

Vermont application to the United States Environmental Protection Agency for approval of a modified State plan for certification of pesticide applicators of restricted use pesticides submitted in accordance with 40 CFR §171.303 (b).

October 2022

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Introduction

This document is in response to the federal revision to Code of Federal Regulations (CFR), Certification of Pesticide Applicators 40 CFR 171, as described in the Federal Register, Vol. 82, No. 2, and dated January 4, 2017 (82 FR 952), and which became effective March 6, 2017. This document compares Vermont's regulations and policies to the revised CFR standards to identify the actions and timetable for implementation the State of Vermont will employ to comply with the new federal standards. As required for states that wish to allow continued use of restricted use pesticides (RUPs), the plan includes a description of requirements for individuals applying and handling such pesticides.

Final approval of the existing Vermont State Plan for Certification of Pesticide Applicators was published in the Federal Register Notice of March 23, 1978 (Page 12082). To respond to the 2017 updated federal regulation meet the new requirements to the Vermont Agency of Agriculture, Food & Markets Pesticide Program (Program), developed this plan which compares Vermont regulations to the revised federal regulation and identifies modifications required to meet the revised new standards for certified private and commercial applicators and dealers who distribute and sell restricted use pesticides.

RUPs are defined by federal regulation as a “...*pesticide that is classified for restricted use under the provisions of section 3(d)(1) of FIFRA and 40 CFR part 152, subpart I.*” In addition to pesticides classified as RUPs by United States Environmental Protection Agency (USEPA), Vermont may classify additional pesticides as state restricted. Vermont may also establish restrictions on other pesticide products to improve protections of public health and the environment.

This document is based on a model outline, “*State Certification Plan Outline*”, provided by the USEPA to State Lead Agencies at the Pesticide Regulatory Education Program, *Applicator Certification Rule*, held April 29, 2019 through May 2, 2019 in Arlington, Virginia.

This State plan, uses the following terms:

- Certified commercial applicator: any person certified under the categories and standards of Section VIII, Vermont Regulations for Control of Pesticides. (p.111)
- Certified private applicator: a private applicator who has been certified under the requirements of Section IX, Vermont Regulations for Control of Pesticides. Certified private applicators may purchase and use restricted use pesticides. (p.118)
- Certified Noncommercial Applicator: a noncommercial applicator who has been certified under the standards and categories of Section VIII, Vermont Regulations for Control of Pesticides. (p. 111). A certified noncommercial applicator may purchase and use both restricted and Class "B" pesticides in the course of their employment. Certified noncommercial applicators are exempt from the company licensing requirements. Certified noncommercial applicators shall comply with all other requirements of these regulations.

In addition, Vermont defines other types of pesticide applicators that are not certified to apply RUPs but whose status is considered if penalties are determined. These types of applicators include:

- Commercial Applicator: a person who applies pesticides to the lands or homes of another whether for remuneration or gratis.
- Non-commercial Applicator: means a person who uses a Class A or Class B pesticide in the course of their employment on their employer's property.
- Private Applicator: any person who uses any pesticide other than those classified as restricted use on property owned or rented by the applicator that is residential in nature or on property owned or rented by the applicator or the applicator's employer for the production of an agricultural commodity. Private applicators may apply pesticides to the property of neighboring producers of agricultural commodities without a commercial applicator's certificate, providing that the applicator receives no compensation other than the trading of personal services between the applicator and his neighbor.

Vermont maintains 3 classes of pesticide product: A, B and C.

- Class A products are federally and state restricted use pesticide products.
- Class B are controlled sale pesticide products, generally turf and lawncare products with greater than 3% active ingredient.
- Class C products are homeowner pesticide products.

Certified commercial applicators in Vermont may use any product Class (A, B and/or C) on the homes and lands of others (commercial). The use of any Class A or Class B product in the course of employment also requires applicator certification (non-commercial/government).

Vermont also maintains regulatory requirements for pesticide applicators to obtain permits for all pesticide application made by air, in water, for mammal (non-rodent) control, in rights-of-ways, and on golf courses.

Vermont's revised plan does not include limited use certification or predator control categories. The list of required rule modifications is identified in the Implementation Timeline.

When the identified state Plan modifications are fully implemented, Vermont believes classification of pesticide products and revised certification requirements will meet the new standards and provide a comprehensive regulatory framework to enhance protections of human health and the environment.

SECTION 1. CERTIFICATION PLAN ADMINISTRATION

STATE LEAD AGENCY DESIGNATION (GOVERNOR LETTER) AND POINT OF CONTACT

§ 171.303(b)(6)(i) A written statement by the Governor of the State designating a lead agency responsible for administering the State certification plan. The lead agency will serve as the central contact point for the Agency. The State certification plan must identify the primary point of contact at the lead agency responsible for administering the State certification plan and serving as the central contact for the Agency on any issue related to the State certification plan.

State Response: The Vermont Agency of Agriculture, Food & Markets (Agency of Agriculture) has been designated by the Governor as the lead Agency for certification of pesticide applicators; the Agency will also serve as the State Plan Administrator. A certification issued under the EPA-approved [SLA] CPA Plan is valid within Vermont's legal boundaries, excluding areas of Indian country as defined at 18 U.S. Code § 1151 and 40 CFR 171.3. The Agency has served in these capacities for over forty years. The Governor's Designation Letter is [Attachment 1](#).

Points of Contact

State Lead Agency (SLA) central point of contact for matters relative to the State certification plan

SLA name: Vermont Agency of Agriculture, Food & Markets

SLA primary contact name: David Huber

SLA primary contact title: Deputy Director

Email address for SLA primary contact: david.huber@vermont.gov

Phone number for SLA primary contact: 802.461.7160

Mailing address for SLA primary contact: Vermont Agency of Agriculture, Food & Markets/116 State Street/ Montpelier, Vermont 05620

Cooperating Agency contact(s) for matters relative to the State certification plan:

Cooperating agency name: University of Vermont Cooperative Extension

Cooperating agency role: Education & training

Name of Primary Contact: Ann Hazelrigg

Title of Primary Contact: Pesticide Safety Education Program Coordinator

Email address for primary contact: Ann.Hazelrigg@uvm.edu

Phone number for primary contact: 802.656.0493

Mailing address for primary contact: Ann Hazelrigg, PhD/UVM Plant Diagnostic Clinic/ 63 Carrigan Drive/Burlington, Vermont 05405

Explanation of agency coordination process: The SLA, the Vermont Agency of Agriculture oversees all regulatory functions related to the certification plan: it develops, proctors, and grades examinations, issues certificates and licenses, classifies pesticide products, oversees inspections, compliance and enforcement. In addition, it supports and provides continuing education to agricultural and non-agricultural applicators. The University of Vermont Cooperative Extension supports the work of the Agency by organizing and providing continuing education focused on agricultural applicators. The two parties typically meet 3-4 times a year to discuss applicator continuing education needs and other topics of interest.

QUALIFIED PERSONNEL

§ 171.303(b)(6)(iii) A listing of the qualified personnel that the lead agency and any cooperating agencies or organizations have to carry out the State certification plan. The list must include the number of staff, job titles, and job functions of such personnel of the lead agency and any cooperating organizations.

State Response:

<i>Table 1. Staffing Summary</i>		
State Lead Agency		
Position Title	Function Relative to Certification and Training	# of FTE*
Director	Director – Program oversight including the Certification and Training Program, liaison to EPA.	1
Agrichemical Management Section Chief	Special registrations, Cooperative Agreement management, enforcement referrals	1
Policy & Research Specialist	Permitting, research, data collection and evaluation, assist with legislation and policy decisions. Administer State Advisory Council.	1
Environmental Surveillance Program Manager	Monitor and assess risks to the environment, particularly water resources. Coordinate with state agencies to mitigate risks to the environment.	0.5
Pesticide Certification and Training Coordinator	Certification and Training – manage the licensing and certification of pesticide applicator: including exam proctoring; annual data entry into CPARD, applicator training and education; obsolete product disposal program; Worker Protection Standard Administration	1

Ag Resource Mgt. Specialists/Specialist(s)	Pesticide Inspector(s) – inspect applicators; conduct routine and complaint-based inspections and investigations related to pesticide applications, proctor exams, inspect restricted use dealers.	5.0
Program Specialist	Product Registration – provides technical assistance relative to pesticides.	0.5
Chief Policy Enforcement Officer	Initiate and oversee administrative proceedings related to certification and related enforcement. Provide guidance on evidence applicability and authorities. Refer cases to the Attorney General for potential criminal prosecution or civil enforcement if proposed penalty exceeds monetary threshold.	0.5
Chemist	Test samples for compliance and enforcement	1.0
Enforcement Specialist	Draft administrative actions, track cases and penalties	0.25

Cooperating Agencies and Other Partners

Position Title	Function Relative to Certification and Training	# of FTE*
Pesticide Safety Education Program Coordinator	Director – Program oversight for pesticide safety training programs related to private and commercial agricultural applicators	0.1
Pesticide Safety Specialist	Collaborate on pesticide applicator continuing education course development, materials and implementation for private and commercial agricultural applicators.	0.25

* FTE = Full Time Employee

SUFFICIENT RESOURCES

§ 171.303(b)(6)(iv) A commitment by the State that the lead agency will ensure sufficient resources are available to carry out the applicator certification program as detailed in the State certification plan.

State Response: Vermont is committed to ensuring sufficient resources are available to carry out the applicator certification program as detailed in the CPA Plan. State statute, 6 V.S.A. § 929, requires that funds from pesticide product registration are used to financially support the pesticide programs within the Agency of Agriculture.

SECTION 2. LEGAL AUTHORITIES.

WRITTEN OPINION – Legal Counsel

§ 171.303(b)(6)(ii) A written opinion from the State attorney general or from the legal counsel of the State lead agency that states that the lead agency and other cooperating agencies have the legal authority necessary to carry out the State certification plan.

State Response: The written opinion is included as [Attachment 2](#).

LAWS AND REGULATIONS – State Statutes and Rules

§ 171.303(b)(7) The application for Agency approval of a State certification plan must include a complete copy of all State laws and regulations relevant to the State certification plan.

State Response: Relevant Vermont statutes (6 V.S.A. §§ 1- 21, §§ 911-929, §§ 1101-1113) and regulations (CVR 20-031-012) are provided in [Attachment 3](#).

PROVISIONS FOR GROUNDS FOR DENYING, SUSPENDING OR REVOKING A CERTIFICATION

§ 171.303(b)(7)(i) Provisions for and listing of the acts which would constitute grounds for denying, suspending, and revoking certification of applicators. Such grounds must include at a minimum misuse of a pesticide, falsification of any records required to be maintained by the certified applicator, a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, and conclusion of a State enforcement action for violations of State laws or regulations relevant to the State certification plan.

State Response: The Secretary has the authority to revoke or suspend any certificate or license issued under the state rule, which includes all certifications and licenses required to purchase, apply, sell, or otherwise use federally restricted pesticide products. Grounds for suspension or revocation are broad and can include any violation of use (misuse), recordkeeping violations (e.g., failure to keep records, keeping false or fraudulent records/invoices), permit violations, and/or improper storage. Suspension and revocation of certification can be required for being subject to a final civil order or conviction under FIFRA. By rule, a certificate may also be denied for failure to adequately demonstrate competency or to anyone under suspension or revocation of a certificate.

6 V.S.A. § 1. General powers of Agency; Secretary of Agriculture, Food and Markets

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

(2) Conduct examinations and pass upon the qualifications of applicants for licenses.

6 V.S.A. § 1103. Regulation by Secretary

(a) General authority. The Secretary shall have responsibility for regulating and controlling the sale, use, storage, treatment, and disposal of pesticides and pesticide wastes, in order to promote the public health, safety, and welfare and protect agricultural and natural resources. In the performance of such duties the Secretary shall act upon the advice of the Pesticide Advisory Council, and subject to the approval of the Governor.

6 V.S.A. § 1104. Powers of Secretary

(8) Revoke or suspend any license or certificate for failure to comply with this Chapter or any rule adopted under its authority, or for being subject to a final order imposing a civil penalty under 7 U.S.C. § 136 l or for being convicted under 7 U.S.C. § 136 l on due notice to the licensee or holder of the certificate with an opportunity for hearing if a written request for hearing is filed with the Secretary within five days of receipt of notice of a violation.

CVR 20-031-012¹

SECTION III - POWERS OF THE COMMISSIONER

1. Suspension or revocation of licenses, certificates, or permits.

a. The Commissioner may amend, suspend or revoke any license, certificate or permit for failure to comply with 6 V.S.A. Chapter 87 or any rule or regulations adopted under its authority or for being subject to a final order imposing a civil penalty under 7 USC Section 136(j) or for being convicted under 7 USC Section 136(j) on due notice to the licensee or holder of the certificate or permit, with an opportunity for hearing if a written request is filed with the Commissioner within five (5) days of receipt of a notice of violation.

b. If the Commissioner finds that public health, safety or welfare imperatively requires emergency action and the Commissioner incorporates a finding to that effect in his order,

¹ When the rule was enacted the Agency of Agriculture was a State “Department” headed by a Commissioner instead of a State Agency led by a Secretary. In 2003, the legislature passed Act No. 42 which elevated the department to an agency and made the Secretary a member of the Governor’s cabinet. All references in the rule to the “Commissioner” or “Department of Agriculture, Food and Markets” should be read as references to the Secretary or Agency of Agriculture as applicable.

summary suspension of a license, permit or certificate may be ordered, pending proceedings for revocation or other action.

PROVISIONS FOR REVIEWING, SUSPENDING AND REVOKING A CERTIFICATION

§ 171.303(b)(7)(ii) Provisions for reviewing, and where appropriate, suspending or revoking an applicator's certification based on any of the grounds listed in the plan pursuant to paragraph (b)(7)(i) of this section, or a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, or conclusion of a State enforcement action for violations of State laws or regulations relevant to the State certification plan.

State Response: The Secretary has the authority to review, and where appropriate institute proceedings to revoke or suspend any certificate or license, including those issued under the state rule, and identified under § 171.303(b)(7)(i). Additionally, the Secretary, through administrative enforcement and prosecutorial discretion, has the authority to deny an application for certification based on an applicant's previous violations. Some of the powers are identified in the preceding section. In addition, the Secretary has the broad statutory and regulatory powers outlined below.

6 V.S.A. § 1. General powers of Agency; Secretary of Agriculture, Food and Markets

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

- (1) Delegate any authority, power, or duty as necessary for the proper execution of the laws.
- (2) Conduct examinations and pass upon the qualifications of applicants for licenses.
- (3) Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.
- (4) Conduct hearings.
- (5) Issue subpoenas and administer oaths in connection with an authorized investigation or hearing.

- (7) Seek and obtain temporary or permanent injunctions to restrain a violation of any law administered by the Secretary, whenever there are reasonable grounds to believe that a law has been or will be violated.
- (8) Institute appropriate proceedings in the name of the Agency to enforce any law administered by the Secretary.

(10) Adopt and enforce rules to implement the laws administered by the Secretary.

(12) Exercise any other power or authority granted by common law or statute.

(14) Require any person or entity regulated by the Secretary under this title or Title 9 or 20 to file an affidavit under oath or affirmation that the person or entity or their regulated premises is in compliance with an assurance of discontinuance or other order or the terms and conditions of a license, permit, registration, certificate, or approval issued by or under the statutory authority of the Secretary or rules adopted under such statutory authority. The Secretary's request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such affidavit when requested or the material misrepresentation of a fact in the affidavit shall constitute a violation of the underlying regulatory program and grounds for revocation or assessment of administrative penalties or both under section 15 of this title.

§ 1104. Powers of Secretary

(4) Enter any premises, public or private, as may be necessary to carry out the provisions of this Chapter.

(6) Require pesticide dealers and applicators to keep records of the sale and use of pesticides deemed particularly toxic or hazardous by the Pesticide Advisory Council and to have such records available for examination by the Secretary or his or her agents at his or her request; the accounting for kinds and amounts of such economic poisons, to whom sold, and where and when used, and the reporting of incidents resulting from accidental contamination or misapplication of pesticides which present a hazard to humans, animals, or the environment, may be required.

CVR 20-031-012

SECTION III - POWERS OF THE COMMISSIONER

4. The Commissioner may, in furtherance of the purpose of 6 V.S.A. Chapter 87 and the regulations adopted pursuant to this Chapter, enter the business premises of any licensed company, certified applicator, or persons using pesticides to inspect records, equipment or obtain pesticide samples.

The Commissioner may enter any job site at which a certified applicator is employed or where pesticides are used to request information regarding pesticide use at that site, to test equipment or

to obtain samples of pesticides or other samples including, but not limited to: soil, water, air, food, plant material and animal tissue, from both treated and untreated areas.

6. In addition to authority conferred by these regulations, the powers of the Commissioner include all statutory authority vested in the Commissioner, now or in the future, to enforce state pesticide laws and regulations. The Commissioner shall develop and implement policies and strategies for the management of pesticide use and the protection of ground and surface water resources.

SECTION VII - REQUIREMENTS FOR CERTIFIED COMMERCIAL AND CERTIFIED NONCOMMERCIAL APPLICATORS.

7. The Secretary may deny issuance of a certificate to any person failing to adequately demonstrate competency on any examination or who is currently under a suspension or revocation of certificate by the Secretary.

PROVISIONS FOR ASSESSING CIVIL AND CRIMINAL PENALTIES.

§ 171.303(b)(7)(iii) Provisions for assessing criminal and civil penalties for violations of State laws or regulations relevant to the State certification plan.

State Response: The Secretary has the authority to assess administrative penalties, bring civil actions that include penalties, and refer matters for criminal prosecution for violations of the laws and regulations relevant to the State certification plan. The issuance of a penalty or criminal charge references the Enforcement Response Policy, and includes an inspection, an enforcement review with penalty recommendation, and an administrative review. A penalty can be applied by enforcement review and administrative review. A fine associated with a penalty typically is the result of applying a fine matrix to the specific regulatory infraction(s) during enforcement review. Substantial fines (greater than \$10,000) or potentially criminal actions include review and enforcement by the State Attorney General.

3 V.S.A. § 152. Scope of authority

The Attorney General may represent the State in all civil and criminal matters as at common law and as allowed by statute. The Attorney General shall also have the same authority throughout the State as a State's Attorney.

6 V.S.A. § 1. General powers of Agency; Secretary of Agriculture, Food and Markets

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

(1) Delegate any authority, power, or duty as necessary for the proper execution of the laws.

(3) Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.

(4) Conduct hearings.

(5) Issue subpoenas and administer oaths in connection with an authorized investigation or hearing.

(7) Seek and obtain temporary or permanent injunctions to restrain a violation of any law administered by the Secretary, whenever there are reasonable grounds to believe that a law has been or will be violated.

(8) Institute appropriate proceedings in the name of the Agency to enforce any law administered by the Secretary.

(12) Exercise any other power or authority granted by common law or statute.

6 V.S.A. § 15 Administrative penalties

(a) In addition to other penalties provided by law, the Secretary may assess administrative penalties, not to exceed \$1,000.00, for each violation of this title and Titles 9 and 20, unless a higher administrative penalty amount is provided for therein.

(b) In determining the amount of the penalty to be assessed under this section, the Secretary may give consideration to one or more of the following:

(1) the degree of actual and potential impact on public health, safety, and welfare resulting from the violation;

(2) the presence of mitigating or aggravating circumstances;

(3) whether the violator has been warned or found in violation of the same provisions of law in the past;

(4) the economic benefit gained by the violation;

- (5) the deterrent effect of the penalty;
- (6) the financial condition of the violator.

(c) Each violation may be a separate and distinct offense and, in the case of a continuing violation, each day's continuance may be deemed to be a separate and distinct offense. In no event shall the maximum amount of the penalty assessed under this section exceed \$25,000.00.

(d) In addition to the administrative penalties authorized by this section, the Secretary may recover the costs of investigation, which shall be credited to a special fund and shall be available to the Agency to offset these costs.

(e) Any party aggrieved by a final decision of the Secretary may appeal de novo to the Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing a civil collection action in any District or Superior Court.

6 V.S.A. § 17. Collections

(a) The Secretary may collect an unpaid administrative or civil penalty by filing a civil collection action in any Superior Court or through any other means available to State agencies.

(b) The Secretary may, subject to 3 V.S.A. Chapter 25, suspend any license, certificate, registration, or permit issued pursuant to his or her authority for failure to pay a penalty under this Chapter more than 45 days after the penalty was imposed by order and served.

6 V.S.A. § 1104. Powers of Secretary

The Secretary in furtherance of the purposes of this Chapter may:

(1) Regulate and license the display, sale, application, use, storage, treatment, and disposal of economic poisons and their waste products and establish restrictions on the use, application, storage, treatment, and disposal of economic poisons and their waste products which are deemed toxic or hazardous to humans, animals, or the natural environment.

(13) Institute appropriate proceedings on behalf of the Agency to enforce this Chapter and any rules adopted pursuant to this Chapter. Whenever the Secretary believes that any person is in violation of the provisions of this Chapter or rules adopted pursuant to this Chapter, an action may be brought in the name of the Agency in a court of competent jurisdiction against the person to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions without bond, and other relief as may be necessary and appropriate for abatement of any violation.

6 V.S.A. § 1107. Penalty

Any person who violates any provision of this Chapter, the rules promulgated herein, or the terms or conditions of any permit, license, or certificate issued by the Secretary, shall be subject to a fine not to exceed \$25,000.00 or imprisonment for not more than six months, or both. Each

violation shall be a separate and distinct offense and, in the case of a continuing violation, the fine for each day's continuance thereof shall be increased by 10 percent over the amount accrued during the previous day, starting from the day the violator is served with notice of the violation. The service shall be by hand or by certified mail, return receipt requested.

§ 1108. Construction with other laws

The provisions of 3 V.S.A. Chapter 25 shall apply to adoption of rules, notices, hearings, and other proceedings under this Chapter unless inconsistent with its provisions. The powers granted to the Secretary under this Chapter shall not limit, restrict, or suspend any similar powers the Secretary may have under other provisions of law and shall not limit or restrict any powers specifically granted to any other state agency.

§ 1111. Administrative penalties

(a) The Secretary may assess an administrative penalty, not to exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders, in any case in which he or she determines that an applicator, dealer, licensed company, or permit holder has done any of the following acts in violation of this Chapter or of the rules adopted under this Chapter:

- (1) sold pesticides without first obtaining the appropriate pesticide dealer license;
- (2) used pesticides without first obtaining the appropriate company license or applicator certificate;
- (3) used a pesticide inconsistent with its labeling or in violation of the rules for the control of pesticides;
- (4) failed to complete and submit a commercial applicator, company license, or pesticide dealer report;
- (5) violated a cease and desist order;
- (6) improperly disposed of pesticide products, dilutions, or rinsates; or
- (7) violated the terms or conditions of a permit issued pursuant to this Chapter or pursuant to the rules adopted pursuant to this Chapter.

(b) In determining the amount of the penalty assessed under this section, the Secretary may give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the person, and the overall history of prior violations.

(c) The Secretary shall use the following procedure in assessing penalties:

- (1) he or she shall issue a written notice of violation setting forth facts that would establish probable cause that a violation has occurred;

- (2) the notice shall be served by personal service or by certified mail, return receipt requested;
 - (3) the notice shall advise the person of the right to a hearing. If a hearing is requested, it shall be conducted pursuant to 3 V.S.A. Chapter 25;
 - (4) the notice shall also state the proposed penalty and that if no hearing is requested, the decision shall become final and the penalty shall be imposed; and
 - (5) the recipient of the notice shall have 15 days from the date on which notice is received to request a hearing.
- (d) Any party aggrieved by a final decision of the Secretary may appeal to a Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing a civil collection action in any District or Superior Court.
- (e) The Secretary may, subject to the provisions of 3 V.S.A. Chapter 25, suspend any license, certificate, or permit issued pursuant to this Chapter for failure to pay a penalty under this section when that person has failed to pay the penalty within 60 days after the penalty becomes final.

PROVISIONS FOR RIGHT OF ENTRY FOR INSPECTIONS

§ 171.303(b)(7)(iv) Provisions for right of entry by consent or warrant by State officials at reasonable times for sampling, inspection, and observation purposes.

State Response: The Secretary has the authority to enter premises in both statute and rule. The Secretary may enter premises to evaluate compliance and may also solicit a warrant when a violation is suspected and/or when permission to conduct a routine inspection is refused.

6 V.S.A. § 1. General powers of Agency; Secretary of Agriculture, Food and Markets

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

(3) Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.

6 V.S.A. § 1104. Powers of the Secretary.

(2) Examine, test, and approve any apparatus or equipment used in dispensing, applying, storing, treating, or disposing of economic poisons or their waste products. Such equipment shall be in good working order and free of defective parts, and equipment used for applying economic

poisons shall be capable of dispensing prescribed amounts of pesticides to the target without undue hazard to the operator or nontarget areas.

(4) Enter any premises, public or private, as may be necessary to carry out the provisions of this Chapter.

(6) Require pesticide dealers and applicators to keep records of the sale and use of pesticides deemed particularly toxic or hazardous by the Pesticide Advisory Council and to have such records available for examination by the Secretary or his or her agents at his or her request; the accounting for kinds and amounts of such economic poisons, to whom sold, and where and when used, and the reporting of incidents resulting from accidental contamination or misapplication of pesticides which present a hazard to humans, animals, or the environment, may be required.

CVR 20-031-012

SECTION III - POWERS OF THE COMMISSIONER

4. The Commissioner may, in furtherance of the purpose of 6 V.S.A. Chapter 87 and the regulations adopted pursuant to this Chapter, enter the business premises of any licensed company, certified applicator, or persons using pesticides to inspect records, equipment or obtain pesticide samples.

The Commissioner may enter any job site at which a certified applicator is employed or where pesticides are used to request information regarding pesticide use at that site, to test equipment or to obtain samples of pesticides or other samples including, but not limited to: soil, water, air, food, plant material and animal tissue, from both treated and untreated areas.

6 V.S.A. § 12. Search warrants

(a) Upon application by the secretary or a person designated by the secretary, a district or superior court judge shall, upon a finding of probable cause, issue an administrative search warrant to search property for violation of any provision of this title, Chapter 73 of Title 9, or any other law administered by the Secretary of Agriculture, Food and Markets. A court may find that probable cause for an administrative search warrant under this section exists when:

(1) the secretary or a person designated by the secretary has reason to believe that a provision of this title, Chapter 73 of Title 9, or any other law administered by the secretary has been violated; or

(2) permission to inspect has been refused and the property to be searched is subject to routine inspections in connection with a regulatory program administered by the Secretary of Agriculture, Food and Markets.

(b) The provisions of Rule 41(c) and (d) of the Vermont Rules of Criminal Procedure shall apply to warrants issued under this section.

PROVISIONS FOR MAKING IT UNLAWFUL TO APPLY RESTRICTED USE PESTICIDES UNLESS CERTIFIED.

§ 171.303(b)(7)(v) Provisions making it unlawful for persons other than certified applicators or noncertified applicators working under a certified applicator’s direct supervision to use restricted use pesticides.

State Response: By rule, Vermont pesticide applicators that use federally restricted use pesticides are required to be certified. Vermont will modify its regulations to *prohibit* the application of a federally restricted pesticide by any noncertified applicator.²

6 V.S.A. § 1104. Powers of Secretary

The Secretary in furtherance of the purposes of this Chapter may:

(1) Regulate and license the display, sale, application, use, storage, treatment, and disposal of economic poisons and their waste products and establish restrictions on the use, application, storage, treatment, and disposal of economic poisons and their waste products which are deemed toxic or hazardous to humans, animals, or the natural environment.

(3) Adopt standards, procedures, and requirements relating to the display, sale, use, application, treatment, storage, or disposal of economic poisons or their waste products and limit the conditions under which the same may be sold, used, treated, stored, or disposed of. The use of pesticides which the Secretary finds to have a hazardous or long-term deleterious effect on the environment shall be restricted, and permits shall be required for their use in accordance with rules adopted by the Secretary. Specific uses of certain pesticides deemed to present a likely risk to human health or be dangerous shall be restricted by rule or by ordering the deletion of certain uses for registered pesticides from the label on pesticide products to be marketed in the State. Approved methods for the safe display, storage, and shipping of poisonous pesticides shall be prescribed and enforced. Procedures for the disposal of pesticides which are illegal, obsolete, surplus, or in damaged containers shall be adopted and enforced with the cooperation of the Agency of Natural Resources.

(5) Issue licenses, permits, and certificates pursuant to this Chapter.

² For purposes of this plan, any reference to the phrase “direct supervision” refers to the “direct supervision” of any pesticide other than a federal restricted use pesticide.

6. V.S.A § 1107. Penalty

Any person who violates any provision of this Chapter, the rules promulgated herein, or the terms or conditions of any permit, license, or certificate issued by the Secretary, shall be subject to a fine not to exceed \$25,000.00 or imprisonment for not more than six months, or both. Each violation shall be a separate and distinct offense and, in the case of a continuing violation, the fine for each day's continuance thereof shall be increased by 10 percent over the amount accrued during the previous day, starting from the day the violator is served with notice of the violation. The service shall be by hand or by certified mail, return receipt requested.

6. V.S.A. § 1111. Administrative penalties

(a) The Secretary may assess an administrative penalty, not to exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders, in any case in which he or she determines that an applicator, dealer, licensed company, or permit holder has done any of the following acts in violation of this Chapter or of the rules adopted under this Chapter:

- (1) sold pesticides without first obtaining the appropriate pesticide dealer license;
- (2) used pesticides without first obtaining the appropriate company license or applicator certificate;
- (3) used a pesticide inconsistent with its labeling or in violation of the rules for the control of pesticides;
- (4) failed to complete and submit a commercial applicator, company license, or pesticide dealer report;
- (5) violated a cease and desist order;
- (6) improperly disposed of pesticide products, dilutions, or rinsates; or
- (7) violated the terms or conditions of a permit issued pursuant to this Chapter or pursuant to the rules adopted pursuant to this Chapter.

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SECTION II – LICENSES, CERTIFICATES, AND PERMITS ISSUED BY THE AGENCY OF AGRICULTURE, FOOD AND MARKETS

2. Certificates - The following certificates are issued by the Agency:

Commercial and noncommercial applicator certificates: shall be obtained by persons who apply or supervise the application of pesticides to the lands and homes of others whether for remuneration or gratis. Noncommercial applicators (as defined in Section I. 8.) shall be certified if they use or supervise the use of Class "B" or restricted use pesticides in the course of their employment. See Section VII.

Private applicator certificate: shall be obtained by private applicators (as defined in Section I.) who wish to purchase and use restricted use pesticides. See Section IX.

SECTION VII - REQUIREMENTS FOR CERTIFIED COMMERCIAL AND CERTIFIED NONCOMMERCIAL APPLICATORS.

1. All noncommercial applicators who use other than Class "C" pesticides and all commercial applicators who use pesticides shall be certified in accordance with the applicator standards established in these regulations,

SECTION IX - CERTIFICATION OF PRIVATE APPLICATORS

1. Persons applying restricted use pesticides on property owned by them or on land rented by them for the production of agricultural commodities shall be certified . Certification shall be limited to allow the use of only those pesticides for which competency is determined.

PROVISIONS FOR COMMERCIAL APPLICATOR RECORDKEEPING

§ 171.303(b)(7)(vi) Provisions requiring certified commercial applicators to record and maintain for the period of at least two years routine operational records containing information on types, amounts, uses, dates, and places of application of restricted use pesticides and for ensuring that such records will be available to appropriate State officials. Such provisions must require commercial applicators to record and maintain, at a minimum, all of the following:

The name and address of the person for whom the restricted use pesticide was applied.

The location of the restricted use pesticide application.

The size of the area treated.

The crop, commodity, stored product, or site to which the restricted use pesticide was applied.

The time and date of the restricted use pesticide application.

The brand or product name of the restricted use pesticide applied.

The EPA registration number of the restricted use pesticide applied.

The total amount of the restricted use pesticide applied per location per application.

The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

Records required under § 171.201(e).

State Response: Vermont requires three types of routine records for commercial applicators to document pesticide use:

- an invoice provided to customer at time of application,
- routine application records (including the pesticide used, its EPA registration number, the amount used, the date of application, the location of application, and the pest(s) treated), and,
- an annual usage report.

All records are required to be maintained for two years and made available for inspection as requested by the Secretary. The required Invoices to be provided to all customers, include applicator information and specific site information.

Vermont will amend its rule to explicitly require all certified commercial and certified noncommercial applicators to compile and retain, for a period of at least three years, the following information:

- (1) The name and address of the person for whom the pesticide was applied.
- (2) Pest treated for.
- (3) The location of the pesticide application.
- (4) The size of the area treated.
- (5) The crop, commodity, stored product, or site to which the pesticide was applied.
- (6) The time and date of the pesticide application.
- (7) The brand or product name of the pesticide applied
- (8) The EPA registration number of the pesticide applied.
- (9) The total amount of the pesticide applied per location per application.
- (10) The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

Vermont will amend its rule to explicitly require all certified private applicators to compile and retain, for a period of at least three years, the following information for any federally restricted pesticide applied:

- (1) The pest treated for
- (2) The location of the pesticide application.
- (3) The size of the area treated.
- (4) The crop, commodity, stored product, or site to which the pesticide was applied.
- (5) The time and date of the pesticide application.
- (6) The brand or product name of the pesticide applied

- (7) The EPA registration number of the pesticide applied.
- (8) The total amount of the pesticide applied per location per application.
- (9) The name and certification number of the certified applicator that made the application.

The state is proposing to bar the use of federally restricted pesticides by noncertified applicators which will eliminate the need for records required under § 171.201(e).

