

2005  
SUNSHINE  
LAW  
REVIEW

Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform

# Colorado Pesticide Applicators' Act



October 14, 2005

# STATE OF COLORADO

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Bill Owens  
Governor

October 14, 2005

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Pesticide Applicators' Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2006 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 10 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Commissioner of Agriculture and the staff of the Colorado Department of Agriculture in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Additionally, Appendix B on page 47 contains the information required by section 35-10-128, C.R.S., regarding the extent of local regulation of pesticides.

Sincerely,



Tambor Williams  
Executive Director

# 2005 Sunset Review Colorado Pesticide Applicators' Act

Department of Regulatory  
Agencies

Bill Owens  
Governor

Tambor Williams  
Executive Director



## Executive Summary

### Quick Facts

**What is Regulated?** Commercial pesticide applicators and those limited commercial and public pesticide applicators that use restricted use pesticides (RUPs).

**Who is Regulated?** In fiscal year 03-04, there were 4,086 active licenses and registrations:

- 2,187 licensed qualified supervisors
- 934 licensed certified operators
- 831 licensed commercial applicators
- 41 registered limited commercial applicators
- 93 registered public applicators

**How is it Regulated?** The Colorado Commissioner of Agriculture (Commissioner) licenses all qualified supervisors and certified operators, as well as all commercial pesticide applicators. Those limited commercial and public applicators that use RUPs must register with the Commissioner, and those limited commercial and public applicators that use only general use pesticides (GUPs) may register. The Commissioner administers examinations, enforces minimum standards of practice as defined by law, and disciplines those in violation of the law. Additionally, the Commissioner maintains the Registry of Pesticide-Sensitive Persons (Registry), which requires pre-application notification to the 81 people listed thereon.

**What Does it Cost?** The fiscal year 03-04 expenditure to oversee this program was \$761,131, and there were 7.0 FTE associated with this program.

In 2005, license costs were:

Qualified Supervisor	\$100/three years
Certified Operator	\$100/three years
Commercial Applicator	\$350/year
Limited Commercial Applicator	\$50/year
Public Applicator	\$50/year

**What Disciplinary Activity is There?** Between fiscal years 99-00 and 03-04, the Commissioner's disciplinary proceedings consisted of:

Formal Complaints Filed	223
Revocations	1
Cease and Desist Orders	294
Fines	93
Other	119

**Where Do I Get the Full Report?** The full sunset review can be found on the internet at:

<http://www.dora.state.co.us/opr/oprpublications.htm>

### Key Recommendations

#### **Continue the Pesticide Applicators' Act until 2015.**

Pesticides, whether they are GUPs or RUPs, are poisons and toxins, and the Act regulates those who apply them. Regulation of pesticide applicators is necessary to protect the public health and the environment.

#### **Amend the notification provisions for individuals listed on the Registry to include certain structural applications.**

The Act requires all licensed commercial applicators and all registered limited commercial and public applicators to provide, when making any turf or ornamental application, pre-application notice to pesticide-sensitive persons on the Registry. Turf and ornamental categories of pesticide applications consist mainly of outdoor applications to lawns, trees and shrubs. The Act does not require pre-application notice to a pesticide-sensitive person who lives in a multi-unit dwelling when, for example, an application is to be made to rid one unit of ants or roaches. In certain, indoor structural applications, the pesticide is intended to remain active in an enclosed space for an extended period of time, thus increasing the likelihood that the pesticide-sensitive person may become exposed to the pesticide. This is particularly true if the pesticide is applied in a hallway or common area.

#### **Clarify that notice to pesticide-sensitive persons is required when applications are made to common areas abutting the property or unit of a pesticide-sensitive person and to the property occupied by a pesticide-sensitive person.**

The Act requires pre-application notification to individuals listed on the Registry when such applications are to take place on property abutting that of the pesticide-sensitive person when the application is of a pesticide in the turf or ornamental categories. However, there is considerable confusion as to when notice is required if the application is to take place on common areas. Some common areas, such as greenways, can be quite large. Further complicating this issue are large condominium complexes with multiple buildings and common areas between them. Additionally, the Act does not require notice when the application is to take place on the property actually occupied by the pesticide-sensitive person. This problem arises when a pesticide-sensitive person rents a single-family home, but where the landowner retains responsibility for lawn care, which may include the ordering of the application of pesticides.

### *...Key Recommendations Continued*

**Repeal the requirement that licensed commercial and registered limited commercial and public applicators use or recommend only registered devices. Direct the Commissioner to specify, by rule, which devices, when employed for hire, require licensure as a commercial applicator.**

The Act prohibits any licensed commercial applicator or registered limited commercial or public applicator from using or recommending the use of any device not registered by the Commissioner pursuant to the Pesticide Act. The Pesticide Act stipulates that only those devices registered by the Commissioner may be lawfully sold in the state. As a practical matter, however, not every device sold in the state is registered because, according to a plain reading of the definition of "device," even a fly swatter should be registered. Fly swatters are not registered. This means that a licensed commercial applicator cannot legally use or recommend the use of a fly swatter. An additional consideration is whether a commercial applicator license should even be required for the use of some devices, since not all devices pose a risk to the public health and safety.

### **Major Contacts Made In Researching the 2005 Sunset Review of the Act**

Colorado Agricultural Aviation Association  
Colorado Association of Lawn Care Professionals  
Colorado Cattlemen's Association  
Colorado Corn Growers' Association  
Colorado Department of Agriculture  
Colorado Farm Bureau  
Colorado Legal Services  
Colorado Office of the Attorney General  
Colorado Seed Growers Association  
Colorado State University  
Colorado Weed Management Association  
Colorado Wildlife Control Operators Association  
Green Industries of Colorado  
Pesticide Advisory Committee  
Rocky Mountain Golf Course Superintendents' Association  
Rocky Mountain Poison and Drug Center  
Sierra Club  
U.S. Environmental Protection Agency  
Western Sugar Cooperative

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:  
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1560 Broadway, Suite 1550 Denver, CO 80202  
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# Table of Contents

