

federal register

MONDAY, JANUARY 13, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 8

PART III



ENVIRONMENTAL PROTECTION AGENCY

■

PESTICIDE PROGRAMS

**Submission and Approval of State
Plans for Certification of Commercial
and Private Applicators**

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 171]

[FRL 320-4; OPP-42001]

PESTICIDE PROGRAMS

Submission and Approval of State Plans For Certification of Commercial and Private Applicators

On October 9, 1974, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 36446) standards for the certification of applicators of restricted use pesticides as required by section 4(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973). The following proposed regulations are designed to ensure that State plans for the certification of applicators satisfy all the requirements of section 4 and are adequate to ensure compliance with the applicator certification standards.

During the development of this proposed rulemaking, there was extensive discussion, and some confusion, about the meaning of the terms "regulations" and "guidelines." At various times, both terms have been used in attempting to characterize the proposed rules. The impression may have been left that "regulations" have the force of law while "guidelines" do not. Whether called regulations, guidelines, or any other term, rules properly issued to implement a regulatory authority under Federal law (in this case FIFRA, as amended) have the force of law when the rules prescribe particular actions: "rules mean the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . ." [Administrative Procedure Act, 5 U.S.C. section 551(4)].

In response to numerous requests from the States and others it has been decided to title this proposed rulemaking regulations instead of guidelines. Both prescriptive and non-prescriptive rules are included in these regulations. Changing the title to regulations has not reduced the level of flexibility available in responding to these regulations.

STATUTORY AUTHORITY

Section 4(a)(2) of the amended FIFRA (86 Stat. 973) requires each State Governor desiring to certify applicator of pesticides to submit a State plan for that purpose and for the Administrator to approve the plan, or any modification thereof, if in his judgment the plan contains the following mandatory elements:

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Paragraph 4(a)(2) of the Act, further provides that any State certification program under this section shall be maintained in accordance with the State plan approved by the Administrator.

DISCUSSION OF REGULATIONS

Section 171.7 (a) *State Agency*. While this subparagraph provides for the designation of a State agency which will be the official liaison with EPA and which will be responsible for administering the plan throughout the State, the wording implicitly acknowledges that there may be more than one State agency regulating the activities of pesticide applicators. Accordingly, other cooperating agencies should be identified and their function and relation to the lead agency described. Data on numbers and qualifications of personnel involved should be given. This will enable EPA to evaluate the adequacy of the State plan in terms of qualified personnel as required by section 4(a)(2)(B) of the Act. All States have already designated a lead agency as a necessary first step in preparing for certification; but in most instances other cooperating agencies have not been identified.

Section 171.7 (b) *Legal Authority and Qualified Personnel*. While this requirement might be fulfilled by an affirmative statement that the designated agency responsible for administering the plan throughout the State, has or will have, the legal authority necessary to carry out the plan, there are differences of opinion regarding the legal authorities States will need to carry out the plan. Unless these authorities are identified, agreed to and understood by all concerned, EPA might be faced at a future date with the necessity of withdrawing approval of a plan under section 4(b) because a State lacked certain legal authorities which are considered necessary to carry out the intent of the Act.

It is recognized that many States do not currently have all legislative authorities needed to implement Section 4 and are now in the process of correcting deficiencies. The time schedule for this process must be developed, taking into consideration the mandatory date for the implementation of the Act and biennial sessions of legislatures in some States. To facilitate this process, these regulations include a provision for the contingency approval of a State plan pending enactment of the necessary legislation (See § 171.7(b)(1)(B)). However, the approval shall lapse if no legislation is enacted in the next legislative session (including any special session) following the date of contingent approval of the plan.

Section 171.7(c) *Adequate Funds*. Consideration was given to requesting detailed information on State funds, including a budget for the establishment and operation of the State certification program. Such information would be helpful to EPA in assessing State capa-

bilities to implement viable programs in accordance with the intent of the Act and State needs for supplemental support for their programs. However, in the interest of reducing the volume of required data from the States, the regulations will not require budgetary detail. It is anticipated that each State will provide sufficient information to satisfy EPA that adequate funding will be available. Further, the information regarding numbers, job titles and functions of personnel carrying out the plan will reflect one portion of the funds necessary for administering the plans. However, in doubtful situations, EPA may request more specific information as needed to make a decision in this area.