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SECTION IV - RESTRICTIONS ON THE USE AND APPLICATION OF PESTICIDES

Standards of operations—All pesticide applicators and licensed companies:

j. Shall provide the following information (on a bill, invoice or other written documentation) to all customers or persons for which pesticide applications are exchanged for remuneration, at the time of application except for applications under Section IV 8:

- (1) the common or trade name for each pesticide used;
- (2) the EPA registration number for each pesticide used;
- (3) the amount of each pesticide used;
- (4) the pest(s) treated for; and
- (5) the name and signature of the applicator.

SECTION V - MAINTENANCE OF RECORDS BY CERTIFIED APPLICATORS, LICENSED COMPANIES, LICENSED PESTICIDE DEALERS AND PESTICIDE PRODUCING ESTABLISHMENT

2. Certified commercial and certified noncommercial applicators shall keep and maintain pesticide operational records in a manner prescribed by the Commissioner on forms provided for that purpose.

a. operational records shall be kept which state the pesticide product name, EPA Registration Number, amount used, date of application, location of application (farm name and town) and the pest(s) treated for during each year. These records must be maintained for a period of two years and shall be made available to the Commissioner upon request.

PROVISIONS FOR RESTRICTED USE PESTICIDE DEALER RECORDKEEPING

§ 171.303(b)(7)(vii) Provisions requiring restricted use pesticide retail dealers to record and maintain at each individual dealership, for the period of at least two years, records of each transaction where a restricted use pesticide is distributed or sold to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Records of each such transaction must include all of the following information:

Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.

The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe, or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold.

The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction including any applicable emergency exemption or State special local need registration number.

The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

The date of the transaction.

State Response: The Vermont Agency of Agriculture requires dealers of federally restricted use pesticides (Vermont Class A) to pass a written examination to secure a dealer license and requires Class A dealers to maintain records of restricted use product sales (state and federal) on a form provided by the Agency. Current information required on that form are:

- date of sale;
- EPA registration number;
- common name of pesticide;
- amount sold;
- certified applicator name;
- certified applicator certificate number;
- certificate expiration date, and,
- county of intended use.

Annual restricted use pesticide dealer reports include:

- the product name;
- the EPA registration number;
- the size and number of containers, and;

- the county of intended use.

New rules will be promulgated to require retail dealers to record and maintain sales information as follows:

(A) name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.

(B) The identity of the issuing agency and the Vermont or federal certification number presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the expiration date of the certified applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold.

(C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction including any applicable emergency exemption or State special local need registration number.

(D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

(E) The date of the transaction.

SECTION 3. COMMERCIAL APPLICATOR CERTIFICATION CATEGORIES

§ 171.303(b) (2) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of commercial applicators meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103.

State Response Vermont has commercial applicator certification categories equivalent to the federal categories and standards at §171.101. Vermont will add the soil and non-soil fumigation categories as additional categories for commercial applicators in order to meet the new federal criteria. Vermont also plans to add the following additional categories to further address Vermont's needs: Category 1 Agricultural Pest Control (C) Apiculture; Category 7: Industrial, Institutional and Structural Pest Control (F) - Mold Remediation; and Category 14: Terrestrial Invasive Plant Pest Control.

The relevant federal to state categories are provided in Table 2.

Table 2: Relevant federal and state categories			
Federal Cite: 40 CFR §171.101	Federal Category Description. These categories apply to the application of federally restricted use products.	Vermont Cite: CVR 20-031-012; Section VIII. 2	Vermont Description. These categories apply to commercial applicators using any class of pesticide product, including federally restricted products. These categories also apply to all Vermont applicators using Vermont Class B or higher, including federally restricted use, products in the course of their employment, on their employer's property.
(a)(1)	Category 1. Agricultural Pest Control, Crop Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides in production of agricultural commodities, including but not limited to grains, vegetables, small fruits, tree fruits, peanuts, tree nuts, tobacco, cotton, feed and forage crops including grasslands, and non-crop agricultural lands.	a. (A)	Category 1: Agricultural Pest Control: (A) Plant - For use in production of food, forage and fiber agricultural crops.
(a)(2)	Category 1. Agricultural Pest Control, Livestock Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides on animals or to places on or in which animals are alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in paragraphs (k) and (l) of this section.	a. (B)	Category 1: Agricultural Pest Control: (B) Animal - For use on animals and to places on or in which animals are confined.
		proposed	Proposed: Category 1: Agricultural Pest Control (C) Apiculture - For use in apiaries to control Varroa mites, and other pests and diseases.

(b)	<p>Category 2. Forest Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides in forests, forest nurseries and forest seed production.</p>	<p>b. Category 2: Forest Pest Control - For use in forests, forest nurseries and forest seed producing areas.</p>	
(c)	<p>Category 3. Ornamental and Turf Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides to control pests in the maintenance and production of ornamental plants and turf.</p>	<p>c. (A)</p>	<p>Category 3 (A): Ornamental and Shade Trees - For use to control pests in the maintenance and production of Christmas trees, ornamental trees, shrubs and flowers.</p>
		<p>c. (B)</p>	<p>Category 3 (B): Turf – for use to control pests in the maintenance and production of turf.</p>

(d)	Category 4. This category applies to commercial applicators using or supervising the use of restricted use pesticides on seeds in seed treatment facilities.	d.	Category 4: Seed Treatment – For use on seeds in seed treatment facilities.
(e)	Category 5. Aquatic Pest Control. This category applies to commercial applicators who use or supervise the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in paragraph (h) of this section.	e.	Category 5: Aquatic Pest Control – For use as applied to, or adjacent to, standing or running waters and includes but is not limited to, waters of the state, drinking water reservoirs, industrial lagoons and sewage or wastewater treatment plant lagoons; excluding applicators engaged in public health related activities as specified in paragraph (h) of this section.
(f)	Category 6. Rights-of-Way Pest Control. This category applies to commercial applicators who use or supervise the use of restricted used pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way and similar areas.	f.	Category 6: Rights-of-Way Pest Control – For use in the maintenance of public roads, electric power lines, pipelines, railway rights’-of-way and similar areas.
(g)	Category 7. Industrial, Institutional, and Structural pest control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides in, on, or around the following: Food handling establishments, packing houses, and food-processing facilities; human dwellings institutions, such as schools, hospitals and prisons; and industrial establishments	g. (A)	Category 7: (A) Industrial, Institutional and Structural Pest Control - General - For pesticide use in, on or around food handling establishments, human dwellings, institutions, such as schools or hospitals, industrial establishments, including warehouses and grain elevators and any other structure and adjacent area, public or private, for the protection of stored, processed or manufactured products.

<p>including manufacturing facilities, warehouses, grain elevators, and any other structures and adjacent areas, public or private for the protection of stored, processed or manufactured products.</p>	g. (B)	<p>Category 7: (B) Industrial, Institutional and Structural Pest Control- Health Related Pest Control - For out-of-door pesticide use in control of mosquitoes and other biting arthropods.</p>
	g. (C)	<p>Category 7: (C) Industrial, Institutional and Structural Pest Control - Industrial, Institutional and Structural Pest Control - Food Processing Pest Control - For use of the pesticides to control pests in, on or around food processing plants which may include, but are not limited to, bakeries, dairy product processing, canning and frozen food packing, confection manufacturing and meat product processing plants</p>
	g. (D)	<p>Category 7: (D) Industrial, Institutional and Structural Pest Control - Wood and Fiber Product Pest Control - For control of pests which degrade or prematurely destroy the service, life and usefulness of wood and fiber products.</p>
	g. (E)	<p>Category 7: (E) Industrial, Institutional and Structural Pest Control - Antimicrobial Pest Control - For the use of pesticides to control pests in non-potable cooling waters and in water or slurries used in industrial processing, in, on or around human dwellings, commercial establishments, institutions, including but not limited to, schools and hospitals, industrial establishments and any other structures and adjacent areas whether public or private.</p>

		proposed	Proposed Category 7: (F) Industrial, Institutional and Structural Pest Control - Mold remediation. For the use of pesticides to treat mold or microbial growth problems that are not covered in antimicrobial pest category.
(h)	Category 8. Public Health Pest Control. This category applies to State, Tribal, Federal or other governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance.	h.	Category 8: Public Health Pest Control – For use by governmental employees in public health programs for the management and control of pests for medical and public health importance.
(i)	Category 9. Regulatory Pest Control. This category applies to State, Tribal, Federal or other local governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored programs for the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control listed in paragraphs (k) and (l) of this section.	i.	Category 9: Regulatory Pest Control - For use by state, federal, and other governmental subprograms for control of regulated pests.
(j)	Category 10. Demonstration and Research. This category applies to individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration and to persons conducting field research with restricted use pesticides, and in doing so, use	j.	Category 10: Demonstration and Research Pest Control. This category applies to applicators using or supervising the use of a pesticide by individuals who demonstrate pest control to the public, supervise demonstrations or conduct field research with a pesticide. Included in this category are those

	or supervise the use of restricted use pesticides. This includes such individuals as extension specialists and county agents, commercial representatives demonstrating restricted use pesticide products, individuals demonstrating application or pest control methods used in public or private programs, and State, Federal, commercial, and other persons conducting field research on or involving restricted use pesticides.		individuals who demonstrate, sell, or recommend a pesticide to applicators, dealers or the public.
(m)	Category 13. Soil Fumigation. This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil.	proposed	Category 12: Soil Fumigation - For the application of pesticides to fumigate soil. This is a concurrent category and must be used in conjunction with valid certification in another category in 1- 9 above.
(n)	Category 14. Non-soil Fumigation. This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil.	proposed	Category 13: Non-soil Fumigation - For the application of fumigants to structures, transportation device or any other non-soil site. This applies to the use of fumigation techniques, as well as fumigant pesticides. This is a concurrent category and must be used in conjunction with valid certification in another category in 1- 9 above.
(o)	Category 15. Aerial Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft.	k.	Category 11: Aerial Pest Control - For the application of pesticides from any aircraft for the control of pests. This is a concurrent category and must be used in conjunction with valid certification in another category in 1- 9 above.
(b)	Category 2. Forest Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides in forests, forest nurseries and forest seed production.		Proposed Category 14: Terrestrial Invasive Plant Pest Control - For use in forests, forest nurseries, sensitive ecosystems, residential, and nonagricultural cropland, and other areas for the specific control of terrestrial invasive plants.

SECTION 4. PRIVATE APPLICATOR CERTIFICATION CATEGORIES.

§ 171.305 States must provide a list of their private applicator certification category and subcategory names and descriptions.

State Response: Vermont implements a private applicator certification for agricultural production that meets the federal requirement. Vermont will add the following federal soil and non-soil fumigation categories for private applicators, in rule, to meet the federal categories and standards at §171.105.

To become certified, private applicators must demonstrate competency through an examination process and are required to maintain records.

Private Certification: A private applicator must demonstrate practical knowledge of the pest problems and pest control practices associated with the applicator's agricultural operations, proper storage, use, handling and disposal of the pesticides and containers, and related legal responsibilities.

Vermont will *add* the following categories to the offered private certification:

- a. *Soil Fumigation.* This category applies to private applicators who use or supervise the use of a restricted use pesticide to fumigate soil.
- b. *Non-soil Fumigation.* This category applies to private applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil.
- c. *Aerial.* means a pesticide application from a motorized vehicle used for flight, including fixed-wing aircraft, rotary aircraft, and unmanned aerial vehicles.

Private applicator categories in aerial, soil and non-soil fumigation will be added to meet the federal requirements. Vermont intends to prohibit the use of restricted use products by noncertified applicators.

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SECTION IX - CERTIFICATION OF PRIVATE APPLICATORS

1. Persons applying restricted use pesticides on property owned by them or on land rented by them for the production of agricultural commodities shall be certified. Certification shall be limited to allow the use of only those pesticides for which competency is determined.
2. Before receiving a certification, the private applicator shall meet requirements set forth by the Commissioner as standards for private applicator certification via examination. Competency shall be established by passing a written examination.
3. Standards of competency for private applicators.

Standards of Competency for Private Applicators

Persons seeking certification as private applicators must demonstrate a practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of Class A pesticides, including the following:

- (a) Label and labeling comprehension. Ability to read and understand pesticide labels, labeling, and their functions, including all the following:
 - (1) The general format and terminology of pesticide labels and labeling.
 - (2) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.
 - (3) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.
 - (4) Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.
 - (5) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use a pesticide for fumigation or aerial application.
 - (6) Understanding the meaning of product classification.
 - (7) Understanding and complying with product-specific notification requirements.
 - (8) Recognizing and understanding the difference between mandatory and advisory labeling language.
- (b) Safety. Measures to avoid or minimize adverse health effects, including the following:
 - (1) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of a pesticide.
 - (2) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.
 - (3) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.
 - (4) Common types and causes of pesticide mishaps.
 - (5) Precautions to prevent injury to applicators and other individuals in or near treated areas.
 - (6) Need for, and proper use of, protective clothing and personal protective equipment.
 - (7) Symptoms of pesticide poisoning.
 - (8) First aid and other procedures to be followed in case of a pesticide mishap.
 - (9) 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 a pesticide and pesticide containers.
- (c) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:
 - (1) Weather and other climatic conditions.
 - (2) Types of terrain, soil, or other substrate.

- (3) Presence of fish, wildlife, and other non-target organisms.
 - (4) Drainage patterns.
- (d) Pests. The proper identification and effective control of pests, including the following:
 - (1) The importance of correctly identifying target pests and selecting the proper pesticide product(s).
 - (2) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).
- (e) Pesticides. Characteristics of pesticides, including the following:
 - (1) Types of pesticides.
 - (2) Types of formulations.
 - (3) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.
 - (4) Hazards and residues associated with use.
 - (5) Factors that influence effectiveness or lead to problems such as pesticide resistance.
 - (6) Dilution procedures.
- (f) Equipment. Application equipment, including the following:
 - (1) Types of equipment and advantages and limitations of each type.
 - (2) Uses, maintenance, and calibration procedures.
- (g) Application methods. Selecting appropriate application methods, including the following:
 - (1) Methods used to apply various forms and formulations of pesticides.
 - (2) Knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification.
 - (3) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.
 - (4) Prevention of drift and pesticide loss into the environment.
- (h) Laws and regulations. Knowledge of applicable State and Federal laws and regulations, including understanding the Worker Protection Standard in 40 CFR part 170 and the circumstances where compliance is required.
- (i) Stewardship. Understanding the importance of the following:
 - (1) Maintaining chemical security for pesticides.
 - (2) How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons.
- (j) Agricultural pest control. Practical knowledge of pest control applications to agricultural commodities including the following:
 - (1) Specific pests of relevant agricultural commodities.
 - (2) How to avoid contamination of ground and surface waters.
 - (3) Understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas.
 - (4) Understanding specific pesticide toxicity and residue potential when a pesticide is applied to animal or animal product agricultural commodities.

- (5) Relative hazards associated with using a pesticide on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

10.03 Category: Aerial Pest Control

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides applied by fixed, rotary wing, or unmanned aircraft must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of a pesticide, including the following:

- (a) Labeling. Labeling requirements and restrictions specific to aerial application of a pesticide including:
 - (1) Spray volumes.
 - (2) Buffers and no-spray zones.
 - (3) Weather conditions specific to wind and inversions.
 - (4) Labeling-mandated recordkeeping requirements for aerial pesticide applications including application conditions if applicable
- (b) Application equipment. Understand how to choose and maintain aerial application equipment, including the following:
 - (1) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application.
 - (2) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.
 - (3) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.
 - (4) Interpreting a nozzle flow rate chart.
 - (5) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.
 - (6) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.
 - (7) Where to place nozzles to produce the appropriate droplet size.
 - (8) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear.
 - (9) How to calculate required and actual flow rates.
 - (10) How to verify flow rate using fixed timing, open timing, known distance, or a flowmeter.
 - (11) When to adjust and calibrate application equipment.
- (c) Application considerations. The applicator must demonstrate knowledge of factors to consider before and during application, including the following:
 - (1) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.
 - (2) How to determine wind velocity, direction, and air density at the application site.

- (3) The potential impact of thermals and temperature inversions on aerial pesticide application.
- (d) Minimizing drift. The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including the following:
 - (1) How to determine drift potential of a product using a smoke generator.
 - (2) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.
 - (3) Selecting techniques that minimize pesticide movement out of the area to be treated.
 - (4) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.
- (e) Performing aerial application. The applicator must demonstrate competency in performing an aerial pesticide application, including the following:
 - (1) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.
 - (2) Choosing a flight pattern that ensures applicator and bystander safety and proper application.
 - (3) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.
 - (4) Tools available to mark swaths, such as global positioning systems and flags.
 - (5) Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

10.04 Category: Soil fumigation

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including the following:

- (a) Label and labeling comprehension. Ability to read and understand pesticide labels and labeling for products used to perform soil fumigation, including all the following:
 - (1) Labeling requirements specific to soil fumigants.
 - (2) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.
 - (3) Entry-restricted periods for tarped and untarped field application scenarios.
 - (4) Recordkeeping requirements.
 - (5) Labeling provisions unique to fumigant products containing certain active ingredients.
 - (6) Labeling requirements for fumigant management plans, such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigant management plan and resources available to assist

the applicator in preparing a fumigant management plan; the person responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

- (b) Safety. Measures to minimize adverse health effects, including the following:
 - (1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.
 - (2) Common problems and mistakes that can result in direct exposure to fumigants.
 - (3) Signs and symptoms of human exposure to fumigants.
 - (4) Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely.
 - (5) Steps to take if a fumigant applicator experiences sensory irritation.
 - (6) Understanding air monitoring, when it is required, and where and when to take samples.
 - (7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.
 - (8) First aid measures to take in the event of exposure to a soil fumigant.
 - (9) Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.
- (c) Soil fumigant chemical characteristics. Characteristics of soil fumigants, including the following:
 - (1) Chemical characteristics of soil fumigants.
 - (2) Specific human exposure concerns for soil fumigants.
 - (3) How soil fumigants change from a liquid or solid to a gas.
 - (4) How soil fumigants disperse in the application zone.
 - (5) Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (d) Application. Selecting appropriate application methods and timing, including the following:
 - (1) Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant.
 - (2) Site characteristics that influence fumigant exposure.
 - (3) Understanding temperature inversions and their impact on soil fumigant application.
 - (4) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.
 - (5) Conducting pre-application inspection of application equipment.

- (6) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.
 - (7) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.
 - (8) Calculating the amount of product required for a specific treatment area.
 - (9) Understanding the basic techniques for calibrating soil fumigant application equipment.
- (e) Soil and pest factors. Soil and pest factors that influence fumigant activity, including the following:
- (1) Influence of soil factors on fumigant volatility and movement within the soil profile.
 - (2) Factors that influence gaseous movement through the soil profile and into the air.
 - (3) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.
 - (4) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.
 - (5) Understanding the relationship between pest density and application rate.
 - (6) The importance of proper application depth and timing.
- (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:
- (1) Following labeling directions for required personal protective equipment.
 - (2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.
 - (3) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.
 - (4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.
- (g) Fumigant management plans and post-application summaries. Information about fumigant management plans, including the following:
- (1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.
 - (2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.
 - (3) The person responsible for verifying that a fumigant management plan is accurate.

- (4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
- (f) Buffer zones and posting requirements. Understanding buffer zones and posting requirements, including the following:
 - (1) Buffer zones and the buffer zone period.
 - (2) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.
 - (3) Using the buffer zone table from the labeling to determine the size of the buffer zone.
 - (4) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.
 - (5) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.
 - (6) Proper choice and placement of warning signs.

10.05 Category: Non-Soil Fumigation

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of a pesticide to sites other than soil, including the following:

- (a) Label & labeling comprehension. Ability to read and understand pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.
- (b) Safety. Measures to minimize adverse health effects, including the following:
 - (1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants.
 - (2) Common problems and mistakes that can result in direct exposure to fumigants.
 - (3) Signs and symptoms of human exposure to fumigants.
 - (4) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.
 - (5) Steps to take if a fumigant applicator experiences sensory irritation.
 - (6) Understanding air monitoring, when it is required, and where and when to take samples.
 - (7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.
 - (8) First aid measures to take in the event of exposure to a fumigant.
 - (9) Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.
- (c) Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including the following:
 - (1) Chemical characteristics of non-soil fumigants.

- (2) Specific human exposure concerns for non-soil fumigants.
 - (3) How fumigants change from a liquid or solid to a gas.
 - (4) How fumigants disperse in the application zone.
 - (5) Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (d) Application. Selecting appropriate application methods and timing, including the following:
- (1) Application methods and equipment commonly used for non-soil fumigation.
 - (2) Site characteristics that influence fumigant exposure.
 - (3) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions.
 - (4) Conducting pre-application inspection of application equipment and the site to be fumigated.
 - (5) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.
 - (6) Calculating the amount of product required for a specific treatment area.
 - (7) Understanding the basic techniques for calibrating non-soil fumigant application equipment.
 - (8) Understanding when and how to conduct air monitoring and when it is required.
- (e) Pest factors. Pest factors that influence fumigant activity, including the following:
- (1) Influence of pest factors on fumigant volatility.
 - (2) Factors that influence gaseous movement through the area being fumigated and into the air.
 - (3) Identifying pests causing the damage and verifying they can be controlled with fumigation.
 - (4) Understanding the relationship between pest density and application rate.
 - (5) The importance of proper application rate and timing.
- (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:
- (1) Following labeling directions for required personal protective equipment.
 - (2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.
 - (3) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.
 - (4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

- (g) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including the following:
 - (1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.
 - (2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.
 - (3) The person responsible for verifying that a fumigant management plan is accurate.
 - (4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
- (h) Posting requirements. Understanding posting requirements, including the following:
 - (1) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.
 - (2) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.
 - (3) Proper choice and placement of warning signs.

SECTION 5. LIMITED USE CERTIFICATION CATEGORIES.

Not applicable in Vermont.

SECTION 6. STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS

§ 171.303(b) (2) *The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of commercial applicators meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103. Such documentation must include one of the following:*

(ii) A statement that the State has adopted its own standards for certification of commercial applicators prescribed by the Agency under §§ 171.101 and 171.103. If the State selects this option, the application of Agency approval of a State certification plan must include all of the following:

State Response: Vermont has its own standards for certification of commercial applicators that will meet or exceed the standards prescribed under § 171.101 and 171.103.

MINIMUM AGE REQUIREMENT

§ 171.103(a)(1) (1) *Commercial applicator minimum age.* A commercial applicator must be at least 18 years old.

State Response: Vermont policy requires that any commercial or private pesticide applicator be at least 18 years of age. Vermont will promulgate this requirement in rule. Vermont proposes to use the following language in its amended rule “A candidate for certification shall be at least 18 years of age.”

CORE STANDARDS OF COMPETENCY

§ 171.103(c) *Core standards for all categories of certified commercial applicators. Persons seeking certification as commercial applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides by passing a written examination. Written examinations for all commercial applicators must address all of the following areas of competency:*

Label and labeling comprehension

Safety

Environment

Pests

Pesticides

Equipment

Application methods

Laws and regulations

Responsibilities of supervisors of noncertified applicators

Professionalism

State Response: The Vermont Certified Commercial examination meets or exceeds the federal competency standards for all of the required elements, with the exception of “*Responsibilities of supervisors of noncertified applicators.*” The Vermont revised Plan does not allow for applications of federal restricted use products and state restricted use pesticides by noncertified applicators, and the “*Responsibilities of supervisors of noncertified applicators*” requirements should not apply. Individuals seeking commercial certification must satisfy an examination standard based on the core standards of competency. The standards are applied through a written examination. Comparison of federal and Vermont competencies for categories are in Table 3. In addition to demonstrating competency of core standards, an applicator must demonstrate competency through categorical certification in order to apply within any category in Table 3.

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SECTION VII - REQUIREMENTS FOR CERTIFIED COMMERCIAL AND CERTIFIED NONCOMMERCIAL APPLICATORS.

1. All noncommercial applicators who use other than Class "C" pesticides and all commercial applicators who use pesticides shall be certified in accordance with the applicator standards established in these regulations,

Exceptions: Persons conducting research in laboratories, or Doctors of Medicine or Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice are exempt from the certification requirement.

2. The candidate for certification shall satisfactorily meet standards prescribed by the Commissioner in Section VIII.

3. Candidates for certification shall take a written examination covering core standards of competency and specific standards required for each category an individual expects to operate under. A candidate must be certified in each specific category that he or she intends to work in.

a. A candidate shall have a maximum of three opportunities to achieve a passing score on the certification examination during a twelve (12) month period. This twelve (12) month period shall begin on the date the candidate takes the first examination. After an initial failing score a candidate must wait at least seven (7) days to retake the examination. If a candidate fails twice, there shall be at least a twenty-eight (28) day waiting period before retaking the exam for the third time.

SECTION VIII - CERTIFICATION STANDARDS FOR COMMERCIAL APPLICATORS AND NONCOMMERCIAL APPLICATORS USING OTHER THAN CLASS "C" PESTICIDES

1. Noncommercial applicators who use pesticides other than Class "C" and all commercial applicators, shall be certified according to categories which reflect the types of pesticide use for which they have been examined and found competent.

Applicants for certification in the categories described in this section shall demonstrate their competence to meet standards described under core standards of competency and category specific standards. Applicants shall take a written examination covering core standards of competency and specific standards required for each category an individual expects to operate under.

3. General standards for all categories of commercial applicators.

a. 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 of the applicator's certification and the following areas of competence:

(1) Label and labeling comprehension.

(a) The general format and terminology of pesticide labels and labeling;

(b) The understanding of instructions, warnings, terms, symbols and other information commonly appearing on pesticide labels;

(c) Classification of the product, general or restricted; and

(d) Necessity for use consistent with the label.

(e) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application.

(f) Understanding and complying with product-specific notification requirements.

(g) Recognizing and understanding the difference between mandatory and advisory labeling language.

(2) Safety. Factors including:

(a) Pesticide toxicity and hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

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

(d) Need for and use of protective clothing and equipment;

(e) Symptoms of pesticide poisoning;

(f) First aid and other procedures to be followed in case of a pesticide accident; and

(g) 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.

(h) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(i) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.

(3) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil or other substrate;

(c) Presence of fish, wildlife and other non-target organisms; and

(d) Ground and surface water drainage patterns.

(4) Pests. Factors such as:

(a) Common features of pest organisms and characteristics of damage needed for pest recognition;

(b) Recognition of relevant pests; and

(c) Pest development and biology as it may be relevant to problem identification and control.

(d) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

(5) Pesticides. Factors such as:

(a) Types of pesticides;

(b) Types of formulations;

(c) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(d) Hazards associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides;

(f) Dilution procedures; and

(g) Residues associated with use.

(6) Equipment. Factors including:

(a) Types of equipment and advantages and limitations of each type; and

(b) Uses, maintenance and calibration.

(7) Application techniques. Factors including:

- (a) 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;
- (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use and misuse;
- (c) Prevention of drift and pesticide loss into the environment; and
- (d) Principles of chemigation including appropriate equipment.
- (8) Laws and regulations. Applicable state and federal laws and regulations.
- (9) Professionalism. Understanding the importance of the following:
 - (a) Maintaining chemical security for pesticides.
 - (b) How to communicate information about pesticide exposures and risks with customers and the public.
 - (c) Appropriate product stewardship for certified applicators.

Specific Standards of Competency for Each Category of Commercial Applicators – Federal to State Comparison

In response to the latter part of § 171.303(b)(2)(ii), Table 3 lists the federal and state specific standards of competency for each category of commercial applicator. This is a direct side-by-side comparison of state category standards to federal category standards with planned revisions in the final column.

Table 3. Specific Standards of Competency for Each Category of Commercial Applicator – Federal to Vermont Comparison

Federal Cite 40 CFR §171.103(d)	Federal Category	Vermont Cite: CVR 20-031- 012; Section VIII.	Vermont Category	Edits For New Regulations	Vermont Competency Category standards for modified State Plan
(1)(i)	Category 1. Agricultural Pest Control, Crop Pest Control. Applicators must demonstrate practical knowledge of crops, grasslands, and non-crop agricultural lands and the specific pests of those areas 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. The required knowledge includes pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination such as soil and water problems, no-target injury and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.	a.	Category 1: Agricultural Pest Control. (A) Plant. Applicators shall demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using 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; preharvest intervals, reentry intervals, phytotoxicity and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.	none	
(1)(ii)	Category 1. Agricultural Pest Control, Livestock Pest Control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides on animals or to places on or in which animals are alone is not sufficient to authorize the purchase, use , or supervision of use of products for predator control listed in paragraphs (k) and (l) of this section.	a.	Category 1: Agricultural Pest Control. (B) Animal. Applicators applying pesticides directly to animals shall 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 applicators shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.	none	

				new	Category 1: Agricultural Pest Control (C) Apiculture. Applicators applying pesticides in or on beehives shall demonstrate practical knowledge of honey bee life cycle, and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since honey, wax, or other hive components will enter into the food supply or be sold. Further, the applicators must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment. Best management practices of pests and diseases must be known. Applicators shall be able to identify and quantify mite loads in hives.
(2)	Category 2. Forest Pest Control. Applicators must demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the certifying authority and the pests involved. The required knowledge includes the cyclic occurrence of certain pests and specific population dynamics as a bases for programming pesticide applications, the relevant organisms casing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of	b.	Category 2: Forest Pest Control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries and seed production within the jurisdiction of the certifying authority 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	none	

	<p>application method and proper used of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.</p>		<p>natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator shall therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife, how to determine when pesticide use is proper, selection of application method and proper used of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.</p>		
(3)	<p>Category 3. Ornamental and Turf Pest Control. Applicators must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental plants and turf. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods that will minimize or prevent hazards to humans, pets and other domestic animals.</p>	c. (A)	<p>Category 3: Ornamental Pest Control. (A) Ornamental and Shade Tree. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs and plantings including cognizance of potential phytotoxicity due to a wide variety of plant material, drift and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods that will minimize or prevent hazards to humans, pets and other domestic animals.</p>	none	
		c. (B)	<p>Category 3 (B): Turf Pest Control Turf. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production, establishment and maintenance of turf including cognizance of potential phytotoxicity due to a wide variety of turf grasses and other plant types found in</p>	none	

			and around turf plantings, drift and persistence beyond the intended period of pest control.		
(4)	Category 4. Seed Treatment Pest Control. Applicators must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.	d.	Category 4: Seed Treatment. Applicators shall demonstrate a practical knowledge of types of seeds in seed treatment facilities that require chemical protection against pests and factors such as seed coloration, carriers and surface-active agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of hazards associated with handling, sorting and mixing and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.	none	
(5)	Category 5. Aquatic Pest Control. Applicators must demonstrate practical knowledge of the characteristics of various aquatic use situations, the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream, and the principles of limited area application.	e.	Category 5: Aquatic Pest Control. Applicators shall demonstrate a 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 shall have practical knowledge concerning potential pesticide effects on non-target plants, fish, birds, beneficial insects and other organisms which may be present in the immediate aquatic environments, environment and downstream, and the principles of limited area application.	none	
(6)	Category 6. Right-of-Way Pest Control. Applicators must demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and	f.	Category 6: Right-of-way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way exist over many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, excessive foliage destruction and ability to recognize target pests. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of	none	

	pests to be controlled, and for persistence beyond the intended period of pest control.		these pesticides within the right-of-way area and the impact of their application activities in the adjacent areas and communities. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control.		
(7)	Category 7. Industrial, Institutional, and Structural Pest Control. Applicators must demonstrate a practical knowledge of industrial, institutional, and structural pests, including recognizing those pest and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination food, minimize damage to and contamination of area treated minimize acute and chronic exposure of people and pests, and minimize environmental impacts of outdoor applications.	g. (A)	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (A) General Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including that of babies, children, pregnant women and elderly people is frequently a potential problem, applicators shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because general pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions, particularly related to this activity.	none	
		g. (B)	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (B) Health Related Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission and nuisance pests as these relate to and influence application programs. A wide variety of pests from the phylum arthropoda are involved and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. The applicators shall have a practical knowledge of the importance of such nonchemical control methods as sanitation, waste disposal and drainage. Because health related pest control may involve outdoor applications, applicators shall also	none	

			demonstrate practical knowledge of environmental conditions, particularly related to this activity.		
		g. (C)	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (C) Food Processing Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control and method of application that avoids contamination of food, food processing equipment and packaging materials, damage and contamination of the processing area and exposure of people. Since human exposure, including pregnant women and elderly people, may be a potential problem, applicators shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including any continuous exposure in the various situations encountered in this category. Because food processing related pest control may involve outdoor and indoor applications, applicators shall also demonstrate a practical knowledge of environmental conditions, particularly related to this activity. They shall demonstrate a practical knowledge of fumigation techniques and need for containment and post treatment ventilation.	none	
		g. (D)	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (D) Wood and Fiber Product Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycle, types of formulations for control and method of application that avoids contamination of food or feed, damage and contamination of habitat and exposure to people, pets and domestic animals. Since exposure to humans,	none	

			including children, may be a potential problem, applicators shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including any continuous exposure conditions included in this category.		
		g. (E)	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (E) Antimicrobial Pest Control. Applicators shall demonstrate a practical knowledge of the wide array of pests (algae, bacteria, fungi and shellfish) that infest a cooling water system or water used in industrial processing and the methods and reasons for their control. Applicators shall also have a practical knowledge of the pesticide formulations and hazards associated with the use of pesticides in non-potable cooling waters or water used in industrial processing, in, on or around human dwellings, commercial establishments, institutions, industrial establishments, pulp mills and any other structures and adjacent areas, public or private. Applicators shall demonstrate a practical knowledge of the different types of cooling water systems or water used in industrial processing and the various methods of testing for and identifying pest infestations.	none	
		new		new	Category 7: Industrial, Institutional, Structural and Health Related Pest Control (F) Mold Remediation. Applicators shall demonstrate a practical knowledge of a microbial pests, including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including that of babies, children, pregnant women and elderly people is frequently a potential problem, applicators shall demonstrate practical knowledge of

					the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because general pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions, particularly related to this activity. Applicators shall also demonstrate best management practice to prevent microbial growth.
(8)	Category 8. Public Health Pest Control. Applicators must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of their presence, their habitats, their life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also includes how to minimize damage to, and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures.	h.	Category 8: Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. The required knowledge also includes how to minimize damage to, and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. These applicators shall have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal and drainage.	none	
(9)	Category 9. Regulatory Pest Control. Applicators must demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests.	i.	i. Category 9: Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of regulated pests and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge factors influencing introduction, spread and population dynamics or relevant pests. Their knowledge shall extend beyond that required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments shall be made in new situations.	none	

