

Environmental Protection Agency

§ 171.10

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).

[40 FR 11702, Mar. 12, 1975]

§ 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 certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency 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.

[40 FR 11704, Mar. 12, 1975]

§ 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 re-

stricted 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)(4).

(c) The employing Federal agency shall ensure that certified 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)(iii) (A)-(E).

[40 FR 11704, Mar. 12, 1975]

§ 171.10 Certification of applicators on Indian Reservations.

This section applies to applicators on Indian Reservations.

(a) On Indian Reservations¹ not subject to State jurisdiction the appropriate Indian Governing Body² may choose to utilize the State certification program, with the concurrence of the State, or develop its own plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) If the Indian Governing Body decides to utilize the State certification program, it should enter into a cooperative agreement with the State. This agreement should include matters concerning funding and proper authority for enforcement purposes. Such agreement and any amendments thereto

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

²The 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.

shall be incorporated in the State plan, and forwarded to the Administrator for approval or disapproval.

(2) If the Indian Governing Body decides to develop its own certification plan, it shall be based on either Federal standards (§§171.1 through 171.8) or State standards for certification which have been accepted by EPA. Such a plan shall be submitted through the United States Department of the Interior to the EPA Administrator for approval.

(b) On Indian Reservations where the State has assumed jurisdiction under other Federal laws, anyone using or supervising the use of restricted use pesticides shall be certified under the appropriate State certification plan.

(c) Non-Indians applying restricted use pesticides on Indian Reservations 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.

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

[40 FR 11704, Mar. 12, 1975]

§ 171.11 Federal certification of pesticide applicators in States or on Indian Reservations where there is no approved State or Tribal certification plan in effect.

(a) *Applicability.* This section applies to persons in any State and on any Indian Reservation where, because there is no approved State or Tribal certification plan in effect, the Administrator implements an EPA plan for the Federal certification of applicators of restricted use pesticides.

(b) *Certification requirement.* In any State or on any Indian Reservation where this section is applicable, any person who uses or supervises the use of any pesticide classified for restricted use must be certified in accordance with this section. However, a competent person who is not certified may use a restricted use pesticide under the direct supervision of a certified applicator for uses authorized by the certified applicator's certification. Private applicator certification shall au-

thorize only those uses, or the supervision of those uses, described in §171.2(t). Commercial applicator certification shall authorize only those uses, or the supervision of those uses, included within the specific category(ies) or subcategory(ies), described in §171.3(b) or an applicable Federal plan, in which the applicator is certified.

(c) *Certification of commercial applicators—(1) Categories for Commercial Applicators.* Categories referred to in this section are the same as those listed in §171.3(b). Determination of competency in each category shall conform to the requirements of §171.4(a).

(2) *Subcategories.* The Administrator may adopt subcategories as he or she deems necessary, consonant with the needs of the individual State or Reservation.

(3) *Standards for certification.* The standards of competency for certification of commercial applicators under this section are the same as those listed in §171.4 (b) and (c) and §171.6.

(4) *Certification procedure.* An individual who desires to be certified or recertified under this paragraph shall complete the EPA certification form and submit the form to the appropriate EPA Regional Office. In order to be initially certified as a commercial applicator under this paragraph, an individual must take and pass written examinations approved by the Administrator and administered by the Administrator or any other party approved by him or her. A general examination will be given, based on the general standards found in §171.4(b) and the standards for supervision found in §171.6. In addition, specific category and subcategory examinations will be given, based on the appropriate category or subcategory standards found in §171.4(c) and the applicable Federal plan. The Administrator will notify the individual in writing of the results of the examinations within 45 days unless special circumstances justify a longer time period. The Administrator will issue to each person who has passed a general examination and one or more category or subcategory examinations a commercial applicator certificate