Section 171.7(d) *Reports*. The Act provides for the submission of reports related to the implementation and maintenance of State plans, thus providing the Administrator with the necessary assurances that approved plans are, indeed, functioning properly. Accordingly, the Reports section of the regulations is designed to provide for submission of appropriate and relevant data on an annual basis and, recognizing variation in budgetary years, at a time to be proposed by each individual State. Reporting provisions of this section are also designed to shed light on the magnitude and content of the program, the extent to which enforcement has been exercised and changes that are necessary to improve the effectiveness of various facets of the certification program. Annual reporting of changes necessary to improve certification program effectiveness does not preclude States from proposing changes to the Administrator at any other time, as the need may arise.

Section 171.7(e) *Conformity of Standards*. The standards for certification of applicators were designed to identify clearly what an individual should know to be determined to be competent. At the same time, the standards are presented in a manner that permits a State to build upon them as a base in the development of the details each State may need for its own program. The State standards should be explicit and must be developed to conform and be at least equal to those prescribed in § 171.4, for the various categories of commercial applicators and for private applicators in § 171.5.

The regulations require a description of the types of examinations to be administered as an indication of applicator competency. It is anticipated that such descriptions and the submission of sample questions (or sample examinations) will not only reflect the adequacy of the program but will help EPA accumulate sound approaches for testing the competency of applicators which will be useful to other States. The Agency expects to develop informational materials which will provide assistance to States in various areas including methods of determining applicator competence.

If considered necessary at some future time, EPA may promulgate special standards under reserved § 171.4(d). In the development of their plans, therefore,

States are asked to recognize the possibility of special standards, or their own special competency standards, and to indicate how they are prepared to accommodate the need for demonstration of special training or competency. (See § 171.7(e) (2) of these regulations.)

Furthermore, it is recognized that some States may already have applicator standards equivalent to or exceeding those of EPA for certain categories of users. Section 171.7(e) (4) provides an acceptance procedure for individuals so qualified.

The provision in section 4 requiring EPA to prescribe standards for certification of applicators should result in a high degree of commonality among State programs throughout the country. It is recognized that differences will exist between States, especially where there are noticeable variations in climate, cropping practices, laws and regulations. Where there is sufficient similarity to warrant it, [§ 171.7(e) (7)] States are encouraged to develop programs for reciprocity. Multi-State certification is not prohibited by the regulations and reciprocity procedures will ease the certification burden on interstate farming operations and commercial business involving pesticide application across State lines. The implementation of amended FIFRA need not place unnecessary hardships on established interstate commerce and, in fact, should alleviate some of the current problems.

Other regulatory activities. Provision is also made in the regulations for States to elaborate on their overall programs by including regulatory activities other than for the certification of applicator programs which will contribute to the overall safety and effectiveness of their pesticide use programs.

Section 171.8(a) *Maintenance of State Plans.* The regulations refer to the matter of supervisory responsibility of certified applicators for the performance of persons working under them and details of how this will be accomplished are requested as part of a State plan in § 171.8(a) (1). Since the availability of the certified applicator must be directly related to the hazard of the situation, States should give examples of how they will deal with the problem of supervisory responsibility and the methods proposed for enforcement.

There has been much discussion among user groups, educational institutions and regulatory officials as to how certified applicators will continue to meet the demands of changing technology. A number of options are open. There is particular merit in required attendance at conferences, workshops, or scheduled training courses as this approach provides a continuing opportunity for the applicator to learn and to remain up-to-date on pertinent matters. Administration of special examinations as significant changes in technology occur or periodic reexamination are other options. Since it is impossible to forecast future developments, the matter has been left flexible and States are being asked at this time to include suitable

provisions to meet the demands of changing technology in their plans [§ 171.8(a) (2)]. At some future time, more specific requirements may be needed.

Section 171.9 *Federal Agency Pesticide Applicators.* The program of certification of pesticide applicators under FIFRA was clearly identified by Congress as one of Federal/State cooperation with the process of certification being delegated to the States. A number of special situations involving certification of Federal employees, however, made it necessary to establish special provisions for these applicators. Some Federal employees apply restricted use pesticides only at Federal facilities; others reside more or less permanently in a single State but operate on Federal, State, or private property; while still others are required to move from State to State to carry out their responsibilities.

Under Executive Order 11752, Federal facilities are to comply with Federal, State and local substantive standards for the prevention, control and abatement of environmental pollution, but are not required to comply with State or local administrative procedures for implementing such requirements. Implementation of the FIFRA, as amended, with respect to Federal facilities is included in Executive Order 11752. An adequate program for assuring certification of Federal employees applying pesticides on Federal facilities must therefore be provided.