<b>BACKGROUND .....</b>	<b>1</b>
<i>The Sunset Process.....</i>	<i>1</i>
<i>Methodology .....</i>	<i>1</i>
<i>Profile of the Profession .....</i>	<i>1</i>
<i>History of Regulation .....</i>	<i>4</i>
<b>LEGAL FRAMEWORK.....</b>	<b>6</b>
<b>PROGRAM DESCRIPTION AND ADMINISTRATION .....</b>	<b>15</b>
<i>Licensing.....</i>	<i>17</i>
<i>Examinations .....</i>	<i>21</i>
<i>Inspections.....</i>	<i>24</i>
<i>Complaints/Disciplinary Actions.....</i>	<i>25</i>
<b>ANALYSIS AND RECOMMENDATIONS .....</b>	<b>29</b>
<i>Recommendation 1 – Continue the Pesticide Applicators’ Act for nine years, until 2015.....</i>	<i>29</i>
<i>Recommendation 2 – Amend the notification provisions for individuals listed on the Registry of Pesticide-Sensitive Persons to include certain structural applications. ....</i>	<i>33</i>
<i>Recommendation 3 – Clarify that notice to pesticide-sensitive persons is required when applications are made to common areas abutting the property or unit of a pesticide-sensitive person and to the property occupied by a pesticide-sensitive person. ....</i>	<i>34</i>
<i>Recommendation 4 – Repeal the requirement that licensed commercial and registered limited commercial and public applicators use or recommend only registered devices. Direct the Commissioner to specify, by rule, which devices, when employed for hire, require licensure as a commercial applicator. Specify that such devices be restricted to those posing a significant risk to public health and safety.....</i>	<i>35</i>
<i>Recommendation 5 – Limit the number of terms that members of the Pesticide Advisory Committee may serve to no more than two, three-year terms. ....</i>	<i>36</i>
<i>Recommendation 6 – Authorize the Commissioner to outsource the development and administration of the licensing examinations. ....</i>	<i>37</i>
<i>Recommendation 7 – Replace all provisions establishing renewal cycles with provisions authorizing the Commissioner to establish renewal cycles administratively, but not to exceed three years.....</i>	<i>38</i>

<i>Recommendation 8 – Amend section 35-10-126, C.R.S., to direct that all money realized through fines be credited to the state’s General Fund.....</i>	<i>38</i>
<i>Recommendation 9 – Repeal section 35-10-118(2)(d), C.R.S., and permit all fees assessed pursuant to the Act to be established administratively so as to cover the actual costs of administering the Act.....</i>	<i>39</i>
<i>Recommendation 10 – Amend section 35-10-112(1)(a), C.R.S., so as to eliminate the need to publish the Registry in hard-copy.....</i>	<i>39</i>
<i>Recommendation 11 – Authorize the Commissioner to reinstate an expired license within six months of the expiration date, upon payment of a reinstatement fee and a showing that all renewal criteria had been satisfied as of the license expiration date.....</i>	<i>40</i>
<i>Recommendation 12 – Repeal section 35-10-127, C.R.S., as obsolete.....</i>	<i>40</i>
<i>Recommendation 13 – Amend section 35-10-125(2)(h), C.R.S., to refer to the Colorado Department of Public Health and Environment.....</i>	<i>40</i>
<i>Administrative Recommendation 1 – The Commissioner should bring forward legislation to assume primacy over the regulation of private pesticide applicators.....</i>	<i>41</i>
<i>Administrative Recommendation 2 – The Commissioner should make licensing and disciplinary information available to the public via the Internet.....</i>	<i>45</i>
<b>APPENDIX A – SUNSET STATUTORY EVALUATION CRITERIA.....</b>	<b>46</b>
<b>APPENDIX B – REPORT REGARDING THE EXTENT OF LOCAL REGULATION OF PESTICIDES... </b>	<b>47</b>

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## **Background**

### *The Sunset Process*

The regulatory functions of the Colorado Commissioner of Agriculture (Commissioner) and the Colorado Department of Agriculture (CDA), in accordance with Article 10 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2006, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Commissioner and CDA pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Colorado Pesticide Applicators' Act (Act) should be continued for the protection of the public and to evaluate the performance of the Commissioner and CDA staff. During this review, the Commissioner must demonstrate that there is still a need for the Act and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 46.

### *Methodology*

As part of this review, DORA staff attended Pesticide Applicator Advisory Committee (Advisory Committee) meetings; interviewed CDA staff, representatives of state and national professional associations and officials from the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment; reviewed Advisory Committee records and minutes, as well as CDA complaint and disciplinary files, Colorado statutes and rules, and the laws of other states; toured the place of business of a licensed commercial pesticide applicator and observed the application of pesticides in the turf and ornamental setting and surveyed all Colorado counties and municipalities.

### *Profile of the Profession*

Pesticide applicators mix and apply pesticides, including herbicides, fungicides and insecticides, through sprays, dusts, vapors, incorporation into the soil, or application of chemicals onto trees, shrubs, lawns or botanical crops. Such pesticides may be general use pesticides (GUPs) or restricted use pesticides (RUPs). While both classifications of pesticides are dangerous, GUPs are available to the public over the counter through retailers across the country. RUPs, on the other hand, have been deemed by EPA to be relatively more dangerous than GUPs, and their sale is restricted to licensed pesticide applicators.

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The types of pesticides utilized and their delivery methods are as diverse as the pests they are designed to kill or repel. Thus, pesticide applicators can generally be characterized by the setting in which they work. Colorado licenses applicators according to 3 general classifications and 20, more specific categories:

- Agricultural Applicators
  - Agricultural Insect Control
  - Agricultural Plant Disease Control
  - Agricultural Weed Control
  - Seed Treatment
  - Livestock Pest Control
  - Forest Pest Control
  - Rangeland Pest Control
  - Aquatic Pest Control
  - Industrial and Right-of-Way Weed Control
  - Public Health Pest Control
  - Research and Demonstration
  
- Ornamental Applicators
  - Turf Pest Control
  - Ornamental Pest Control
  
- Structural Applicators
  - Wood Destroying Organism Pest Control
  - Outdoor Vertebrate Pest Control
  - Fumigation
  - Residential/Commercial Pest Control
  - Stored Commodities Treatment
  - Wood Preservation and Wood Products Treatment
  - Interior Plant Pest Control

There are four basic types of applicators: commercial, limited commercial, public and private. Commercial applicators apply pesticides for hire on property that they do not own, lease or otherwise control. Commercial applicators cover a wide range of specialties, ranging anywhere from aerial applicators in agriculture to those a homeowner may call to rid a lawn of weeds, or to exterminate ants or roaches.

Limited commercial applicators apply pesticides in the course of conducting a non-pesticide applicator business on property they own or lease. An example of a limited commercial applicator could be a private golf course.

Public applicators apply pesticides on public lands, such as public rights-of-way, state or national forests, parks, etc. Public applicators are typically quasi-governmental entities, such as weed control districts, or true governmental entities.

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Private applicators apply pesticides on property that they own or lease. Private applicators include farmers that perform their own applications to their crops, but also include private homeowners who apply pesticides in and around their homes.

The Act regulates all commercial applicators, all limited commercial and public applicators that use RUPs and those limited commercial and public applicators that use GUPs and voluntarily register with the Commissioner. EPA retains jurisdiction over private applicators and those limited commercial and public applicators that use only GUPs and do not register with the Commissioner.

In general, “applicators” are entities, though they may be individuals, and they are regulated to some degree or another. However, it is individuals who actually handle, by mixing, loading and applying, pesticides. For purposes of discussing the Act, individuals can generally be divided into three categories: qualified supervisors, certified operators and technicians.

Qualified supervisors evaluate pest problems and recommend pest controls using any (GUP or RUP) pesticides or devices in those categories in which they are licensed. Qualified supervisors also mix, load and apply any pesticide, sell any pesticide and application services, operate devices and supervise others in any of these functions.

Certified operators mix, load and apply RUPs or GUPs under the supervision of, but not necessarily the on-site supervision of, a qualified supervisor.