(10)	<p>Category 10. Demonstration and Research. Applicators must demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. In addition, they must demonstrate competency in each pest control category applicable to their demonstrations.</p>	j.	<p>Category 10: Demonstration and Research Pest Control. Persons demonstrating and recommending 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, practical knowledge of problems, pests and population levels occurring in each demonstration situation is required, and the effects of restricted use pesticides on target and non-target organisms. Further, they should demonstrate an understanding of pesticide-organism interactions 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 the general standards requirements. In addition, they shall meet the specific standards required for categories 1 through 9 as may be applicable to their particular activity. Persons conducting field research or method improvement work with pesticides should be expected to know the general standards. In addition, they shall be expected to know the specific standards required for categories 1 through 9 applicable to their activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".</p>	none	
(13)	<p>Category 13. Soil Fumigation as specified in 40 CFR §171.103(d) 13 (text is too long for this table)</p>	new	<p>Category 12: Soil Fumigation. Applicators shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including the following: (a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all the following: (1) Labeling requirements specific to soil fumigants.</p>	new	<p>Vermont will adopt the language from 40 CFR §171.103(d) 13 into rule</p>

		<p>(2) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.</p> <p>(3) Entry-restricted periods for tarped and untarped field application scenarios.</p> <p>(4) Recordkeeping requirements.</p> <p>(5) Labeling provisions unique to fumigant products containing certain active ingredients.</p> <p>(b) Safety. Measures to minimize adverse health effects, including all the following:</p> <p>(1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.</p> <p>(2) Common problems and mistakes that can result in direct exposure to fumigants.</p> <p>(3) Signs and symptoms of human exposure to fumigants.</p> <p>(4) Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely.</p> <p>(5) Steps to take if a fumigant applicator experiences sensory irritation.</p> <p>(6) Understanding air monitoring, when it is required, and where and when to take samples.</p> <p>(7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.</p> <p>(8) First aid measures to take in the event of exposure to a soil fumigant.</p> <p>(9) Label and labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.</p>		
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		<p>(c) Soil fumigant chemical characteristics. Characteristics of soil fumigants, including the following:</p> <ol style="list-style-type: none"> (1) Chemical characteristics of soil fumigants. (2) Specific human exposure concerns for soil fumigants. (3) How soil fumigants change from a liquid or solid to a gas. (4) How soil fumigants disperse in the application zone. (5) Compatibility concerns for tanks, hoses, tubing, and other equipment. <p>(d) Application. Selecting appropriate application methods and timing, including the following:</p> <ol style="list-style-type: none"> (1) Application methods, including but not limited to water-run and non-water- run applications, and equipment commonly used for each soil fumigant. (2) Site characteristics that influence fumigant exposure. (3) Understanding temperature inversions and their impact on soil fumigant application. (4) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions. (5) Conducting pre-application inspection of application equipment. (6) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use. (7) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair. (8) Calculating the amount of product required for a specific treatment area. 		
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		<p>(9) Understanding the basic techniques for calibrating soil fumigant application equipment.</p> <p>(e) Soil and pest factors. Soil and pest factors that influence fumigant activity, including the following:</p> <p>(1) Influence of soil factors on fumigant volatility and movement within the soil profile.</p> <p>(2) Factors that influence gaseous movement through the soil profile and into the air.</p> <p>(3) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.</p> <p>(4) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.</p> <p>(5) Understanding the relationship between pest density and application rate.</p> <p>(6) The importance of proper application depth and timing.</p> <p>(f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:</p> <p>(1) Following labeling directions for required personal protective equipment.</p> <p>(2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.</p> <p>(3) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.</p> <p>(4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.</p> <p>(g) Fumigant management plans and post-application summaries. Information about fumigant management plans, including the following:</p>		
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			<p>(1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.</p> <p>(2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.</p> <p>(3) The person responsible for verifying that a fumigant management plan is accurate.</p> <p>(4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.</p> <p>(h) Buffer zones and posting requirements. Understanding buffer zones and posting requirements, including the following:</p> <p>(1) Buffer zones and the buffer zone period.</p> <p>(2) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.</p> <p>(3) Using the buffer zone table from the labeling to determine the size of the buffer zone.</p> <p>(4) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.</p> <p>(5) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.</p> <p>(6) Proper choice and placement of warning signs.</p>		
(14)	Category 14. Non-Soil Fumigation as specified in 40 CFR §171.103(d) 14 (text is too long for this table)	new	<p><u>Category 13. Non-Soil Fumigation</u></p> <p>Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of a pesticide to sites other than soil, including the following:</p> <p>(a) Label & labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.</p>	new	Vermont will adopt the language from 40 CFR §171.103(e) 14 into rule

		<p>(b) Safety. Measures to minimize adverse health effects, including the following:</p> <ol style="list-style-type: none"> (1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants. (2) Common problems and mistakes that can result in direct exposure to fumigants. (3) Signs and symptoms of human exposure to fumigants. (4) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely. (5) Steps to take if a fumigant applicator experiences sensory irritation. (6) Understanding air monitoring, when it is required, and where and when to take samples. (7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone. (8) First aid measures to take in the event of exposure to a fumigant. (9) Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers. <p>(c) Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including the following:</p> <ol style="list-style-type: none"> (1) Chemical characteristics of non-soil fumigants. (2) Specific human exposure concerns for non-soil fumigants. (3) How fumigants change from a liquid or solid to a gas. (4) How fumigants disperse in the application zone. (5) Compatibility concerns for tanks, hoses, tubing, and other equipment. 	
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		<p>(d) Application. Selecting appropriate application methods and timing, including the following:</p> <ol style="list-style-type: none"> (1) Application methods and equipment commonly used for non-soil fumigation. (2) Site characteristics that influence fumigant exposure. (3) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions. (4) Conducting pre-application inspection of application equipment and the site to be fumigated. (5) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use. (6) Calculating the amount of product required for a specific treatment area. (7) Understanding the basic techniques for calibrating non-soil fumigant application equipment. (8) Understanding when and how to conduct air monitoring and when it is required. <p>(e) Pest factors. Pest factors that influence fumigant activity, including the following:</p> <ol style="list-style-type: none"> (1) Influence of pest factors on fumigant volatility. (2) Factors that influence gaseous movement through the area being fumigated and into the air. (3) Identifying pests causing the damage and verifying they can be controlled with fumigation. (4) Understanding the relationship between pest density and application rate. (5) The importance of proper application rate and timing. <p>(f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:</p> <ol style="list-style-type: none"> (1) Following labeling directions for required personal protective equipment. 	
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		<p>(2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.</p> <p>(3) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.</p> <p>(4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.</p> <p>(g) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including the following:</p> <p>(1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.</p> <p>(2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.</p> <p>(3) The person responsible for verifying that a fumigant management plan is accurate.</p> <p>(4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.</p> <p>(h) Posting requirements. Understanding posting requirements, including all the following:</p> <p>(1) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.</p> <p>(2) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.</p> <p>(3) Proper choice and placement of warning signs.</p>		
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<p>(15)</p>	<p>Category 15. Aerial Pest Control. Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of restricted use pesticides, including all the following: (i)Labeling. Labeling requirements and restrictions specific to aerial application of pesticides including: (A) Spray volumes. (B) Buffers and no-spray zones. (C) Weather conditions specific to wind and inversions. (ii) Application equipment. Understand how to choose and maintain aerial application equipment, including all of the following: (A) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application. (B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift. (C) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles. (D) Interpreting a nozzle flow rate chart. (E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width. (F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence. (G) Where to place nozzles to produce the appropriate droplet size.</p>	<p>k</p>	<p>Category 11: Aerial Pest Control. Applicators shall demonstrate a practical knowledge of problems which are of special significance in aerial application of pesticides. Among the subjects involved will be weather and drift, chemical dispersal equipment, tank, pump and plumbing arrangements, nozzle selection and location and ultra-low volume systems. In addition, aerial applicators will need a practical knowledge of aircraft calibration, field flight patterns, droplet size considerations, flagging methods and loading procedures. Applicators will also be required to demonstrate comprehension of labeling information for each category of intended operation from appropriately selected labels provided. The Commissioner will rely upon the Federal Aviation Administration and the Vermont Agency of Transportation, Aeronautics Section, to determine the aeronautical competence of spray pilots and the airworthiness of their aircraft. Applicators will be required to demonstrate recognition of target area characteristics as well as characteristics of nontarget areas to avoid accidental damage or contamination.</p>	<p>revise</p>	<p>Aerial Pest Control. Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of pesticides, including all the following: (i)Labeling. Labeling requirements and restrictions specific to aerial application of pesticides including: (A) Spray volumes. (B) Buffers and no-spray zones. (C) Weather conditions specific to wind and inversions. (ii) Application equipment. Understand how to choose and maintain aerial application equipment, including all of the following: (A) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application. (B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift. (C) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles. (D) Interpreting a nozzle flow rate chart. (E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width. (F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence. (G) Where to place nozzles to produce the appropriate droplet size.</p>
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<p>(2)</p>	<p>Category 2. Forest Pest Control. Applicators must demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the certifying authority and the pests involved. The required knowledge includes the cyclic occurrence of certain pests and specific population dynamics as a bases for programming pesticide applications, the relevant organisms casing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method and proper used of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.</p>	<p>new</p>		<p>new</p>	<p>Category 14: Terrestrial Invasive Plant Pest Control - Applicators shall demonstrate practical knowledge of types of terrestrial invasive plants, their life cycles and management techniques. They should possess practical knowledge specific population dynamics as a basis for programming pesticide applications. A practical knowledge of a variety of nonagricultural sites is required, many in sensitive environmental areas; knowledge of non-target impacts of pesticides in aquatic, residential and forest stands is needed. Proper techniques of application will vary by site, and applicators shall demonstrate thorough knowledge of proper technique and pesticide selection. The applicator must demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife, how to determine when pesticide use is proper, selection of application method and proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. Knowledge of proper use of specialized equipment, especially as it may relate to meteorological factors and adjacent land use.</p>
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EXAMINATION STANDARDS

40 CFR § 171.103 a (2)(i) The examination must be presented and answered in writing.

(ii) The examination must be proctored by an individual designated by the certifying authority and who is not seeking certification at any examination session that he or she is proctoring.

(iii) Each person seeking certification must present at the time of examination valid, government-issued photo identification or other form of similarly reliable identification authorized by the certifying authority as proof of identity and age to be eligible for certification.

(iv) Candidates must be monitored throughout the examination period.

(v) Candidates must be instructed in examination procedures before beginning the examination.

(vi) Examinations must be kept secure before, during, and after the examination period so that only the candidates have access to the examination, and candidates have access only in the presence of the proctor.

(vii) Candidates must not have verbal or non-verbal communication with anyone other than the proctor during the examination period.

(viii) No portion of the examination or any associated reference materials described in paragraph (a)(2)(ix) of this section may be copied or retained by any person other than a person authorized by the certifying authority to copy or retain the examination or any associated reference materials described in paragraph (a)(2)(ix) of this section.

(ix) The only reference materials used during the examination are those that are approved by the certifying authority and provided and collected by the proctor.

(x) Reference materials provided to examinees are reviewed after the examination is complete to ensure that no portions of the reference material has been removed, altered, or destroyed.

(xi) The proctor reports to the certifying authority any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the examination.

(xii) The examination must be conducted in accordance with any other requirements of the certifying authority related to examination administration.

(xiii) The certifying authority must notify each candidate of the results of his or her examination.

40 CFR § 171.103 b. Additional methods of determining competency

State Response: Competency for certification of both commercial and private applicators is demonstrated by written examination, proctored only by Agency of Agriculture staff. Exams are secured when not in use and examination procedures and re-take criteria are described in [Attachment 4](#).

Vermont has utilized Cornell Cooperative Extension (CES) manuals for certification training except for VT Category 4, Seed Treatment, which was adopted from the Pesticide Educational Resources Collaborative (PERC,) and VT Category 7F, Antimicrobial and Disinfection, developed by VAAF program staff.

Certification training materials will be reviewed to determine coverage of federal standards.

VT Category 4 and Category 7F training materials will be reviewed, and if needed, updated to address applicable federal standards.

For certification training in non-soil fumigation, Vermont expects to adopt the PERC Non-Soil Fumigation Manual.

For certification training in aerial, Vermont expects to use the national Aerial Manual.

For certification training in soil fumigation, Vermont expects to use the National Soil Fumigation Manual.

Exam questions will be found in the national database or developed by VAAF.

Vermont will develop learning materials and a corresponding exam for VT Category 1C Apiculture.

Persons conducting research in laboratories, or Doctors of Medicine or Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice are exempt from the certification requirement.

SECTION 7. STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS.

§ 171.303(b)(3) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of private applicators meet or exceed those standards prescribed by the Agency under § 171.105. Such documentation must include a statement that the State has adopted its own standards that meet or exceed the standards for certification of private applicators of restricted use pesticides prescribed by the Agency under § 171.105.

State Response: Vermont has standards for certification of private applicators that meet or exceed the federal standards prescribed under FIFRA Section 171.105.

MINIMUM AGE REQUIREMENT

§ 171.105(g) (1) Private applicator minimum age. A private applicator must be at least 18 years old.

State Response: The Vermont private applicator **certification** examination includes competency standards listed in §171.105(a)(1-8; 10, 11).

CORE STANDARDS OF COMPETENCY

§ 171.105 Standards for certification of private applicators. General private applicator certification. Before using or supervising the use of a restricted use pesticide as a private applicator, a person must be certified by an appropriate certifying authority as having the necessary competency to use restricted use pesticides for pest control in the production of agricultural commodities, which includes the ability to read and understand pesticide labeling. Certification in this general private applicator certification category alone is not sufficient to authorize the purchase, use, or supervision of use of the restricted use pesticide products in the categories listed in paragraphs (b) through (f) of this section.

State Response: The Vermont private applicator examination process includes competency standards in §171.105(a), and (d) - (g). All training and examination materials will be reviewed to ensure coverage of federal category standards. For certification training, Vermont will review the learning materials available.

For certification training in non-soil fumigation, Vermont expects to adopt the PERC Non-Soil Fumigation Manual. For certification training in aerial, Vermont expects to use the national Aerial Manual. For certification training in soil fumigation, Vermont expects to use the National Soil Fumigation Manual. Exam questions will be found in the national database or developed by VAAFAM.

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SECTION IX - CERTIFICATION OF PRIVATE APPLICATORS

1. Persons applying restricted use pesticides on property owned by them or on land rented by them for the production of agricultural commodities shall be certified or work under the direct supervision of a certified applicator. Certification shall be limited to allow the use of only those pesticides for which competency is determined.
2. Before receiving a certificate, the private applicator shall meet requirements set forth by the Commissioner as standards for private applicator certification. Competency shall be established by passing a written examination.
3. Standards of competency for private applicators.

As a minimum requirement for certification, a private applicator must show that he possesses practical knowledge of the pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling and disposal of the pesticides and containers and his related legal responsibility. This practical knowledge includes ability to:

- a. Recognize common pests to be controlled and damage caused by them.
- b. Read and understand the label and labeling information -- including the common name of pesticides he applies, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions and any specific disposal procedures.
- c. 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, the quantity dispersed in a given period of operation and the principles of chemigation including appropriate equipment.
- d. Recognize local environmental conditions that must be considered during application to avoid contamination.
- e. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

4. Certification and renewal.

- a. Private applicators will be certified according to the pesticide needs associated with the agricultural commodities they produce.
- b. Any person who is qualified and has adequately met standards for determination of competency shall be certified. However, the Secretary, through enforcement discretion, has the authority to deny an application for certification based on an applicant's previous violations.
- c. Private applicator certifications shall be issued for a five-year period after which recertification will be required. Recertification requirements may be met by participation in additional training approved by the Commissioner or by reexamination.

Standards of Competency for Private Applicators

- (a) Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of Class A pesticides, including the following:
 - (1) Label and labeling comprehension. Familiarity with pesticide labels and labeling, and their functions, including all the following:
 - (A) The general format and terminology of pesticide labels and labeling.
 - (B) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.
 - (C) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.
 - (D) Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.

- (E) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use a pesticide for fumigation or aerial application.
- (F) Understanding the meaning of product classification.
- (G) Understanding and complying with product-specific notification requirements.
- (H) Recognizing and understanding the difference between mandatory and advisory labeling language.
- (2) Safety. Measures to avoid or minimize adverse health effects, including the following:
 - (A) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of a pesticide.
 - (B) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.
 - (C) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.
 - (D) Common types and causes of pesticide mishaps.
 - (E) Precautions to prevent injury to applicators and other individuals in or near treated areas.
 - (F) Need for, and proper use of, protective clothing and personal protective equipment.
 - (G) Symptoms of pesticide poisoning.
 - (H) First aid and other procedures to be followed in case of a pesticide mishap.
 - (I) 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 a pesticide and pesticide containers.
- (3) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:
 - (A) Weather and other climatic conditions.
 - (B) Types of terrain, soil, or other substrate.
 - (C) Presence of fish, wildlife, and other non-target organisms.
 - (D) Drainage patterns.
- (4) Pests. The proper identification and effective control of pests, including the following:
 - (A) The importance of correctly identifying target pests and selecting the proper pesticide product(s).
 - (B) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).
- (5) Pesticides. Characteristics of pesticides, including the following:
 - (A) Types of pesticides.
 - (B) Types of formulations.
 - (C) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.
 - (D) Hazards and residues associated with use.
 - (E) Factors that influence effectiveness or lead to problems such as pesticide resistance.
 - (F) Dilution procedures.
- (6) Equipment. Application equipment, including the following:
 - (A) Types of equipment and advantages and limitations of each type.
 - (B) Uses, maintenance, and calibration procedures.
- (7) Application methods. Selecting appropriate application methods, including the following:
 - (A) Methods used to apply various forms and formulations of pesticides.
 - (B) Knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification.

- (C) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.
- (D) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of applicable State and Federal laws and regulations, including understanding the Worker Protection Standard in 40 CFR part 170 and the circumstances where compliance is required.
- (9) Stewardship. Understanding the importance of the following:
 - (A) Maintaining chemical security for pesticides.
 - (B) How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons.
- (10) Agricultural pest control. Practical knowledge of pest control applications to agricultural commodities including the following:
 - (A) Specific pests of relevant agricultural commodities.
 - (B) How to avoid contamination of ground and surface waters.
 - (C) Understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas.
 - (D) Understanding specific pesticide toxicity and residue potential when a pesticide is applied to animal or animal product agricultural commodities.
 - (E) Relative hazards associated with using a pesticide on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.
- (b) In addition to satisfying the requirements in subsection 9.2(a), private applicators that use or supervise the use of a pesticide to make a fumigation application to soil, non-soil or by aerial methods must obtain certification by written examination in a relevant category listed below.

10.03 Category: Aerial Pest Control

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides applied by fixed, rotary wing, or unmanned aircraft must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of a pesticide, including the following:

- (a) Labeling. Labeling requirements and restrictions specific to aerial application of a pesticide including:
 - (1) Spray volumes.
 - (2) Buffers and no-spray zones.
 - (3) Weather conditions specific to wind and inversions.
 - (4) Labeling-mandated recordkeeping requirements for aerial pesticide applications including application conditions if applicable
- (b) Application equipment. Understand how to choose and maintain aerial application equipment, including the following:
 - (1) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application.
 - (2) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.
 - (3) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.
 - (4) Interpreting a nozzle flow rate chart.

- (5) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.
- (6) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.
- (7) Where to place nozzles to produce the appropriate droplet size.
- (8) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear.
- (9) How to calculate required and actual flow rates.
- (10) How to verify flow rate using fixed timing, open timing, known distance, or a flowmeter.
- (11) When to adjust and calibrate application equipment.
- (c) Application considerations. The applicator must demonstrate knowledge of factors to consider before and during application, including the following:
 - (1) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.
 - (2) How to determine wind velocity, direction, and air density at the application site.
 - (3) The potential impact of thermals and temperature inversions on aerial pesticide application.
- (d) Minimizing drift. The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including the following:
 - (1) How to determine drift potential of a product using a smoke generator.
 - (2) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.
 - (3) Selecting techniques that minimize pesticide movement out of the area to be treated.
 - (4) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.
- (e) Performing aerial application. The applicator must demonstrate competency in performing an aerial pesticide application, including the following:
 - (1) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.
 - (2) Choosing a flight pattern that ensures applicator and bystander safety and proper application.
 - (3) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.
 - (4) Tools available to mark swaths, such as global positioning systems and flags.
 - (5) Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

10.04 Category: Soil fumigation

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including the following:

- (a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all the following:
 - (1) Labeling requirements specific to soil fumigants.
 - (2) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.

- (3) Entry-restricted periods for tarped and untarped field application scenarios.
- (4) Recordkeeping requirements.
- (5) Labeling provisions unique to fumigant products containing certain active ingredients.
- (6) Labeling requirements for fumigant management plans, such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan; the person responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
- (b) Safety. Measures to minimize adverse health effects, including the following:
 - (1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.
 - (2) Common problems and mistakes that can result in direct exposure to fumigants.
 - (3) Signs and symptoms of human exposure to fumigants.
 - (4) Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely.
 - (5) Steps to take if a fumigant applicator experiences sensory irritation.
 - (6) Understanding air monitoring, when it is required, and where and when to take samples.
 - (7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.
 - (8) First aid measures to take in the event of exposure to a soil fumigant.
 - (9) Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.
- (c) Soil fumigant chemical characteristics. Characteristics of soil fumigants, including the following:
 - (1) Chemical characteristics of soil fumigants.
 - (2) Specific human exposure concerns for soil fumigants.
 - (3) How soil fumigants change from a liquid or solid to a gas.
 - (4) How soil fumigants disperse in the application zone.
 - (5) Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (d) Application. Selecting appropriate application methods and timing, including the following:
 - (1) Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant.
 - (2) Site characteristics that influence fumigant exposure.
 - (3) Understanding temperature inversions and their impact on soil fumigant application.
 - (4) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.
 - (5) Conducting pre-application inspection of application equipment.
 - (6) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.
 - (7) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.

- (8) Calculating the amount of product required for a specific treatment area.
 - (9) Understanding the basic techniques for calibrating soil fumigant application equipment.
 - (e) Soil and pest factors. Soil and pest factors that influence fumigant activity, including the following:
 - (1) Influence of soil factors on fumigant volatility and movement within the soil profile.
 - (2) Factors that influence gaseous movement through the soil profile and into the air.
 - (3) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.
 - (4) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.
 - (5) Understanding the relationship between pest density and application rate.
 - (6) The importance of proper application depth and timing.
 - (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:
 - (1) Following labeling directions for required personal protective equipment.
 - (2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.
 - (3) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.
 - (4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.
 - (g) Fumigant management plans and post-application summaries. Information about fumigant management plans, including the following:
 - (1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.
 - (2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.
 - (3) The person responsible for verifying that a fumigant management plan is accurate.
 - (4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
 - (f) Buffer zones and posting requirements. Understanding buffer zones and posting requirements, including the following:
 - (1) Buffer zones and the buffer zone period.
 - (2) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.
 - (3) Using the buffer zone table from the labeling to determine the size of the buffer zone.
 - (4) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.
 - (5) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.
 - (6) Proper choice and placement of warning signs.
- 10.05 Category: Non-soil fumigation

In addition to satisfying the requirements in Section 10.02, private applicators that use Class A pesticides to fumigate soil must demonstrate practical knowledge of the pest

problems and pest control practices associated with performing fumigation applications of a pesticide to sites other than soil, including the following:

- (a) Label & labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.
- (b) Safety. Measures to minimize adverse health effects, including the following:
 - (1) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants.
 - (2) Common problems and mistakes that can result in direct exposure to fumigants.
 - (3) Signs and symptoms of human exposure to fumigants.
 - (4) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.
 - (5) Steps to take if a fumigant applicator experiences sensory irritation.
 - (6) Understanding air monitoring, when it is required, and where and when to take samples.
 - (7) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.
 - (8) First aid measures to take in the event of exposure to a fumigant.
 - (9) Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.
- (c) Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including the following:
 - (1) Chemical characteristics of non-soil fumigants.
 - (2) Specific human exposure concerns for non-soil fumigants.
 - (3) How fumigants change from a liquid or solid to a gas.
 - (4) How fumigants disperse in the application zone.
 - (5) Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (d) Application. Selecting appropriate application methods and timing, including the following:
 - (1) Application methods and equipment commonly used for non-soil fumigation.
 - (2) Site characteristics that influence fumigant exposure.
 - (3) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions.
 - (4) Conducting pre-application inspection of application equipment and the site to be fumigated.
 - (5) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.
 - (6) Calculating the amount of product required for a specific treatment area.
 - (7) Understanding the basic techniques for calibrating non-soil fumigant application equipment.
 - (8) Understanding when and how to conduct air monitoring and when it is required.
- (e) Pest factors. Pest factors that influence fumigant activity, including the following:
 - (1) Influence of pest factors on fumigant volatility.
 - (2) Factors that influence gaseous movement through the area being fumigated and into the air.

- (3) Identifying pests causing the damage and verifying they can be controlled with fumigation.
- (4) Understanding the relationship between pest density and application rate.
- (5) The importance of proper application rate and timing.
- (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including the following:
 - (1) Following labeling directions for required personal protective equipment.
 - (2) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.
 - (3) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.
 - (4) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.
- (g) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including the following:
 - (1) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.
 - (2) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.
 - (3) The person responsible for verifying that a fumigant management plan is accurate.
 - (4) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
- (h) Posting requirements. Understanding posting requirements, including the following:
 - (1) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.
 - (2) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.
 - (3) Proper choice and placement of warning signs.

Determination of Competency and Examination Standards

§171.105(h) Private applicator competency. The competency of each candidate for private applicator certification must be established by the certifying authority based upon the certification standards set forth in paragraphs (a) through (g) of this section in order to assure that private applicators have the competency to use and supervise the use of restricted use pesticides in accordance with applicable State, Tribal, and Federal laws and regulations. The certifying authority must use either a written examination process as described in paragraph (h)(1) of this section or a non-examination training process as described in paragraph (h)(2) of this section to assure the competency of private applicators in regard to the general certification standards applicable to all private applicators outlined in paragraph (a) of this section and, if applicable, the specific standards for the each of the categories outlined in paragraphs (b) through (f) of this section in which a private applicator is to be certified. § 171.303(b)(3)(iii)

If private applicator certification is based upon written examination, a description of the State's private applicator certification examination standards and an explanation of how those meet or exceed the standards prescribed by the Agency under § 171.103(a)(2).

State Response: Vermont employs a written examination standard, which meets the federal requirements of §§171.105(a), and (d) - (g), to determine the competency of any private applicator who seeks to purchase and use restricted use pesticides. Vermont examination procedures for private applicators are the same as for commercial applicators, and meet the federal requirements, for age, government identification, proctoring and examination administration. For more information please refer to Attachment 4.

SECTION 8. RECERTIFICATION STANDARDS

State Response: Vermont has standards for recertification of commercial applicators and private applicators. Please refer to Attachment 4 for more information.

In order to become certified, all applicators, private and commercial, must demonstrate competency through a written test and achieve a passing score of 75%. See Attachment 4 for details on the examination process.

Commercial Applicators and Recertification Credits - The recertification period for commercial applicators is five (5) years and 16 credit hours of continuing education.

Private Applicators and Recertification Credits - The recertification period for private applicators is five (5) years and 8 credit hours of continuing education.

Certification of noncommercial and commercial applicators may be renewed annually, for a fee, for up to five years, after which recertification shall be required, either through re-examination or by accumulating a total of 16 continuing education credits.

Private applicator certificates are valid for five years at which point they need to be recertified, either through re-examination or by accumulating a total of 8 continuing education credits, or else forfeited.

The recertification period for both private and commercial applicators is five years. Continuing education credits shall be secured on or before December 31st of the fifth year of the recertification period. If the certified applicator does not satisfy the annual renewal requirement by December 31st or does not secure the proper amount of recertification credits at the end of the 5-year cycle, re-examination is required. For commercial applicators, this would entail retaking the Core exam and any required category exam. For private applicators, this would entail retaking the Private Application Certification exam and any required category.

CONTINUING EDUCATION CREDITS

State Response: The Program reviews requests of continuing education opportunities for credits by process. A request for continuing education credits may be submitted via email or electronically, or by USPS mail to the Program. The request must include the: meeting type;

date; time and location of the meeting; seminar's title; seminar's sponsor; name, phone number and email address of the contact person/coordinator; agenda for the seminar; and biographical sketches of speakers including qualifications. All in-state meetings are required to allow for Agency staff to be present and monitor attendance, topics and credits. VAAFPM will review an agenda to assign credits and to determine how much/what category-specific content is covered to maintain competency in a given category. Credit will be allowed for topics including, but not limited to:

- (a) Label and labeling comprehension
- (b) Safety
- (c) Environment
- (d) Pests
- (e) Pesticides
- (f) Equipment
- (g) Application methods
- (h) Laws and regulations
- (i) Professionalism
- (j) Category-specifics related to any of the above.

One credit will be assigned for each 1 hour of presentation on appropriate topics.

Vermont also approves distance learning credits; they must be approved in the same process as an on-site meeting. Only recertification credits approved by a SLA with an EPA approved State Plan are accepted. The Program reserves the right to deny credits assigned by another SLA. Both the seminar sponsor and the attendee shall provide proof of attendance.

Per §171.107(b)(2)(iii), Vermont will ensure that any continuing education course or event, including an online or other distance education course or event, relied upon for applicator recertification includes a process to verify the applicator's successful completion of the course or event. Before credits may be approved, Vermont will ensure the individual/entity offering the course/event has adequate measures to determine successful completion of a course or event by the applicator.

Adequate measures include, but are not limited to: participant sign-ins and attendance time frames indicating presence at both the start and end of the course/event. The agency will determine the adequacy of the attendance verification process submitted by the event host.

SECTION 9. STANDARDS FOR THE DIRECT SUPERVISION OF NONCERTIFIED APPLICATORS.

State Response: Vermont will amend the Vermont Regulations for the Control of Pesticides to prohibit the application of a federally restricted use pesticide by a noncertified applicator even when under the direct supervision of a certified applicator. Vermont intends to add the following in it's amended rule: "A federally restricted use pesticide shall only be used by a certified applicator."

SECTION 10. CREDENTIALS

§ 171.303(a)(8) The State certification plan must describe the credentials or documents the State certifying authority will issue to each certified applicator verifying certification.

State Response: The state credential required for use of a restricted use pesticide is the pesticide applicator's certificate. A physical certificate is provided to each successful candidate and is required to be renewed annually, for Commercial Applicators, and every five years for a Private Applicator, based on the end of the year, December 31st, regardless of when the certificate is issued. Certificates are printed on pre-laminated paper and are only issued from the Agency. Commercial applicators are affiliated with a company license. Company licenses are issued for commercial companies. Credentials indicate what type of applicator (commercial, non-commercial, private), expiration dates of credits, categories of certification, affiliation, and applicator name and signature.

Please refer to Attachment 5 for detailed graphics of the: Vermont commercial applicator certificate, private applicator certificate, dealer license, and certificate of attendance.

SECTION 11. RECIPROCITY

State Response: Vermont currently maintains reciprocity with New York, Pennsylvania, Rhode Island and New Jersey. Other states' applicator certifications are reviewed annually at the time of renewal prior to VAAFm issuing reciprocal certificates.

Reciprocal certification is based on proof of a valid and current certification from another state. A reciprocal certification will be denied or revoked based on originating state suspension, denial or revocation. Reciprocity will be considered for all states that meet the requirements in Vermont's rule. The certified applicator shall notify VAAFm within 30 days of termination of their reciprocal state's certification.

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SECTION II - LICENSES, CERTIFICATES, AND PERMITS ISSUED BY THE AGENCY OF AGRICULTURE, FOOD AND MARKETS

5. The Secretary may enter into reciprocal agreement with officials of other states and federal agencies and grant certificates on a reciprocal basis provided that:
 - a. Certification requirements are substantially the same as those required by Vermont;
 - b. The certified applicator knows and abides by Vermont's pesticide control law and regulations;
 - c. The certified applicator pays all appropriate fees;
 - d. The certified applicator is a resident of and has a valid pesticide applicator certificate or certificate issued by a state which has established a reciprocal agreement with Vermont; and

e. The certified applicator's reciprocal certificate is valid for the entire calendar year.

Applicators with certificates which expire on dates other than December 31 of each year shall provide confirmation that their certificate has been renewed by their state of residence within forty-five (45) days from the date of expiration. Failure to provide confirmation will result in the revocation of reciprocal certificates.