A situation requiring particular consideration is the matter of special activities and responsibilities of Federal employees who may need to be certified to apply pesticides on a variety of Federal, State and private lands. Acting under statutes mandated by Congress, some Federal agencies must move personnel frequently and on short notice to distant localities for special pest programs, e.g., to control or eradicate pests introduced from outside the country or to assist States in continuing pest control programs. These Federal pest control programs and joint Federal/State activities pose a potentially difficult situation with respect to certification in various States. For example, there is no way to predict in advance which State or States will have a pest situation at some time in the future which may require the assistance of certain Federal employees. It is impractical and unrealistic for these Federal employees to be required to take examinations in all States to be qualified to work with restricted use pesticides in the particular State or States where their presence is, from time to time, required.

Arrangements have therefore been developed with the Federal Working Group on Pest Management (FWGPM) to deal with qualifying Federal applicators for certification. The FWGPM's Panel on Categorization and Training Objectives is developing a plan for establishing Federal applicator competency standards which will conform and be at least equal to those developed by EPA. Under this system, the FWGPM will be responsible

for submitting a plan for Federal employees to the Administrator for approval. This procedure of accommodation has been identified in § 171.9 as the Government Agency Plan (GAP).

The GAP will include the elements common to all Federal agencies and will additionally reflect special requirements which any particular agency may have. If the plan is approved by EPA, a copy will be sent to each State so that State officials can determine whether or not the Federal employees qualified under the GAP meet State certification requirements. States will be asked to describe in their State plan any additional requirements [§ 171.7(e) (5)] that Federal employees must meet to use restricted use pesticides in that State, but the additional requirements should not exceed those required of other applicators in that State. A current roster of Federal employees who have been determined to be qualified under GAP standards will be maintained and an appropriate form will be issued to Federal employees qualified under the GAP.

It is envisioned that Federal employees qualified under the GAP who apply restricted use pesticides on Federal, State or private lands within a State will be prepared to present documentation to appropriate State officials verifying their qualifications. The Federal form issued to these employees will provide an opportunity for States that have requirements in addition to the GAP to specify other qualifications needed to apply restricted use pesticides in that State. The form would also permit the appropriate State official to indicate acceptance of the applicator's qualifications, thus authorizing the applicator to use restricted use pesticides within the State. Copies of the forms which have been reviewed by State officials will be sent to EPA and will be used to evaluate and update training programs for Federal applicators.

It should be pointed out that there is no requirement that Federal agencies utilize the GAP. For administrative convenience or for other reasons, a Federal agency may provide for its employees to obtain State certification directly in lieu of participating in the GAP.

States have primary responsibility for enforcement procedures to ensure that Federal employees qualified under the GAP or certified by the State comply with State and Federal certification standards when applying restricted use pesticides on State or private lands. The Federal agency involved is responsible for enforcement procedures to ensure that restricted use pesticides applied within a Federal facility are applied in compliance with the appropriate standards of certification. Federal facility managers are encouraged to develop cooperative enforcement procedures with the State.

Provisions designed to facilitate certification of Federal agency pesticide applicators do not apply to nonfederal employees contracted to perform pesticide application for the Federal Government. Rather, such employees must be certified by the appropriate State(s).

Plans are being developed separately to provide for Federal employees who must respond to unusual emergency situations.

This discussion supersedes that published in the FEDERAL REGISTER, February 22, 1974 (39 FR 6731), on the subject.

Section 171.10 *Certification of Applicators on Indian Reservations*. The problem of certifying applicators on Indian Reservations arose during the development of the proposed regulations for submission and approval of State plans. While States have primary responsibility for conducting certification within their own political boundaries, they do not always have jurisdiction over Indian Reservations within those boundaries. The Government Agency Plan discussed in § 171.9 is not an appropriate mechanism for qualifying or certifying Indian applicators since (1) it was designed exclusively for Federal employees and (2) it is built around commercial applicator standards rather than the less inclusive private applicator standards which would apply to most Indian farmers.