Applicator technicians may mix, load and apply GUPs under the supervision of, but not necessarily the on-site supervision of, a qualified supervisor, and RUPs only with the on-site supervision of a qualified supervisor. In general, applicator technicians are the individuals in the field performing the actual application of the pesticides.

In other words, qualified supervisors identify the pest, determine how best to eliminate the pest and then supervise others in the application of the pesticides. The primary distinctions between certified operators and applicator technicians are that certified operators may apply RUPs and GUPs without on-site supervision, whereas applicator technicians may apply only GUPs without on-site supervision, and must have on-site supervision by a qualified supervisor when working with RUPs.

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## *History of Regulation*

The Colorado General Assembly first regulated commercial pesticide applicators in 1953, with its sole focus falling on agriculture. The 1953 statute required any person applying pesticides by aircraft for hire to obtain a license. The General Assembly further authorized the Colorado Agriculture Commission (Commission) to require applicants to take and pass an examination and to post a surety bond or to carry insurance. The Commission could inspect any aircraft's pesticide-dispensing equipment and could suspend or revoke licenses.

In 1961, the General Assembly amended the statute to require licensure of all "for hire" applicators of agricultural pesticides. Specifically exempted from this new requirement were federal employees, structural pest control applicators, persons controlling pests on their own property and fertilizer applicators. The Commissioner was directed to examine and license pesticide applicators and to otherwise enforce the statute. Licensees were required to post a surety bond of \$2,500 with the Commissioner.

The statute was again revised in 1967, when three types of pesticide applicators were delineated: ground agricultural applicator, aerial agricultural applicator and commercial applicator. Thus, it wasn't until 1967, that the focus of pesticide applicator regulation began to expand beyond its agricultural origins.

Applicants were required to take and pass written examinations. The General Assembly also repealed the surety bond requirement and established minimum liability insurance coverage of \$25,000 per person, \$50,000 per accident for bodily injury and \$5,000 for property damage.

The General Assembly passed the Structural Pest Control Act (Structural Act) in 1971, thereby further expanding the scope of pesticide applicator regulation into areas other than agriculture. The Structural Act required all persons preventing, controlling or eradicating pests in household structures, commercial buildings or other structures to be licensed by the Commissioner. Candidates were required to take and pass written and oral examinations. They also had to have either two years of experience in structural pest control or hold a college degree with a major in entomology, sanitary or public health engineering or related subjects. Structural applicators were required to carry liability insurance in the amount of \$50,000 per person, \$100,000 per accident for bodily injury and \$50,000 for property damage. The Commissioner could suspend, revoke or deny structural applicator licenses.

In 1983, the Structural Act was repealed and substantially re-enacted as part of the new Pesticide Applicators' Act (Act), which covered all commercial pesticide applicators, including those who worked in the agriculture and structural settings. The Act was drafted to incorporate EPA requirements, as set forth in EPA rules and in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Act further authorized the Commissioner to certify commercial applicators that use or supervise the use of RUPs.

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The Act was again amended in 1990, following the previous year's sunset review, to impose training and examination requirements on qualified supervisors and certified operators. The Act also required applicators to provide training to their technicians.

Additionally, the 1990 amendments required turf, ornamental and aquatic applicators to post notification signs after applying pesticides. Such signs must identify the name of the applicator and the pesticide applied. In imposing this notification requirement, the General Assembly pre-empted local governments from imposing more stringent notification procedures on commercial applicators.

Finally, the 1990 amendments also created the Registry of Pesticide-Sensitive Persons (Registry). To be placed on the Registry, an individual must obtain a letter from a physician attesting to the fact that the individual is sensitive to pesticides, and pay a fee to the Commissioner. Any commercial, limited commercial or public applicator performing a turf and ornamental application on property abutting the address of an individual listed in the Registry is required to provide advance notice of the date and approximate time of the application to the individual on the Registry.

Another sunset review of the Act was conducted in 1995, resulting in Senate Bill 96-086, which further amended the Act. The 1996 amendments included clarifications of several definitions and clarified what constitutes "abutting property" for purposes of the Registry. Perhaps more importantly, though, the 1996 amendments specifically pre-empted any local regulation of pesticide applicators, thus imposing a uniform, statewide system for the regulation of pesticide applicators.

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## **Legal Framework**

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorizes the U.S. Environmental Protection Agency (EPA) to restrict the use of certain pesticides to individuals who have demonstrated competency in the use and handling of pesticides or who work under the direct supervision of an individual who has demonstrated such competency. FIFRA governs pesticide registration (including the sale, distribution and use of pesticides), pesticide classification as general use pesticide (GUP) or restricted use pesticide (RUP) and pesticide applicator certification and training.

Under FIFRA, a pesticide is generally any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest, or that is used as a plant regulator, defoliant or desiccant. Designation as a pesticide is also dependent upon a given product's stated claims and active ingredients.

Although FIFRA requires all pesticides distributed, sold and used within the United States to be registered with EPA, in determining whether to register a pesticide, EPA is limited to examining whether the pesticide will cause unreasonable adverse effects on human health or the environment when used in accordance with widespread and commonly recognized practices. The efficacy of the product does not play a role in granting it registration.

Every registered pesticide must bear a printed label that discloses the product's name; a precautionary statement (i.e., "DANGER," "WARNING," or "CAUTION"); environmental hazards; active ingredients; directions for use, storage and disposal; first aid directions and the EPA registration number. According to representatives of EPA, the label is the law. The label dictates how the pesticide lawfully may or may not be used and to whom the product can be sold.

Under FIFRA, all pesticides are designated as either RUPs or GUPs. GUPs may be purchased and used by anyone. RUPs, on the other hand, are those that, even when used according to the label, may cause unreasonable adverse effects on human health or the environment because of their toxicity. Thus, FIFRA requires certification of applicators only when the applicator uses or supervises the use of RUPs.

Finally, FIFRA distinguishes between private and commercial applicators. Applicators applying, or supervising the application of RUPs on property that they own, or that is owned by the applicator's employer, and which property's purpose is agricultural production, must obtain a private applicator certification. Commercial applicators must obtain certification if they apply or supervise the application of RUPs on any property for any purpose.

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Although EPA has authority to regulate private and commercial pesticide applicators, it has actively encouraged states to assume that authority through implementation of EPA-approved programs. State programs may be more restrictive than FIFRA. The Colorado Pesticide Applicators' Act (Act) and the resulting regulatory program administered by the Colorado Commissioner of Agriculture (Commissioner) and the Colorado Department of Agriculture (CDA), the program under review in this sunset report, is an EPA-approved program, but it is limited to commercial pesticide applicators, and certain limited commercial and public pesticide applicators. The Colorado program does not address private pesticide applicators, giving Colorado the distinction of being the only state in which EPA retains jurisdiction over private pesticide applicators.

The Act is codified at section 35-10-101, *et seq.*, Colorado Revised Statutes (C.R.S.), and it defines "pesticide" at section 35-10-103(10), C.R.S., as:

any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States Food and Drug Administration.

