6.3.d. Ornamental and Turf Pest Control.

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

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

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

6.3.f. Aquatic Pest Control. Applicators shall demonstrate a practical knowledge of the types of secondary effects

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

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

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

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

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

6.3.h.C. Fumigation. Applicators shall demonstrate a practical knowledge of conditions requiring the application of fumigants and the selection of the most appropriate fumigation methods to use. They shall demonstrate a knowledge of the equipment used in fumigation, such as application, monitoring, testing, calculating and personal protective devices. Applicators

shall demonstrate the ability to release, distribute and maintain the correct fumigant concentrations for the product or structure being fumigated, under differing conditions. They shall have a knowledge of the hazards involved with the use of fumigants.

6.3.h.D. Wood Preservation and Wood Product Treatment. Applicators shall demonstrate a practical knowledge of the conditions for which a preservative treatment of wood is used. Applicators shall demonstrate a knowledge of the health and environmental hazards associated with wood treating procedures, and the need for informing purchasers of precautions for handling, use and disposal of treated wood products. They shall demonstrate a knowledge of all applicable treating and testing equipment. Applicators in this subcategory shall also demonstrate a knowledge of the handling and local injection of specially labeled liquid or solid wood fumigants into infested wood, such as poles, piling and railroad crossties. Applicators shall demonstrate a knowledge of the hazards involved with the handling and use of these pesticides and the appropriate application equipment to be used.

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

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

6.3.k. Demonstration and Research Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public are expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course

of activities associated with the demonstration and an applicator must have a practical knowledge of problems, pests and population levels occurring in each demonstration situation. Further, they shall demonstrate an understanding of pesticide-organism interaction and the importance of integrating pesticide use with other control methods. Applicators doing demonstration pest control work shall possess knowledge of all of the standards detailed under sub-section 6.1. of this rule. In addition, they shall meet the specific standards required in sub-division 6.3.a. through 6.3.h. of this rule as may be applicable to their activity in this State. Persons conducting field research or method improvement work with restricted use pesticides shall know the general standards detailed in section 6.1. of this rule. In addition, they shall know the specific standards required in sub-division 6.3.a. through 6.3.j. of this rule as may be applicable to their particular activity in this State.

6.3.1. Pesticide Storage and Distribution.

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

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

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

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

6.4. Registered Technicians. Non-certified employees of a pesticide business performing pesticide application similar to a

commercial applicator or certified public applicator must register with the commissioner.

6.4.a. Training. Each pesticide business is responsible for ensuring that each employee, other than a certified applicator, successfully completes a verifiable training program approved by the commissioner. The employee shall complete the training program within 30 days of his or her employment and before the employee registers with the commissioner.

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

- 6.4.b.A. State and Federal Laws and Regulations;
- 6.4.b.B. how to read and interpret a pesticide label;
- 6.4.b.C. the handling of emergencies and spills to include:
 - 6.4.b.C.1. the signs and symptoms of common types of pesticide poisoning;
 - 6.4.b.C.2. the practical emergency treatment for pesticide injuries;
 - 6.4.b.C.3. how to obtain emergency medical care; and
 - 6.4.b.C.4. decontamination procedures.
- 6.4.b.D. the proper methods of storing, mixing or loading, transporting, handling, applying and disposing of pesticides;
- 6.4.b.E. safety and health measures including the proper use of personal protective equipment;
 - 6.4.b.E.1. the hazards of pesticides from toxicity or exposure including acute and delayed reaction; and
 - 6.4.b.E.2. the routes of exposure.
- 6.4.b.F. the potential adverse effects caused by various climatic or environmental conditions such as drift, runoff or ground water contamination;
- 6.4.b.G. pesticide application techniques;

6.4.b.H. pest identification and control recommendation; and

6.4.b.I. the principles of integrated pest management.