SECTION 12. REPORTS TO EPA

§ 171.303(c)

Requirement to submit reports to the Agency. The State must agree to submit the following reports to the Agency in a manner and containing the information that the Agency requires:

(1) An annual report to be submitted by the State lead agency to the Agency by the date established by the Agency that includes all of the following information:

The number of new general private applicator certifications and recertifications issued during the last 12 month reporting period, and total number of applicators holding a valid general private applicator certification at the end of the last 12 month reporting period.

For each private applicator category specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12 month reporting period, and the total number holding valid certifications in each category at the end of the last 12 month reporting period.

The numbers of new commercial applicator certifications and recertifications issued during the last 12 month reporting period, and the total number of applicators certified in at least one commercial applicator certification category at the end of the last 12 month reporting period.

For each commercial applicator certification category or subcategory specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12 month reporting period, and the total number of commercial applicators holding a valid certification in each category or subcategory at the end of the last 12 month reporting period.

State Response: Vermont will submit the required reports with the information identified in § 171.303(c) to the United States Environmental Protection Agency in a timely manner.

SECTION 13. IMPLEMENTATION TIMEFRAME

SUMMARY: Below is a detailed estimate of full implementation of the Vermont CPA Plan recognizing the 5-year recertification period. The estimated completion of Learning Materials, Exams, & Continuing Education is 2025. Since all applicator credentials expire on December 31st the conservative estimate for full implementation under the new standards is by December 31, 2030. We expect implementation before that date with most applicators certified under the new standards by the end of 2027.

Preliminary Actions:

January 2019 – Vermont’s Draft modified State Certification Plan was submitted to the US EPA Region 1 for initial review and comment.

March 4, 2020 – Vermont’s draft State Certification Plan was submitted to US EPA Region 1 as required in order to maintain primacy. The draft plan was determined to be “complete”, in that it addressed all 13 sections included in the US EPA template.

Upon initial review by US EPA Region 1, Vermont initiated promulgating its pesticide regulations to incorporate required changes.

Regulatory/Legislative Actions:

Any rule changes will need to be reviewed internally and with other State Agencies, stakeholders and the Vermont Interagency Committee on Administrative Rules (ICAR). Once rule changes are identified, there will be a public comment period, with the Agency responding to each comment. The rules are then filed with Vermont Legislative Committee on Administrative Rules (LCAR). The rule becomes final with approval by the Committee.

July 2021 – January 2022 – Vermont’s Regulations for Control of Pesticides in Accordance with 6 V.S.A. Chapter 87 will be updated to reflect the following changes:

- Vermont will amend the Vermont Regulations for the Control of Pesticides to prohibit the application of a federally restricted use pesticide by a noncertified applicator even when under the direct supervision of a certified applicator. Vermont will add the following in its’ amended rule: “A federally restricted use pesticide shall only be used by a certified applicator.”
- Vermont will amend its rule to explicitly require the compilation and retention of the following additional information:
 - (1) The name and address of the person for whom the pesticide was applied.
 - (2) Pest treated for.
 - (3) The location of the pesticide application.
 - (4) The size of the area treated.
 - (5) The crop, commodity, stored product, or site to which the pesticide was applied.
 - (6) The time and date of the pesticide application.
 - (7) The brand or product name of the pesticide applied
 - (8) The EPA registration number of the pesticide applied.
 - (9) The total amount of the pesticide applied per location per application.

(10) The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator. The new regulations shall refine the current requirement for physical location of pesticide application. The state is proposing to bar the use of federally restricted pesticides by noncertified applicators which will eliminate the need for records required under § 171.201(e).

- Vermont will *update* its Class A dealer recordkeeping to require: (A) the name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator. (B) The identity of the issuing agency and the Vermont or federal certification number presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the expiration date of the certified applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold. (C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction including any applicable emergency exemption or State special local need registration number. (D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction. (E) The date of the transaction.
- Vermont will *add* five new commercial certification categories with competency standards that equal the federal standard: Soil Fumigation; Non-Soil Fumigation; Agricultural pest control - Apiculture; Industrial, Institutional and Structural Pest Control - Mold Remediation; and Terrestrial Invasive Plant Pest Control.
- Vermont will *add* the following categories to private certification using the same competency standards as for commercial applicators: Soil Fumigation; Non-Soil Fumigation; Aerial.
- Vermont will *require* all certified applicators to be at least 18 years old to be eligible for certification.
- Vermont will *remove* all wording in regulation that allows for private applicator certification determination by any method other than written examination.

April, 2022 – October, 2022

- Vermont will continue to go through the rulemaking process and make adjustments as needed.
- Vermont will engage with stakeholders, including the regulated community, through a public comment process on the proposed rule and hold a public hearing on June 15th, 2022.

August, 2022 – November, 2022:

- August, 2022 – Vermont will submit its final proposed rule to both the Vermont Legislative Committee on Administrative Rules (LCAR) and the Secretary of State.
- August – September, 2022 – LCAR will review VAAFMs' final proposed rule to determine whether (1) the proposed rule is beyond the agency's authority, (2) the proposed rule is contrary to the intent of the Legislature, (3) the proposed rule is

arbitrary, (4) VAAFPM failed to maximize public input, (5) the proposed rule does not meet statutory stylistic requirements, (6) the economic impact analysis fails to recognize a substantial economic impact of the proposed rule, and (7) the environmental impact analysis fails to recognize a substantial environmental impact of the proposed rule.

- September/October, 2022 – Vermont will meet with the Vermont Legislative Committee on Administrative Rules to discuss their review of the final proposed rule.
- September/October, 2022 – Vermont will file an adopted rule filing with the Vermont Secretary of States office.
- October/November, 2022 – Vermont anticipates final adoption of the amended rule which meets all the federal requirements.

Learning Materials, Exams, & Continuing Education:

April, 2022 – October, 2025 – and beyond

- April, 2022 – December 2022 – Vermont Pesticide Program staff will review and, as needed, begin revising learning materials and associated exams to ensure coverage of certification category standards.
- Ongoing – March, 2023 – Vermont Pesticide Program staff will develop learning materials and an exam for Category 1C Apiculture.
- Ongoing – March, 2025 – Vermont will determine vendors of learning materials and will only source training materials that meet federal standards.
- March, 2025 – May, 2025 – Vermont will facilitate exams for aerial, soil-fumigation, and non-soil fumigation based on the learning materials that reflect the changes in the rule.
- January, 2023 – Beyond – Vermont will provide continuing education & training to certified applicators on the new standards.
- Continuing education will cover topics such as regulatory changes and parameters of the newly added categories including: soil, non-soil fumigation, and aerial applications.

Communication/Implementation:

Ongoing – March, 2025 – and beyond

- Vermont will communicate with the regulatory community and other stakeholders regarding all the necessary changes that will occur as a result of the rulemaking process.
- Vermont will use an array of media and approaches to communicate with the regulatory community and stakeholders in its communications including, but not limited to: social media, conferences, and presentations.
- January, 2023 – Beyond – Vermont will continue to recognize valid Vermont applicator certifications. The continuing education program will provide additional training on the revised federal standards. Applicators requiring recertification by examination and new applicators seeking certification will need to pass the revised exams.
- Related updates and milestones will be entered into CPARD and other EPA reporting systems as requested.

The Governor's signature from initial designation (Governor Scott-attachment 1) and Counsel's Opinion is secured, and the plan will be available for federal approval. Full plan implementation of this modified State plan will be done with final state rule adoption and when additional material development (examinations/manuals) is complete.

Attachment 1. State Lead Agency Designation (Governor Letter)

THOMAS P. SALMON
GOVERNOR

APPENDIX B



STATE OF VERMONT
EXECUTIVE DEPARTMENT
MONTPELIER, VERMONT

December 18, 1973

Mr. Russell Train, Administrator
Environmental Protection Agency
Waterside Mall
4th and M Street, S.W.
Washington, D. C. 20460

Dear Mr. Train:

As per the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516, 86 Stat. 973), Section 4(a) (2) ("A"), I, as Governor of the State of Vermont, hereby designate the Vermont Department of Agriculture as the state agency responsible for the administration of any state plan which will certify applicators of pesticides.

Pending finalization of regulations under the Federal Environmental Pesticide Control Act of 1972, I will submit a state plan for such purpose.

Sincerely,

151 Thomas P. Salmon

Thomas P. Salmon

TPS:js

cc: Region I, E.P.A. ✓
Vt. Dept. of Agriculture

Attachment 2. Written Opinion – AGENCY Counsel



AGENCY OF AGRICULTURE, FOOD & MARKETS

www.vermontagriculture.com

116 State Street • Montpelier, Vermont 05620-2901 • (802) 828-2431 • (802) 828-1410 FAX

March 4, 2020

Cary Giguere, Director
Public Health & Agricultural Resource Management Division
116 State Street
Montpelier, Vermont

Re: Legal authority of the Vermont Agency of Agriculture, Food & Markets

Dear Director Giguere,

You requested a written opinion about whether the Vermont Agency of Agriculture, Food & Markets (VAAFM) has the legal authority to administer the proposed State of Vermont Certification Plan prepared for the United States Environmental Protection Agency in accordance with 40 C.F.R. § 171.303. After reviewing the proposed State Plan and applicable Vermont statutes and regulations, I believe VAAFM is authorized to carry out the described State certification plan.

VAAFM is the lead State Agency for regulating pesticides. The Secretary's statutory powers include, among other things, broad authority to impose limitations, conditions, and restrictions on pesticide use, to review an applicator's certification and to deny, suspend, or revoke certification as appropriate, to access premises for compliance purposes, to make it unlawful for unauthorized persons to use restricted use pesticides, to require applicator and dealer reporting requirements, to adopt rules implementing statutory powers, to impose administrative penalties, and to seek civil or criminal penalties for applicable legal violations.

VAAFM also adopted extensive regulations to implement its statutory authority and tailored the regulations to comply with federal pesticide standards when appropriate.

In my opinion, VAAFM has the legal authority necessary to carry out the proposed State Certification Plan.

Thank you very much, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Collier".

Steven Collier
General Counsel
Vermont Agency of Agriculture, Food & Markets

The State of Vermont is an Equal Opportunity / Affirmative Action Employer and Provider



Attachment 3. Current Regulatory Authorities

Vermont Regulations for Control of Pesticides (CVR 20-031-012)

PREAMBLE

The goal of these pesticide regulations is to encourage the use of the most environmentally responsible approach to effective pest management. The Agency of Agriculture, Food and Markets believes that with the knowledge and use of Integrated Pest Management (IPM) skills and soil/water conservation techniques currently available this goal will be achieved.

SECTION I - DEFINITION

1. Accident: any release of a pesticide or pesticide mix from its container or application equipment which is contrary to label instructions for use of that pesticide, or which violates these regulations.
2. Agricultural commodity: any plant, or part thereof, including but not limited to sod and ornamental tree production, or animal or animal product produced by persons (including farmers, ranchers, vineyardists, nurserymen, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.
3. Aircraft: a motorized device used for flight.
4. Anti-siphon device: any equipment designed and constructed to prevent the accidental backflow or siphoning of pesticide into any water supply or to prevent contamination by a pesticide or other materials being injected at the same time such as fertilizers or other pesticides.
5. Application sites or treatments for rights-of-way means:
 - a. Foliar: The placing of a pesticide upon the leaves of growing plants.
 - b. Basal: The placing of a pesticide upon the stem at the base of a growing tree or shrub.
 - c. Stump: The placing of a pesticide upon the cut surface of a stump.
 - d. Soil: The placing of a pesticide upon the ground for uptake by plants in the immediate vicinity.
6. Application of a pesticide: the placement for effect of any pesticide at or on the site where pest control or other response is desired.
7. Applicators regulated in Vermont are defined as follows:
 - a. Certified commercial applicator: any person certified under the categories and standards of Section VIII, Vermont Regulations for Control of Pesticides.
 - b. Commercial applicator: a person who applies pesticides to the lands or homes of another whether for remuneration or gratis under the direct supervision of a certified commercial applicator.

- c. Private Applicator: any person who uses other than those classified restricted use on property owned or rented by the applicator that is residential in nature or on property owned or rented by the applicator or the applicator's employer for the production of an agricultural commodity. Private applicators may apply pesticides to the property of neighboring producers of agricultural commodities without a commercial applicator's certificate, providing that the applicator receives no compensation other than the trading of personal services between the applicator and his neighbor.
- d. Certified private applicator: a private applicator who has been certified under the requirements of Section IX, Vermont Regulations for Control of Pesticides. Certified private applicators may purchase, use restricted use pesticides.
- e. Noncommercial Applicator: a person who uses or applies pesticides in the course of employment. It is anticipated by these regulations that in most instances the use of pesticides will comprise only a portion of the applicator's duties and that other employment responsibilities will be unrelated to pesticide application. Noncommercial applicators are exempt from the company licensing requirements. Noncommercial applicators without certification may apply only Class "C" pesticides in the course of their employment. Persons without certification who are hired as independent contractors for the exclusive purpose of applying Class "C" pesticides shall have the burden of proof in any Agency hearing to rebut the presumption that they are commercial applicators.
- f. Certified Noncommercial Applicator: a noncommercial applicator who has been certified under the standards and categories of Section VIII, Vermont Regulations for Control of Pesticides. A certified noncommercial applicator may purchase, use of restricted and Class "B" pesticides in the course of their employment. Certified noncommercial applicators are exempt from the company licensing requirements. Certified noncommercial applicators shall comply with all other requirements of these regulations.
8. Appurtenance: all valves, pumps, fittings, pipes, hoses, metering devices, mixing containers, and dispensing devices which are connected to a storage container, or which are used to transfer liquid pesticide or pesticide rinsate into or out of a storage container.
9. Brownout: foliar discoloration resulting from the application of pesticides or other vegetation control methods.
10. Bulk pesticide: liquid pesticide in a container larger than 210 gallons (795 liters) or dry pesticide in undivided quantities greater than 100 pounds (45 kilograms). It includes mini-bulk pesticide containers, except as otherwise specified.
11. Chemigation: any process whereby a pesticide(s) is (are) mixed with water and applied through irrigation systems to land and/or crops including, but not limited to, agricultural, nursery, turf, golf course, ornamental or greenhouse sites through an irrigation system.
12. Commissioner: the Commissioner of Agriculture, Food and Markets of the State of Vermont or a duly authorized agent.
13. Company license: a license issued by the -Agency of Agriculture to business entities which apply any pesticides to the lands or homes of another person for remuneration. No person or business entity may contract to use any pesticide on the lands of another without first obtaining a

company license. A company license does not exempt a commercial applicator from applicable certification requirements. The regulations pertaining to the company license became effective January 1, 1981 and can be found in Section VI of these regulations.

14. Conspicuous point of access: the usual and customary entrance(s) where people are likely to enter a treated area and observe warning signs pursuant to Section IV 8.

15. Demonstration: to conduct or supervise field research or exhibitions with old, new or experimental use pesticides or pesticide application methods or equipment or to exhibit, sell or recommend pesticides to the general public, pesticide applicators or pesticide dealers.

16. Agency: the Vermont Agency of Agriculture, Food and Markets.

17. Direct supervision: on-site supervision of pesticide application by a certified applicator who is capable of calibration of equipment, prescribing pesticides, calculating volumes of pesticides to be applied, and dealing with emergency situations which might occur.

18. Discharge: a spill, leak, accidental or intentional release, or other emission of pesticide from a storage container, container or appurtenance, and includes a discharge into secondary containment. It does not include a fully contained transfer of bulk pesticide which is made pursuant to sale, storage or distribution or releases that are in accordance with label directions.

19. Distribute: to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply pesticide for sale or use in this State.

20. Drift: the airborne movement of a pesticide during or immediately after its use or application to a site unintended for its use or application.

21. Dry pesticide: pesticide which is in solid form prior to any application or mixing for application and includes, but is not limited to, formulations such as dusts, wettable powders, dry flowable powders and granules.

22. Economic poison: any substance produced, distributed or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, which the – Secretary shall declare to be a pest or any substance produced, distributed or used as a plant regulator, defoliant or desiccant.

23. Enterprise: any form of doing business, including, but not limited to, sole proprietorships, partnerships, joint ventures and corporations.

24. EPA: the United States Environmental Protection Agency.

25. Equipment: any mechanical device used to apply pesticides.

26. Environmentally Sensitive Areas: include those areas which are significant wetlands as defined by the Vermont Wetlands Act, necessary wildlife habitat (10 V.S.A. Section 6001(12) and which contain endangered or threatened species (10 V.S.A. Section 5401(6) and (7).

27. FIFRA: the Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 et seq.

28. Forest trees: plants which are primarily used for wood, watershed protection, land stabilization purposes, or wildlife habitat.
29. Fruit and crop plants: plants which are primarily used to produce food, forage, or seed.
30. Full-time employee: an employee who works 35 hours minimum per week. A full-time employee does not include seasonal personnel.
31. Golf Course: any contiguous area upon which the game of golf is played including such supporting operations as practice greens, tees and driving areas, whether existing or proposed.
32. Golf Course - existing: a golf course, after construction, when it has been opened for play.
33. Golf Course - proposed: a golf course, including expansions of existing courses, which is in the design, permit or construction stage and has not been open for play.
34. Ground water: water below the land surface which occurs in a saturated zone of the soil.
35. Half-Life: the time required for disappearance of one-half of the pesticide residue present.
36. KOC: a measure of the tendency of a pesticide to be strongly attached, by chemical or physical bonds, to soil particle surfaces. The higher KOC values have a stronger attachment to soil and a lesser tendency for the pesticide to move off-site except with sediment movement.
37. Loading: any act of transferring pesticide to or from any storage container or to any mobile application equipment.
38. Liquid pesticide: pesticide in liquid form and includes, but is not limited to, solutions, emulsions, suspensions, and slurries.
39. MSDS: Material Safety Data Sheet is a document required for each hazardous chemical including pesticides by the Occupational Health and Safety Act. It contains health and safety data as well as physical properties pertinent to the chemical which will aid in an emergency situation. MSDS can be obtained through the distributor or the manufacturer of the pesticide.
40. Manufacture: to process, manufacture, formulate, prepare, compound, package, repackage or label any pesticide.
41. Mixing: the act of combining pesticides and/or solvents or diluents for the purpose of application.
42. Ornamental and flowering shrubs and plants: plants used for ornamental purposes not otherwise classified as shade trees.
43. Person: any individual, partnership, association, corporation, or organization of persons whether incorporated or not, including any municipality, state, or federal agency or subdivision of any state.
44. Pesticide: economic poison as defined in 6 V.S.A. Section 911 and Section I 21. of the Regulations For Control of Pesticides.
45. Pesticide applicator: any person who uses any pesticide.

46. Pesticide dealer: any person who distributes, takes orders for sale, offers for sale or sells pesticides.
47. Prescreened Pesticide List: a list of pesticides which due to their relative immobility and limited persistence (as measured by parameters such as, but not restricted to solubility, KOC and half-life) are unlikely, under normal conditions and acceptable use, to leave established turf grass and enter surface and/or ground water.
48. Private Non-Residential Property: property open to the public and which is not a residence, such as an athletic field.
49. Public Non-Residential Property: property open to the public and which is not a residence, such as a commercial business.
50. Public Water System: any system or combination of systems owned or controlled by a person which provides piped drinking water to the public which has: a) has at least ten service connections, or b) serves at least an average of at least twenty-five individuals for at least 60 days a year. Public water system shall also mean any part of a piped system which does not provide drinking water, if such use of such a part could affect the quality or quantity of the drinking water supplied by the system.
51. Public (or private) Water Source Protection Area: a surface or subsurface area from or through which contaminants are reasonably likely to reach a public (or private) water source.
52. Public (or private) Water Source: any surface or ground water supply used as a source of drinking water for a public (or private) water system.
53. Restricted use pesticides: those pesticides classified under Section 3(d) of FIFRA as amended, U.S. Environmental Protection Agency or those pesticides classified by the Secretary as Class "A".
54. Right-of-way: an interest in real property, above, on or below the ground, which entitles the holder of the interest to pass over the land for the purpose of carrying, transmitting or transporting liquids, gases, electricity, communications, vehicles or people. For the purpose of these regulations, it is immaterial whether the right-of-way is owned, leased, or an easement. The term "right-of-way" includes properties owned or leased by utilities where that property is used as a right-of-way.
55. Shade trees: plants which are primarily used for shade, aesthetic value, ornamentation or windbreak.
56. Simple Dilution Analysis: an analysis involving the dilution of a chemical with an expected volume of precipitation available for infiltration within a watershed or hydrologic unit. Simple Dilution Analysis is used to assess the potential for a contaminant to be transported to groundwater through the process of infiltration.
57. Storage: storage of pesticide by a person who uses, manufactures or distributes pesticide.
58. Storage container: a container used for the fixed storage of bulk pesticide; a rail car, nurse tank, a portable container of mini-bulk pesticide or other mobile container which is used for the

fixed storage of bulk pesticide for more than 15 consecutive days. It does not include a container which is used solely for emergency storage of leaking pesticide containers which are 55 gallons or smaller.

59. Storage facility: a location at which bulk pesticide is held in storage.

60. Surface Water: any river, stream, creek, brook, reservoir, pond, lake, spring and any other body of surface water, whether natural or artificial.

61. Turf: a covering of mowed vegetation growing together with an upper soil stratum of intermingled roots and stems.

62. Turf-grass: a species or cultivar of the plant family Graminae usually of spreading or upright habitat, which is maintained as a mowed turf.

63. Use of a pesticide: any handling, release or exposure of a pesticide to a human or the environment including, but not limited to:

a. application of a pesticide, which includes mixing or loading of equipment and any required supervisory action in or near the areas of application;

b. storage of pesticides and pesticide containers;

c. disposal of pesticides and pesticide containers; and

d. recommendation of pesticide applications.

64. Utility: railroad companies, pipelines operators, communication companies and electric companies whether public or privately owned.

65. Vegetation means:

a. herbaceous plants: species that do not develop woody stems;

b. brush: woody species of shrubs, trees, vines, and brambles generally not exceeding ten feet in height; and

c. trees: woody species generally reaching a height of ten feet at maturity.

66. Vermont Act 31: The State law enacted by the General Assembly of Vermont on May 3, 1985, relating to Community and Worker Right-to-Know; Sec. 1. 18 V.S.A. Chapter 36.

67. Water Supplies: any developed source of water whether public or privately owned, that is intended for human consumption.

SECTION II - LICENSES, CERTIFICATES, AND PERMITS ISSUED BY THE AGENCY 20. AGENCY OF AGRICULTURE, FOOD AND MARKETS

1. Licenses - The following licenses are issued by the Agency:

a. Company license: shall be obtained by business entities which apply pesticides to the lands and homes of others for remuneration. See Section VI.

b. Dealer licenses are issued in the following categories:

(1) Class "A": shall be obtained by persons who sell restricted use pesticides. Also entitles licensee to sell Class "B" and Class "C" pesticides. See Section X.

(2) Class "B": shall be obtained by persons who sell Class "B" pesticides. Also entitles licensee to sell Class "C" pesticides. See Section X.

(3) Class "C": shall be obtained by stores or other sales outlets which sell Class "C" pesticides. See Section X.

2. Certificates - The following certificates are issued by the Agency:

a. Commercial and noncommercial applicator certificates: shall be obtained by persons who apply or supervise the application of pesticides to the lands and homes of others whether for remuneration or gratis. Applicators who apply pesticides under the direct supervision of a certified commercial applicator are exempt from the certification requirement. Noncommercial applicators (as defined in Section I. 8.) shall be certified if they use or supervise the use of Class "B" or. See Section VII.

b. Private applicator certificate: shall be obtained by private applicators (as defined in Section I.) who wish to purchase and use restricted use pesticides. See Section IX.

3. Permits - The following permits are issued by the Agency:

a. Aerial application permits: shall be obtained before applying pesticides from an aircraft. Two types of aerial permits are issued: an aerial agricultural permit which is good for an entire season and special aerial permits for specific jobs. See Section IV.

b. Right-of-way permits: shall be obtained before applying pesticides to rights-of-way, as defined in Section I. See Section IV.

c. Experimental use permits: shall be obtained to use an unregistered pesticide or to use a registered pesticide for an unregistered use. See Section IV.

d. Bird or animal permits: shall be obtained to control bird or animal pests that may be lethally controlled by use of a pesticide under statute or declared a pest by the Secretary. See Section IV.

e. Special permits for the sale or use of specially restricted pesticides: shall be obtained before using specially restricted compounds as established by statute or these regulations. See Section IV.

f. Golf course permit: shall be obtained in accordance with the provisions herein before applying pesticides to a golf course. See Section IV.

4. Procedures for obtaining licenses, certificates, or permits.

a. Businesses or persons who wish to obtain a license, certificate or permit shall:

(1) Request the appropriate application form from the Plant Industry Division of the Agency of Agriculture, Food and Markets;

- (2) Complete the appropriate form and return it to the Plant Industry Division;
- (3) Remit any fees required by law or these regulations when the completed form is submitted;
- (4) Satisfy all prerequisites established by these regulations to demonstrate competence or financial responsibility for the particular license, certificate, or permit requested:
 - (a) Examinations required as part of the prerequisite for a license or certificate will be maintained for a period of one year unless an active file is established; and
 - (b) Inactive files will be destroyed one calendar year after a holder of a license or certificate fails to renew that certificate or license.
- (5) Businesses and persons proposing to store, use or distribute pesticides are advised that the statutes and regulations administered by the Vermont Occupational Safety and Health Program may be applicable to them. For further information, write or call the Vermont Department of Labor and Industry, 7 Court Street, Montpelier, Vermont; telephone number: 802/828-2765.

SECTION III - POWERS OF THE Secretary

1. Suspension or revocation of licenses, certificates, or permits.
 - a. The Secretary may amend, suspend or revoke any license, certificate or permit for failure to comply with 6 V.S.A. Chapter 87 or any rule or regulations adopted under its authority or for being subject to a final order imposing a civil penalty under 7 USC Section 136(j) or for being convicted under 7 USC Section 136(j) on due notice to the licensee or holder of the certificate or permit, with an opportunity for hearing if a written request is filed with the Secretary within five (5) days of receipt of a notice of violation.
 - b. If the Secretary finds that public health, safety or welfare imperatively requires emergency action and the Secretary incorporates a finding to that effect in his order, summary suspension of a license, permit or certificate may be ordered, pending proceedings for revocation or other action.
2. The Secretary may restrict or regulate any pesticide product or device which is deemed to be ineffective or which constitutes an undue hazard to the public or the environment. Any person aggrieved by a decision of the Secretary under this section may request a hearing within fifteen (15) days of the receipt of notice of the decision. The hearing shall be for the purpose of reviewing evidence pertaining to the ineffectiveness of the product or the hazard presented to the public from use of this product.
3. Pesticide cease and desist order.
 - a. The Secretary may issue a cease and desist order for failure to comply with 6 V.S.A. Chapter 87 or any rule or regulation adopted under its authority with an opportunity for hearing if a written request is filed with the Secretary within five (5) days of receipt of the cease and desist order.
 - b. It shall be unlawful to violate a cease and desist order.

4. The Secretary may, in furtherance of the purpose of 6 V.S.A. Chapter 87 and the regulations adopted pursuant to this Chapter, enter the business premises of any licensed company, certified applicator, or persons using pesticides to inspect records, equipment or obtain pesticide samples.

The Secretary may enter any job site at which a certified applicator is employed or where pesticides are used to request information regarding pesticide use at that site, to test equipment or to obtain samples of pesticides or other samples including, but not limited to: soil, water, air, food, plant material and animal tissue, from both treated and untreated areas.

5. The Secretary may enter into reciprocal agreement with officials of other states and federal agencies and grant certificates on a reciprocal basis provided that:

- a. Certification requirements are substantially the same as those required by Vermont;
- b. The certified applicator knows and abides by Vermont's pesticide control law and regulations;
- c. The certified applicator pays all appropriate fees;
- d. The certified applicator is a resident of and has a valid pesticide applicator certificate or certificate issued by a state which has established a reciprocal agreement with Vermont; and
- e. The certified applicator's reciprocal certificate is valid for the entire calendar year. Applicators with certificates which expire on dates other than December 31 of each year shall provide confirmation that their certificate has been renewed by their state of residence within forty-five (45) days from the date of expiration. Failure to provide confirmation will result in the revocation of reciprocal certificates.

6. In addition to authority conferred by these regulations, the powers of the Secretary include all statutory authority vested in the Secretary now or in the future, to enforce state pesticide laws and regulations. The Secretary shall develop and implement policies and strategies for the management of pesticide use and the protection of ground and surface water resources.

SECTION IV - RESTRICTIONS ON THE USE AND APPLICATION OF PESTICIDES

1. Registered and recommended uses of pesticides.

- a. All pesticide uses or recommendations for use shall comply with that pesticide's label, which shall be registered with the U.S. Environmental Protection Agency and the Agency (except as provided under authority for pesticide use in Section 18 and 24(c) of FIFRA as amended).
- b. Pesticide Drift - Pesticide applicators shall use pesticides and conduct operations under conditions known to minimize contamination of non-target land and water areas.

2. Standards of operations - All pesticide applicators and licensed companies:

- a. Shall use only methods and equipment which insure safe and efficient application of materials.
- b. Shall use equipment with an effective anti-siphoning device to prevent backflow when drawing or pumping water to fill pesticide application devices.

- c. Shall use equipment with an effective anti-siphoning device to prevent backflow when drawing or pumping water to be used in chemigation operations.
- d. Shall operate in a careful manner and only when climatic, pest or other conditions are proper for controlling pests in the locality.
- e. Shall make no false or fraudulent claims. The term "fraud" includes, but is not limited to, intentional misrepresentation through verbal or written statements, the media, falsified records, invoices or reports or false statement on applications for licenses or certificates.
- f. Shall fill out weekly spray reports accurately.
- g. Shall conform to the application restrictions established in 6 V.S.A. Chapter 87, the Regulations for Control of Pesticides and permits issued thereunder.
- h. Shall cooperate with Agency requests to observe spraying operations, to inspect equipment, to inspect pesticide related records, to inspect business premises and to conduct pesticide-related sampling.
- i. Shall apply all pesticides consistent with their labeling. Use of a pesticide in the following manner shall be considered application consistent with the labeling:
 - (1) applying a pesticide at any dosage, concentration or frequency less than specified on the labeling;
 - (2) applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling except when the labeling specifically states that the pesticide may be used only on pests specified on the labeling;
 - (3) employing any method of application not prohibited by labeling;
 - (4) mixing a pesticide with fertilizer when such mixture is not prohibited by labeling or state regulations;
 - (5) using a pesticide for agricultural or silvicultural purposes at a dilution factor less than label dosages as authorized by the EPA in regulations or in advisory opinions.
- j. Shall provide the following information (on a bill, invoice or other written documentation) to all customers or persons for which pesticide applications are exchanged for remuneration, at the time of application except for applications under Section IV 8:
 - (1) the common or trade name for each pesticide used;
 - (2) the EPA registration number for each pesticide used;
 - (3) the amount of each pesticide used;
 - (4) the pest(s) treated for; and
 - (5) the name and signature of the applicator.

k. Are advised that Vermont Occupational Safety and Health Program requirements may be applicable to their activities.

l. Shall use pesticides so as not to exceed the primary groundwater quality enforcement standards identified in Chapter 12.702 of the "Ground Water Protection Rule and Strategy" in accordance with 10 V.S.A. Chapter 48.

m. Shall manage the use of pesticides to reduce the concentrations of pesticides in groundwater to the preventive action limits established by Chapter 12.702 of the "Ground Water Protection Rule and Strategy" when monitoring indicates the presence of pesticide concentrations in groundwater that exceed the preventive action limits.

n. Shall obtain a Water Quality Permit (from the Vermont Department of Environmental Conservation, Water Quality Division), prior to using pesticides in waters of the State.

o. Shall maintain a fifty (50) foot buffer when applying pesticides which provide control within the soil profile around any existing private well unless written permission allowing a lesser distance has been granted by the well owner.

3. Protection of Bees - To prevent destruction of pollinating insects and contamination of honey crop, all persons are prohibited from spraying pesticides to flowering crops, including but not limited to alfalfa, apples, blueberries, clover, pumpkins, raspberries, squash or trefoil without prior notification of apiculturists who have established apiaries on the premises. Any individual hiring commercial applicators shall be responsible for notification of the apiculturist prior to the application. Apiculturists who are notified of spraying operations shall remove their bees from the area or cover the hives to prevent exposure.

The following pesticides are exempt from the requirement of Section IV, subsection 3:

a. Blossom thinning sprays consisting of sodium salt or 4,6-Dinitro-o-cresol (DNC) or Dinitro orthocylcohexylphenol.

b. Fungicides.

4. Rights-of-way clearing and maintenance

a. No person, including utilities as defined in Section I., shall use herbicides for the purpose of clearing or maintaining a right-of-way without first obtaining a permit from the Secretary for each application as provided in this section.

(1) A request for permission to use a herbicide on a right-of-way shall be made before April 1 of the year of the proposed spray application.

(2) Application shall be made on a form provided by the Secretary . In the case of utilities, as defined in Section I., the application shall be signed by an officer of the utility and who shall agree to conditions to be set forth by the Secretary in the permit. Final action by the Secretary will be taken only after the submitted application form has been forwarded to the Vermont Pesticide Advisory Council (VPAC) members for review and recommendation in accordance with 6 V.S.A. Section 1102(d) (1).