In section 35-10-103(5), C.R.S., the Act defines "device" as:

any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.

Thus, the Act regulates those who use pesticides and devices, such as commercial applicators, limited commercial applicators and public applicators.

Section 35-10-103(2), C.R.S., defines a commercial applicator as "any person who engages in the business of applying pesticides or operating a device for hire."

Section 35-10-103(8), C.R.S., defines a limited commercial applicator as "any person engaged in applying pesticides in the course of conducting a business; except that such application shall be only in or on property owned or leased by the person or the person's employer."

Finally, section 35-10-103(12), C.R.S., defines a public applicator as "any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision which applies pesticides."

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Applicators are further differentiated by the sector in which they work. The Commissioner's rules divide applicators into the following three classifications, with the indicated categories within each classification:

**Agricultural Applicators:** Agricultural Insect Control, Agricultural Plant Disease Control, Agricultural Weed Control, Seed Treatment, Livestock Pest Control, Forest Pest Control, Rangeland Pest Control, Aquatic Pest Control, Industrial and Right-of-Way Weed Control, Public Health Pest Control and Research and Demonstration

**Ornamental Applicators:** Turf Pest Control and Ornamental Pest Control

**Structural Applicators:** Wood Destroying Organism Pest Control, Outdoor Vertebrate Pest Control, Fumigation, Residential/Commercial Pest Control, Stored Commodities Treatment, Wood Preservation and Wood Products Treatment and Interior Plant Pest Control

All commercial applicators, regardless of whether they apply RUPs or GUPs, must obtain a business license from the Commissioner. However, only limited commercial and public applicators that apply RUPs are required to register with the Commissioner. If such entities apply only GUPs, they may register, but they are not required to do so. § 35-10-104, C.R.S. and Rules 2.18 and 2.19. Those public and limited commercial applicators that use only GUPs and do not register with the Commissioner fall within the jurisdiction of EPA.

All commercial, and all registered limited commercial and public applicators must employ or retain the services of at least one qualified supervisor who is licensed in each of the classifications and categories of pesticide application pertinent to that entity. Additionally, each such applicator must provide verifiable training for all applicator technicians. §§ 35-10-106 and 35-10-110, C.R.S.

In addition to these requirements, commercial applicators must also maintain liability insurance of at least \$400,000. Commercial applicator licenses are valid for one year and must be renewed in January of each year. § 35-10-106, C.R.S. The license fee for a commercial applicator license is \$350. § 35-10-118(2)(d), C.R.S.

All commercial applicator invoices must disclose that the Commissioner regulates commercial applicators. § 35-10-108, C.R.S.

Each commercial, and each registered limited commercial and public applicator must maintain records, for three years, of each pesticide application. § 35-10-111, C.R.S. These records must contain the name and address for whom the application was made; the location where the application was made; the target pest; the site, crop, commodity or structure treated; the pesticide applied, including the dilution rate, application rate and carrier; the date and time of application, and the name of the person who made the application. Rule 6.03.

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The Act provides for the licensing of two types of individuals: certified operators and qualified supervisors. §§ 35-10-113 and 35-10-114, C.R.S. Section 35-10-103(13), C.R.S. defines “qualified supervisor” as:

any individual who, without supervision, evaluates pest problems or recommends pest controls using pesticides or devices, or mixes, or loads, or applies any pesticide, or sells application services, or operates devices, or supervises others in any of these functions.

The Act defines “certified operator” as “an individual who mixes, loads, or applies any pesticide, including restricted use pesticides, under the supervision of a qualified supervisor.” § 35-10-103(1), C.R.S.

To become licensed as a qualified supervisor, a candidate must possess the experience and qualifications established by the Commissioner, as well as take and pass an examination in each category of pesticide application in which the candidate wishes to be licensed. § 35-10-115(1), C.R.S. The Commissioner has established the following experience requirements for qualified supervisors in the indicated pesticide categories:

**Agriculture:** eight months of field experience or 1) two years of college credit and two months of field experience, or 2) one year of college credit and five months of field experience.

**Turf:** four months of field experience or 1) two years of college credit and one month of field experience, or 2) one year of college credit and two and one-half months of field experience.

**Ornamental:** eight months of field experience or 1) two years of college credit and four months of field experience, or 2) one year of college credit and six months of field experience.

**Structural – Wood Destroying Organisms, Household Pest Control and Fumigation:** 24 months of field experience or 1) four years of college credit and four months of field experience, 2) three years of college experience and nine months of field experience, 3) two years of college credit and 14 months of field experience, or 4) one year of college experience and 19 months of field experience.

**Structural – Outdoor Vertebrates, Wood Preservation, Wood Products Treatment, Stored Commodities Treatment and Interior Plant Pest Control:** eight months of field experience or 1) two years of college credit and two months of field experience, or 2) one year of college experience and five months of field experience.

In all cases where college credit is used as qualifying experience, such college credit must be earned in courses relevant to the applicable pesticide category, and the Commissioner deems one year of college credit to comprise six semester hours per year in a course related to the subject of pesticides.

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The Commissioner established the level of acceptable experience with industry input. The guiding philosophy was that the higher the risk of exposure of pesticides to humans and the environment, the higher the need for experience. This explains the relatively high experience requirements for those seeking licensure in structural categories.

There are no experience requirements to become a certified operator. Rather, candidates must simply take and pass an examination.

Qualified supervisor and certified operator licenses must be renewed every three years on the anniversary date of the license. § 35-10-116(1), C.R.S. As a precondition of renewal, a licensee must either retake the licensing examination or provide proof of having obtained continuing education. § 35-10-116(2), C.R.S.

The Commissioner has determined, in Rule 4.1, that qualified supervisors and certified operators must obtain continuing education credits in the following topics:

- Two credits in the subject area of applicable state, federal and local laws and regulations;
- One credit in the subject area of pesticides and their families;
- One credit in the subject area of applicator safety;
- One credit in the subject area of public safety;
- One credit in the subject area of environmental protection;
- One credit in the subject area of use of pesticides; and
- One credit for each licensed category in the subject area of pest management, except that two credits must be obtained in the licensed categories of residential/commercial pest control, turf pest control and ornamental pest control.

All license fees are deposited in the Commercial Pesticide Applicator Fund. § 35-10-126, C.R.S.

In addition to qualified supervisors and certified operators, another group of individuals involved in pesticide applications are the technicians. Although the Act requires commercial, limited commercial and public applicators to provide verifiable training for their technicians, it does not specify any other requirements. Thus, the Commissioner has established minimum training requirements.

Rule 5.1 distinguishes between five types of technicians:

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- Experienced technicians are those who have been trained and have six months of experience in structural applications, or one season of experience in agricultural, turf or ornamental applications or sales.
  - New-hire-experienced technicians are those who are otherwise experienced, but have switched employers.
  - On-going-experienced applicator technicians are those who are experienced and continue to work for the same employer.
  - Sales technicians are those whose sole job is selling pesticide application services.
  - Flagger technicians are those who designate, with a flag or any other identification, the alignment of a pesticide application during the application of pesticides at a particular site. Flagger technicians generally work for aerial applicators.