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

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

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

6.4.f. On the effective date of these regulations any employee who has continually been in the employment of a Licensed Pesticide Application Business for at least 90 days immediately preceding the effective date of this rule is eligible to apply as a registered technician by completing an application form, paying the required fee and showing such proof of continual employment by employment records or a notarized statement from his or her employer.

§61-12A-7 Recertification

7.1. At no greater than a three year interval each commercial applicator, certified public applicator or private applicator must present evidence or documentation indicating that he or she has attended workshops or training sessions approved by the commissioner. The commissioner will grant an applicator a continuing certification unit (ccu) for a 30 minute period of training or the greater portion thereof.

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

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

rule for each category or subcategory of certification.

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

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

8.1. General Supervision

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

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

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

§61-12A-9 Record Keeping

9.1. Commercial Applicator/Certified Public Applicator

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

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

9.1.a.B. the formulation, the dilution rate and the quantity of the pesticide used. In the case of a business in the classification of General Pest and Ornamental and Turf pest control, the records for the quantity used may be kept as the total

quantity used per day by each applicator when less than one gallon of use dilution spray or one pound of dust, powder or prepared rodenticide baits are used at any location. When more than these amounts are used at one location, the quantity of the pesticide for that location shall be maintained separately;

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

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

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

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

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

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

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

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

§61-12A-10 Reciprocity

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

10.2. Private Applicators - When a private applicator is certified under the state plan of another state and owns, leases or manages land in West Virginia on which restricted use pesticides must be applied to produce agricultural crops, the commissioner

will issue a West Virginia Private Applicator Certification on receipt of a properly completed application, the proper fee and a true copy of the applicant's out-of-state certification.

§61-12A-11 Federal Employees

11.1. Certification - When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP), or another EPA approved plan judged by the commissioner to be at least equal to the Act and regulations promulgated pursuant to the Act, the commissioner may issue a certification in the same category or categories without the need for a written examination nor for the payment of any fee.

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

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

§61-12A-12 Equipment

12.1. General - No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound

mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of pesticide. All pesticide mixing, storage or holding tanks, whether on application equipment or not, shall be leakproof. All spray distribution systems shall be leakproof and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge. All pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over (or by) nontarget areas without contaminating them.

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

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Bill Agri, Pest Applicator 61-12A

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H. B. 4249

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the

Committee on Agriculture and Natural Resources
then the Judiciary)

A BILL to amend and reenact section one, article nine, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
commissioner of agriculture to promulgate legislative rules
relating to certified pesticide applicators.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

(a) The legislative rules filed in the state register on the
sixth day of April, one thousand nine hundred eighty-three,

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1 relating to the commissioner of agriculture (schedule of charges
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred eighty-three,
5 relating to the commissioner of agriculture (licensing of
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the
8 eighth day of February, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (conduct of beef
10 industry self-improvement assessment program referendum), are
11 authorized.

12 (d) The legislative rules filed in the state register on the
13 fourth day of June, one thousand nine hundred eighty-four,
14 relating to the commissioner of agriculture (feeding untreated
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the
17 fourth day of June, one thousand nine hundred eighty-four,
18 relating to the commissioner of agriculture (registration,
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the
21 first day of November, one thousand nine hundred eighty-four,
22 relating to the commissioner of agriculture (public markets), are
23 authorized.

24 (g) The legislative rules filed in the state register on the
25 tenth day of September, one thousand nine hundred eighty-four.

1 relating to the commissioner of agriculture (noxious weed rules),
2 are authorized.

3 (h) The legislative rules filed in the state register on the
4 fourth day of June, one thousand nine hundred eighty-four,
5 relating to the commissioner of agriculture (animal disease
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the
8 fifth day of January, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (use of certain
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the
12 eighth day of March, one thousand nine hundred eighty-five,
13 relating to the commissioner of agriculture (increasing certain
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the
16 thirteenth day of January, one thousand nine hundred eighty-six,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the thirty-first day of January,
20 one thousand nine hundred eighty-six, relating to the
21 commissioner of agriculture (licensing of livestock dealers), are
22 authorized.