(3) The application form shall be accompanied by two sets of geodetic maps marked with the right-of-way. With the assistance of the Department of Health, the Agency of Agriculture, Food and Markets, shall mark the public water supplies along the right-of-way and return one set of maps to the permit applicant. The other set shall be retained by the Agency on permanent file. Subsequent requests for permits to treat the same right-of-way shall require re-submission of the permit applicant's set of maps for update.

b. After applying for a permit to use herbicides on a right-of-way, the permit applicant shall publish a notice of the intent to use herbicides which satisfies the following criteria. A copy of the notice shall be supplied to the Agency prior to publication. The notice shall:

(1) be published not less than 25 days nor more than 60 days before the commencement of spraying;

(2) be published for one (1) day a week for two (2) consecutive weeks in each of two (2) newspapers prescribed in Appendix B, for every county to be affected by the right-of-way spraying. If the notices are printed in a daily newspaper, the notice shall be published on Thursdays. If notices are printed in a weekly newspaper, the notices shall be published on whatever day the paper is published;

(3) be at least two (2) columns wide by three (3) inches high;

(4) set forth the name and address of the permit applicant; a reasonable identification of the affected right-of-way; the names of the towns where the spraying is to be done; the approximate date of the herbicide application; that a permit has been requested from the Commissioner; the method by which the herbicide is to be applied; the chemicals to be used; the name, position, address and telephone number of a person from the permit applicant to contact for further information; the address and phone number of the Agency of Agriculture, Food and Markets, identifying it as the appropriate place to contact with comments and/or complaints; a warning to residents along the right-of-way that water supplies and other environmentally sensitive areas near the right-of-way should be protected from spray and that it is the resident's responsibility to notify the contact person of the existence of a private water supply near the right-of-way.

c. Applicants conducting vegetative management along rights-of-way shall submit a long-term Vegetative Management Plan which should include:

(1) A general statement of policy and goals;

(2) Identification of a biologically sound schedule to achieve long-term objectives including a specified time interval between original control and subsequent scheduled control;

(3) Description and identification of the species to be eliminated or controlled versus the species to be left in various types of vegetative settings;

(4) List and description of techniques and conditions under which given mechanical, chemical and other methods would normally be considered appropriate;

(5) Procedure for identifying, evaluating, reporting and responding to right-of-way maintenance problems;

(6) Establishment of clearance standards sought, based on kilowatt of transmission line and the part of the right-of-way to be controlled; i.e., central strip, side strip, high visibility, other;

(7) Establishment of standards and practices for:

(a) Wetlands;

(b) Wildlife;

(c) Erosion control;

(d) Aesthetic considerations.

(8) Establishment of right-of-way inspection and monitoring standards including frequency of inspection, manner of inspections and what is to be taken note of; suggested list -- heights of road crossing screens or ideal clearance level, danger trees, evidence of tree-conductor contact, species identification, conditions of sensitive areas, notation of condition of specially or experimentally treated areas;

(9) Retention of records to coincide with maintenance cycle of company including right-of-way inspection dates, maintenance schedules, maintenance activities;

(10) Provisions for periodically reviewing, evaluating and revising long-range plans and the time interval for such revisions;

(11) A plan to assure contractor accountability in implementing the plan such as drawing-up a comprehensive contract for contractors or developing a contractor training program, to familiarize and provide detailed instructions to field personnel in the concepts of the Vegetative Management Plan so that field personnel can demonstrate an understanding of the practices and standards contained in the document. This may include: identification of plant species and their role in the overall management scheme, what is expected practice in sensitive areas, correct techniques to use in a given situation, knowledge of standards sought in a given situation.

d. In addition to newspaper advertisements, further notification by one of the following methods containing the information set forth in 4.b. (4) shall be provided by:

(1) three (3) spot messages per day on each of two (2) radio stations in the area of spraying on two (2) consecutive days during the two-week period prior to the commencement of spraying.

(2) U.S. mail to residents adjacent to the right-of-way during the calendar year of spray application, at least two weeks prior to such application.

(3) a personally delivered printed statement to residents of property adjacent to the right-of-way during the calendar year of spray application, at least ten (10) days prior to such application.

e. The permit applicant shall notify the Agency of the option used and the dates implemented. The text of this notice shall be supplied to the Agency prior to implementation.

(1) Upon notification by the landowner or water supply user, the permit applicant shall mark private water supplies on their maps.

(2) Prior to spraying, the permit applicant shall flag all public and private water supplies marked on their maps as well as other sensitive areas as designated by the Commissioner in the permit.

(3) The permit applicant shall furnish the certified applicator with a copy of the right-of-way maps showing flagged areas and a copy of the approved permit.

(4) The applicator shall not spray near the flagged areas.

f. All right-of-way clearing or maintenance by the use of herbicides shall be conducted by certified applicators.

g. All uses of herbicides on rights-of-way shall be conducted by the certified applicator in a manner that minimizes the extent and duration of foliar brownout.

h. Right-of-way spraying operations shall be conducted in a manner and under weather conditions which prevent deposits of pesticides to areas outside the rights-of-way.

i. The clearing of brush, trees and other vegetation from rights-of-way shall be conducted in accordance with other applicable provisions of state and federal laws and regulations.

j. All operations conducted prior, during or subsequent to the aerial application of pesticides to rights-of-way, including, but not limited to, gaining access, landing of aircraft, refilling operations and the like, shall not be conducted on private lands near the right-of-way without the owner's prior written permission. Written permission shall be maintained by the permit applicant for one (1) year following completion of the operations and shall be available to the Secretary upon request.

k. All permits issued by the Secretary shall establish buffer strip distances to protect the waters of the state. Buffer strip distances shall be determined according to the type of spray operation, properties of chemicals to be used and the characteristics of the areas to be treated.

5. Aerial applications of pesticides

a. An applicant applying for a company license or certificate to engage in aerial application of pesticides shall meet all the requirements of the Federal Aviation Administration and the Vermont Agency of Transportation, Aeronautics Section, to operate the aircraft and equipment described in the application.

b. Aerial applications shall be conducted by certified applicators only.

c. All aerial pesticide applications require an approved permit prior to application.

(1) Aerial applicators shall obtain a permit for each contract to apply pesticides for purposes other than the treatment of agricultural commodities. Permits may not be issued for more than one spray season.

(2) Aerial applicators shall obtain a permit annually for the treatment of agricultural commodities.

d. Materials listed on Attachment A, subsection 2, "Control Details for Permit Application", as recommended by the Vermont Extension Service or other state agencies will be used for permit review.

6. Experimental use permit

a. Any person who desires to use an unregistered pesticide or who desires to use a registered pesticide for an unregistered use shall first obtain an experimental use permit from the Secretary. Permits may be issued for three (3) kinds of experimental uses:

(1) A state-issued permit as authorized under Section 5(f) of the FIFRA (as amended) to accumulate information or data necessary to register a pesticide use for special local needs.

(2) A state-issued permit to conduct laboratory or greenhouse tests or limited replicated field trials to confirm such tests or other tests in which the purpose is to determine the value of the substance for pesticide purposes or to determine its toxicity or other properties to the extent permitted under EPA regulations.

(3) A state-issued authorization to conduct an experimental use in Vermont for all or some of the uses provided in the label under the experimental use permit issued by EPA pursuant to Section 5(a-e) of FIFRA as amended.

b. A state experimental use permit may, subject to the terms and conditions of the state's certification from the Administrator of EPA, be issued when the Secretary determines that the conditions under which the use of the experimental pesticide will be conducted are satisfactory. The permit shall be for a specified period commensurate with the experimental program submitted, but in any case not to exceed one year. Permits may be renewed or extended upon request if circumstances warrant. The permittee shall supervise the test program and evaluate the results of testing at each site of application. The permittee shall report immediately to the Secretary any adverse effects from the use of or exposure to the pesticide.

c. A report shall be submitted to the Secretary at the conclusion of the experimental pesticide treatment or at the expiration date of the experimental use permit. The report shall include the data gathered during the testing program, the dates of application, any adverse effects to the environment and recommended directions for use which might be submitted for future registration.

d. The application of a pesticide under a state experimental use permit shall be under the supervision of a certified applicator as required by labeling and any additional restrictions imposed by the Secretary in the permit.

e. When a pesticide is applied to a food or feed crop under an experimental use permit where a tolerance has not been established for that particular crop and use pattern, then:

(1) the crop must be destroyed after harvest; or

(2) the crop may be used for further testing, provided that the crop may not be consumed by humans. If the crop is consumed by test animals, the animals or animal products may not be used for human or animal consumption.

7. Bird and other animal control exclusive of the phylum chordata (families Cricetidae and Muridae).

Cricetidae: (moles and voles)

Muridae: (rats and mice)

a. Bird and animal pests are those that may be declared a pest by the Secretary. The Secretary may declare a bird or animal to be a pest in a specific situation where there is a likelihood of damage to health, the economy or where harm to other wildlife may occur or in the event of injury or severe annoyance.

(1) Types of use that may be authorized by permit:

(a) Area-wide application of pesticides on agricultural commodities, wildlife and for human protection.

(b) Limited-area applications of pesticides where the use of those pesticides could have a detrimental effect on non-target animal life adjacent to the structure, lot or yard which is specifically treated or may affect food or food products.

b. Any licensed company or certified applicator applying pesticides for the lethal control of pest birds or other pest animals shall apply to the Secretary, on an approved form, for a permit to perform such control operation.

(1) The application for a permit shall state the problem and the pest to be controlled, the pesticide to be used, rate to be applied, the area to be treated, disposal of the controlled pest and unused pesticide and the treatment time period.

(2) For municipal or community-wide operations, a written request or statement granting permission for such operation signed by an official of the municipality shall be submitted with the request.

c. All requests for application of pesticides for bird or animal control on open land shall be reviewed by the Vermont Fish and Wildlife Department and Vermont Department of Health and notification of all limited-area requests for application of pesticides shall be submitted to the aforesaid departments if approved by the Secretary.

d. Control operations may also be subject to guidelines or directives which are established by the Vermont Commissioner of the Fish and Wildlife Department, Vermont Commissioner of Health, the U.S. Fish and Wildlife Service and the Vermont Commissioner of Labor and Industry.

e. Permits are not required for the use of animal or bird repellents.

8. Notification and Posting of turf-grass and landscape pesticide application:

a. No outdoor application by certified commercial or non-commercial applicators of pesticides to turf-grass or landscape plants shall be made on residential, single or multi-family or public non-residential properties, such as athletic fields without the following provisions having been met.

(1) At the time the service is being requested, the customer shall be provided with written information regarding the identification of the pesticides (common or trade name, EPA Registration number) and the rates being proposed for use. In addition, the customer shall be informed, in writing, of the availability of labels and Safety Data Sheets for these pesticides and any existing EPA Fact Sheets for the active ingredients contained within.

(2) At the beginning of each application, the applicator shall post a sign(s) prescribed below, at conspicuous points of access to the treated area(s). The applicator shall leave such sign(s) posted with instructions to remove 24 hours after application. This shall mean that if a property has more than one entrance or point of access then the corresponding number of signs shall be posted. The specifications of the sign shall be as follows:

- (a) Shall be at least 4 x 5 inches, of sturdy, weather resistant material
- (b) Shall be with contrasting colors using the indicated point type size
- (c) Shall contain no additional words or symbols on the front panel; however, the back panel may include any additional information such as emergency number or company name
- (d) Shall be posted at least 12" above the ground
- (e) Shall contain the date and time of application on the back of the sign

[See graphic or tabular material in printed version]

(3) Immediately upon completion of each application, the applicator or their employer shall leave at the residence or with the property manager a written statement containing the following information:

- (a) Name, address and telephone number of the company or non-commercial facility providing service
- (b) Pesticide applicator's name and certification number
- (c) Common or trade name, EPA Reg. #, amount used and pest(s) treated for each pesticide applied
- (d) Post-application label safety precautions, if applicable
- (e) Application date, time and location
- (f) Instructions that signs should remain posted for at least 24 hours

(4) Upon request, by either customer or adjoining landowner, a copy of the pesticide label, Safety Data Sheet or available EPA Fact Sheet shall be provided by the applicator or their employer.

(5) Upon request, the applicator or their employer shall provide the customer with prior notification of the timing of each pesticide application.

NOTE: Golf courses shall be regulated by Section IV 8b. of this regulation. Outdoor commercial or noncommercial pesticide application to turf-grass or landscape plants made on private non-residential properties shall comply with either Section IV 8a. or Section IV 8c. of the regulations.

b. Pesticide applications made by certified commercial or noncommercial applicators on golf course turf-grass or landscape plants shall require the posting of a written notice on the clubhouse bulletin board or the first tee by the course superintendent or their designee.

(1) The written notice shall contain information as specified under Section IV 8a. (3) (a-f) and include the specific location and number of each fairway, green, tee and driving area, etc., where pesticide is applied. The Secretary reserves the right to approve the use of alternate wording to fulfill the written notice requirement on a case by case basis. Alternate wording must be submitted to the Secretary, in writing and approved prior to its use.

(2) The notice shall be posted prior to application and remain on the bulletin board or the first tee for at least 24 hours after application.

(3) Upon request, a label, Safety Data Sheet or EPA Pesticide Fact Sheet for the specific pesticide(s) used shall be made available to any golfer using the facility or course employee for their review.

c. Outdoor commercial or noncommercial pesticide application to turf-grass or landscape plants made on fenced, private non-residential properties shall require the posting of a written notice(s) in visitor reception area(s) and main employee entrance(s) by the grounds superintendent or their equivalent. All other private non-residential properties without fencing shall comply with Section IV 8.a.

(1) The written notice shall contain information as specified under Section IV 8a. (3) (a-f) and the specific location where each pesticide is applied.

(2) The notice shall be posted prior to application and remain in place for at least 24 hours after application.

(3) Upon request, a label, Safety Data Sheet or EPA Pesticide Fact Sheet for the specific pesticide(s) used shall be made available to any visitor or facility employee for review.

(d) This regulation does not cover the injection of pesticides directly into plant material and does not apply to rights-of-way or utility applications.

(e) This regulation does not apply to private pesticide applicators or certified private pesticide applicators.

9. Golf Course Permits:

a. No person shall use a pesticide(s) on a golf course without first obtaining a permit from the Secretary as provided in Section IV 9. except as described in Section IV 9.b. The permit process shall begin as follows:

(1) Existing golf courses shall submit to the Secretary their name, address, location and information identifying surface water, private water sources of abutting landowners, public water sources, private or public source protection areas and environmentally sensitive areas present on

the golf course. The amount and type of pesticide used on the golf course over the last three (3) years is also required. A form will be provided by the Secretary for the submission of this information.

2) The Secretary shall determine a schedule staggered over the next five (5) years when each golf course existing on the effective date hereof shall file an application for a permit and shall notify each course in writing, certified mail, return receipt requested. The scheduling of golf courses will be prioritized on the basis of risk and will require those golf courses with the highest risk potential to submit first.

b. An existing golf course may continue to use pesticides until either it fails to file an application for a permit on the date scheduled by the Secretary or a permit is denied.

c. An application for a permit shall be on a form provided by the Secretary and conform to the provisions of Section IV 9 h. and be signed by an officer of the golf course and the golf course superintendent completing the form, who shall agree to the conditions to be set forth by the Secretary in the permit. Applications for a renewal permit shall be filed with the Secretary three (3) months prior to the expiration of the existing permit. An application for renewal shall detail any proposed changes to the existing pesticide management plan of the golf course.

d. The Secretary will forward the application to the Vermont Pesticide Advisory Council (VPAC) for review and recommendation under 6 V.S.A. Section 1102(d) (1). VPAC's review shall be based on the established requirements of statutes, regulations and guidelines.

e. The Secretary shall issue or deny the permit after consideration of VPAC's recommendation, risk to human health and the environment, the pesticide management plan as it relates to the use of pesticides and the past history of the golf course. The Secretary may restrict or deny the use of a pesticide in accordance with 6 V.S.A. Section 1104(3) and other applicable provisions of the law. All parties aggrieved by a decision of the Secretary under this section may request a hearing within fifteen (15) days of the receipt of notice of the decision.

f. Permits issued by the Secretary :

(1) Shall be conditioned on the operation of the golf course according to an approved pesticide management plan.

(2) Shall, when necessary and appropriate, establish additional buffer strips to protect surface waters and environmentally sensitive areas. The need for buffer strips shall be determined according to the type of application, properties of chemicals to be used and characteristics of the areas to be treated.

(3) May require sampling and analysis of ground and surface water as a condition to the use of a pesticide. Those pesticides on the Prescreened Pesticide List would not require sampling or analysis unless the Secretary determines that this type of information is critical to the evaluation of the risk to human health or the environment. Due to its cost, sampling and analysis will be required only when the Secretary determines it is reasonably necessary to assess compliance with statutory or regulatory standards for protection of the environment or human health and will limit the variables. All parties aggrieved by a decision of the Secretary under this section may request a hearing within fifteen (15) days of the receipt of notice of the decision.

(4) To a proposed golf course shall be conditioned on the course being built as is represented in the application and requires the applicant to submit proof within sixty (60) days after completion.

(5) Shall be issued for a period of five (5) years and therefore expire at the end of the five (5) year period. The permit shall identify the pesticides permitted either by specific reference to each pesticide or reference to the Prescreened Pesticide List. The use of other pesticides may be added by modification of the five (5) year permit. Modifications shall be requested on forms provided by the Secretary and shall be processed, issued or denied in the same manner as provided for permits, except that the term shall coincide with the term of the permit being modified.

g. The Secretary shall approve and maintain the Prescreened Pesticide List along with specifications for its use on golf courses upon review and recommendation from VPAC. Pesticide(s) may be added or deleted at any time. Any person may submit to the Secretary a request to add or delete a pesticide under this section. The request shall include a current EPA Pesticide Fact Sheet or equivalent and any other data desired to be considered. The Secretary shall either approve or deny the request and notify the applicant in a timely manner.

h. Applications for a permit to use pesticides on a golf course shall contain the following information:

(1) General Information

(a) Name of the golf course

(b) Location

(c) Mailing address

(d) Golf Course Superintendent who is responsible for completing the application

(e) Name and position of an officer of the golf course

(f) Date of application

(2) Permit Status

(a) Initial, renewal or modification

(b) Course classification; existing, existing with proposed expansion or proposed

(3) Pesticide Information. Identification of the pesticide(s) to be used as follows:

(a) Pesticides found on current Prescreened Pesticide List. Indicate specific pesticides by common and trade name and EPA Registration Number.

(b) Pesticide(s) other than those found on the Prescreened Pesticide List shall be identified by both common and trade name, EPA Registration Number and by attaching a current EPA Pesticide Fact Sheet or equivalent. The KOC, solubility, half-life (soil) and any additional information as specified in Section IV 9h. (6) shall be provided for each pesticide.

(4) Golf Course Description. A description of the golf course as it exists or is designed as follows:

(a) A site plan (which may be an orthophoto map, scale 1:5000'), marked with the following:

- i. tees, greens and fairways, by hole number and supporting operations;
- ii. areas irrigated and source of water for irrigation;
- iii. all surface waters identified by name, if known;
- iv. all known ground waters;
- v. private water sources of abutting properties;
- vi. public water sources and source protection areas;
- vii. identification and location of any environmentally sensitive areas;
- viii. property boundaries;
- ix. each building and its use; and
- x. legend, scale, north designation;

(b) A topographical map, which may be a U.S.G.S. topographical map with the boundaries of the golf course identified thereon and a general written topographical description including minimum and maximum slopes and any distinct topographical features.

(c) The square feet of each green and tee, and identification of any green or tee which is within 100 feet of any surface waters.

(d) Approximate acreage of each fairway specifying closely mowed areas and rough areas individually.

(e) The square miles of the drainage area for flowing waters at the point of exit from the golf course property.

(f) The surface acreage and average depth of any ponded surface waters and the location of its primary source of supply.

(g) A soils map and key as mapped by the United States Natural Resources and Conservation Service or other reliable source, including identification of soils of high erodibility.

(5) Pesticide Management Plan. A detailed account of how pests such as insects, weeds, diseases and rodents are managed on the golf course as follows:

(a) A general statement of the policy and listing of the goals of the pesticide management plan, including the golf course's strategy for minimizing pesticide use;

(b) A description of pest problems associated with turfgrass and ornamentals during the past five (5) years, including locations and the extent of infestation. For proposed golf courses a description of anticipated pest problems and the rationale for each;

(c) A description and rationale of the pest management strategies that are or will be employed, including biological, chemical and cultural controls;

- (d) A description of pest monitoring practices that are or will be utilized;
 - (e) A description and location of pesticide storage, handling and mixing areas; a Spill Response Plan and proposed measures to prevent accidental releases;
 - (f) A description of irrigation practices, including the type of system used, rates and intervals of irrigation;
 - (g) For proposed golf courses, a description of any unique feature of its design which will minimize pest problems;
 - (h) A description of any buffer zone established or to be established to protect surface waters, private and public water supplies, and environmentally sensitive areas.
- (6) Other Pesticides, Additional Information. When the use of a pesticide(s) is (are) requested which is (are) not found on the current Prescreened Pesticide List or when otherwise required by the Secretary to evaluate risk, the applicant will provide additional information which will justify the use of the pesticide within an acceptable level of risk. The following information or any other pertinent information may be submitted in support of this justification:
- (a) Expected pesticide concentrations:
 - i. nearest private and all public water sources of concern using a Simple Dilution Analysis, calculated using a proportion of either well yield and/or precipitation and irrigation;
 - ii. in flowing surface water at the point of exit from the golf course boundary.
 - iii. in standing surface water only when deemed necessary after consultation with the Department of Environmental Conservation, Water Quality Division.
 - (b) In graphic or matrix form, a comparison between the expected pesticide concentrations and Vermont Water Quality Guidelines, Chapter 12 Groundwater Protection Rule Standards and Department of Health Drinking Water Standards.
 - (c) The hydrogeologic setting, including hydrogeologic flow patterns, receiving waters, recharge and discharge areas, range of depth to groundwater, aquifer type, if present and hydraulic conductivity.
 - (d) Identification of any environmentally sensitive areas and a general discussion of whether the use of pesticides will destroy or significantly imperil the same.
 - i. Golf courses shall keep and maintain operating records and report pesticides on forms provided by the Secretary for that purpose as follows:
 - (1) Operational records of pest problems encountered, control methods employed and their effectiveness, the type and amount of pesticide(s) used, its purpose, date and area of the golf course where applied; a record of rainfall; and a summary of irrigation utilization. These records must be maintained for a period of five (5) years and shall be made available to the Secretary upon request.

(2) A pesticide use record for each calendar year shall be submitted to the Secretary prior to January 1 of the following year. A form will be provided by the Secretary for this purpose.

(3) Maintenance of the records and report of pesticide use as provided above shall exempt the golf course or certified applicators employed by it from the record and reporting requirements of Section V. 2, 4 and 6.

SECTION V - MAINTENANCE OF RECORDS BY CERTIFIED APPLICATORS, LICENSED COMPANIES, LICENSED PESTICIDE DEALERS AND PESTICIDE PRODUCING ESTABLISHING ESTABLISHMENTS

1. Certified private applicators shall record, for all restricted use pesticides, the pesticide product name, Environmental Protection Agency (EPA) Registration Number, amount used, date of application, location of application (farm name and town) and the pest(s) treated for during each year. This information is to be held for a period of two years and shall be furnished to the Secretary upon request.

2. Certified commercial and certified noncommercial applicators shall keep and maintain pesticide operational records in a manner prescribed by the Secretary on forms provided for that purpose.

a. Routine operational records shall be kept which state the pesticide product name, EPA Registration Number, amount used, date of application, location of application (farm name and town) and the pest(s) treated for during each year. These records must be maintained for a period of two years and shall be made available to the Secretary upon request.

b. A pesticide use report shall be submitted to the Secretary annually. The report shall state the EPA Registration Number, the product name, the manufacturer, the amount used, the general purpose for which it was used and the county in which it was used.

c. Annual pesticide use reports shall be submitted together with an application for the renewal of certification to the Secretary prior to January 1 of each year. Commercial and noncommercial pesticide applicator certificates shall not be renewed without the submission of an annual use report. Annual use reports shall be submitted regardless of whether pesticides were applied during a given year or not.

3. Persons applying pesticides under the authority of a permit issued by the Agency shall comply with all record keeping and reporting requirements imposed by the Secretary as conditions of the permit.

4. Licensed companies shall be responsible for maintaining routine operational records and submitting the annual pesticide report. Certified noncommercial applicators, who do not work for licensed companies, will continue to be responsible for the maintenance and submission of these records.

a. The licensed company shall collect operational records required by this section from its certified applicators and hold them for a period of two years. These records shall be made available to the Secretary upon request.

- b. The annual pesticide use report shall be submitted together with the company license renewal application to the Secretary prior to January 1 of each year.
5. Licensed Class A dealers shall keep and maintain records of the sales of pesticides and shall make them available for inspection to the Secretary . Records shall be maintained on forms provided by the Secretary.
 - a. A report of special permit and restricted use pesticides sold on a calendar year basis shall be submitted together with the application for license renewal to the Secretary by all Class "A" pesticide dealers prior to January 31 of the following year. Reports may be required by the Secretary at any other time, provided the request is made in writing.
 - b. Pesticide dealer reports shall include the product name, the EPA registration number, the size and number of containers and the county of intended use. For the purpose of reporting the county of intended use, pesticide dealers may use the applicator's county of residence.
 - c. Annual sales reports must be submitted regardless of whether or not restricted use pesticides were sold.
6. Annual records may be required for treatments of pests as deemed necessary by the Secretary.
7. In the event that a certified applicator, licensed company or licensed pesticide dealer should choose not to renew a certificate or license, the annual use and/or sales reports are still required for the last year in which a valid certificate and/or license was held.
8. Refer to Section XII, Community Right-to-Know, for a complete description of additional requirements that may be applicable to pesticide companies, applicators, dealers and producers.

SECTION VI - COMPANY LICENSE.

1. Any enterprise applying pesticides to the land or home of another for remuneration must be licensed by the Agency. Exceptions to the company license requirement shall be:
 - a. Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of practice.
 - b. Applicators certified under Category 10, making recommendations and applying pesticides in demonstration or research programs.
 - c. Private applicators who apply pesticides to a neighbor's property in exchange for services.
 - d. Certified and noncertified noncommercial applicators.
2. The company license shall be renewed yearly. The license shall extend from January 1 through December 31.
3. A fee of forty dollars (\$40.00) shall be charged for a company license.
4. The Secretary may deny an application for a company license when the applying company is owned, controlled, or operated by persons or their employees who have been determined to have violated Vermont's pesticide laws, or any rule or regulation adopted under its authority, or any

order of the Secretary under 6 V.S.A. Chapter 87 within two years preceding the date of application.

5. Applicants who are denied a company license may request a hearing to review the decision within fifteen days of receipt of the denial.

6. Licensed companies and those requiring licensing shall be responsible for ensuring they only employ pesticide applicators that are properly certified under these regulations, prescribed by the Secretary in Section VIII and that applicators employed by them remain certified for the duration of their employment with the company, except that those employees working under the direct supervision of a certified applicator need not be certified.

Licensed companies shall supply the Agency with a list of all certified commercial applicators they employ. They shall send written notice to the Agency within thirty (30) days whenever a certified commercial applicator is hired or leaves their employment.

SECTION VII - REQUIREMENTS FOR CERTIFIED COMMERCIAL AND CERTIFIED NONCOMMERCIAL APPLICATORS.

1. All noncommercial applicators who use other than Class "C" pesticides and all commercial applicators who use pesticides shall be certified in accordance with the applicator standards established in these regulations, or work under the direct supervision of a certified commercial or certified noncommercial applicator. (See definition of "direct supervision", Section I.)

Exceptions: Persons conducting research in laboratories, or Doctors of Medicine or Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice are exempt from the certification requirement.

2. The candidate for certification shall satisfactorily meet standards prescribed by the Secretary in Section VIII.

3. Candidates for certification shall take a written examination covering general standards and specific standards required for each category an individual expects to operate under. A candidate must be certified in each specific category that he or she intends to work in.

a. A candidate shall have a maximum of three opportunities to achieve a passing score on the certification examination during a twelve (12) month period. This twelve (12) month period shall begin on the date the candidate takes the first examination. After an initial failing score, a candidate must wait at least seven (7) days to retake the examination. If a candidate fails twice, there shall be at least a twenty-eight (28) day waiting period before retaking the exam for the third time.

4. Certificates issued in any category may be further restricted by the Secretary as a condition of issuance, when the Secretary determines that the restrictions are necessary to protect human life or the environment. For example, a certain category certificate may be restricted to allow only the use of specific pesticides in that type of work.

5. Fees: A fee of twenty dollars (\$ 20.00) shall be assessed for each category certification issued. The maximum total fee charged for categories per candidate shall be seventy-five dollars (\$

75.00). Payment of fees for persons who are employees of federal, state or municipal government and who apply pesticides as part of that employment shall be waived.

6. The certification year will extend from January 1 through December 31.

a. Certification of noncommercial and commercial applicators may be renewed annually for up to five Years after which recertification shall be required. The Secretary may furthermore require recertification whenever necessary and determine the procedure to be utilized involving either additional training or reexamination.

b. Certified noncommercial or commercial applicators shall send written notice to the Agency within thirty (30) days of changing employers. The name of the new employer shall be supplied in the notice.

7. Denial of certificate: The Secretary may deny issuance of a certificate to any person failing to adequately demonstrate competency on any examination or who is currently under a suspension or revocation of certificate by the Secretary.

SECTION VIII - CERTIFICATION STANDARDS FOR COMMERCIAL APPLICATORS AND NONCOMMERCIAL APPLICATORS USING OTHER THAN CLASS "C" PESTICIDES

1. Noncommercial applicators who use pesticides other than Class "C" and all commercial applicators, except those who work under the direct supervision of a certified applicator, shall be certified according to categories which reflect the types of pesticide use for which they have been examined and found competent.

Applicants for certification in the categories described in this section shall demonstrate their competence to meet standards described under general standards, category specific standards. Applicants shall take a written examination covering general standards and specific standards required for each category an individual expects to operate under.

2. Description of categories.

a. Category 1: Agricultural Pest Control.

(A) Plant - For use in production of food, forage and fiber agricultural crops.

(B) Animal - For use on animals and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators are included in this category. Doctors of Veterinary Medicine who apply pesticides as drugs or medications during the course of their normal practice are exempt from certification requirement. See Section VII.

b. Category 2: Forest Pest Control - For use in forests, forest nurseries and forest seed producing areas.

c. Category 3: Ornamental and Turf Pest Control.

(A) Ornamentals and Shade Trees - For use to control pests in the maintenance and production of Christmas trees, ornamental trees, shade trees, shrubs and flowers.

- (B) Turf - For use to control pests in the maintenance and production of turf.
 - d. Category 4: Seed Treatment - For use on seeds in seed treatment facilities.
 - e. Category 5: Aquatic Pest Control - For use as applied to, or adjacent to, standing or running waters and includes but is not limited to, waters of the state, drinking water reservoirs, industrial lagoons and sewage or wastewater treatment plant lagoons.
 - f. Category 6: Rights-of-way Pest Control - For use in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or similar areas.
 - g. Category 7: Industrial, Institutional, Structural, and Health Related Pest Control
 - (A) Industrial, Institutional and Structural Pest Control - General - For pesticide use in, on or around food handling establishments, human dwellings, institutions, such as schools or hospitals, industrial establishments, including warehouses and grain elevators and any other structure and adjacent area, public or private, for the protection of stored, processed or manufactured products.
 - (B) Health Related Pest Control - For out-of-door pesticide use in control of mosquitoes and other biting arthropods.
 - (C) Food Processing Pest Control - For use of the pesticides to control pests in, on or around food processing plants which may include, but are not limited to, bakeries, dairy product processing, canning and frozen food packing, confection manufacturing and meat product processing plants.
 - (D) Wood and Fiber Product Pest Control - For control of pests which degrade or prematurely destroy the service, life and usefulness of wood and fiber products.
 - (E) Antimicrobial Pest Control - For the use of pesticides to control pests in non-potable cooling waters and in water or slurries used in industrial processing, in, on or around human dwellings, commercial establishments, institutions, including but not limited to, schools and hospitals, industrial establishments and any other structures and adjacent areas whether public or private.
 - h. Category 8: Public Health Pest Control - For use by governmental employees in public health programs for the management and control of pests for medical and public health importance.
 - i. Category 9: Regulatory Pest Control - For use by state, federal, and other governmental subdivisions for control of regulated pests.
 - j. Category 10: Demonstration and Research Pest Control - For individuals who demonstrate pest control to the public, supervise demonstrations or conduct field research with old, new or experimental use pesticides. Included in this category are those individuals who demonstrate, sell or recommend pesticides to applicators, dealers or the public.
 - k. Category 11: Aerial Pest Control - For the application of pesticides from any aircraft for the control of pests in any of the preceding categories.
3. General standards for all categories of commercial applicators.

a. 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 of the applicator's certification and the following areas of competence:

(1) Label and labeling comprehension.

(a) The general format and terminology of pesticide labels and labeling;

(b) The understanding of instructions, warnings, terms, symbols and other information commonly appearing on pesticide labels;

(c) Classification of the product, general or restricted; and

(d) Necessity for use consistent with the label.

(2) Safety. Factors including:

(a) Pesticide toxicity and hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

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

(d) Need for and use of protective clothing and equipment;

(e) Symptoms of pesticide poisoning;

(f) First aid and other procedures to be followed in case of a pesticide accident; and

(g) 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.

(3) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil or other substrate;

(c) Presence of fish, wildlife and other non-target organisms; and

(d) Ground and surface water drainage patterns.