The Agency is specifically seeking comments on the proposed regulations [§ 171.10] providing for the certification of pesticide applicators on Indian Reservations. The certification plan to be followed may depend upon the extent of State jurisdiction over Indian Reservations within a State's political boundaries. Where a State has assumed jurisdiction over an Indian Reservation under other laws, that State's pesticide applicator certification plan shall apply to all pesticide applicators on that Reservation. In cases where Federal laws apply and State laws do not apply, the appropriate Indian Governing Body may choose to develop its own certification plan for Indian private and commercial applicators based on EPA or State standards and submit their plan to the State for incorporation in the State plan or via the United States Department of the Interior to EPA for approval.

Provisions designed to facilitate certification of Indian pesticide applicators who are members of an Indian Reservation not subject to State law would also apply to non-Indian employees contracted to perform pesticide applications for the Indian Governing Body or employed by a private lessee of Indian Reservation Lands. (Section 171.7(e)(6) provides space for States to indicate any arrangements they have for certifying or assisting in certification of applicators on Indian Reservations.)

DISCUSSION OF NEED FOR TRAINING

A plan for training of applicators is not required in the State plan dealing with certification since training is not included in section 4, FIFRA, as amended. However, training is referred to in section 23, and such activities will be extremely important in helping to ensure that applicators meet competency standards and achieve the intent of the amended FIFRA that restricted use pesticides be properly used. Because of the time schedule involved, training should receive special emphasis between now and October 1976. Since State educational organizations, principally the

State Cooperative Extension Service, educational institutions and industries may be involved in training, coordination of such training within each State is essential. A document executed by EPA and the USDA provides for such leadership through the Federal/State Cooperative Extension system, and the lead agency may adopt this arrangement at its option, and include training plans as a supplement to its certification plans.

DISCUSSION OF NEED FOR ACCIDENT REPORTING

Pesticides are registered by EPA largely on the basis of laboratory tests designed to evaluate their pesticidal effectiveness and their possible adverse effects on non-target organisms. These laboratory tests are supplemented by limited field tests designed to predict a product's efficacy and environmental behavior. Such tests are by no means comprehensive or conclusive. In actual use, pesticides may have a variety of adverse effects that could not be predicted on the basis of laboratory and limited field testing. Prior to registration, EPA also evaluates such parameters as packaging and labeling. But again, it is not possible to be sure that the pre-registration assessments will reflect all the problems which will be encountered during use of a pesticide. Directions for use, for example, may well be interpreted in a way that neither EPA nor the registrant had anticipated. The occurrence of such unforeseen problems may necessitate additional regulatory action to protect human health, environmental quality, and economic values. The availability of reliable field data is therefore essential to EPA in carrying out regulatory responsibilities under the amended FIFRA.

In recognition of these responsibilities, EPA established the Pesticide Accident Surveillance System (PASS), in January 1973. Currently, PASS receives reports on pesticide accidents from approximately 150 State and Federal agencies on a voluntary basis.

While PASS has provided some important data on pesticide accidents, voluntary accident reporting systems may not be entirely adequate to provide the scope and detail of information needed to carry out the Agency's regulatory responsibilities. Accordingly, EPA has considered including a requirement that (1) commercial applicators report accidents or episodes which occur in connection with their handling and use of pesticides and which involve substantial adverse effects on, or risk to, human health, environmental quality, or economic values and (2) States in turn report these accidents through PASS.

In meetings during the development of these regulations, there was extensive discussion of such a requirement. However, one point was made repeatedly at these meetings—many States would not be able to take all the steps necessary to implement an accident report requirement (including enactment of legislation where necessary) without seriously diluting their efforts to certify applicators by October 21, 1976. Therefore, EPA has decided not to include any language establishing mandatory pesticide acci-

dent report requirements in the proposed regulations at this time. However, EPA specifically invites comments by State officials and other interested persons on the question of whether EPA should require any mandatory reporting of pesticide accidents. If, as a result of these comments, it is decided not to require any mandatory reporting of accidents and episodes at this time, EPA will continue to rely on the PASS and other voluntary reporting systems until further evaluation of their adequacy can be made. The timetable for this evaluation is October 21, 1976. If it is determined at that time that the voluntary systems are not adequate to carry out the intent of amended FIFRA, it may be necessary to consider issuing a proposed rule to require mandatory pesticide accident and episode reporting by commercial applicators.

Comments should also specifically address the following types of pesticide related events which the Agency believes would provide useful information in identifying and perhaps reducing or preventing accidents:

(a) Humans—(1) All human fatalities;

(2) Episodes resulting in apparent permanent disability;

(3) Episodes involving hospitalization or medical treatment;

(4) Episodes involving illness or injury with no hospitalization or medical treatment.

