



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON
25305

Gus R. Douglass
Commissioner

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NOTICE OF EMERGENCY RULE

RULE TITLE: West Virginia Pesticides Use and Application Act of 1975

RULE TYPE: Legislative, SERIES XIIa

The attached rule is filed as an Emergency Rule. This rule is also filed this day with the Legislative Rule Making Review Committee as an Emergency Rule.

The facts and circumstances constituting the emergency are as follows:

The financial security or liability insurance required of businesses applying pesticides for hire has become increasingly difficult or impossible to obtain for many companies. The amendments to Section 13 of the above listed regulations will enable companies to stay in business and, at the same time, provide adequate protection for the citizens of the State and meet the statutory requirements mandated by the Legislature in Chapter 19, Article 16B, Section 15.

The companies affected by the tightening insurance requirements provide pest control services to homes, hospitals, restaurants, warehouses and public buildings; maintain right-of-ways to provide for uninterrupted electricity and fuel services; and protect the State's crops, to assure an adequate supply of food, fiber and energy to the people of West Virginia. These amendments are necessary for the immediate preservation of the health, safety and welfare of the public.

Gus R. Douglass
Agriculture Commissioner

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

REVIEW OF EMERGENCY RULE

AGENCY: Dept of Agricul/Huve

RULE TITLE: WV Pesticide Use; Financial Security +
Liability Amendments

DATE FILED AS AN EMERGENCY RULE: April 11, 1986

LAST DATE TO ISSUE DECISION: May 23, 1986 DATE OF DECISION _____

PROCEDURAL COMPLIANCE:

FILED WITH SECRETARY OF STATE: _____

FILED WITH LEGISLATIVE RULE-MAKING REVIEW COMMITTEE: _____

ALL REQUIRED INFORMATION FILED: _____

STATUTORY AUTHORITY:

CODE GRANTING AUTHORITY: _____

RELATED CODE CITATIONS: _____

NOTES:

NATURE OF EMERGENCY:

NOTES:

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Pesticide Use and Application Act

Type of Rule: Legislative Interpretive Procedural

Agency W. Va. Dept. of Agriculture / Address Guthrie Agricultural Center, Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ None	\$ None	\$ None	\$None	\$ None
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The proposed change will not affect current procedures.

3. Objectives of these rules:

The amendment of Section 13 will reflect the current trends of insurance available to Licensed Pesticide Application Businesses. The current requirements are no longer available to many segments of the industry.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

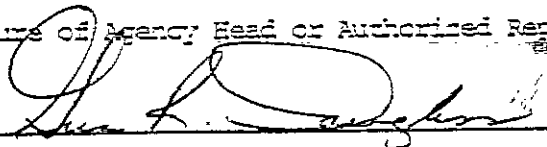
These rules will enable many pesticide application businesses to remain in business. Without the changes, some companies will be freed to close and their services will no longer be available.

C. Economic Impact on Citizens/Public at Large.

None

Date: April 11, 1986

Signature of Agency Head or Authorized Representative





STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON
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SUMMARY OF CONTENT

RULE TITLE: West Virginia Pesticide Use and Application Act.

These regulations establish general operating rules and procedures for the enforcement of the West Virginia Pesticide Use and Application Act including 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.

DATE: April 11, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

EMERGENCY RULE TITLE: West Virginia Pesticide Use and Application Act
of 1975

1. Date of filing: April 11, 1986
2. Statutory authority for promulgating the emergency rule: 19-16B-4
3. Date of filing of proposed legislative rule: June 2, 1986
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

This rule amends a current Legislative Rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The companies affected by the tightening insurance requirements provide pest control services to homes, hospitals, restaurants, warehouses and public buildings; maintain right-of-ways to provide for uninterrupted electricity and fuel services; and protect the State's crops to assure an adequate supply of food, fiber and energy to the people of West Virginia. These amendments are necessary for the immediate preservation of the health, safety and welfare of the public because the pesticide applicators cannot be licensed without insurance and they cannot get insurance under the present rules.

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

N/A

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

The financial security or liability insurance required of businesses applying pesticides for hire has become increasingly difficult or impossible to obtain for many companies. These amendments to Section 13 of the Pesticide Use and Application Act regulations will enable companies to stay in business and, at the same time, provide adequate protection for the citizens of the State and meet the statutory requirements mandated by the Legislature in Chapter 19, Article 16B, Section 15.