23 (l) The legislative rules filed in the state register on the
24 eighteenth day of June, one thousand nine hundred eighty-six,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the fifth day of January, one
3 thousand nine hundred eighty-seven, relating to the commissioner
4 of agriculture (West Virginia pesticide use and application act),
5 are authorized.

6 (m) The legislative rules filed in the state register on the
7 eighteenth day of August, one thousand nine hundred eighty-six,
8 modified by the director of the division of forestry of the
9 department of agriculture to meet the objections of the
10 legislative rule-making review committee and refiled in the state
11 register on the fifth day of January, one thousand nine hundred
12 eighty-seven, relating to the director of the division of
13 forestry of the department of agriculture (ginseng), are
14 authorized.

15 (n) The legislative rules filed in the state register on the
16 tenth day of April, one thousand nine hundred eighty-seven,
17 relating to the commissioner of agriculture (schedule of charges
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the
20 thirteenth day of August, one thousand nine hundred eighty-seven,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eighth day of September, one
24 thousand nine hundred eighty-seven, relating to the commissioner
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the
2 fifteenth day of September, one thousand nine hundred
3 eighty-eight, relating to the commissioner of agriculture (sale
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the
6 fifteenth day of September, one thousand nine hundred
7 eighty-eight, modified by the commissioner of agriculture to meet
8 the objections of the legislative rule-making review committee
9 and refiled in the state register on the twenty-sixth day of
10 October, one thousand nine hundred eighty-eight, relating to the
11 commissioner of agriculture (animal disease control), are
12 authorized.

13 (r) The legislative rules filed in the state register on the
14 fifteenth day of May, one thousand nine hundred eighty-nine,
15 modified by the commissioner of agriculture to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the twenty-first day of August,
18 one thousand nine hundred eighty-nine, relating to the
19 commissioner of agriculture (production of milk and cream for
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the
22 seventh day of August, one thousand nine hundred eighty-nine,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the
2 commissioner of agriculture (animal disease control), are
3 authorized.

4 (t) The legislative rules filed in the state register on the
5 tenth day of August, one thousand nine hundred ninety, modified
6 by the commissioner of agriculture to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifth day of October, one thousand nine hundred
9 ninety, relating to the commissioner of agriculture (meat
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the
12 tenth day of August, one thousand nine hundred ninety, modified
13 by the commissioner of agriculture to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the third day of October, one thousand nine hundred
16 ninety, relating to the commissioner of agriculture (agricultural
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the
19 tenth day of August, one thousand nine hundred ninety, modified
20 by the commissioner of agriculture to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the third day of October, one thousand nine hundred
23 ninety, relating to the commissioner of agriculture (public
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred ninety,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the
9 eighth day of August one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the second day of October, one
13 thousand nine hundred ninety-one, relating to the commissioner of
14 agriculture (certified pesticide applicators) are authorized.

15

16 NOTE: The purpose of this bill is to authorize the
17 Commissioner of Agriculture to promulgate legislative rules
18 relating to certified pesticide applicators.

19

20 Strike-throughs indicate language that would be stricken from
21 the present law, and underscoring indicates new language that
22 would be added.



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Secretary of State

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Deputy Secretary of State

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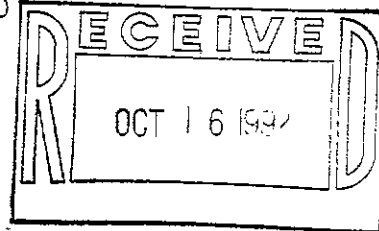
DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770



TO: Barbara Smith

AGENCY: Department of Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 12A TITLE: 61 Department of Agriculture

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Barbara J. Smith

TITLE OF PERSON SIGNING: Director of Compliance

DATE: 11-12-92 (see pg 12)

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.