Another common term is “applicator technician.” Applicator technicians fall within the above-described types of technicians, but rather than sales or flagging, their jobs consist primarily of mixing, loading and applying pesticides.

The amount of initial and continuing education a technician must receive depends upon the category of pesticides with which the technician works:

**Agriculture:** each applicator technician, flagger technician and sales technician must have at least 36 hours of initial training.

**Turf:** each applicator technician must receive at least 36 hours of initial training and sales technicians must receive at least 40 hours of initial training. Any technician who works as both an applicator technician and as a sales technician must receive at least 48 hours of initial training.

**Ornamental:** each applicator technician must receive at least 40 hours of initial training and sales technicians must receive at least 48 hours of initial training. Any technician who works as both an applicator technician and as a sales technician must receive at least 56 hours of training.

**Turf and Ornamental:** each applicator technician must receive at least 60 hours of initial training and sales technicians must receive at least 64 hours of initial training. Any technician who works as both an applicator technician and as a sales technician must receive at least 80 hours of training.

**Structural:** each applicator technician and sales technician working in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control must have at least 160 hours of initial training. Each applicator technician and sales technician working in the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation

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and wood products treatment, or interior plant pest control must have at least 36 hours of initial training.

Each on-going-experienced applicator technician, flagger technician and sales technician continuing to work for the same employer in the agricultural, turf, ornamental, turf and ornamental and the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation and wood products treatment, or interior plant pest control must have four hours of continuing education each year. A new-hire-experienced technician working in these categories must receive 16 hours of training from the new employer.

Each on-going-experienced applicator technician and sales technician working in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control must receive 12 hours of continuing education each year. A new-hire-experienced technician working in these categories must receive 32 hours of training from the new employer.

Pursuant to section 35-10-121, C.R.S., the Commissioner may issue letters of admonition or restrict, impose probation on, deny, suspend, refuse to renew or revoke any license issued under the Act if the applicant or licensee, but not technician, has been found to have:

- Refused or failed to comply with the Act or any rules promulgated thereunder;
- Been convicted of a felony for an offense related to the Act;
- Been adjudicated to have violated FIFRA;
- Had an equivalent license denied, revoked or suspended by any authority;
- Refused to provide the Commissioner with reasonable, complete and accurate information regarding methods or materials used or work performed when requested by the Commissioner; or
- Falsified any information requested by the Commissioner.

In addition to these statutory grounds for discipline, the Commissioner has promulgated Rule 7.01 to include as grounds for discipline the application of pesticides in a negligent or willful manner which creates a hazard to property or which endangers human health, and the creation of a situation from improper handling of pesticides which constitutes a hazard to the health, welfare or safety of any person, the general public, any animal or animals, any crops, any ornamental plants or the environment.

Additionally, the Commissioner may issue cease and desist orders and impose fines of up to \$1,000 per violation. The level of fine may be doubled upon a second violation. §§ 35-10-120 and 35-10-122(1), C.R.S. All monies realized through the imposition of fines are deposited in the Commercial Pesticide Applicator Fund. § 35-10-126, C.R.S.

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At the time of the application of pesticides, any commercial, and any registered limited commercial or public applicator applying any pesticide in any turf and ornamental category, or in any aquatic category, must post a sign notifying the public that a pesticide has been applied to the property, along with the name of the applicator. If the application is made to a commercial property and the owner or an agent of the owner is not at the site, then the sign must also bear the telephone number of the applicator, the name of the pesticide applied and the date the pesticide was applied. § 35-10-112(2), C.R.S. The Act specifically prohibits any local government from enacting any notification requirements that are more stringent than those contained in the Act. § 35-10-112(3), C.R.S.

The Act also creates the Registry of Pesticide-Sensitive Persons (Registry) in section 35-10-112(1)(a), C.R.S. Placement on the Registry triggers a requirement that any commercial, and any registered limited commercial or public applicator applying a pesticide in any turf or ornamental category on property abutting the property of a pesticide-sensitive person take reasonable actions to provide pre-application notification to the pesticide-sensitive person. § 35-10-112(1)(c), C.R.S.

To be listed on the Registry, the pesticide-sensitive person must provide the Commissioner with a letter, signed by a Colorado-licensed physician, certifying that the person is sensitive to pesticides. This letter must be updated every two years. § 35-10-112(1)(a), C.R.S., and Rule 1.02(f). Additionally, when applying for listing on the Registry, the pesticide-sensitive person must provide the addresses of those properties abutting that of the pesticide-sensitive person. Rule 12.02. The Registry is published annually with periodic updates.

The Act specifically prohibits local governments from adopting any ordinance, rule, resolution, charter provision or statute regarding the use of any pesticide by persons regulated under the Act or federal law. § 35-10-112.5(2), C.R.S. Exceptions to this prohibition include zoning laws pertaining to the sale and storage of pesticides; fire code enforcement or regulations pertaining to safe water. §§ 35-10-112.5(3) and (4), C.R.S.

Finally, section 35-10-125, C.R.S., directs the State Agricultural Commission to appoint an 11-member advisory committee (Advisory Committee) whose members must consist of:

- A formulator actively engaged in the sale of pesticides in Colorado;
- An agricultural commercial applicator;
- A turf or ornamental commercial applicator;
- A structural applicator;
- A qualified supervisor employed by a limited commercial applicator;
- Two representatives from public applicators;

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- A representative from the Colorado State University Agricultural Experiment Station or Extension Service;
  - A representative from the Colorado Department of Public Health and Environment; and
  - Two representatives from the general public, one of whom must be actively engaged in agricultural production.

The Advisory Committee's primary purpose is to assist the Commissioner in the promulgation of rules. § 35-10-125, C.R.S.

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## **Program Description and Administration**

The 11-member Pesticide Advisory Committee (Advisory Committee), which is appointed by the Agricultural Commission (Commission) meets quarterly. Attendance at Advisory Committee meetings is generally good.

The Colorado Pesticide Applicators' Act (Act) is administered by the Colorado Commissioner of Agriculture (Commissioner), through the Colorado Department of Agriculture, Division of Plant Industry, Pesticide Section (CDA). Table 1 illustrates the funding for CDA relevant to the Act.

**Table 1**  
**Fiscal Information**

<b>Fiscal Year</b>	<b>State Funding</b>	<b>Federal Funding</b>	<b>Total Program Funding</b>
99-00	\$695,869	\$247,478	\$943,347
00-01	\$545,753	\$273,735	\$819,488
01-02	\$441,744	\$332,437	\$774,181
02-03	\$479,773	\$282,626	\$762,399
03-04	\$479,773	\$281,358	\$761,131

Unless otherwise noted, all figures throughout this sunset report are provided according to the federal government's fiscal year, which runs from October 1 through September 30. This is because, as Table 1 illustrates, CDA receives considerable funding from the federal government to assist in the administration of the Act, and federal reporting requirements mandate reporting based on the federal government's fiscal year.