(4) Pests. Factors such as:

(a) Common features of pest organisms and characteristics of damage needed for pest recognition;

(b) Recognition of relevant pests; and

- (c) Pest development and biology as it may be relevant to problem identification and control.
 - (5) Pesticides. Factors such as:
 - (a) Types of pesticides;
 - (b) Types of formulations;
 - (c) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
 - (d) Hazards associated with use;
 - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides;
 - (f) Dilution procedures; and
 - (g) Residues associated with use.
 - (6) Equipment. Factors including:
 - (a) Types of equipment and advantages and limitations of each type; and
 - (b) Uses, maintenance and calibration.
 - (7) Application techniques. Factors including:
 - (a) 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;
 - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use and misuse;
 - (c) Prevention of drift and pesticide loss into the environment; and
 - (d) Principles of chemigation including appropriate equipment.
 - (8) Laws and regulations. Applicable state and federal laws and regulations.
4. Specific standards of competency for each category of commercial applicators.

Because of the frequent proximity of human habitations to application activities, applicators in all categories must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets and other domestic animals.

Certified applicators in each category will be particularly qualified with respect to the practical knowledge standards elaborated below:

a. Category 1: Agricultural Pest Control.

(A) Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using 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; preharvest intervals, reentry intervals, phytotoxicity and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

(B) Animal. 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 applicators must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

b. Category 2: Forest Pest Control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries and seed production 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.

c. Category 3: Ornamental and Turf Pest Control.

(A) Ornamental and Shade Tree. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs and plantings including cognizance of potential phytotoxicity due to a wide variety of plant material, drift and persistence beyond the intended period of pest control.

(B) Turf. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production, establishment and maintenance of turf including cognizance of potential phytotoxicity due to a wide variety of turf grasses and other plant types found in and around turf plantings, drift and persistence beyond the intended period of pest control.

d. Category 4: Seed Treatment. Applicators shall demonstrate a practical knowledge of types of seeds in seed treatment facilities that require chemical protection against pests and factors such as seed coloration, carriers and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

e. Category 5: Aquatic Pest Control. Applicators shall demonstrate a 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.

f. Category 6: Right-of-way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way exist over many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, 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.

g. Category 7: Industrial, Institutional, Structural and Health Related Pest Control

(A) General Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including that of 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 this category. Because general pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(B) Health Related Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission and nuisance pests as these relate to and influence application programs. A wide variety of pests from the phylum arthropoda are involved and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. The applicators shall have a practical knowledge of the importance of such nonchemical control methods as sanitation, waste disposal and drainage. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(C) Food Processing Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control and method of application that avoids contamination of food, food processing equipment and packaging materials, damage and contamination of the processing area and exposure of people. Since human exposure, including pregnant women and elderly people, may be a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including any continuous exposure in the various situations encountered in this category.

Because food processing related pest control may involve outdoor and indoor applications, applicators must also demonstrate a practical knowledge of environmental conditions, particularly related to this activity. They shall demonstrate a practical knowledge of fumigation techniques and need for containment and post treatment ventilation.

(D) Wood and Fiber Product Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycle, types of formulations for control and method of application that avoids contamination of food or feed, damage and contamination of habitat and exposure to people, pets and domestic animals. Since exposure to humans, including children, may be a potential problem, applicators must demonstrate practical knowledge of the

specific factors which may lead to a hazardous condition including any continuous exposure conditions included in this category.

(E) Antimicrobial Pest Control. Applicators shall demonstrate a practical knowledge of the wide array of pests (algae, bacteria, fungi and shellfish) that infest a cooling water system or water used in industrial processing and the methods and reasons for their control. Applicators must also have a practical knowledge of the pesticide formulations and hazards associated with the use of pesticides in non-potable cooling waters or water used in industrial processing, in, on or around human dwellings, commercial establishments, institutions, industrial establishments, pulp mills and any other structures and adjacent areas, public or private. Applicators shall demonstrate a practical knowledge of the different types of cooling water systems or water used in industrial processing and the various methods of testing for and identifying pest infestations.

h. Category 8: Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal and drainage.

i. Category 9: 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 factors influencing introduction, spread and population dynamics or relevant pests. Their knowledge shall extend beyond that required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

j. Category 10: Demonstration and Research Pest Control. Persons demonstrating and recommending 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 interactions 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 the general standards requirements. In addition, they shall meet the specific standards required for categories 1 through 9 as may be applicable to their particular activity. Persons conducting field research or method improvement work with pesticides should be expected to know the general standards. In addition, they shall be expected to know the specific standards required for categories 1 through 9 applicable to their activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

k. Category 11: Aerial Pest Control. Applicators shall demonstrate a practical knowledge of problems which are of special significance in aerial application of pesticides. Among the subjects involved will be weather and drift, chemical dispersal equipment, tank, pump and plumbing arrangements, nozzle selection and location and ultra-low volume systems. In addition, aerial applicators will need a practical knowledge of aircraft calibration, field flight patterns, droplet

size considerations, flagging methods and loading procedures. Applicators will also be required to demonstrate comprehension of labeling information for each category of intended operation from appropriately selected labels provided. The Secretary will rely upon the Federal Aviation Administration and the Vermont Agency of Transportation, Aeronautics Section, to determine the aeronautical competence of spray pilots and the airworthiness of their aircraft.

Applicators will be required to demonstrate recognition of target area characteristics as well as characteristics of nontarget areas to avoid accidental damage or contamination.

SECTION IX - CERTIFICATION OF PRIVATE APPLICATORS

1. Persons applying restricted use pesticides on property owned by them or on land rented by them for the production of agricultural commodities shall be certified . Certification shall be limited to allow the use of only those pesticides for which competency is determined.
2. Before receiving a certificate, the private applicator shall meet requirements set forth by the Secretary as standards for private applicator certification. Competency shall be established by passing a written examination.
3. Standards of competency for private applicators.

As a minimum requirement for certification, a private applicator must show that he possesses practical knowledge of the pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling and disposal of the pesticides and containers and his related legal responsibility. This practical knowledge includes ability to:

- a. Recognize common pests to be controlled and damage caused by them.
 - b. Understand the label and labeling information -- including the common name of pesticides he applies, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions and any specific disposal procedures.
 - c. 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, the quantity dispersed in a given period of operation and the principles of chemigation including appropriate equipment.
 - d. Recognize local environmental conditions that must be considered during application to avoid contamination.
 - e. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.
4. Certification and renewal.
 - a. Private applicators will be certified according to the pesticide needs associated with the agricultural commodities they produce.
 - b. Any person who is qualified and has adequately met standards for determination of competency shall be certified.

c. Private applicator certificates shall be issued for a five-year period after which recertification will be required. Recertification requirements may be met by participation in additional training approved by the Secretary or by reexamination.

SECTION X - CLASSIFICATION OF PESTICIDES AND LIMITATIONS ON SALE

1. General: The U.S. Environmental Protection Agency classifies all registered pesticides available to consumers as either general use or restricted use for the purposes of federal regulation. Vermont recognizes federal, state and by permit only restricted use pesticides as Class "A". Vermont classifies all registered pesticides used, sold, distributed or manufactured within the state into three categories known as:

Class "A" - Restricted Use - federal, state and by permit only

Class "B" - Controlled Sale

Class "C" - Homeowner/Specialty

All pesticides sold in Vermont must be registered with the State under 6 V.S.A. Chapter 81, the Pesticide Registration Act.

2. Identification of Class "A" - Restricted Use, Class "B" - Controlled Sale and Class "C" - Homeowner/Specialty pesticides.

a. Class "A" - Restricted Use - federal: shall be those federally restricted use pesticides identified by the EPA designation "Restricted Use Pesticide" on the product label.

b. Class "A" - Restricted Use - state: shall be those pesticides classified general use by EPA and reclassified as restricted use by the Vermont Agency of Agriculture, Food and Markets after consideration of the following:

- (1) Toxicological profile, including acute, subchronic and chronic effects
- (2) Environmental profile, including aquatic and wildlife effects
- (3) Physical hazard profile, including the potential for fire, explosion and reactivity
- (4) Potential for ground and surface water contamination
- (5) Potential for misuse
- (6) Container construction and size
- (7) Those requiring training due to special concerns
- (8) Method of application

Class "A" pesticides shall be listed in "Appendix A(2)", available from the Agency's Plant Industry Section.

c. Class "A" - Restricted Use - by permit only: shall be those pesticides which may be purchased and used only after securing a special permit from the Secretary. Pesticides are classified Class

"A" - Restricted Use - by permit only by the Commissioner with the advice of the Vermont Pesticide Advisory Council after a determination that routine use of the chemical could result in harm to human health or the environment. Any sale or use whether or not currently registered under the FIFRA as amended for the following products is forbidden unless a permit is obtained from the Secretary:

Aldrin
Daminozide (Alar - food uses)
Endrin
Mercury
Sodium Arsenite
Sodium Fluoroacetate (Compound 1080)
Dieldrin
Heptachlor
Dibromo-chloro-propane (DBCP)
Chlordane

d. Class "B" - Controlled sale: shall be those pesticides determined to be less hazardous than Class "A" under the criteria expressed in subsection 2.b but require some control over where products are sold. Class "B" pesticides are generally for use outside of the home and contain more than 3% total active ingredient, however, the Secretary reserves the right to classify additional pesticides as Class "B".

The Secretary has classified the following additional pesticides as Class "B":

(1) All turf care, excluding aerosols or products containing either *Bacillus thuringiensis* or potassium fatty acids regardless of percent of total active ingredient and does not meet Class "A" definition.

e. Class "C" - Homeowner/Specialty - shall be those pesticides which are generally used in and around the home and which contain not more than 3% total active ingredient; however, the Secretary reserves the right to classify additional pesticides including non-homeowner specialty products as Class "C".

The Secretary has classified the following additional pesticides as Class "C":

(1) Limited percentages of active ingredients:

(a) Anti-fouling paint containing mercury - of not more than 0.5% total active ingredient and which conform to the U.S. Department of Agriculture or Environmental Protection Agency, Pesticides Regulation Division, Interpretation No. 3 under FIFRA as amended.

(b) Pet supplies - shampoos, dips, tick and flea collars and dusts except lindane products which shall not exceed 7% total active ingredient.

(c) DDVP impregnated strips (Vapona strips) - concentrations not over 20% in resin strips and pet collars.

(2) Unlimited percentage of active ingredients:

- (a) Wood preservatives and sapstain control agents other than creosote, inorganic arsenicals and pentachlorophenol
 - (b) Antimicrobial agents such as disinfectants, bacteriostats, bactericides, mildewcides, mildewstats, viricides, sanitizers, slimicides, sterilants and industrial preservatives
 - (c) Animal repellents, indoors and outdoors
 - (d) Insect repellents for human use
 - (e) Moth flakes, crystals, cakes and nuggets
 - (f) Indoor aquarium supplies
 - (g) Swimming pool supplies
 - (h) Pediculocides and mange cure on humans
 - (i) Pheromone baits and floral lures
 - (j) Premixed paints containing preservatives, and which make pesticidal claims
 - (k) Aerosols, excluding Class A; including fumigator bombs
 - (l) Insecticides containing bacillus thuringiensis, bacillus popilliae, bacillus lentimorbus or potassium fatty acid
 - (m) Colorants used to control algae growth by providing shade
 - (n) Animal ear tags
- (3) The petroleum solvent fraction of the product's formula shall not be considered an active ingredient for the purpose of Class "C" classification procedures.

3. The following pesticides are prohibited from use in Vermont:

- a. All uses of pesticides cancelled or suspended under FIFRA amended at the time these regulations are adopted are hereby prohibited in Vermont. All uses of pesticides prohibited in the future by the U.S. Environmental Protection Agency will be prohibited in Vermont by adoption of regulations pursuant to 3 V.S.A. Chapter 25.
- b. All DDT - Dichloro-diphenyl-trichlorothane use is prohibited by 6 V.S.A. Section 1105, as of December 31, 1971.
- c. All pesticide products formulated from technical grade 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) which contain more than 0.10 ppm 2,3,7,8-tetra chlorodiebenzo-para-dioxin (TCDD) shall not be sold or used in the State of Vermont.

4. Limitations on sales of pesticides.

- a. Limitations on sales of Class "A" - Restricted Use - federal, state or by permit only:

(1) Dealers shall obtain a Class "A" dealer's license before they may sell Class "A" - Restricted Use pesticides.

(2) Class "A" pesticides shall be sold only to certified applicators and persons who produce written authorization from a certified applicator to purchase specific restricted use pesticides. Written authorization shall include the certificate number of the certified applicator authorizing the purchase, as well as the name and quantity of the pesticide desired.

(3) Class "A" pesticides shall not be displayed for self-service or stored in food areas.

(4) Class "A" - Restricted Use - by special permit only pesticides shall be sold only to certified applicators who produce a special permit issued by the Secretary authorizing the purchase.

b. Limitations on sales of Class "B" pesticides.

(1) Dealers shall obtain a Class "A" or Class "B" dealer's license before they may sell Class "B" pesticides to the general public.

(2) Class "B" pesticides may not be stored or displayed in food areas.

c. Limitations on sale of Class "C" pesticides:

(1) Dealer's shall obtain either a Class "A", Class "B" or Class "C" dealer's license before they may sell Class "C" pesticides to the general public.

(2) Class "C" pesticides may not be stored or displayed in food areas.

SECTION XI - PESTICIDE DEALER LICENSES.

1. Class "A" and Class "B" licenses.

a. No store or other retail sales outlet shall sell restricted use or Class "B" pesticides unless a licensed dealer is a full-time employee of the store or retail sales outlet. Persons who pass the tests required for Class "A" or Class "B" dealer licenses shall be entitled to sell the following classes of products:

(1) Class "A" license: Licensees may sell any pesticide registered in the State of Vermont, subject to the limitations imposed by these regulations. Generally, Class "A" licensees may sell restricted use, Class "B" and Class "C" pesticides.

(2) Class "B" license: Licensees may sell any Class "B" or Class "C" pesticides registered in the State of Vermont.

b. Prior to the issuance of a license, a pesticide dealer must apply for a license to the Secretary and then pass a written and/or oral examination conducted by the Secretary to show that the applicant possesses adequate knowledge of: regulations, classification of pesticides, safe handling, hazards and disposal of pesticides which will be sold or recommended for use.

c. Holders of Class "A" and Class "B" dealer licenses are required to notify, in writing, the Agency within thirty (30) days of a change of employment, including a change from one branch store location to another.

2. Class "C" licenses are issued to retail outlets, entitling the licensee to sell Class "C" pesticides from that location. No examination is required. Class "C" licenses are issued upon payment of the required fee.

3. All sales and technical field representatives of commercial companies recommending or demonstrating pesticides to "agricultural type" company stores and individuals shall be certified under Section VIII, Demonstration and Research Pest Control, and shall make annual reports of sales of pesticides classified for restricted use plus materials used for demonstrations.

4. Salesmen for wholesale companies operating in Vermont and selling to institutions, governmental subdivisions and retail sales outlets other than "agricultural type" company stores shall be licensed according to the classification of the pesticide sold. Salesmen selling only Class "C" pesticides are exempted from this provision.

5. License classification, renewals and fees

a. A pesticide dealer's license shall state the classification of pesticides the dealer is qualified to sell and will be considered as one category for fee assessment purposes.

(1) Pesticide dealers shall be classed as follows:

(a) Class "A" dealer refers to a dealer licensed to sell restricted use pesticides, Class "B" pesticides, special permit pesticides and Class "C" pesticides. Class "A" dealers shall not sell restricted use pesticides or special permit pesticides to Class "B" or Class "C" dealers.

(b) Class "B" dealer refers to a dealer licensed to sell Class "B" and Class "C" pesticides. Class "B" dealers shall not sell Class "B" pesticides to Class "C" dealers.

(c) Class "C" dealer refers to a dealer licensed to sell Class "C" pesticides only.

(2) A license fee of twenty dollars (\$ 20.00) will be assessed for the issuance of a Class "A" or Class "B" license; a fee of ten dollars (\$ 10.00) will be assessed for the issuance of a Class "C" license as provided under Section 1109 by 6 V.S.A. as amended in 1989.

b. The license year will extend from January 1 through December 31 and the license must be renewed annually by January 1 of each year.

Licenses may be renewed without examination provided the conditions under which the original license was issued have not changed. However, the Secretary may determine that additional instruction or examination is necessary to meet new criteria relative to any pesticide use, handling or disposal.

SECTION XII - COMMUNITY RIGHT-TO-KNOW REQUIREMENTS, EMERGENCY ACTIONS AND ACCIDENT REPORTING

Ref: Adopted Rule 91-P38, Vermont Community Right-to-Know (CRTK) Program and EPA Superfund Amendments and Reauthorization Act, Title III (SARA) Program

During the Legislative Committee on Administrative Rules' September 19, 1991 hearing the Agency of Agriculture, Food, and Markets proposed adding the following to Section Twelve - Repeal of Existing Rules:

12.2 Vermont Agency of Agriculture, Food and Markets rules, Vermont Regulations for control of Pesticides, Section XII - "Community Right-to-Know Requirements". Effective August 2, 1991 are repealed on the effected date of these rules.

The Legislative Committee on Administrative Rules agreed unanimously to add the requested language. No change in economic impact is anticipated.

SECTION XIII - TRANSPORTATION, STORAGE AND DISPOSAL OF PESTICIDES.

1. Transportation.

- (a) Pesticide applicators shall secure pesticides during transportation to prevent spillage.
- (b) Pesticide applicators and dealers shall ensure that vehicles owned, leased, rented or borrowed by them for the purpose of transporting pesticides are placarded in accordance with state and federal transportation regulations.

2. Storage: Standards Applicable to Pesticide Storage, Mixing and Loading Facilities.

(1) During the use or storage of pesticides, commercial and private applicators shall not leave pesticides or pesticide containers in any area which is readily accessible to unauthorized persons, livestock or wildlife.

(2) Labeling of storage containers.

(a) In addition to federal regulatory requirements concerning the labeling of pesticide storage containers, legible labels shall be maintained on all bulk storage containers at all times.

(3) Storage of dry pesticide in bulk quantity.

(a) Except during loading and unloading, stored dry bulk pesticide shall be covered by a roof or tarpaulin which will keep precipitation off the pesticides. Dry bulk pesticide stored outdoors shall be kept in storage containers. Storage containers shall be placed on pallets or on a raised concrete platform. Storage facilities shall be secured against entry by unauthorized persons, livestock or wildlife.

(4) Storage containers and appurtenances.

(a) General requirements. Storage containers and appurtenances shall be constructed, installed and maintained so as to prevent the discharge of liquid bulk pesticide. Storage containers and appurtenances shall be constructed of materials which are resistant to corrosion, puncture or cracking. Materials used in the construction or repair of storage containers and appurtenances shall meet or exceed the manufacturer's recommendations and may not be of a type which react chemically or electrolytically with stored bulk pesticide in a way which may weaken the storage container or appurtenance, create a risk of discharge or adulterate the pesticide. Materials used for valves, fittings and repairs on metal containers shall be compatible with the metals used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances, or create a risk of discharge. Storage containers and appurtenances shall be designed and constructed to handle all operating stresses, taking into account static head, pressure buildup from pumps and

compressors and any other mechanical stresses to which the storage containers and appurtenances may be subject in the foreseeable course of operation.

(b) Appurtenances. Every storage container connection, except a safety relief connection, shall be equipped with a shut-off valve located on the storage container or at a distance from the storage container dictated by standard engineering practices. Valves shall be secured to protect against vandalism or accidental valve openings which may result in a discharge. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage due to gravity and other forces which may be encountered in the ordinary course of operations.

(c) Vents. Any air tight storage container used for liquid bulk pesticide shall be equipped with a pressure relief vent which opens and closes within the designed pressure limits of the container, so as to relieve excess pressure, prevent evaporative losses and prevent the entry of precipitation into the container. All other storage containers used for liquid bulk pesticide shall be equipped with a cover or closure which will relieve excess pressure, prevent evaporative losses and prevent the entry of precipitation.

(d) Liquid level gauging devices. Every storage container shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of liquid in a storage container can be readily and reliably measured by other means. EXTERNAL SIGHT GLASS GAUGES ARE PROHIBITED.

(e) Security. Outdoor storage containers and containment facilities shall be located within a permanent fenced area or equivalent security system approved by the Secretary that is designed reasonably to prevent access by unauthorized persons and to provide reasonable protection against access by livestock or wildlife. Appurtenances shall be fenced or otherwise secured to provide reasonable protection against vandalism or unauthorized access which may result in a discharge. Valves on storage containers shall be locked or otherwise secured except when persons responsible for facility security are present at the facility. Valves on rail cars, nurse tanks and other mobile pesticide containers parked overnight at a storage facility shall be locked or secured except when persons responsible for facility security are present at the facility.

(f) Filling. Storage containers may not be filled to more than 95 percent of rated capacity unless the storage container construction or location provides for constant temperature control.

(5) Mixing, loading and rinsate collection areas.

(a) Paved surfaces and catch basins. Any mixing, loading and unloading, including mini-bulk filling, of pesticide or washing or rinsing of pesticide application equipment that takes place at commercial pesticide application and storage facilities must take place on a pad which is paved with asphalt or concrete. The paved surface shall be curbed or constructed with sufficient slope to drain into a liquid-tight catch basin. The curbed surface and catch basin shall be of adequate size and design to contain 125 percent of the capacity of the largest mobile container used.

(b) Protection against damage by moving vehicles. Storage containers and appurtenances, including pipes and transfer hoses, shall be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles engaged in the loading or unloading of pesticide.

(c) Recovery of discharges. Discharges incident to loading or unloading of pesticide shall be promptly recovered from the paved surface and catch basin. If recovery of any of the spill for use as originally intended is not feasible, then procedures shall be employed to dispose of the discharged pesticide and any resulting clean up material as a hazardous waste in accordance with the statutes and regulations of Vermont's Hazardous Waste Management Law, 10 V.S.A. Chapter 159.

(6) Secondary containment for liquid bulk pesticides.

(a) General requirements. Storage containers shall be enclosed in a secondary containment facility which is adequate, in the event of a discharge, to prevent the movement of liquid pesticide to waters of the state including groundwater. A secondary containment facility shall consist of a wall and liner as provided under paragraphs (d) and (e) or a prefabricated facility as provided under paragraph (f) of this subsection. Precipitation shall not be permitted to accumulate within a secondary containment facility. Empty pesticide containers shall not be stored or accumulated within secondary containment facilities.

(b) Capacity. The capacity of a secondary containment facility shall be at least equal to the sum of the following: (1) 110 percent of the greatest volume of liquid which could be discharged from the largest storage container within the secondary containment facility; and (2) the total volume of discharged liquid which would be displaced by the submerged portions of all other storage containers, fixtures and materials located within the secondary containment facility.

(c) Storage with other commodities. No other commodity, except liquid pesticide, pesticide rinsate or recovered pesticide discharges may be stored within a liquid pesticide secondary containment facility.

(d) Walls. The walls of a secondary containment facility shall be constructed of earth, steel, concrete or solid masonry and be designed to withstand a full hydrostatic head of any discharged liquid. Cracks and seams shall be sealed to prevent leakage. Walls constructed of earth or other permeable materials shall be lined as provided under paragraph (e) of this subsection. Earthen walls shall have a horizontal-to-vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice and shall be protected from erosion. Walls may not exceed 6 feet (1.8 meters) in height above interior grade.

(e) Linings. The base of a secondary containment facility, and any earthen walls of the containment facility, shall be lined with asphalt, concrete, an approved synthetic liner. Liners shall meet the following requirements:

(1) Asphalt or Concrete Liners. Asphalt or concrete liners shall be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of discharged liquid. Cracks and seams shall be sealed to prevent leakage.

(2) Synthetic Liners. Synthetic liners shall have a minimum thickness of 30 mils (0.8 millimeters) and be chemically compatible with the materials being stored within the facility. The synthetic liner shall be protected by a 6-inch (15 centimeter) soil layer below the liner, and a 12 inch (30 centimeter) soil layer above the liner. Both soil layers shall be free of large rocks, angular stones, sticks or other materials which may puncture the liner. The use of synthetic liners for the construction of secondary containment facilities shall be approved by the Secretary

provided the manufacturer of the liner provides the Agency with a written confirmation of chemical compatibility and a written estimate of the life of the liner. Synthetic liners shall be installed under the supervision of a qualified representative of the manufacturer, and all field constructed seams shall be tested, and repaired if necessary, in accordance with the manufacturer's recommendations.

(f) Prefabricated facilities. A prefabricated facility shall be composed of a rigid prefabricated basin having both a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture or cracking. Materials used in the facility shall be chemically compatible with the products being stored within the secondary containment facility. The prefabricated facility shall be designed and installed to withstand all foreseeable loading conditions, including the tank load and a full hydrostatic head of any discharged liquid.

(g) Recovery of discharges. Discharges incident to the storage, loading or unloading of pesticide shall be promptly recovered from within the secondary containment facility. If recovery of any of the spill for use as originally intended is not feasible, then procedures shall be employed to dispose of the discharged pesticide and any resulting clean up material as a hazardous waste in accordance with the statutes and regulations of Vermont's Hazardous Waste Management Law, 10 V.S.A. Chapter 159.

(7) Inspection and maintenance

The operator of a storage facility shall routinely inspect and maintain storage facilities, storage containers, and appurtenances in accordance with the following schedule in order to minimize the risk of a discharge.

(a) Valves and other appurtenances shall be inspected for leakage and proper operation at least weekly.

(b) The contents of each bulk storage container shall be measured and recorded at least weekly to facilitate the monthly inventory reconciliation as required by paragraph 8(d).

(c) Secondary containment facilities shall be inspected annually to assure compliance with subsection (6).

(d) All equipment and supplies mandated by the Discharge and Response Plan shall be maintained in sound working order.

(e) A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance, and kept at the storage facility, or at the nearest local office from which the storage facility is administered.

(8) Recordkeeping

(a) The following records shall be prepared and maintained on file at every storage facility, or at the nearest local office from which the storage facility is administered. Furthermore, records shall be maintained for at least five years, and shall be made available for inspection and copying by the Secretary upon request.

(b) A record of all discharges at the storage facility, including the date and time of discharge, the type of liquid bulk pesticide discharged, the volume of the discharge, the cause of the discharge, any action taken to control or recover the discharge, and the method of use or disposal of any recovered discharge. The discharge record shall be completed on the day the discharge is discovered, and shall be promptly updated to show measures taken to control, recover, use or dispose of the discharge.

(c) A regular record of the liquid pesticide levels in each storage container. The level in each storage container shall be measured and recorded at least weekly, as provided in paragraph 7(b).

(d) A monthly inventory reconciliation, showing the amount of liquid bulk pesticide from each storage container which is lost or unaccounted for at the end of each monthly period.

(e) Inspection and maintenance records pertaining to storage containers, appurtenances, and secondary containment facilities, as provided under paragraphs 7(a) and 7(c).

(f) A record of manufacturers' compatibility statements as provided under paragraphs 6(e)(2) and 6(f).

(9) Preparations for control and recovery of pesticide discharges

(a) Discharge response plan. The operator of a storage facility shall prepare a written discharge response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan shall be kept readily available at the storage facility or at the nearest local office from which the storage facility is administered, and shall be available for inspection and copying by the Agency. The operator of the storage facility shall inform the local fire and police departments of the existence of the plan, and shall provide a current copy of the plan to the local fire department.

The plan shall include:

1. The identity and telephone number of the persons or agencies who are to be contacted in the event of a discharge, including persons responsible for the stored pesticide.
2. For each bulk pesticide stored at the facility, a copy of the label affixed to the storage container, the Safety Data Sheet (SDS) and a complete copy of the labeling that would ordinarily accompany sale of the pesticide.
3. A map identifying the location of bulk pesticide storage containers located at the storage facility.
4. For each type of bulk pesticide stored at the facility, the procedures to be used in controlling and recovering, or otherwise responding to a discharge.
5. Procedures to be followed in using or disposing of a recovered discharge.
6. Storage facilities shall also comply with applicable requirements of Section XII - Community Right-to-Know and Accident Reporting.

(b) Equipment and supplies. Applicators, manufacturers and distributors who store bulk pesticides shall have access to pumps and recovery containers which can be used to control and

recover discharges, and to personal protective equipment and clothing for use by persons involved in discharge control and recovery. Pumps, recovery containers, personal protective equipment and clothing and persons capable of deploying and operating them, shall be readily available in an emergency. Pumps, recovery containers, personal protective equipment and clothing required under this subsection may include those provided by a local fire department or other persons, if the use and availability of such equipment is arranged in advance as part of a discharge response plan. Pumps, recovery containers, personal protective equipment, and other materials used in control and recovery of discharges shall be decontaminated promptly after the discharge has been recovered, and may not be used for other purposes until they have been decontaminated. Absorbent materials suitable for the control and cleanup of small liquid discharges shall be kept readily available at every storage facility.

(c) Training. Persons employed at the storage facility shall be made aware of and trained in discharge response procedures, pursuant to the discharge response plan.

(10) Underground liquid storage prohibited

(a) No liquid bulk pesticide or pesticide rinsate shall be stored underground. This prohibition does not apply to a watertight catch basin used for temporary collection of discharges or runoff.

(11) Alternative technology

(a) The Secretary may exempt any person or company from a requirement under this regulation if compliance is not technically feasible, but only if the Secretary finds that alternative measures provide substantially similar protection for the waters of the state. A person desiring to implement technology inconsistent with the provisions of this regulation shall make such a request in writing and shall provide the Secretary with adequate information to show that the alternative measures requested provide substantially similar protection for the waters of the state.

3. Disposal of pesticides and pesticide containers.

a. Pesticide containers.

(1) Disposal of pesticide containers shall comply with instructions on the labeling and with other state and federal regulations.

(2) If practical, pesticide drums shall be shipped to recycling centers capable of handling pesticide containers.

(3) Empty pesticide containers shall not be stored or accumulated within a secondary containment facility.

b. Obsolete, excess, and mixtures of pesticides shall be disposed of according to the statutes and regulations established by Vermont's Hazardous Waste Management Law, 10 V.S.A. Chapter 159.

c. All containers made of materials other than paper shall be triple rinsed prior to disposal.

Vermont Statutes: 6 V.S.A. §§ 1 – 21 (Chapter 1)

§ 1. General powers of Agency; Secretary of Agriculture, Food and Markets

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

- (1) Delegate any authority, power, or duty as necessary for the proper execution of the laws.
- (2) Conduct examinations and pass upon the qualifications of applicants for licenses.
- (3) Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.
- (4) Conduct hearings.
- (5) Issue subpoenas and administer oaths in connection with an authorized investigation or hearing.
- (6) Enter into contracts on behalf of the Agency.
- (7) Seek and obtain temporary or permanent injunctions to restrain a violation of any law administered by the Secretary, whenever there are reasonable grounds to believe that a law has been or will be violated.
- (8) Institute appropriate proceedings in the name of the Agency to enforce any law administered by the Secretary.
- (9) Apply for and accept grants of money or other gifts on behalf of the Agency, subject to 32 V.S.A. § 5.
- (10) Adopt and enforce rules to implement the laws administered by the Secretary.
- (11) Accept an assurance of discontinuance in lieu of instituting an action or proceeding for violation of a law administered by the Secretary.
- (12) Exercise any other power or authority granted by common law or statute.
- (13) Notwithstanding any law to the contrary in this title or Title 9 or 20, issue all licenses, permits, registrations, or certificates under a program administered by the Secretary for a term of up to three years; renew and issue such licenses, permits, registrations, and certificates on any calendar cycle; collect any annual fee set by law for the multiyear licensure, permit, registration, or certificate on a pro-rated basis, which shall not exceed 150 percent of the annual fee for an 18-month cycle, 200 percent of the annual fee for a two-year cycle, or 300 percent of the annual fee for a three-year cycle; and conduct inspections at regulated premises at least once every three years when inspection is required by law. The authority to mandate licenses, permits, registrations, or certificates for more than one year shall not extend to any program administered by the Secretary for which the annual fee is more than \$175.00. The Secretary shall only provide refunds for overpayments of \$25.00 or more on a license, permit, registration, or certificate

issued by the Secretary. The Secretary may assess a late fee of \$27.00, provided that the late fee is no greater than the fee due, in which case the late fee shall equal the fee due, for any license, registration, permit, or certification renewal that is received more than 30 days past expiration, unless a higher late renewal fee is otherwise prescribed by statute.

(14) Require any person or entity regulated by the Secretary under this title or Title 9 or 20 to file an affidavit under oath or affirmation that the person or entity or their regulated premises is in compliance with an assurance of discontinuance or other order or the terms and conditions of a license, permit, registration, certificate, or approval issued by or under the statutory authority of the Secretary or rules adopted under such statutory authority. The Secretary's request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such affidavit when requested or the material misrepresentation of a fact in the affidavit shall constitute a violation of the underlying regulatory program and grounds for revocation or assessment of administrative penalties or both under section 15 of this title.

(b) The following entities shall exist and operate within the Agency of Agriculture, Food and Markets under the general supervision of the Secretary:

(1) The Vermont Milk Commission.

(2) The State Dairy Council.

(3) The Vermont Dairy Industry Council.

(4) [Repealed.]

(c) The Secretary shall provide data and funding recommendations to the Vermont Climate Change Oversight Committee with regard to:

(1) funding and implementing State conservation programs in order to increase carbon sequestration;

(2) providing cost-share assistance for farmers to purchase manure injection equipment to retrofit existing manure spreaders or purchase new equipment;

(3) providing cost-share assistance for farms to develop and implement nutrient management plans for smaller dairy farms and continuing to provide annual assistance so that existing plans on medium-sized farms continue to be implemented;

(4) providing cost-share assistance under the farm agronomic practices program so that farms implement cover crops and other soil erosion and land cover practices;

(5) other ways to create incentives for carbon sequestration on farm and forestland, Vermont's "green bank."