(b) Animals—(1) Episodes involving large numbers of animals either domestic or wild. This may include fatal, injured, or ill as well as animals exposed but exhibiting no poisoning symptoms.

(2) Episodes involving animal fatalities;

(3) Episodes involving poisoning symptoms;

(4) Episodes involving animals that apparently have been exposed to pesticides but exhibit no poisoning symptoms.

(c) Plants—(1) Episodes involving destruction or damage to large areas of cropland or forest;

(2) Episodes involving damage to ornamental plants including lawns, and small vegetable gardens, fruit trees, etc.

(d) General Contamination—(1) Contamination of a public or private water supply;

(2) Warehouse or pesticide storage facilities involved in disasters such as tornadoes, hurricanes, and fires;

(3) Spillage of a pesticide during transportation or jettison of a pesticide during aerial application;

(4) Pesticide contamination of food or feed crops;

(5) Incidents resulting from improper use or disposal of treated seeds;

(6) Incidents resulting from improper use or disposal of pesticide containers.

It is important to note that such a system can and should be designed in such a way as to facilitate the flow of information without requiring excessive paperwork by applicators.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed regulations to the Federal Register Sec-

tion, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 423, East Tower, 401 M Street SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the EPA and others interested in inspecting the document. The comments must be received on or before February 5, 1975 and should bear a notation indicating the subject [OPP-42001]. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: December 24, 1974.

RUSSELL E. TRAIN,
Administrator.

Part 171 is amended by adding § 171.7 through 171.10 to 40 CFR to read as follows:

Sec.	
171.7	Submission and approval of State plans for certification of commercial and private applicators of restricted use pesticides.
171.8	Maintenance of State plans.
171.9	Submission and approval of Government Agency Plan.
171.10	Certification of applicators on Indian Reservations.

AUTHORITY: Sections 4 and 25(a), Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 86 Stat. 973.

§ 171.7 Submission and approval of State plans for certification of commercial and private applicators of restricted use pesticides.

If any State, at any time, desires to certify applicators of restricted use pesticides, the Governor of that State shall submit a State plan for that purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if the plan in his judgment—

(a) Designates a State agency as the agency responsible for administering the plan throughout the State. Since several other agencies or organizations may also be involved in administering portions of the State plan, all of these shall be identified in the State plan, particularly any other agencies or organizations responsible for certifying applicators and suspending or revoking certification. In the event that more than one State agency will be responsible for performing certain functions under the State plan, the plan shall identify which functions are to be performed by which agency and indicate how the program will be coordinated by the lead agency to ensure consistency of programs within the State. The lead agency will serve as the central contact point for the Environmental Protection Agency in carrying out the certification program. The numbers and job titles of the responsible officials of the lead agency and cooperating units shall be included.

(b) Contains satisfactory assurances that such lead agency has or will have the legal authority and qualified personnel necessary to carry out the plan:

(1) Satisfactory assurances that the lead agency or other cooperating agen-

cies have the legal authority necessary to carry out the plan should be in the form of an opinion of the Attorney General or the legal counsel of the lead agency. In addition:

(i) The lead agency should submit a copy of each appropriate State law and regulation.

(ii) In those cases where the required legislative authorities have been requested by the Executive but have not yet been granted by the State Legislature (or have been granted but not yet been fully implemented), the lead agency may request that a State plan be approved contingent upon the enactment of all necessary legislation. Ordinarily, plans approved on a contingency basis will be for a specific period of time, generally not to exceed a period of one year from the date of approval. During this time, the State will have an approved certification program and may proceed to certify applicators who will then be permitted to use pesticides classified for restricted use under FIFRA, as amended. If no legislation is enacted within the time period of the contingent program, the approval shall lapse. In such instances, section 4(b) of FIFRA, as amended, shall not apply. In the event that the legislation passed by the State Legislature differs materially from that proposed and submitted with the original State plan, and the Administrator finds that such legislation does not provide adequate legal authority to administer the plan, section 4(b) of FIFRA, as amended, shall apply.

(iii) The State plan should indicate by citations to specific laws (whether enacted or pending enactment) and/or regulations (whether promulgated or pending promulgation) that the State has legal authorities as follows:

(A) Provisions for and listing of the acts which constitute grounds for denying, suspending and revoking certification of applicators; and provisions for assessing criminal and/or civil penalties, and other appropriate action. Such grounds should include, at a minimum, misuse of a pesticide and falsification of any records required to be maintained by the certified applicator.