The U.S. Environmental Protection Agency (EPA) is charged with administering and enforcing the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). However, under FIFRA, EPA may approve state plans to assume primacy over enforcement activities. Colorado, through the Act and the Commissioner's rules, has assumed primacy over enforcement of FIFRA with respect to: 1) all commercial applicators; 2) those limited commercial and public applicators that use restricted use pesticides (RUPs); and 3) those limited commercial and public applicators that use only general use pesticides (GUPs) and voluntarily register with the Commissioner. Thus, as part of the arrangement with EPA, CDA receives federal funds to assist in certification and training of licensees and enforcement.

Although the levels of state and federal funding have fluctuated considerably over the five years reflected in Table 1, overall, funding has decreased by approximately 20 percent. This is somewhat surprising, considering that the number of full-time equivalent (FTE) employees dedicated to the administration and enforcement of the Act, as illustrated in Table 2, has increased by 2.0 FTE during the same, five-year period.

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**Table 2**

**CDA Staff Dedicated to Administration of the Act**

<b>Fiscal Year</b>	<b>FTE</b>
99-00	5
00-01	7
01-02	7
02-03	7
03-04	7

These FTE can be divided into funding sources. Colorado funds support 5.0 FTE, comprising 1.0 FTE General Professional V (Pesticide Applicator Coordinator), 2.0 FTE General Professional III (Inspectors) and 2.0 Administrative Assistant III. The remaining 2.0 FTE are supported through federal funds: 1.0 FTE General Professional IV (Enforcement Specialist) and 1.0 FTE Physical Science Research Scientist III (Laboratory Technician).

The Pesticide Applicator Coordinator coordinates overall program implementation and direction, inspections, enforcement, budgets, grant submissions and grant reporting. In short, this position oversees the day-to-day operations of the program.

The Enforcement Specialist directs complaint investigations, assigns investigations to Inspectors, compiles results of investigations and issues enforcement actions.

The Inspectors conduct investigations and inspections, and they perform certification and training presentations.

The two Administrative Assistants provide general administrative and clerical support, such as data entry, mailings, test proctoring and issuing licenses.

Finally, the Laboratory Technician analyzes samples obtained by the Inspectors and Enforcement Specialist during the course of investigations and inspections.

The Commissioner is also responsible for maintaining and publishing the Registry of Pesticide-Sensitive Persons (Registry). The Registry is currently published in hardcopy and mailed to every commercial, limited commercial and public applicator that is licensed by or registered with the Commissioner. Periodic updates are also published and the Registry is available on the Internet.

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To be listed on the Registry, a pesticide-sensitive person must obtain a letter from a Colorado-licensed physician and complete a CDA application, which, among other things, requires the pesticide-sensitive person to provide the addresses of properties abutting the property of the pesticide-sensitive person. Inclusion on the Registry must be renewed annually and physician letters must be updated every two years.

Table 3 illustrates the number of people listed on the Registry for the indicated fiscal years.

**Table 3**

**Registry of Pesticide-Sensitive Persons**

<b>Fiscal Year</b>	<b>Number of People Listed on Registry</b>
99-00	56
00-01	63
01-02	74
02-03	86
03-04	81

Whenever a commercial, or registered limited commercial or public applicator is going to make a turf or ornamental application, the Registry must be consulted. If the scheduled application is to take place on a property abutting the property of a pesticide-sensitive person listed on the Registry, the applicator must attempt to notify that person at least two days prior to the scheduled application.

Importantly, inclusion on the Registry does not grant the pesticide-sensitive person the power or authority to prevent an application of pesticides. Rather, inclusion on the Registry merely entitles the pesticide-sensitive person to advance notification of the application so that the pesticide-sensitive person can take appropriate precautions, such as closing windows that day or staying away from home for a certain period.

As a practical matter, however, most applicators interviewed during the course of this sunset review conceded that if a pesticide-sensitive person requested that an application occur on a day or time other than the day and time pre-scheduled, the applicator would make every reasonable attempt to accommodate such a request.

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*Licensing*

The 7.0 FTE dedicated to administering and enforcing the Act, oversee approximately 4,000 licensed or registered individuals and entities. Table 4 illustrates the total number of licensed qualified supervisors, certified operators and commercial applicators, as well as the number of registered limited commercial and public applicators for the fiscal years indicated.

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**Table 4**

**Licensing & Registration Information**

<b>Fiscal Year</b>	<b>Qualified Supervisors (Licensed)</b>	<b>Certified Operators (Licensed)</b>	<b>Commercial Applicators (Licensed)</b>	<b>Limited Commercial Applicators (Registered)</b>	<b>Public Applicators (Registered)</b>	<b>Total</b>
99-00	2,087	650	771	30	104	3,642
00-01	2,098	761	753	35	104	3,751
01-02	2,350	788	811	36	100	4,085
02-03	2,187	935	799	36	96	4,053
03-04	2,187	934	831	41	93	4,086

While the number of commercial, and registered limited commercial and public applicators has remained relatively constant during this period, the number of certified operators has steadily increased, thus leading to the overall increase in number of regulated individuals and entities.

To become a licensed commercial applicator, the applicator must complete a CDA application form, which solicits information concerning the identities of the qualified supervisors and certified operators employed by the applicator, as well as insurance information, primary location and other ministerial items. The fee for a commercial applicator license is \$350. Commercial applicator licenses are valid for one year and must be renewed by January 1 each year.

To register as a limited commercial or public applicator, a representative of the entity must complete the CDA application form, which solicits information concerning the identities of the qualified supervisors and certified operators employed by the applicator, as well as the primary location of the applicator and other ministerial information. The registration fee for limited commercial and public applicators is \$50. Registrations are valid for one year and must be renewed by January 1 each year. Recall that registration for these entities is mandatory if they apply RUPs. If they apply only GUPs, then registration with the Commissioner is voluntary, but failure to register with the Commissioner subjects such entities to EPA's jurisdiction.

To become licensed as a qualified supervisor, a candidate must satisfy certain experience requirements. Experience requirements are based entirely on the classification and category of pesticides with which the individual will work. Finally, a candidate for licensure as either a qualified supervisor or certified operator must take and pass an examination

Table 5 illustrates the number of new qualified supervisors and certified operators, as well as the number of each license-type renewing, for each of the fiscal years indicated.

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**Table 5**

**Qualified Supervisor and Certified Operator Licensing Information**

Fiscal Year	Qualified Supervisors			Certified Operators			
	Exam	Renewal	Total Active	Exam	Endorsement	Renewal	Total Active
99-00	187	468	2,087	212	82	105	650
00-01	203	427	2,098	228	77	111	761
01-02	161	517	2,350	204	88	112	788
02-03	185	477	2,187	213	50	127	935
03-04	257	458	2,187	290	71	156	934

As Table 5 indicates, the overall number of each license-type has increased during the five years reviewed here.

Note also that only certified operators may obtain licensure in Colorado through endorsement. This means that all Colorado-licensed qualified supervisors must satisfy the experience requirements and take and pass the relevant examinations.