(d) The Secretary shall continue the Agency's methane capture program and shall collaborate with the Vermont Climate Change Oversight Committee with regard to the availability of additional funds for these purposes. The goal of the methane digester portion of the program shall be to digest and use 15 percent of the State's dairy cattle manure by 2012, and 50 percent by 2028. The goal of a second aspect of this emissions reduction program shall be to increase the

percentage of poultry and nondairy livestock manure composted to 25 percent by 2012, and 50 percent by 2028.

§ 2. Appointment of Secretary of Agriculture, Food and Markets

Biennially, in the month of February, with the advice and consent of the Senate, the Governor shall appoint a Secretary of Agriculture, Food and Markets. (Amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3. Duties of Secretary generally; educational work

The Secretary shall promote the agricultural interests and education throughout the State by means of institutes, farmers' meetings, lectures, essays, bulletins, crop reports, nature leaflets, and such other means as he or she deems advisable. Subject to the approval of the Governor, he or she may employ assistants, lecturers, essayists, and experts in conducting meetings, in the preparation of bulletins and crop reports, and in the proper discharge of his or her duties. Such educational work shall include, among other topics, tree planting, roads, and road making. Lectures and essays shall be given and institutes and meetings held at such places and times as the Secretary deems advisable. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4. Meetings outside State

The Secretary may attend conventions, meetings, or institutes relating to agriculture, held in other states or countries. With the approval of the Governor, he or she may use a portion of the monies apportioned for agriculture, to represent the State by exhibit or otherwise outside the State. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 5. Repealed. 2009, No. 33, § 83(c)(1).

§ 6. Combined licenses

The Secretary of Agriculture, Food and Markets shall publish a combined application and shall issue a combined license for any person desiring to be licensed under more than one of the following provisions: retail vendors licensed under sections 1109, 2723a, 2855, and 3306 of this title and 9 V.S.A. § 2730. The license fee for the combined license shall not exceed the amount charged if each license were granted separately. Combined licenses shall expire and be renewed annually on January 1 of each year. Except as otherwise provided by statute, all fees collected under this combined license shall be deposited in the weights and measures special fund provided for under 9 V.S.A. § 2632(b) for use in administering this combined license and carrying out inspections associated with compliance. (1971, No. 177 (Adj. Sess.), § 6, eff. Jan. 1, 1973; amended 1985, No. 226 (Adj. Sess.), § 4, eff. June 2, 1986; 1991, No. 79, § 1; 1995, No. 128 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 7. Feed, seed, and fertilizer authority

Authority to administer and enforce the provisions of Chapter 35 of this title is hereby transferred from the Director of the Experiment Station to the Secretary of Agriculture, Food and Markets. Any reference in Chapter 35 to the words Director of the Agricultural Experiment Station or Director shall be deemed to mean Secretary of Agriculture, Food and Markets. Any reference to the related services division of the College of Agriculture shall be deemed to mean

the Agency of Agriculture, Food and Markets. Any reference to the Chief Financial Officer of the University of Vermont shall be deemed to mean the State Treasurer. (Added 1983, No. 252 (Adj. Sess.), § 2; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 8. Agricultural lands planning criteria

(a) The Secretary shall establish guidelines to assist municipal and regional planning commissions in identifying agricultural lands. The guidelines shall provide, but not be limited to:

- (1) soil characteristics appropriate to agricultural land;
- (2) appropriate size of the parcel and use of adjacent land;
- (3) the importance of agriculture to the region or locality;
- (4) the availability and capacity of agricultural services and labor to support farming in the region; and
- (5) the importance of the land, as agricultural land, to the character of the locality.

(b) The guidelines established by the Secretary under subsection (a) of this section may be applied by each regional and municipal planning commission to establish specific criteria for identifying agricultural lands within that region or municipality. (Added 1987, No. 200 (Adj. Sess.), § 30, eff. May 19, 1988; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 9. Service charges

The Secretary may assess charges for services rendered by Agency employees to commercial enterprises that are not required by or otherwise referred to in statute. The Secretary may also assess charges for inspections which are conducted to confirm that action has been taken to correct violations when an inspector has conducted at least two inspections regarding a violation. Service charges assessed under this section shall be sufficient to recover the Agency's costs, including payment for the inspector's time, and shall be retained by the Agency to reimburse these expenses. (Added 1989, No. 257 (Adj. Sess.), § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 10. Special funds

Fees, assessments, and reimbursements of costs collected by the Agency of Agriculture, Food and Markets under the provisions of this title shall be credited to special funds and shall be available to the Agency to offset the costs of providing the service. (Added 1999, No. 49, § 100, eff. July 1, 2000; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 11. Administrative hearings; hearing officers

The Secretary may designate a hearing officer to preside in his or her place in all matters in which the Secretary is required or permitted by law to conduct a hearing. The hearing officer may administer oaths or issue subpoenas in connection with a hearing. The hearing officer shall report findings of fact to the Secretary in writing, within a reasonable time after the conclusion of the hearing, in contested cases within the meaning of 3 V.S.A. § 801(b)(2). Judgment on the

findings in cases covered by this section shall be rendered only by the Secretary. (Added 1987, No. 277 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 12. Search warrants

(a) Upon application by the Secretary or a person designated by the Secretary, a District or Superior Court judge shall, upon a finding of probable cause, issue an administrative search warrant to search property for violation of any provision of this title, 9 V.S.A. Chapter 73, or any other law administered by the Secretary of Agriculture, Food and Markets. A court may find that probable cause for an administrative search warrant under this section exists when:

(1) the Secretary or a person designated by the Secretary has reason to believe that a provision of this title, 9 V.S.A. Chapter 73, or any other law administered by the Secretary has been violated; or

(2) permission to inspect has been refused and the property to be searched is subject to routine inspections in connection with a regulatory program administered by the Secretary of Agriculture, Food and Markets.

(b) The provisions of Rule 41(c) and (d) of the Vermont Rules of Criminal Procedure shall apply to warrants issued under this section. (Added 1987, No. 277 (Adj. Sess.), § 3; amended 1991, No. 228 (Adj. Sess.), § 5; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 13. Assurances of discontinuance

(a) As an alternative to administrative or judicial proceedings, the Secretary may accept an assurance of discontinuance of any violation. An assurance of discontinuance may include:

(1) specific actions to be taken;

(2) abatement or mitigation schedules;

(3) payment of a civil or administrative penalty and the costs of investigation; or

(4) payment of an amount to be held in escrow pending the outcome of an action, or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing, and may by its terms be filed with the Superior Court having jurisdiction over the subject matter and become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima facie proof of the violation.

(c) Any violation of an assurance of discontinuance shall constitute a separate and distinct offense of the underlying regulatory program and shall be subject to the applicable general penalties for violations of the law under that program, in addition to any other applicable penalties.

(d) Costs of investigations collected under subsection (a) of this section shall be credited to a special fund and shall be available to the Agency to offset these costs. (Added 1987, No. 277 (Adj. Sess.), § 4; amended 1991, No. 228 (Adj. Sess.), § 6; 1999, No. 49, § 101; 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 75, § 1.)

§ 14. Acceptance of gifts of real property

The Secretary, with the approval of the Governor, may accept gifts of the rights and interests in real property in the manner provided by 10 V.S.A. Chapter 155. Rights or interests in real property acquired by the Secretary through transactions funded in whole or in part by the Vermont Housing and Conservation Board are deemed as accepted by the Governor. (Added 1987, No. 277 (Adj. Sess.), § 5; amended 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 75, § 4.)

§ 15. Administrative penalties

(a) In addition to other penalties provided by law, the Secretary may assess administrative penalties, not to exceed \$1,000.00, for each violation of this title and Titles 9 and 20, unless a higher administrative penalty amount is provided for therein.

(b) In determining the amount of the penalty to be assessed under this section, the Secretary may give consideration to one or more of the following:

(1) the degree of actual and potential impact on public health, safety, and welfare resulting from the violation;

(2) the presence of mitigating or aggravating circumstances;

(3) whether the violator has been warned or found in violation of the same provisions of law in the past;

(4) the economic benefit gained by the violation;

(5) the deterrent effect of the penalty;

(6) the financial condition of the violator.

(c) Each violation may be a separate and distinct offense and, in the case of a continuing violation, each day's continuance may be deemed to be a separate and distinct offense. In no event shall the maximum amount of the penalty assessed under this section exceed \$25,000.00.

(d) In addition to the administrative penalties authorized by this section, the Secretary may recover the costs of investigation, which shall be credited to a special fund and shall be available to the Agency to offset these costs.

(e) Any party aggrieved by a final decision of the Secretary may appeal de novo to the Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing a civil collection action in any District or Superior Court. (Added 1989, No. 49, § 1; amended 1989, No. 183 (Adj. Sess.), § 2; 1991, No. 79, § 1a; 1991, No. 228 (Adj. Sess.), § 4; 1991, No. 261 (Adj. Sess.), § 5; 1995, No. 68 (Adj. Sess.), § 3; 1995, No. 128 (Adj. Sess.), § 2; 1997, No. 130 (Adj. Sess.), § 1; 1999, No. 49, § 102; 1999, No. 100 (Adj. Sess.), § 1, eff. May 5, 2000; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 16. Notice and fair hearing requirements

(a) The Secretary shall use the following procedures in assessing the penalty under section 15 of this title: the alleged violator shall be given an opportunity for hearing after reasonable notice and the notice shall be served by personal service or by certified mail sent to the last address of record on file with the Agency. If the alleged violator is not an applicant for or holder of a license, permit, registration, or certification issued by the Agency, the notice shall be served by personal service or by certified mail, return receipt requested. The notice shall include:

- (1) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (2) A statement of the matter at issue, including reference to the particular statute or administrative rule allegedly violated and a factual description of the alleged violation.
- (3) The amount of the proposed administrative penalty and required corrective action, abatement, or mitigation.
- (4) A warning that the decision shall become final and the penalty shall be imposed if no hearing is requested within 15 days of service of the notice. The notice shall specify the requirements that must be met in order to avoid being deemed to have waived the right to a hearing, or the manner of payment if the person elects to pay the penalty and waive a hearing.

(b) Any person who receives notification pursuant to this section shall be deemed to have waived the right to a hearing unless, within 15 days of the receipt of the notice, the person requests a hearing in writing. If the person waives the right to a hearing, the Secretary shall issue a final order finding the person in default and imposing the penalty and any required corrective action, abatement, or mitigation. A copy of the final default order shall be served upon the violator by certified mail, return receipt requested, or by personal service.

(c) When an alleged violator requests a hearing in a timely fashion, the Secretary shall hold the hearing pursuant to 3 V.S.A. Chapter 25. (Added 1989, No. 49, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 75, § 2.)

§ 17. Collections

(a) The Secretary may collect an unpaid administrative or civil penalty by filing a civil collection action in any Superior Court or through any other means available to State agencies.

(b) The Secretary may, subject to 3 V.S.A. Chapter 25, suspend any license, certificate, registration, or permit issued pursuant to his or her authority for failure to pay a penalty under this Chapter more than 45 days after the penalty was imposed by order and served. (Added 1989, No. 49, § 3; amended 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 75, § 3.)

§ 18. Certificate of free sale

(a) The Secretary is hereby authorized to make available certificates of free sale to applicants who manufacture or produce Vermont food regulated by the Agency for the limited purpose of facilitating the shipment of such products for sale in foreign countries.

(b) The Agency may adopt rules for the issuance of such certificates.

(c) The Agency shall assess a fee of \$30.00 per certificate to offset administrative costs. (Added 1995, No. 184 (Act. Sess.), § 1; amended 1999, No. 49, § 103; 2003, No. 42, § 2, eff. May 27, 2003; 2015, No. 149 (Adj. Sess.), § 2.)

§ 19. Emergency livestock feed program

(a) An emergency livestock feed program is established. The Secretary of Agriculture, Food and Markets is hereby authorized to administer an emergency livestock feed program to distribute funds to farmers who live in a county designated a natural disaster area by presidential declaration.

(b) The Secretary shall adopt rules to implement this program, and to disburse funds from time to time appropriated by the General Assembly. The rules shall include an application format, review process, eligibility criteria, and payment rates.

(c) The Secretary may recoup program payments from an individual who makes a fraudulent claim to the program and may issue an administrative penalty under section 15 of this title to a claimant for each violation of this section or rule adopted under its provisions. (Added 1997, No. 66 (Adj. Sess.), § 59, eff. Feb. 20, 1998; amended 1999, No. 1, § 98, eff. March 31, 1999; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 20. Vermont Large Animal Veterinarian Educational Loan Repayment Fund

(a) There is created a special fund to be known as the Vermont Large Animal Veterinarian Educational Loan Repayment Fund that shall be used for the purpose of ensuring a stable and adequate supply of large animal veterinarians in regions of the State as determined by the Secretary. The Fund shall be established and held separate and apart from any other funds or monies of the State and shall be used and administered exclusively for the purpose of this section. The money in the Fund shall be invested in the same manner as permitted for investment of funds belonging to the State or held in the Treasury.

(b) The Fund shall consist of:

(1) sums appropriated or transferred to it from time to time by the General Assembly, the State Emergency Board, or the Joint Fiscal Committee when the General Assembly is not in session;

(2) interest earned from the investment of Fund balances; and

(3) sums from any other public or private source accepted for the benefit of the Fund.

(c) The Agency shall administer the Fund and make sums available for loan repayment awards. The Agency may contract with a Vermont nonprofit entity for administration of the program, which shall administer awards in compliance with the requirements of Section 108(f) of the Internal Revenue Code. (Added 2009, No. 44, § 21, eff. May 21, 2009; amended 2011, No. 52, § 39, eff. May 27, 2011.)

§ 21. Authority to address public health hazards and food safety issues

(a) As used in this section:

- (1) "Adulterated" has the same meaning as in 18 V.S.A. § 4059 and shall include adulteration under rules adopted under 18 V.S.A. Chapter 82.
- (2) "Emergency" means any natural disaster, weather-related incident, health- or disease-related incident, resource shortage, plant pest outbreak, accident, or fire that poses a threat or may pose a threat, as determined by the Secretary, to health, safety, the environment, or property in Vermont.
- (3) "Farm" means a site or parcel on which farming is conducted.
- (4) "Farming" has the same meaning as in 10 V.S.A. § 6001(22).
- (5) "Public health hazard" means the potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. In determining whether a health hazard is public or private, the Secretary shall consider at least the following factors:
 - (A) the number of persons at risk;
 - (B) the characteristics of the person or persons at risk;
 - (C) the characteristics of the condition or agent that is the source of potential harm;
 - (D) the availability of private remedies;
 - (E) the geographical area and characteristics thereof where the condition or agent that is the source of the potential harm or the receptors exists; and
 - (F) the policy of the Agency of Agriculture, Food and Markets as established by rule or procedure.
- (6) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.
- (7) "Secretary" means the Secretary of Agriculture, Food and Markets.
 - (b) The Secretary shall have the authority to:
 - (1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard or protect the environment, including:
 - (A) Expending up to \$25,000.00 in funding from the Agency of Agriculture, Food and Markets' budget to remediate the issue when there are no other financial resources available, and the Secretary has determined the expenditure is necessary for either public health or the environment.
 - (B) The Secretary may attempt to recover monies expended under subdivision (b)(1)(A) of this subsection from the responsible party;
 - (2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, Pub. L. No. 111-353, to farms, farm products, or value-added products produced in the State. (Added 2013, No. 159 (Adj. Sess.), § 12, eff. May 28, 2014; amended 2017, No. 180 (Adj. Sess.), § 1, eff. May 28, 2018; 2017, No. 194 (Adj. Sess.), § 17, eff. May 30, 2018; 2019, No. 64, § 15.)

Vermont Statutes: 6 V.S.A. §§ 911 – 929 (Chapter 81)

§ 911. Definitions

As used in this Chapter:

(1) "Active ingredient" means:

(A) in the case of an economic poison other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, or repel insects, nematodes, fungi, rodents, weeds, or other pests;

(B) in the case of plant regulators, any ingredient which will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of plants or the produce thereof;

(C) in the case of a defoliant, any ingredient which will cause the foliage to drop from a plant;

(D) in the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Secretary" means the Secretary of Agriculture, Food and Markets.

(5) "Economic poison" means:

(A) any substance produced, distributed, or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, which the Secretary shall declare to be a pest;

(B) any substance produced, distributed, or used as a plant regulator, defoliant, or desiccant.

(6) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast, and bacteria, except those on or in living humans or other animals.

(7) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(8) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(9) "Inert ingredient" means an ingredient which is not an active ingredient.

(10) "Ingredient statement" means:

(A) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(B) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison. However, if the preparation is highly toxic to humans (determined as provided in section 913 of this title), subdivision (A) of this subdivision (10) shall apply; or

(C) A statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic, to be made in addition to the statement required by subdivision (A) or (B) of this subdivision (10), in case the economic poison contains arsenic.

(11) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(12) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever.

(13) "Label" means the written, printed, or graphic matter on, or attached to, the economic poison, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison.

(14) "Labeling" means all labels and other written, printed, or graphic matter:

(A) upon the economic poison or any of its containers or wrappers;

(B) accompanying the economic poison at any time; or

(C) to which reference is made on the label or in literature accompanying the economic poison, except when accurate, non-misleading reference is made to current official publications of the U.S. Department of Agriculture or of the Interior, the U.S. Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of economic poisons.

(15) "Misbranded" shall apply:

(A) To any economic poison if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients that is false or misleading in any particular.

(B) To any economic poison:

(i) if it is an imitation of or is offered for sale under the name of another economic poison;

(ii) if its labeling does not bear a U.S. Environmental Protection Agency registration number or a valid registration number issued by the Secretary under this Chapter;

(iii) if the labeling accompanying it does not contain instructions for use that are necessary and, if complied with, adequate for the protection of the public;

(iv) if the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to prevent injury to living humans and the total environment;

(v) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statements on the immediate container cannot be clearly read, of the retail package which is presented or displayed under the customary conditions of purchase;

(vi) if any word, statement, or other information required by or under the authority of this Chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) if in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied; or

(viii) if in the case of a plant regulator, defoliant, or desiccant, when used as directed, it shall be injurious to living humans or other vertebrate animals or vegetation to which it is applied. Provided, that physical or physiological effects on plants or parts thereof shall not be considered to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(16) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(17) "Registrant" means the person registering any economic poison pursuant to the provisions of this Chapter.

(18) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal that the Secretary shall declare to be a pest.

(19) "Weed" means any plant that grows where not wanted.

(20) "Nematocide" means any substance produced, distributed, or used for preventing, destroying, or repelling nematodes.

(21) "Plant regulator" means any substance produced, distributed, or used for the purposes of accelerating or retarding the rate of growth or rate of maturation, or otherwise altering the behavior of plants but shall not include substances produced, distributed, or used for plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(22) "Defoliant" means any substance produced, distributed, or used for causing the foliage to drop from a plant, with or without causing abscission.

(23) "Desiccant" means any substance produced, distributed, or used for artificially accelerating the drying of plant tissues.

(24) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(25) "Agricultural seed" has the same meaning as in section 641 of this title.

(26) "Neonicotinoid pesticide" means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals, including:

(A) imidacloprid;

(B) nithiazine;

(C) acetamiprid;

(D) clothianidin;

(E) dinotefuran;

(F) thiacloprid;

(G) thiamethoxam; and

(H) any other chemical designated by the Secretary by rule.

(27) "Treated article" or "treated article pesticide" shall have the same meaning as "treated article" in section 1101 of this title.

(28) "Treated article seed" means an agricultural seed, flower seed, or vegetable seed that is a treated article pesticide. (Amended 1961, No. 74, §§ 1-4, eff. April 19, 1961; 1975, No. 42, § 1; 1981, No. 117 (Adj. Sess.); 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 113 (Adj. Sess.), § 20; 2019, No. 35, § 1.)

§ 912. Administration

Jurisdiction in all matters pertaining to the distribution, sale, and transportation of economic poisons is by this Chapter vested exclusively in the Secretary. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 913. Powers of Secretary

The Secretary may, after opportunity for a hearing:

(1) declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances;

(2) determine whether economic poisons are highly toxic to humans; and

(3) determine standards of coloring or discoloring for economic poisons, and subject economic poisons to the requirements of subdivision 919(4) of this title. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 914. Delegation of duties

All authority vested in the Secretary by virtue of the provisions of this Chapter may with like force and effect be executed by such employees of the Agency of Agriculture, Food and Markets as the Secretary may from time to time designate for such purpose. (Amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 915. Regulations

The Secretary, after due public hearing, may make appropriate rules and regulations for carrying out the provisions of this Chapter, including rules and regulations providing for the collection and examination of samples of economic poisons. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 916. Cooperation with State and federal agencies

The Secretary is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this State, the U.S. Department of Agriculture or Environmental Protection Agency, and any other state or agency thereof for the purpose of carrying out the

provisions of this Chapter and securing uniformity of regulations. (Amended 1975, No. 42, § 2; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 917. Uniformity between State and federal regulations

In order to avoid confusion, endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the Secretary is authorized to adopt rules, applicable to and in conformity with the primary standards established by this Chapter, as have been or may be prescribed by the U.S. Environmental Protection Agency with respect to economic poisons. (Amended 1975, No. 42, § 3; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 918. Registration

(a) Every economic poison that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the Office of the Secretary, and such registration shall be renewed annually; provided that products that have the same formula are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplemental statements during the current period of registration. It is further provided that any economic poison imported into this State, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of this Chapter, may, in the discretion of the Secretary, be exempted from registration under this Chapter when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the Secretary a statement including:

- (1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.
- (2) The name of the economic poison.
- (3) A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including directions for use.
- (4) If requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information that is different from that furnished when the economic poison was registered or last reregistered.

(b) The registrant shall pay an annual fee of \$200.00 for each product registered, and \$185.00 of that amount shall be deposited in the special fund created in section 929 of this title. Of the registration fees collected under this subsection, \$15.00 of the amount collected shall be

deposited in the Agricultural Water Quality Special Fund under section 4803 of this title. Of the registration fees collected under this subsection, \$25.00 of the amount collected shall be used to offset the additional costs of inspection of economic poison products and to provide educational services, training, and technical assistance to pesticide applicators, beekeepers, and the general public regarding the effects of pesticides on pollinators and the methods or best management practices to reduce the impacts of pesticides on pollinators. The annual registration year shall be from December 1 to November 30 of the following year.

(c) The Secretary, whenever he or she deems it necessary in the administration of this Chapter, may require the submission of the complete formula of any economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of sections 919 and 920 of this title, he or she shall register the article.

(d) If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Chapter, he or she shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Chapter so as to afford the registrant an opportunity to make the necessary corrections. In order to protect the public, the Secretary, on his or her own motion, may, at any time, cancel the registration of an economic poison which fails to meet the requirements of this section. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under sections 919 and 920 of this title.

(e) Notwithstanding any other provision of this Chapter, registration is not required in the case of an economic poison shipped from one plant within this State to another plant within this State operated by the same person.

(f) The Secretary shall register as a restricted use pesticide any neonicotinoid pesticide labeled as approved for outdoor use that is distributed, sold, sold into, or offered for sale within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State, provided that the Secretary shall not register the following products as restricted use pesticides, unless classified under federal law as restricted use products:

(1) pet care products used for preventing, destroying, repelling, or mitigating fleas, mites, ticks, heartworms, or other insects or organisms;

(2) personal care products used for preventing, destroying, repelling, or mitigating lice or bedbugs;

(3) indoor pest control products used for preventing, destroying, repelling, or mitigating insects indoors; and

(4) treated article seed. (Amended 1961, No. 74, § 5, eff. April 19, 1961; 1965, No. 90, §§ 1, 2; 1975, No. 39, § 1, eff. Dec. 1, 1975; 1985, No. 72, § 2, eff. May 20, 1985; 1987, No. 71, § 1; amended 1995, No. 125 (Adj. Sess.), § 1; 1999, No. 49, § 115; 1999, No. 141 (Adj. Sess.), §

2; 2003, No. 42, § 2, eff. May 27, 2003; 2005, No. 72, § 21; 2009, No. 134 (Adj. Sess.), § 11; 2013, No. 72, § 19; 2015, No. 64, § 11; 2015, No. 149 (Adj. Sess.), § 11; 2019, No. 35, § 2.)

§ 919. Prohibited distribution; sale or transportation

It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any economic poison which has not been registered pursuant to the provisions of section 918 of this title, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring registration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

(A) the name and address of the manufacturer, registrant, or person for whom manufactured;

(B) the name, brand, or trademark under which the article is sold; and

(C) the net weight or measure of the content subject, however, to such reasonable variations as the Secretary may permit.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to humans, determined as provided in section 913 of this title, unless the label shall bear, in addition to any other matter required by this Chapter:

(A) the skull and crossbones;

(B) the word "poison" prominently, in red, on a background of distinctly contrasting color; and

(C) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Chapter, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such

coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the Secretary may exempt any economic poison, to the extent that it is intended for a particular use or uses, from the coloring or discoloring required or authorized by this section, if he or she determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 920. Other prohibitions

(a) It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Chapter.

(b) It shall be unlawful for any person to use for his or her own advantage or to reveal, other than to the Secretary or proper officials or employees of the State or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 918 of this title. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 921. Seizure and condemnation

Any economic poison that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be liable to be proceeded against in any Superior Court of the State where it may be found and seized for confiscation by process of libel for condemnation:

- (1) if it is adulterated or misbranded;
- (2) if it has not been registered under the provisions of section 918 of this title;
- (3) if it fails to bear on its label the information required by this Chapter; or
- (4) if it is a white powder economic poison and is not colored as required under this Chapter. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 2017, No. 113 (Adj. Sess.), § 21.)

§ 922. Disposition after condemnation

If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided, that the article shall not be sold contrary to the provisions of this Chapter; and provided, further, that upon payment of costs and execution and delivery of a good

and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

§ 923. Procedure for prosecuting violations

The examination of economic poisons shall be made under the direction of the Secretary for the purpose of determining whether they comply with the requirements of this Chapter. If it shall appear from such examination that an economic poison fails to comply with the provisions of this Chapter, and the Secretary contemplates instituting criminal proceedings against any person, the Secretary shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his or her views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the Secretary it shall appear that the provisions of the Chapter have been violated by such person, then the Secretary shall refer the facts to the State's Attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. However, nothing in this Chapter shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of the Chapter whenever he or she believes that the public interests will be best served by a suitable notice of warning in writing. (Amended 2003, No. 42, § 2, May 27, 2003.)

§ 924. Duty of state's attorney

It shall be the duty of each State's Attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the Superior Court without delay. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 925. Repealed. 2009, No. 33, § 83(c)(4).

§ 926. Penalties

(a) Any person violating subdivision 919(1) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$100.00.

(b) Any person violating any provision of this Chapter other than subdivision 919(1) of this title shall be guilty of a misdemeanor and upon a conviction shall be fined not more than \$100.00 for the first offense and upon conviction for a subsequent offense shall be fined not more than \$200.00; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided further, that in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of this Chapter, such registrant shall, upon conviction of a violation of any provision of this Chapter other than subdivision 919(1) of this title, be fined not more than \$200.00 or imprisoned for not more than one year, or be subject to both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article the registration of which has been terminated, may not again be registered unless the article, its labeling, and other

material required to be submitted appear to the Secretary to comply with all the requirements of this Chapter.

(c) Notwithstanding any other provisions of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of section 918 of this title, he or she shall be fined not more than \$200.00 or imprisoned for not more than one year, or both. (Amended 2003, No. 42, § 2, May 27, 2003.)

§ 927. Exceptions from penalties

The penalties provided for violations of section 919 of this title shall not apply to:

(1) Any carrier while lawfully engaged in transporting an economic poison within this State, if such carrier shall, upon request, permit the Secretary or his or her designated agent to copy all records showing the transactions in and movement of the articles.

(2) Public officials of this State and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of an economic poison for experimental use only:

(A) by or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of economic poisons; or

(B) by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only-Not to be sold," together with the manufacturer's name and address. However, if a written permit has been obtained from the Secretary, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit. (Amended 2003, No. 42, § 2, May 27, 2003.)

§ 928. Foreign exports

Articles shall not be deemed in violation of this Chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this Chapter shall apply.

§ 929. Revolving fund

(a) There is hereby created a special pesticide monitoring revolving fund. Monies collected pursuant to subsection 918(b) of this title shall be deposited in the fund. The Secretary may use monies deposited in the fund for the following purposes:

(1) For the purpose of monitoring pesticides, conducting pesticide educational activities, researching alternatives to the use of pesticides for pest control, and implementing pesticide reduction strategies pursuant to the provisions of section 1110 of this title.

(2) To pay salaries of full and part-time employees involved in monitoring pesticides.

(3) To purchase necessary pesticide monitoring and analytical equipment.

(4) To defray the cost of necessary operating expenses.

(5) To contract with other public or private entities in order to implement portions of this plan or to conduct any special studies necessary to ascertain the impact of pesticides on the environment.

(6) To defray the costs of a collection program for obsolete and unwanted pesticides.

(7) To implement and administer the provisions of this title and any other provisions of law relating to pesticides.

(b) [Repealed.] (Added 1985, No. 72, § 3, eff. May 20, 1985; amended 1987, No. 71, § 2; 1995, No. 125 (Adj. Sess.), § 2; 1999, No. 49, § 116(1); 2003, No. 42, § 2, May 27, 2003; 2005, No. 72, § 22.)

Vermont Statutes: 6 V.S.A. §§ 1101 – 1113 (Chapter 87)

§ 1101. Definitions

As used in this Chapter unless the context clearly requires otherwise:

- (1) "Secretary" shall have the meaning stated in subdivision 911(4) of this title.
- (2) "Cumulative" when used in reference to a substance means that the substance so designated has been demonstrated to increase twofold or more in concentration if ingested or absorbed by successive life forms.
- (3) "Dealer or pesticide dealer" means any person who regularly sells pesticides in the course of business, but not including a casual sale.
- (4) "Economic poison" shall have the meaning stated in subdivision 911(5) of this title.
- (5) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganisms, which the Secretary declares as being injurious to health or environment. Pest shall not mean any viruses, bacteria, or other microorganisms on or in living humans or other living animals.
- (6) "Pesticide" for the purposes of this Chapter shall be used interchangeably with "economic poison."
- (7) "Treated article" means a pesticide or class of pesticides exempt under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1975, No. 39, § 2; 1987, No. 71, § 3; 2003, No. 42, § 2; 2015, No. 99 (Adj. Sess.), § 1.)

§ 1102. Pesticide Advisory Council established

(a) The Pesticide Advisory Council is established and attached to the Agency of Agriculture, Food and Markets. Members of the Council, except those public members appointed by the Governor, shall be qualified individuals who, by experience and training, are knowledgeable in one or more areas associated with pest control. The Secretary, or Commissioner as the case may be, shall represent each Department or Agency on the Council:

- (1) The Department of Fish and Wildlife.
- (2) The Department of Environmental Conservation.
- (3) The Agency of Agriculture, Food and Markets.
- (4) The Department of Forests, Parks and Recreation.
- (5) The Department of Health.
- (6) The Agency of Transportation.
- (7) One physician from the College of Medicine of the University of Vermont nominated by its dean.

- (8) One representative in the area of entomology, plant pathology, or weed control from the University of Vermont Extension to be named by the Director.
- (9) One representative in the area of pesticide research from the Vermont Agricultural Experiment Station named by the Dean of the College of Agriculture and Life Sciences of the University of Vermont.
- (10) Two members appointed by the Governor. In choosing these members, the Governor shall consider people who have knowledge and qualities that could be useful in pursuing the goals and functions of the Council. One of these members shall have practical experience in commercial agricultural production and shall be appointed in consultation with the Secretary.
- (b) Each State or university member of the Council shall serve until his or her resignation or until his or her successor is appointed or otherwise designated in accordance with this Chapter. Public members of the Pesticide Advisory Council shall be appointed for terms of three years, except initially, appointments shall be made such that one member shall serve for a term of one year and one for a term of two years.
- (c) The Chair of the Council shall be designated by the Governor and serve as his or her personal representative and shall coordinate activities on the Council.
- (d) The functions of the Council are:
- (1) To review insect, plant disease, weed, nematode, rodent, noxious wildlife, and other pest control programs within the State and to assess the effect of such programs on human health and comfort, natural resources, water, wildlife, and food and fiber production and, where necessary, make recommendations for greater safety and efficiency.
 - (2) To serve as the advisory group to State agencies having responsibilities for the use of pesticides as well as to other State agencies and departments.
 - (3) To advise the Executive Branch of State government with respect to legislation concerning the use of various pest control measures.
 - (4) To suggest programs, policies, and legislation for wise and effective pesticide use that lead to an overall reduction in the use of pesticides in Vermont consistent with sound pest or vegetative management practices.
 - (5) To recommend studies necessary for the performance of its functions as established under this section.
 - (6) To recommend targets with respect to the State goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices and to measure the State's progress in reaching those targets and attaining that goal. The targets should be designed to enable evaluation of multiple measures of pesticide usage, use patterns, and associated risks. Targets should take into consideration at a minimum the following:
 - (A) reducing the amount of acreage where pesticides are used;
 - (B) reducing the risks associated with the use of pesticides;

- (C) increasing the acreage managed by means of integrated pest management techniques;
- (D) decreasing, within each level of comparable risk, the quantity of pesticides applied per acre; and
- (E) making recommendations regarding the implementation of other management practices that result in decreased pesticide use.