(B) Provisions for reviewing an applicator's certification to determine whether suspension or revocation of the certification is appropriate in the event of criminal conviction under section 14(b) of amended FIFRA, a final order imposing civil penalty under section 14(a) of amended FIFRA, or conclusion of a State enforcement action.

(C) Provisions for right-of-entry by consent or warrant by appropriate State officials at reasonable times for surveillance, inspection, and observation purposes.

(D) Provisions making it unlawful for persons other than certified applicators or persons working under their supervision to use restricted use pesticides.

(E) Provisions requiring certified commercial applicators to keep and maintain for the period of at least two years routine operational records containing information on kinds, amounts, uses, dates, and places of application of restricted use pesticides; and for ensuring that such

records will be available for inspection by appropriate State officials at reasonable times.

(2) Satisfactory assurance that the lead agency and any cooperating organizations have qualified personnel necessary to carry out the plan will be demonstrated by including the numbers, job titles and job functions of persons so employed.

(c) Give satisfactory assurances that the State will devote adequate funds to the administration of the plan.

(d) Provides that the State agency will make reports to the Administrator in a form and containing information that the Administrator may from time to time require, including:

(1) An annual report to be submitted by the lead agency, at a time to be specified by the State, to include the following information:

(i) Total number of applicators, private and commercial, by category, currently certified; number of applicators, private and commercial, by category, certified during the last reporting period.

(ii) Any changes in commercial applicator subcategories.

(iii) A summary of enforcement actions related to certified applicators during the last reporting period, showing number and types of actions taken.

(iv) Any significant proposed changes in required standards of competency.

(v) Proposed changes in plans and procedures for enforcement activities related to certified applicators for the next reporting period.

(vi) Any other proposed changes from the State plan that would significantly affect the State certification program.

(2) Other reports as may be required by the Administrator shall be submitted from time to time to meet specific needs.

(e) Contains satisfactory assurances that the State standards for the certification of applicators of pesticides conform to those standards prescribed by the Administrator under §§ 171.4 and 171.5. Such assurances should consist of:

(1) A detailed description of the State's plan for certifying applicators and a discussion of any special situations, problems, and needs, together with an explanation of how the State intends to handle them. The State plan should include the following elements as a minimum:

(i) For commercial applicators:

(A) A list and description of categories and subcategories to be used in the State, such categories to be consistent with those defined in § 171.3.

(B) An estimate of the number of commercial applicators by category expected to be certified by the State.

(C) The standards of competency elaborated by the State. These shall conform and be at least equal to those prescribed in § 171.4 for the various categories of applicators utilized by the State. The standards shall also cover each of the points listed in the general standards in § 171.4(b) and the points covered in the appropriate specific standards set forth in § 171.4(c).

(D) For each category and subcategory listed under § 171.7(e)(1)(A)(i),

PROPOSED RULES

either submission of examinations or a description of the types and contents of examinations (e.g., multiple choice, true-false) and submission of sample examination questions; and a description of any performance testing used to determine competency of applicators.

(i) For private applicators:

(A) An estimate of the number of private applicators expected to be certified by the State.

(B) The standards of competency elaborated by the State. These shall conform and be at least equal to those prescribed in § 171.5(a), including the five requirements listed in § 171.5(a)(1)-(5).

(C) Types and contents of examinations and/or submission of detailed description of methods other than examination used to determine competency of private applicators.

(D) A description of any special procedure of testing that a State develops to determine the competency of a private applicator who is unable to read the label as prescribed in § 171.5(b)(1).

(2) A description of how the State will certify applicators for any special competency standards which may be developed later under reserved § 171.4(d), or other standards imposed independently by the State.

(3) A provision for issuance by the State of appropriate credentials or documents verifying certification of applicators.

(4) If appropriate, a description of any existing State licensing, certification or authorization programs for private applicators or for one or more categories of commercial applicators may be included. If these programs are determined by EPA to meet standards of competency prescribed by §§ 171.1 through 171.6, States may certify applicators so licensed, certified or authorized without additional examination provided:

(i) The commercial applicators who were licensed, certified, or authorized have demonstrated their competency based on written examinations and, as appropriate, performance testing, conforming to the standards set forth in § 171.4, and

(ii) The private applicators who were licensed, certified, or authorized have demonstrated their competency by written or oral testing procedures or other acceptable equivalent system, conforming to the standards set forth in § 171.5.