License fees for qualified supervisors and certified operators are \$100, and licenses are valid for three years from the anniversary date of initial licensure. Upon renewal, a licensee must satisfy Commissioner-promulgated continuing education requirements. Generally, licensees must acquire seven general continuing education credits every three years to renew their licenses, plus either one or two additional credits that are specific to each of the categories of pesticides in which the licensee is licensed.

CDA tracks the number of continuing education credits acquired by each licensee by requiring continuing education workshop providers to report such information directly to CDA. CDA then sends periodic reminders to licensees as to the number of continuing education credits they must obtain prior to renewing their licenses.

CDA approves all continuing education workshops and the number of continuing education credits to be awarded for each. To gain approval, a workshop provider must complete an application. The application requires a disclosure of the topics, as well as a synopsis of each, to be covered during the workshop, and estimate as to the amount of time to be devoted to each topic. All applications for approval must be submitted at least two weeks prior to the workshop offering.

It takes CDA staff approximately one or two hours to either approve or deny a continuing education workshop. Workshop providers are typically notified as to whether their courses are approved or denied within one week of submission to CDA.

Table 6 illustrates the number of approved continuing education workshops approved for each of the fiscal years indicated.

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**Table 6**

**Approved Continuing Education Workshops**

Fiscal Year	Number of Approved Workshops			
	Core Only	Category Only	Core and Category	Total
99-00	7	2	75	84
00-01	11	9	76	96
01-02	7	6	64	77
02-03	6	11	67	84
03-04	5	18	57	80

Core workshops are relatively general in nature and typically cover topics such as the Act and its regulations, as well as general labeling requirements, rather than more category-specific subject matter.

Note that although the total number of workshop offerings has remained relatively constant over the five-year period indicated, the number of workshops that are category-specific increased substantially, from 2 in fiscal year 99-00, to 18 in fiscal year 03-04.

The last group of individuals governed by the Act, though not directly regulated by it, are technicians. Applicators are required to provide their technicians with a certain number of hours of training; this is often referred to as verified technician training (VTT). The number of hours of VTT an individual technician must have depends entirely on the type and number of classifications and categories of pesticides with which that technician will work, but generally, technicians must receive between 36 and 160 hours of initial training.

Additionally, applicators must provide their technicians with a certain number of hours of annual continuing education, generally between 4 and 12 hours. Again, the number of hours an individual technician must receive depends on the type and number of classifications and categories of pesticide with which that technician works.

The CDA has developed a form upon which all VTT must be tracked. These forms are retained by the applicator for which the technician works and are subject to inspection by CDA. However, since the Commissioner lacks direct jurisdiction over technicians and has no requirement for applicators to report the number of technicians they employ, there is no reliable means for determining the actual or estimated number of trained technicians working in Colorado today.

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## Examinations

Through a memorandum of understanding between CDA and Colorado State University Pesticide Education Office (CSU), the examinations and related study guides for qualified supervisors and certified operators are developed and maintained. New tests are generated semi-annually from a database of validated questions.

The examination process essentially consists of two parts: a general examination (commonly referred to as the “core category” examination) and one examination for each classification and category of pesticide with which the individual works. As a result, an individual may take several category-specific examinations.

The general examination covers areas such as laws and regulations, pesticide labels and labeling, pesticides, host and pest identification and biology, safety and protection, and pesticide application. While qualified supervisors and certified operators take the same, category specific examinations, the general examinations for these two license types are different.

The qualified supervisor general examination contains more questions and the questions go into greater detail regarding applicable laws and regulations and pest management because qualified supervisors, not certified operators, are charged with supervising others, so they need to demonstrate a greater depth of knowledge regarding such topics.

The general examination for qualified supervisors consists of 125 questions comprising 10 “true/false” and 115 multiple-choice questions. The general examination for certified operators consists of 100 questions comprising 10 “true/false” and 90 multiple-choice questions. In both cases, examinees must complete the general examination within two hours.

For each classification and category of pesticide with which a licensee will work, there is a separate, category-specific examination. Each category-specific examination consists of 50 questions comprising 10 “true/false” and 40 multiple-choice questions that must be answered within one hour. Within each category, examination questions cover basic biology, pesticides and formulations, pesticide application, applicator safety, pest identification, environmental protection, integrated pest management, equipment knowledge, calibration and host/site identification.

All examination test items are validated by panels of outside experts. CSU maintains the examinations and generates new test forms every six months.

CSU and CDA have developed study guides for the general examinations and for each category-specific examination. All test questions are derived from the study guides, the Act and its rules.

Regardless of the examination taken, a candidate must answer 70 percent of the questions correctly in order to pass the examination. Table 7 illustrates the total number of examinations administered during the five years indicated and the overall examination pass rate for each year.

**Table 7****Examination Information**

Fiscal Year	Number of Written Examinations Given	Pass Rate (%)
99-00	2,649	43
00-01	2,881	43
01-02	2,835	47
02-03	2,703	47
03-04	3,205	47

While these overall pass rates are relatively low, the situation becomes more alarming when an analysis of pass rates by examination is conducted. Table 8 illustrates, by examination, the pass rates for each examination for the same five fiscal years.

**Table 8****Pass Rates (%) by License Type and Examination**

Pesticide Category	FY 99-00		FY 00-01		FY 01-02		FY 02-03		FY 03-04	
	QS	CO								
General	45	40	48	61	55	49	32	61	33	66
Ag. Insect Control	28	35	21	35	32	53	28	58	44	47
Ag. Plant Disease Control	23	65	12	59	17	65	13	67	25	77
Ag. Weed Control	61	54	38	49	61	62	62	72	57	93
Ag. Seed Treatment	20	N/A	29	100	14	100	50	100	N/A	100
Ag. Livestock Pest Control	33	67	29	67	N/A	N/A	N/A	N/A	N/A	0
Ag. Forest Pest Control	38	63	33	31	33	50	45	50	34	12
Ag. Rangeland Pest Control	98	89	75	96	84	77	80	76	74	81
Ag. Aquatic Pest Control	40	82	32	69	50	44	30	75	51	61
Ag. Industrial and Right-of-Way Weed Control	31	71	18	49	28	53	34	100	37	63
Ag. Public Health Pest Control	20	0	13	75	47	0	36	61	33	51
Ag. Research and Demonstration	88	50	71	100	64	100	80	N/A	75	0
Ag. Metam Sodium for Root Control in Sewers	N/A	N/A	100	N/A	N/A	N/A	N/A	N/A	100	N/A
Turf Pest Control	33	56	30	65	32	55	41	67	41	77
Ornamental Pest Control	16	64	24	60	21	68	25	60	33	69
Structural Wood Destroying Organism Pest Control	55	75	69	50	47	86	57	100	41	100
Structural Outdoor Vertebrate Pest Control	35	67	21	46	31	53	49	75	36	55
Structural Fumigation	53	73	100	64	56	53	30	40	75	67
Structural Residential/Commercial Pest Control	36	68	37	44	45	69	49	100	38	81
Structural Stored Commodities Treatment	17	35	23	64	110	67	9	71	36	80
Structural Wood Preservation and Wood Products Treatment	38	100	100	100	29	100	29	N/A	50	50
Structural Interior Plant Pest Control	55	N/A	83	N/A	100	N/A	71	N/A	100	75