(7) To recommend to the Secretary policies, proposed rules, or legislation for the regulation of the use of a treated article when the Council determines that use of the treated article will have a hazardous or long-term deleterious effect on the environment in Vermont, presents a likely risk to human health, or is dangerous. In developing recommendations under this subdivision, the Council shall review:

- (A) alternatives available to a user of a treated article; and
- (B) the potential effects on the environment or risks to human health from use of the available alternatives to a treated article.

(e) The Council shall meet semiannually, once in the fall and once in the spring. Meetings at other times may be called by the Governor, by the Chair, or by a member of the Council. Attendance at Council meetings shall not be required of the commissioners of departments within the Agency of Natural Resources or their designees; however, at least one of these commissioners or the commissioner's designee shall attend each meeting of the Council. The Council's proceedings shall be open to the public and its deliberations shall be recorded and made available to the public, along with its work product. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1987, No. 71, § 4; 1987, No. 76, § 18; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 79, § 4; 1995, No. 189 (Adj. Sess.), § 1; 1999, No. 141 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003; 2009, No. 33, § 12; 2015, No. 11, § 5; 2015, No. 99 (Adj. Sess.), § 2; 2019, No. 61, § 14.)

§ 1103. Regulation by Secretary

(a) General authority. The Secretary shall have responsibility for regulating and controlling the sale, use, storage, treatment, and disposal of pesticides and pesticide wastes, in order to promote the public health, safety, and welfare and protect agricultural and natural resources. In the performance of such duties the Secretary shall act upon the advice of the Pesticide Advisory Council, and subject to the approval of the Governor.

(b) Management program. By January 1, 1993, the Secretary, in conjunction with the committee described in this section, shall make recommendations to the Vermont legislature regarding a management program for unwanted, obsolete, and waste quantities of pesticides. These recommendations shall be of a nature that, if implemented, will provide for the proper management of these pesticides and address all pesticides sold into the State of Vermont. These recommendations shall include recommendations for funding.

(c) Management program committee. The committee convened by the Secretary to make the recommendations required under this section shall be composed of at least the following members, appointed by the Secretary:

- (1) a representative from the Agency of Natural Resources;
- (2) a representative from a regional planning commission;
- (3) a representative from a farmer group;
- (4) a representative from an environmental group;
- (5) a representative from the manufacturers of pesticides;
- (6) a representative from a retail sales association;
- (7) a representative from the Department of Health;
- (8) a representative of the general public.

(d) Management program recommendations. Recommendations for the program under this section shall include, at least, recommendations related to the following:

- (1) responsibility of manufacturers of pesticides;
- (2) responsibility of retailers and wholesalers;
- (3) responsibility of consumers;
- (4) responsibility of government;
- (5) public education efforts to inform consumers;
- (6) efforts to prioritize collection of pesticides;
- (7) efforts to divert pesticides from the municipal waste stream;
- (8) opportunities to use up pesticides in the possession of consumers;
- (9) funding of all program elements;
- (10) identification of characteristics of pesticides which should be banned from landfill disposal;
- (11) date at which pesticides should be banned from landfill disposal. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1981, No. 53, § 1; 1991, No. 210 (Adj. Sess.), § 2; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1104. Powers of Secretary

The Secretary in furtherance of the purposes of this Chapter may:

- (1) Regulate and license the display, sale, application, use, storage, treatment, and disposal of economic poisons and their waste products and establish restrictions on the use, application, storage, treatment, and disposal of economic poisons and their waste products which are deemed toxic or hazardous to humans, animals, or the natural environment.

(2) Examine, test, and approve any apparatus or equipment used in dispensing, applying, storing, treating, or disposing of economic poisons or their waste products. Such equipment shall be in good working order and free of defective parts, and equipment used for applying economic poisons shall be capable of dispensing prescribed amounts of pesticides to the target without undue hazard to the operator or nontarget areas.

(3) Adopt standards, procedures, and requirements relating to the display, sale, use, application, treatment, storage, or disposal of economic poisons or their waste products and limit the conditions under which the same may be sold, used, treated, stored, or disposed of. The use of pesticides which the Secretary finds to have a hazardous or long-term deleterious effect on the environment shall be restricted, and permits shall be required for their use in accordance with rules adopted by the Secretary. Specific uses of certain pesticides deemed to present a likely risk to human health or be dangerous shall be restricted by rule or by ordering the deletion of certain uses for registered pesticides from the label on pesticide products to be marketed in the State. Approved methods for the safe display, storage, and shipping of poisonous pesticides shall be prescribed and enforced. Procedures for the disposal of pesticides which are illegal, obsolete, surplus, or in damaged containers shall be adopted and enforced with the cooperation of the Agency of Natural Resources.

(4) Enter any premises, public or private, as may be necessary to carry out the provisions of this Chapter.

(5) Issue licenses, permits, and certificates pursuant to this Chapter.

(6) Require pesticide dealers and applicators to keep records of the sale and use of pesticides deemed particularly toxic or hazardous by the Pesticide Advisory Council and to have such records available for examination by the Secretary or his or her agents at his or her request; the accounting for kinds and amounts of such economic poisons, to whom sold, and where and when used, and the reporting of incidents resulting from accidental contamination or misapplication of pesticides which present a hazard to humans, animals, or the environment, may be required.

(7) [Repealed.]

(8) Revoke or suspend any license or certificate for failure to comply with this Chapter or any rule adopted under its authority, or for being subject to a final order imposing a civil penalty under 7 U.S.C. § 136 l or for being convicted under 7 U.S.C. § 136 l on due notice to the licensee or holder of the certificate with an opportunity for hearing if a written request for hearing is filed with the Secretary within five days of receipt of notice of a violation.

(9) Make, adopt, revise, and amend reasonable rules as he or she deems necessary with the advice of the Pesticide Advisory Council in order to carry out the provisions of this Chapter.

(10) Appoint assistants, subject to applicable laws and rules, to perform or assist in the performance of any duties or functions of the Secretary under this Chapter.

(11) Enter into reciprocal agreements with appropriate pesticide control agencies of other states or the federal government for the acceptance of licensing and certification of pesticide applicators and operators, provided their standards and administration are substantially equal to the standards established by the Secretary under the provisions of this Chapter and the rules adopted under this Chapter.

(12) Cooperate fully with the federal government or other agency in the operation of any joint federal-state programs concerning the rule of the application or use of pesticides, such programs, including the program promulgated by Public Law 92-516 of the 92nd Congress.

(13) Institute appropriate proceedings on behalf of the Agency to enforce this Chapter and any rules adopted pursuant to this Chapter. Whenever the Secretary believes that any person is in violation of the provisions of this Chapter or rules adopted pursuant to this Chapter, an action may be brought in the name of the Agency in a court of competent jurisdiction against the person to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions without bond, and other relief as may be necessary and appropriate for abatement of any violation.

(14) In any case in which the Secretary has authority to institute an action or proceeding under this Chapter, in lieu thereof he or she may accept an assurance of discontinuance of any violation of any of the statutes and rules specified in this Chapter, including schedules of abatement for a violation. Any assurance of discontinuance shall be prepared in writing with the assistance of the Attorney General. The assurance shall be signed by all parties, and at the discretion of the Secretary, the Attorney General shall submit the assurance of discontinuance to the Superior Court having jurisdiction over the subject matter and shall request that the presiding judge sign the document and issue it as an order of the court. Evidence of a violation of such assurance shall be prima facie proof of violation of a statute or rule specified in this Chapter as cited in the assurance. Prior to institution of any action or proceeding under this subdivision, the Secretary whenever he or she believes any person to be or to have been in violation of any statute or rule specified in this subdivision may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and the notice of intention to institute an action or proceeding against the person responsible for the violation. In that event, the Secretary shall provide the person within 30 days of the notice an opportunity to be heard and an opportunity to settle the matter by an assurance to discontinue prior to instituting an action or proceeding as provided for in this subdivision.

(15) Require correction of sources of pesticide contamination that threaten human health or the environment.

(16) Conduct a collection program for obsolete and unwanted pesticides.

(17) Make information reported to the Agency relative to the use of pesticides available to the public via the Internet or in any other way deemed appropriate, and may allow the required reporting of pesticide use data to be submitted electronically. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1975, No. 39, § 3; 1975, No. 220 (Adj. Sess.), § 10; 1981, No. 53, §§ 2, 4; 1987, No. 76, § 18; 1989, No. 257 (Adj. Sess.), § 8; 1991, No. 79, § 5; 1995, No. 125 (Adj. Sess.), § 3; 1999, No. 49, § 116(2); 1999, No. 141 (Adj. Sess.), § 3; 2003, No. 42, § 2, eff. May 27, 2003; 2015, No. 99 (Adj. Sess.), § 4; 2017, No. 74, § 8; 2017, No. 113 (Adj. Sess.), § 24.)

§ 1105. Use and sale of DDT prohibited

No person shall sell, use, or apply dichloro-diphenyl-trichloro-ethane, sometimes referred to as DDT, on or after December 31, 1971, except when the Secretary certifies that an emergency exists which requires its use. When the Secretary finds that an emergency exists and so certifies,

he or she shall prescribe the conditions under which and the period for which it may be used. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1105a. Treated articles; powers of Secretary; best management practices

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Pesticide Advisory Council, may adopt by rule:

(1) best management practices, standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(2) requirements for the response to or corrective actions for exigent circumstances or contamination from a treated article that presents a threat to human health or the environment;

(3) requirements for the examination or inspection of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(4) requirements for persons selling treated articles to keep or make available to the Secretary records of sale of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous; or

(5) requirements for reporting of incidents resulting from accidental contamination from or misuse of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous.

(b) At least 30 days prior to pre-filing a rule authorized under subsection (a) of this section with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837, the Secretary shall submit a copy of the draft rule to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry for review. (Added 2015, No. 99 (Adj. Sess.), § 3; amended 2017, No. 74, § 9.)

§ 1106. Financial responsibility

The Secretary may require from a licensee or an applicant for a license under this Chapter evidence of his or her financial ability to properly indemnify persons suffering damage from the use or application of economic poison, in the form of a surety bond, liability insurance, or cash deposit of at least \$1,000,000.00, but this section shall neither restrict nor enlarge the liability of any person under applicable laws. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 2003, No. 42, § 2, eff. May 27, 2003; 2013, No. 159 (Adj. Sess.), § 4.)

§ 1107. Penalty

Any person who violates any provision of this Chapter, the rules promulgated herein, or the terms or conditions of any permit, license, or certificate issued by the Secretary, shall be subject

to a fine not to exceed \$25,000.00 or imprisonment for not more than six months, or both. Each violation shall be a separate and distinct offense and, in the case of a continuing violation, the fine for each day's continuance thereof shall be increased by 10 percent over the amount accrued during the previous day, starting from the day the violator is served with notice of the violation. The service shall be by hand or by certified mail, return receipt requested. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1981, No. 53, § 3; 1987, No. 71, § 6; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1108. Construction with other laws

The provisions of 3 V.S.A. Chapter 25 shall apply to adoption of rules, notices, hearings, and other proceedings under this Chapter unless inconsistent with its provisions. The powers granted to the Secretary under this Chapter shall not limit, restrict, or suspend any similar powers the Secretary may have under other provisions of law and shall not limit or restrict any powers specifically granted to any other state agency. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1991, No. 210 (Adj. Sess.), § 5; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1109. Licensing retail dealers

The Secretary may adopt rules requiring persons selling Class C pesticides at retail to be licensed under this Chapter and may establish reasonable requirements for obtaining licenses. The license fee for a retail dealer shall be \$25.00 for one year or any part thereof for each store or place of business operated by the retail dealer. The license period shall be January 1 to December 31. (Added 1971, No. 177 (Adj. Sess.), § 5, eff. Jan. 1, 1973; amended 1989, No. 257 (Adj. Sess.), § 9; 2001, No. 143 (Adj. Sess.), § 37; 2003, No. 42, § 2, eff. May 27, 2003; 2015, No. 149 (Adj. Sess.), § 12; 2017, No. 74, § 10.)

§ 1110. Pesticide monitoring

The Secretary shall develop and implement a plan to monitor the use of pesticides registered in Vermont. The program shall include the cataloguing of available data and research conducted on the environmental and public health aspects of pesticides into a central information repository in order to facilitate public access to the accumulated information. The program shall be funded directly by a portion of the registration fee provided for in 6 V.S.A. § 918(b). (Added 1985, No. 72, § 4; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1111. Administrative penalties

(a) The Secretary may assess an administrative penalty, not to exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders, in any case in which he or she determines that an applicator, dealer, licensed company, or permit holder has done any of the following acts in violation of this Chapter or of the rules adopted under this Chapter:

- (1) sold pesticides without first obtaining the appropriate pesticide dealer license;
- (2) used pesticides without first obtaining the appropriate company license or applicator certificate;

(3) used a pesticide inconsistent with its labeling or in violation of the rules for the control of pesticides;

(4) failed to complete and submit a commercial applicator, company license, or pesticide dealer report;

(5) violated a cease and desist order;

(6) improperly disposed of pesticide products, dilutions, or rinsates; or

(7) violated the terms or conditions of a permit issued pursuant to this Chapter or pursuant to the rules adopted pursuant to this Chapter.

(b) In determining the amount of the penalty assessed under this section, the Secretary may give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the person, and the overall history of prior violations.

(c) The Secretary shall use the following procedure in assessing penalties:

(1) he or she shall issue a written notice of violation setting forth facts that would establish probable cause that a violation has occurred;

(2) the notice shall be served by personal service or by certified mail, return receipt requested;

(3) the notice shall advise the person of the right to a hearing. If a hearing is requested, it shall be conducted pursuant to 3 V.S.A. Chapter 25;

(4) the notice shall also state the proposed penalty and that if no hearing is requested, the decision shall become final and the penalty shall be imposed; and

(5) the recipient of the notice shall have 15 days from the date on which notice is received to request a hearing.

(d) Any party aggrieved by a final decision of the Secretary may appeal to a Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing a civil collection action in any District or Superior Court.

(e) The Secretary may, subject to the provisions of 3 V.S.A. Chapter 25, suspend any license, certificate, or permit issued pursuant to this Chapter for failure to pay a penalty under this section when that person has failed to pay the penalty within 60 days after the penalty becomes final. (Added 1987, No. 71, § 5; amended 1999, No. 49, § 118; 2003, No. 42, § 2, eff. May 27, 2003; 2017, No. 74, § 11.)

§ 1112. Licensing pesticide applicators; pesticide companies; dealers

(a) The Secretary may adopt rules requiring persons selling Class A and B pesticides to be licensed under this Chapter. In addition, the Secretary may adopt rules requiring companies that hire applicators or conduct pesticide applications to be licensed and applicators who use pesticides to be certified under this Chapter. The Secretary may establish reasonable

requirements for obtaining licenses and certificates. The fees for dealers, licensed companies, and applicator certificates under this Chapter shall be as follows:

- (1) Class A Dealer License-\$50.00;
 - (2) Class B Dealer License-\$50.00;
 - (3) Pesticide Company License-\$75.00;
 - (4) Commercial and Noncommercial Applicator Certification fee-\$30.00 per category or category with a maximum of \$120.00;
 - (5) Second and third time examination fee for dealer licenses and applicator certification-\$25.00;
 - (6) Private Applicator-\$25.00;
 - (7) State Government, Municipal, and Public Education Institution Applicators-\$30.00.
- (b) All license and certification fees shall be for one year or any part thereof for each dealer, licensed pesticide applicator company, or certified commercial and noncommercial applicator. The license and certification period shall be January 1 to December 31.

(c) Notwithstanding the fees provided in subsection (a) of this section, the Secretary shall exempt the federal government and its agencies and instrumentalities from license and certification fees. (Added 1999, No. 49, § 119; amended 2001, No. 143 (Adj. Sess.), § 38, eff. June 21, 2002; 2003, No. 42, § 2; 2009, No. 134 (Adj. Sess.), § 12; 2015, No. 149 (Adj. Sess.), § 13.)

§ 1113. Accessory on-farm businesses; pesticides; posting

When an agricultural pesticide is applied on a farm in an area in which an accessory on-farm business operates or conducts activity, the accessory on-farm business shall post the same warning signs that would be posted for agricultural workers under the rules of the U.S. Environmental Protection Agency adopted pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Chapter 6, subChapter II (environmental pest control). The manner and duration of posting shall be the same as under those rules. As used in this section:

- (1) "Accessory on-farm business" and "farm" shall have the same meaning as in 24 V.S.A. § 4412(11).
- (2) "Agricultural pesticide" means any pesticide labeled for use in or on a farm, forest, nursery, or greenhouse. (Added 2017, No. 143 (Adj. Sess.), § 3.)

Attachment 4. Standard Operating Procedures for Vermont Pesticide Applicator Certification Exams

Standard Operating Procedures for All Pesticide Applicator Certification Exams Vermont Agency of Agriculture, Food and Markets (VAAFMM) Pesticide Programs (12/2019)

Introduction

This document describes practical procedures for people administering and taking pesticide applicator certification exams for both commercial and private applicators. Its audiences include VAAFMM employees who administer pesticide applicator certification exams sessions as well as applicators taking exams.

Contents

- Pesticide applicator certification exams administered by VAAFMM employees;
- Certification Exam logistics;
- Who may administer pesticide applicator certification exams;
- Definition of the term “closed book;”
- Preparing for a pesticide applicator exam session;
- How to conduct a pesticide applicator certification exam session;
- Certification Exam session rules;
- Cheating during a certification exam.

Pesticide applicator certification exams currently administered by VAAFMM employees

- Private Applicator Certification
- Commercial/Non-Commercial Applicator Core
- Category 1: Agricultural Pest Control
 - (A) Plant
 - (B) Animal
- Category 2: Forest Pest Control
- Category 3: Ornamental and Turf Pest Control
 - (A) Ornamental and Shade Trees
 - (B) Turf
- Category 4: Seed Treatment
- Category 5: Aquatic Pest Control
- Category 6: Rights-of-way Pest Control
- Category 7: Industrial, Institutional, Structural, and Health Related Pest Control
 - (A) Industrial, Institutional, and Structural Pest Control
 - (B) Mosquito and other biting arthropods
 - (C) Food Processing Pest Control
 - (D) Wood and Fiber Product Pest Control
 - (E) Antimicrobial Pest Control

- Category 8: Public Health Pest Control
- Category 9: Regulatory Pest Control
- Category 10: Demonstration and Research Pest Control
- Category 11: Aircraft Pest Control

Pesticide applicator certification exams to be administered by VAAFM employees in the future

- Private Applicator
- Commercial/Non-Commercial Applicator Core
- Category 1: Agricultural Pest Control
 - (A) Plant
 - (B) Animal
 - (C) Apiculture
- Category 2: Forest Pest Control
- Category 3: Ornamental and Turf Pest Control
 - (A) Ornamental and Shade Trees
 - (B) Turf
- Category 4: Seed Treatment
- Category 5: Aquatic Pest Control
- Category 6: Rights-of-way Pest Control
- Category 7: Industrial, Institutional, Structural, and Health Related Pest Control
 - (A) Industrial, Institutional, and Structural Pest Control
 - (B) Mosquito and other biting arthropods
 - (C) Food Processing Pest Control
 - (D) Wood and Fiber Product Pest Control
 - (E) Antimicrobial Pest Control
 - (F) Mold Remediation
- Category 8: Public Health Pest Control
- Category 9: Regulatory Pest Control
- Category 10: Demonstration and Research Pest Control
- Category 11: Aircraft Pest Control
- Category 12: Soil Fumigation
- Category 13: Non-Soil Fumigation
- Category 14 Terrestrial Invasive Plants

Exam Logistics

Training materials and exams are reviewed to ensure they meet the federal requirements. Materials from NY/Cornell that are currently relied on are being updated and will be adopted when completed.

Exams are offered in Brattleboro, Rutland, St. Albans, St. Johnsbury, Derby, Williston and Montpelier. Directions to each location are on the exam schedule:

<https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs/pesticide-exam>.

There is no cost to sit for (take) certification exams, however there are re-take fees for failed exams and fees for obtaining certification are required.

Certification exam Re-takes: An individual that fails (score of less than 75%) a certification exam may re-take it, but there are waiting periods:

- A first failure has a one week waiting period;
- a second failure of the same certification exam has a 28-day waiting period;
- a third failure of the same certification exam has a one year (365-day) waiting period.

Retake fees (\$25.00) are required at each re-take certification exam. Passing scores of certification exams are valid for 365 days.

Registering for Exams

You may register for the exam in advance by contacting the Certification and Training Specialist at 802-828-3479.

Walk-ins are not permitted.

Please sign up for exams at least a week in advance.

A current, government-issued, picture ID is required to take the exam. If you are unable to make the certification exam, please notify the Certification and Training Specialist at 802-828-3479.

For each exam session, you may register for either the Core/Private Applicator, or a combination of the Core/Private Applicator and Category exams. You may take the Core Private Applicator by itself and take Category exam(s) later.

Certification examination Fees

Examination fees are nonrefundable. You may pay with cash, credit card, or check made out to VAAF. We can also provide an invoice for payment later.

The Core/Private Applicator exam is free. The fee for each category is \$30.00. If you fail any exam, you must pay a \$25 retake fee when you retake the exam.

About the Exams

The Core/Private Exam is 100 multiple choice questions, closed book, and based on the federal core and category standards as well as VAAF's pesticide laws and regulations. You must be able to read and obtain a score of at least a 75 to pass.

It is the responsibility of the applicator to have the correct and most up-to-date manuals.

Applicants are allowed three hours to complete their exams.

Vermont will review its examination materials to ensure coverage of core and category standards.

Who may administer pesticide applicator certification exams?

- VAAFM-approved exam administrators must be present during any pesticide applicator certification exam session.

Only persons taking the examinations and VAAFM personnel administering or assisting certification exam sessions may be present during an examination session. All other persons (visitors, spectators, work associates, commercial trainers, etc.) must remain outside the exam area until the exam session is completed. VAAFM prohibits an individual who is proctoring an examination from participating in the examination session as a candidate for certification or recertification.

Understanding the term “closed book”

Each pesticide applicator certification exam is written only in English, contains multiple-choice, true/false, short answer questions, and must be administered as a closed-book examination. The term “closed-book” means *each examinee must interpret exam questions and choose answers without assistance from any source.*

- An examinee may not refer to any reading materials except those accompanying the exam, such as product labels, the Appendix “A (2)” “Restricted Use Pesticides”, pest photos, and pest identification boxes.
- An examinee may not refer to any electronic devices, such as cell phones, digital cameras, and personal programmable calculators. Standard calculators are issued by exam administrators for all exams.
- No person may in any way aid or assist an examinee’s understanding of any exam question or its multiple-choice, true/false and short answer question during an exam session.

NOTE: During an exam session, an exam administrator may answer examinees’ questions about the mechanics of exam administration. (For example, explain how to properly mark answers on the answer sheet).

Preparing for a pesticide applicator exam session

Be prepared to answer clients’ common questions concerning the exams:

- *Are exams available in any languages other than English?* No. All exams are written in English only and translation to other languages is not legally allowed.
- *May I use notes, my personal calculator, or study manuals?* No. All exams are conducted as “closed-book.”
- *Do I need to show identification in order to take exams?* Yes. All exams require the examinee to bring and show their driver’s license or government-issued identification to the exam administrator prior to issuing the exam(s).

Prior to an exam session, determine:

- How many people will be taking exams?
- Which category exams will be needed?

How to conduct a pesticide applicator certification exam session

- Introduce yourself and briefly explain your role(s).
- To each examinee, distribute:
 - Exam(s) being taken;
 - Pesticide Applicator Certificate and/or Company License Application Form(s), (if necessary);
 - Pencils and/or pens;
 - Calculator.
- Allocate time at the beginning of the exam session for review of exam session rules and completion of necessary paperwork. Solicit questions about the rules and clarify any concerns that arise.

Exam session rules*

- No visitors. Only exam administrators and those taking exams are permitted.
- Food, beverages, and tobacco products are not permitted in the exam area.
- No cell phones, digital cameras, and personal programmable calculators can be used during the exam. Cell phones, beepers, pagers and other electronic devices **MUST** be turned off during the exam. Standard calculators will be issued by the exam administrator.
- Maximum time allowed for written exams is three hours (180 minutes).
- Seat examinees apart from each other (whenever possible, have them occupy alternate seats).
- During exam sessions, visits to the restroom must occur separately – one person in the restroom at a time.
 - When an exam is not in use, such as a restroom visit, the exam must be turned face down on the table.

Vermont policy requires exams be conducted closed-book (see previous section describing the meaning of “closed-book”).

- View the examinee’s driver’s license (or government-issued id) prior to issuing an exam.
 - If appropriate, assign alternate exam versions to adjacently seated examinees.
- After an examinee completes an exam, verify:
- The examinee returned all exam materials (exam, Pesticide Applicator certificate Application).
- Grade the exams and give results to attendee(s).

***Exam administrators reserve the right to terminate an exam and void an exam’s final score for failure to comply with any of these rules.**

Cheating during a certification exam

Examination cheating is the giving or taking of any information intended to influence the recipient's scored response to an exam question. Any evidence of cheating nullifies that examinee's score. If such an act cooperatively involves two examinees, then both are cheating.

VAAFM employees conducting pesticide applicator certification exam sessions are exam administrators. Hence, there is never a need for you to personally confront any examinee whom you think is acting inappropriately. Your judgement as an exam administrator has the full support of the VAAFM PHARM Director. Use the following procedure to deal with cheating observed during an examination session:

- Privately note the circumstances and the individual(s) involved.
- Allow the examinee(s) to complete and return his/her/their exam materials. Keep these papers separate from other examinees' materials.
- At your earliest convenience, inform the VAAFM PHARM Director of the incident, the examinee(s), and the exam(s) involved.

The VAAFM PHARM Director will request exam score nullification(s) for the identified examinee(s). The examinee and/or their employer will be contacted by phone or email of their failed exam grades once the examinee has left the building.

Attachment 5. Current Certificate, License, and Credential Examples

Government/Commercial Applicator Certificate

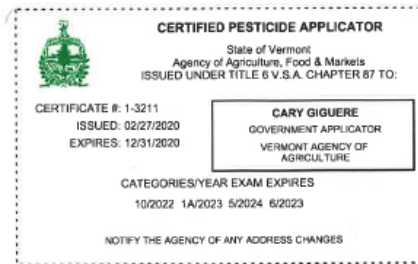
The Agency provides a glossy/thermal paper applicator certificate with a wallet sized cut-out card which must be signed and carried by the applicators. A company license is also issued, as required.

Front/back:



Commercial, Non-Commercial, and Government Applicators

Your certification is for one year. Each year, to be certified for the following year you must re-apply and submit a pesticide use report. Examinations in commercial categories are valid for 5 years. To extend the exam for another 5 years, you must earn 16 recertification credits in each desired category before the exam expires, or you will have to re-take the examination.



Private Applicators

Your certificate is valid for 5 years. To be recertified, you must earn 8 recertification credits in each desired commodity group before the expiration of your certificate, or re-take the exam.

▼ NOT VALID UNTIL SIGNED ▼

X

SIGNATURE OF APPLICATOR _____

COMMERCIAL CATEGORIES

- | | |
|------------------------|-----------------------------|
| 1A Agriculture Plant | 7A Structural & Rodent |
| 1B Agriculture Animal | 7B Mosquito & Biting Fly |
| 2 Forest | 7C Food Processing |
| 3A Ornam. & Shade Tree | 7D Wood Preservation |
| 3B Turf | 7E Cooling Tower |
| 4 Seed Treatment | 8 Public Health |
| 5 Aquatic | 9 Regulatory |
| 6 Right-of-Way | 10 Demonstration & Research |
| | 11 Aerial |

PRIVATE COMMODITIES

- | | |
|---------------------------|---------------------|
| 1 Animal & Livestock | 4 Plant Propagation |
| 2 Tree Fruit | 5 Aquaculture |
| 3 Vegetable & Small Fruit | 6 Field Crops |

VERMONT AGENCY OF AGRICULTURE, FOOD, & MARKETS
BUSINESS OFFICE L&R
116 STATE STREET MONTPELIER, VT
05620-2901 (802) 828-2436

2022

COMMERCIAL PESTICIDE APPLICATOR CERTIFICATE

ISSUED UNDER TITLE 6 V.S.A. CHAPTER 87 TO:

JORGE OCHOA
EHRlich PEST CONTROL
47 GAUTHIER DR STE 30
ESSEX JUNCTION VT 05452

Type: COMMERCIAL

Certificate #: 441-5827

Issued: 11/30/2021


Company/Organization: EHRlich PEST CONTROL

Expires: 12/31/2022

Categories/Year Exam Expires:

7A/2026 7C/2026

The individual named above is hereby certified as a pesticide applicator pursuant to Title 6, Chapter 87 of the Vermont Statutes Annotated, as amended, and regulations pertaining thereto until the expiration date of the certificate unless sooner revoked for cause. The individual thus certified shall comply with all statutes and regulations relating to the use of pesticides.



Secretary of Agriculture,
Food and Markets

**Commercial, Non-Commercial,
and Government Applicators**

Your certification is for one year. Each year, to be certified for the following year you must re-apply and submit a pesticide use report. Examinations in commercial categories are valid for 5 years. To extend the exam for another 5 years, you must earn 16 recertification credits in each desired category before the exam expires, or you will have to re-take the examination.

CERTIFIED PESTICIDE APPLICATOR
State of Vermont
Agency of Agriculture, Food & Markets
ISSUED UNDER TITLE 6 V.S.A. CHAPTER 87 TO:

CERTIFICATE # 441-5827 ISSUED: 11/30/2021 EXPIRES: 12/31/2022	<div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 80%;"> <p>JORGE OCHOA COMMERCIAL APPLICATOR EHRlich PEST CONTROL</p> </div>
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CATEGORIES/YEAR EXAM EXPIRES
7A/2026 7C/2026

NOTIFY THE AGENCY OF ANY ADDRESS CHANGES

Private Applicators

Your certificate is valid for 5 years. To be recertified, you must earn 8 recertification credits in each desired commodity group before the expiration of your certificate, or re-take the exam.

Private Applicator Certificate

VERMONT AGENCY OF AGRICULTURE, FOOD, & MARKETS
BUSINESS OFFICE L&R
116 STATE STREET MONTPELIER, VT
06620-2901 (802) 828-2436

2018-2022

PRIVATE PESTICIDE APPLICATOR CERTIFICATE

ISSUED UNDER TITLE 6 V.S.A. CHAPTER 87 TO:

DOUGLAS JOHNSTONE
57 RT 106
NORTH SPRINGFIELD VT 05150-9747

Type: PRIVATE

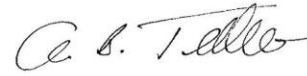
Certificate #: 2596

Issued: 12/28/2017

Commodity Groups: 1 3 4 6

Expires: 12/31/2022

The individual named above is hereby certified as a pesticide applicator pursuant to Title 6, Chapter 87 of the Vermont Statutes Annotated, as amended, and regulations pertaining thereto until the expiration date of the certificate unless sooner revoked for cause. The individual thus certified shall comply with all statutes and regulations relating to the use of pesticides.



Secretary of Agriculture,
Food and Markets

Commercial, Non-Commercial, and Government Applicators

Your certification is for one year. Each year, to be certified for the following year you must re-apply and submit a pesticide use report. Examinations in commercial categories are valid for 5 years. To extend the exam for another 5 years, you must earn 16 recertification credits in each desired category before the exam expires, or you will have to re-take the examination.

CERTIFIED PESTICIDE APPLICATOR

State of Vermont
Agency of Agriculture, Food & Markets
ISSUED UNDER TITLE 6 V.S.A. CHAPTER 87 TO:

CERTIFICATE #:	2596	DOUGLAS JOHNSTONE PRIVATE APPLICATOR
ISSUED:	12/28/2017	
EXPIRES:	12/31/2022	

COMMODITY GROUPS
1 3 4 6

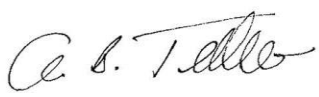
NOTIFY THE AGENCY OF ANY ADDRESS CHANGES

Private Applicators

Your certificate is valid for 5 years. To be recertified, you must earn 8 recertification credits in each desired commodity group before the expiration of your certificate, or re-take the exam.

Dealer License

AUBUCHON HARDWARE - FAIR HAVEN
95 AUBUCHON DRIVE
WESTMINSTER MA 01473

Issued: 12/02/2021	License Number: 673
Expires: 12/31/2022	Class: B
Vermont Agency of Agriculture, Food & Markets Pesticide Dealer's License for 2022	
The below-named individual is hereby granted a license to sell the class of pesticide listed above pursuant to Chapter 87, Title 6, VSA and regulations pertaining thereto until the expiration date of the license unless sooner revoked for cause.	
Wood, Sharon Aubuchon Hardware - Fair Haven Route 22a P O Box 424 Fair Haven VT 05743	
 Secretary of Vermont Agency of Agriculture, Food & Markets	Non-transferable – Please Post

Private Applicator Credential

UNIVERSITY
of NEW HAMPSHIRE
Cooperative Extension

Pesticide Training Certificate of Attendance

Seminar Title: 2021 New England Vegetable & Fruit Conference - virtual Date: December 14, 2021


Location: Berry Crops I NHDPC #22-1415

Applicator: Laura Johnson ID#4486

Address: 2307 Beaver Meadow Rd

City: Sharon State: Vt Zip Code: 05065

Applicator	Credit
Private	2.0
Commercial	2.0


Signature of Applicator

Digitally signed by Heather Bryant
Date: 2021.12.28 15:59:39 -05'00'
Heather Bryant
Signature of Seminar Sponsor

Save this certificate until the end of the year and then submit it along with your renewal paperwork to the NH Division of Pesticide Control, P. O. Box 2042, Concord, NH 03302-2042.