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

TITLE: West Virginia Pesticide Use and Application Act

Section 1. General

1.1. Scope - These Legislative Regulations amend and promulgate Section 1 through 21 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 11, 1986

1.4 Effective Date - April 11, 1986

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.

By virtue of the authority vested in me as Commissioner of Agriculture by Article 16B, Chapter 19 of the Code of West Virginia, I, Gus R. Douglass, Commissioner of Agriculture, do hereby promulgate the following rules and regulations governing 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) with the following additions:

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 "consistent" 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 volatilizable chemical (as hydrogen cyanide or methyl bromide) used as a disinfectant or pesticide.

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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, 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.

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 I)

Section 5. Categorization of Commercial Applicators

5.1 Procedure -

5.1.1 Categories and sub-categories of applicators (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 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-1 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.

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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 category 5.10.1 below.

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 - This category 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 applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools

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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 emergence 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 or lumber shall not be considered to be structural 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, 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 or grounds, storage yards, sub-stations 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.

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5.10.2 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 applicators.

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

6.1 Determination of Competency - Competence in the use and handling of pesticides shall be determined on the basis of written examinations, 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 standard 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. No fee shall be required 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;

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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 used pesticide containers, including precautions to be taken to prevent children from having access to 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;

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;

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- 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 because 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

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Applicator - In addition to demonstrating competence in the specific standards for the sub-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 host animals will frequently be used for food. Further, the applicator must know the relative hazards association with such factors as formulation, 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 pesticide use may be difficult to assess. The applicator 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 relate to meteorological factors and adjacent land use.

6.3.3.1 Sub-Category A - Aerial Forest Pest Control - In addition to demonstrating competence in the specific standards for sub-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 sub-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

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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 application.

6.3.6.1 Sub-Category A - Aerial Aquatic Pest Control - In addition to demonstrating competence in the specific standards for the sub-category Aquatic Pest Control, the aerial applicator 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 sub-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

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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 regulated pests, 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 where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

6.3.10 Demonstration and Research Pest Control category - Persons demonstrating the safe and effective use of pesticides to other applicators and the public will 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 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 demonstration pest control work possess a practical knowledge of 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 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 or medication during the course of their normal practice.

6.6 Standards For Licensed Pesticide Application Business License -

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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 license 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.

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 pesticides 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 may be approved by the commissioner. Failure to demonstrate 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 certification at any time. Therefore, the applicator will be authorized to use only the pesticide(s) 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 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 instructions 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.

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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 infestations 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 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.

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9.3 Emergency Situations - If, in an 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 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 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 Applicator 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. No fee shall be required 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 formulations; 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.

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.

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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 licensed 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 ~~for the amount and kind~~ in the amounts listed for each category of licensed applicator as follows: pesticide application business.

The type of insurance coverage shall be in the form of Comprehensive General Liability with a Broad Form General Liability Supplement. 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 a minimum amount of \$25,000 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 for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

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 for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and 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 for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and 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 for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and 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 for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

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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 for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and 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 for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and 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 or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.2 Aerial Applicators - Aerial Applicators in ~~any of~~ 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 for each occurrence and Two Hundred Thousand Dollars (\$200,000.00) One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~

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, chlorates, 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, animal 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;

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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 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,

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whether on application equipment or not, shall be leak-proof; 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) 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 8 of these regulations, shall be licensed as a Licensed Pesticide Application Business providing the proper 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.

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)

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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.

Section 21. Effective Date -

21.1 Date Done - Done in the Office of the Commissioner, West Virginia Department of Agriculture, Capitol Building, Charleston, West Virginia 25305, this 7th day of October, 1981, to become effective the 1st day of January, 1982.

Gus R. Douglass
Agriculture Commissioner



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

May 23, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Agriculture

RULE: Series 12a West Virginia Pesticide Use and Application;
Amendment to Section 13, "Financial Security Required of
Licensed Pesticide Application Businesses."