(5) A statement that the State accepts Federal employees qualified under the Government Agency Plan (GAP) as fully meeting the requirements for certification by that State; or a description of any additional requirements these employees must meet to apply restricted use pesticides in that State. Any such additional requirements shall be consistent with and shall not exceed standards established for other comparable applicators in that State.

(6) A description of any arrangements a State has made to certify or assist in the certification of applicators on Indian reservations which are under the jurisdiction of Federal laws [§ 171.10(a)].

(7) A description of any arrangements that a State has made or plans to make

relating to reciprocity with other States for the acceptance of certified applicators from those States. However, those arrangements should meet these conditions:

(i) The State according reciprocity should provide for issuance of an appropriate document verifying certification based upon the certifying document issued by the other State.

(ii) The State according reciprocity should have enforcement procedures that cover out-of-State applicators to the same extent as those applicators examined and certified within the State;

(iii) The detailed State standards of competency, for each category identified in the reciprocity arrangement should be sufficiently comparable to justify waiving an additional examination by the State granting reciprocity.

In responding to the preceding requirements, a State may describe in its State plan other regulatory activities implemented under State laws or regulations which will contribute to the desired control of the use of restricted use pesticides by certified applicators. Such other regulatory activities, if described, will be considered by the Administrator in evaluating whether or not a State's certified applicator program satisfies the requirements of § 171.7 (a) through (e).

§ 171.8 Maintenance of State plans.

(a) Any State certification program approved under § 171.7 shall be maintained in accordance with the State plan approved under that section. Accordingly, the State plan should include:

(1) Provisions to assure that certified applicators comply with standards for the use of restricted use pesticides and carry out their responsibility to provide adequate supervision of noncertified applicators.

(2) Provisions to ensure that applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(b) An approved State plan and the certification program carried out under such plan may not be substantially modified without the prior approval of the Administrator. A proposed change may be submitted for approval at any time but all applicable requirements prescribed by these regulations must be satisfied for the modification to be eligible for approval by the Administrator.

(c) Whenever the Administrator determines that a State is not administering the certification program in accordance with the State plan approved under § 171.7 he shall so notify the State and provide for a hearing at the request of the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of the plan.

§ 171.9 Submission and approval of Government Agency Plan.

This section is included to provide for certain Federal employees including those whose duties may require them to

use or supervise the use of restricted use pesticides in a number of States.

(a) Sections 171.1 through 171.8 will, with the necessary changes, apply to the Government Agency Plan (GAP) for determining and attesting to the competency of Federal employees to use or supervise the use of restricted use pesticides.

(b) Federal employees qualified under the GAP shall:

(1) Be prepared to present the Federal form issued to them attesting to their competency to appropriate State officials.

(2) Fulfill any additional requirements States may have enumerated in their State plans as provided for under § 171.7(e)(5).

(c) The employing Federal agency shall ensure that employees using or supervising the use of restricted use pesticides within a Federal facility are subject to the same or equivalent provisions prescribed under § 171.7(b)(1)(C).

§ 171.10 Certification of applicators on Indian Reservations.

This section applies to applicators on Indian Reservations.

(a) On Indian Reservations¹ the appropriate Indian Governing Body² may choose to utilize the State certification program or develop its own plan for certifying Indian private and commercial applicators to use or supervise the use of restricted use pesticides based on Federal or State standards for certification. At the option of the Indian Governing Body, such a plan may be submitted to the State for incorporation in the State plan or, alternatively submitted through the United States Department of the Interior to the Administrator for approval.

(b) On Indian lands subject to the jurisdiction of a State anyone using or supervising the use of restricted use pesticides shall be certified under the appropriate State certification plan.

(c) Indian applicators using or supervising the use of restricted use pesticides on State or private land shall be certified under the appropriate State certification plan.

(d) Non-Indian employees contracted to apply restricted use pesticides on Indian Reservation lands not subject to State jurisdiction shall be certified either under a State certification plan accepted by the Indian Governing Body or under the Indian Reservation certification plan.

(e) Nothing in this section is intended either to confer or deny authority to the States over Indian Reservations not already conferred or denied under other laws or treaties.

[FR Doc. 75-6 Filed 1-3-75; 8:45 am]

¹ The term "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

² The term "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.