DATE FILED AS AN EMERGENCY RULE: April 11, 1986

DECISION NO. 3-86

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

FILED

1986 MAY 23 PM 4:23

OFFICE OF THE SECRETARY OF STATE

KEN HECHLER
Secretary of State

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision (ERD 3-86)

AGENCY: Department of Agriculture
RULE: Series 12a West Virginia Pesticide Use and Application; Amendment to Section 13, "Financial Security Required of Licensed Pesticide Application Businesses."

DATE FILED AS AN EMERGENCY RULE: April 11, 1986

- par. 1 The Department of Agriculture has filed as an emergency rule an amendment to their Series 12a rule titled West Virginia Pesticide Use and Application. The amendment is to Section 13, "Financial Security Required of Licensed Pesticide Application Businesses"; which establishes the amounts of coverage for liability insurance or surety bond to be held by applicators for a licensee to do business as a pesticide application business.
- par. 2 The amendment reduces the amount of coverage from \$300,000 for bodily injury or death for each occurrence and \$100,000 for property damage to \$300,000 combined single limit for bodily injury or death and property damage. Section 13.2 also reduces the amount of coverage for Aerial applications from \$300,000 for bodily injury or death for each occurrence and \$200,000 for property damage to \$300,000 for bodily injury or death regardless of number of occurrences and \$100,000 for property damage.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the

circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Department of Agriculture has filed this emergency rule with supporting documents with the Secretary of State on April 4, 1986 and with the LRMRC prior to the issuance of this decision. It is, therefore, the determination of the Secretary of State that the Department of Agriculture has complied with the procedural requirements of WV Code 29A-3-15.

par. 8 (B) Statutory Authority: WV Code 19-16B-4 Pesticide use and Application Act reads in part:

§19-16B-4. Administration and enforcement of article.

(a) The commissioner shall administer and enforce the provisions of this article and shall have authority to issue regulations after a public hearing following due notice to all interested persons in conformance with the provisions of the state administrative procedures set forth in chapter twenty-nine-A [§29A-1-1 et seq.] of this Code to carry out the provisions of this article. Such regulations may prescribe methods to be used in application of pesticides.

par. 9. WV Code 19-15B-15 reads in part:

§19-16B-15. Financial security required of licensed pesticide application business.

(a) The commissioner shall not issue a licensed pesticide application business license as required in section eight [§19-16B-8] of this article 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 in an amount no less than twenty-five thousand dollars protecting persons who may suffer legal damages as a result of the operations of the applicant or applicant's employees. Such financial security need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant.

(b) The commissioner, taking into consideration the different classifications or categories of licensed pesticide application business licenses, shall establish the amount and kind of financial security for property damage and public liability, each separately, and including loss of damage arising out of the actual use of any pesticide which each classification of licensed licensee requires.

par. 10 It is the determination of the Secretary of State that the Department of Agriculture has not exceeded its statutory authority by amending its Series 12a rule.

par. 11 (C) Emergency: WV Code 25A-3-15(g) defines "emergency" as follows:

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

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The Department of Agriculture claims that this proposal is for "the immediate preservation of the public peace, health, safety, or welfare."

par. 14 The circumstances and facts as presented by the Department of Agriculture are as follows:

1. Pest control service companies are finding it difficult or impossible to gain liability insurance required for licensure under the current rules.
2. The lower amounts required under this new rule will allow such pest control services to gain or maintain coverage.
3. Loss of license by pest control companies would not allow them to operate during the current planting season thus adversely affecting agriculture production.

par. 15 The problem and its impact affects only a portion of West Virginia, but it has been previously determined by the Secretary of State that such circumstances need not be statewide to qualify for emergency rule filing. (ERD 1-86, par. 19.)

par. 16 The Department of Agriculture conducted a public hearing on this proposal under Chapter 29A on May 23, 1986. There was no opposition presented at the hearing.

par. 17 The Secretary of State determines that the Department of Agriculture has demonstrated the need to make effective this proposal for the immediate preservation of the public peace, health, safety and welfare.

par. 19 It is the decision of the Secretary of State that this proposal by the Department of Agriculture is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Agriculture; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should not be disapproved.

par. 20 This decision shall be cited as Emergency Rule Decision 3-86 or ERD 3-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Committee.

Ken Hechler

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered THIS DATE May 23, 1986
ADMINISTRATIVE LAW DIVISION