QS = Qualified Supervisor

CO = Certified Operator

N/A = Not Administered

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Recall that all examination questions are derived from the study guides, as well as the Act and its rules. CDA and CSU began rewriting the study guides in 2001. As of this writing, seven study guides had been rewritten and are listed below, along with the month and year in which they were revised:

- General (April 2001)
- Interior Plant Pest Control (April 2001)
- Residential/Commercial Pest Control (April 2001)
- Turf Pest Control (September 2001)
- Industrial Right-of-Way (September 2002)
- Agricultural Insect Control (September 2003)
- Ornamental Pest Control (September 2004)

Comparing this information with the data contained in Table 8, it becomes clear that pass rates have improved somewhat after the various study guides have been rewritten.

Although CDA has no definitive timeline for rewriting the remaining study guides, the general target is to rewrite one study guide each year.

Study guide revisions are important when discussing the low pass rates for the various examinations described in Table 8. When CSU became involved in the examination maintenance and study guide writing processes in 2000, the first task was to eliminate test items that referred to other states, in an effort to make the examinations Colorado-specific. The second task was to ensure that each question was addressed in the study guide.

Since the examination questions are derived directly from the study guides, the Act and its rules, two explanations seem logical. First, test takers generally do not adequately study for the examinations. Anecdotal evidence suggests that this may be the key reason for the low pass rates.

The second explanation pertains to what is studied. An analysis of which examination questions are most often answered incorrectly reveals that questions pertaining to the Act and its rules are at the top of the list. This indicates that candidates are not sufficiently familiar with these subject areas. Again, anecdotal evidence suggests that candidates have not historically been aware that these topics appeared on the examinations. Recently, CDA and CSU have made efforts to ensure that candidates are aware of this fact.

Candidates may take the examinations at several locations across the state. The main testing location is at CDA's headquarters in Lakewood, where examinations are offered on Wednesdays and Thursdays by appointment only.

Additionally, candidates may arrange, by appointment, to take an examination at test centers in Alamosa, Cheyenne Wells, Durango, Eads, Fort Collins, Fort Morgan, Gypsum, Lamar, Montrose, Palisade, Pueblo, Steamboat Springs, Sterling and Yuma. Although appointments are necessary, all examinations typically begin at 8:00 a.m.

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Examinations taken at CDA's headquarters in Lakewood are graded on-site and examination results are available immediately. Examinations taken at other testing sites are graded at CDA headquarters and examination results are generally available within one week of testing.

Candidates must pay an examination fee of \$100. However, this fee is assessed per testing session, which means that a candidate seeking licensure in five categories, for example, pays the same as a candidate seeking licensure in one category. Additionally, this means that a candidate may take the same examination twice in the same session if he or she fails the first time.

### *Inspections*

Inspections are conducted either as a matter of routine or as the result of a complaint. However, the primary focus is on routine inspections of applicators. Such inspections include verifying proper certifications and technician training, checking applicator records, storage and disposal of pesticides and vehicle identification.

As Table 9 illustrates, CDA conducted 2,378 inspections between fiscal years 99-00 and 03-04.

**Table 9**

#### **Inspection Information**

<b>Fiscal Year</b>	<b>Number of Applicators Inspected</b>
99-00	433
00-01	433
01-02	337
02-03	662
03-04	513

If, during the course of an inspection, an inspector identifies a violation of the Act or some other matter that needs correcting, a follow-up inspection may be conducted. It is, therefore, important to note that the figures provided in Table 9 represent the number of applicators inspected for a given year, not necessarily the number of inspections actually conducted.

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*Complaints/Disciplinary Actions*

Table 10 illustrates the number and types of complaints received by CDA from the general public for the five-year period indicated.

**Table 10**  
**Complaint Information**

<b>Nature of Complaints</b>	<b>FY 99-00</b>	<b>FY 00-01</b>	<b>FY 01-02</b>	<b>FY 02-03</b>	<b>FY 03-04</b>
Practicing w/o a License	12	12	11	11	7
Pesticide Drift	11	21	12	13	12
Ornamental Damage (no drift)	7	4	2	5	1
Business Practices	2	1	3	1	3
Pesticide-Sensitive Person Not Notified	1	2	0	0	1
Application on Incorrect Property	1	1	4	2	1
Violation of Stipulation	1	0	0	0	0
People Ill From Application	6	3	2	4	0
Animals Ill From Application	0	2	0	2	1
Animals Killed	0	2	0	0	2
Beneficial Insects Killed	1	0	0	0	0
Violated Injunction	1	0	0	0	0
Spill	3	0	0	1	0
Product Not Registered	1	0	0	1	3
Storage	0	3	1	0	2
Treatment Effectiveness	0	3	0	0	0
Damage to Property	0	1	0	1	0
Application Inconsistent with Label	0	3	3	1	5
<b>TOTAL</b>	<b>47</b>	<b>58</b>	<b>38</b>	<b>42</b>	<b>38</b>

The statistics reported in Table 10 can be somewhat misleading without explanation because they represent what CDA considers “formal” complaints only. CDA deems a complaint to be formal when it is made by a member of the public and an investigation determines that disciplinary action is necessary. Thus, the data reported as “complaints” actually represent the number of investigations, not what is traditionally considered a complaint.

CDA characterizes traditional complaints as “miscellaneous complaints,” and only began tracking statistics regarding such in mid-2005. As a result, no reliable information is available as to the number of public inquiries or complaints that are made that are not developed into investigations and formal complaints.

Table 11 illustrates the number of disciplinary actions taken by the Commissioner during the same five-year period.

**Table 11**  
**Final Agency Actions**

Type of Action	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Revocation of License/Registration	0	0	0	1	0
Surrender of License	0	0	1	0	0
Cease & Desist Orders	46	35	55	86	72
Probation / Practice Limitation / Stipulation	23	18	16	19	16
Letter of Admonition	2	2	2	1	5
License Granted with Probation / Practice Limitations	0	0	0	0	0
License Denied	0	0	0	0	0
Injunction	0	0	0	0	0
Fine	22	22	16	17	16
Referred to EPA or Attorney General	1	0	2	5	5
<b>Total Disciplinary Actions</b>	<b>94</b>	<b>77</b>	<b>92</b>	<b>129</b>	<b>114</b>
Dismissed	22	19	23	15	18
Letter of Concern	1	0	1	0	2
Violations Issued	17	33	19	15	23

As early as fiscal year 99-00, CDA reports having a considerable backlog of cases, which it has been trying to eliminate. CDA asserts that this is why the number of disciplinary actions exceeds the number of complaints. Additionally, a single complaint may lead to multiple disciplinary actions. For example, one complaint may result in a fine and a probationary period.

The Commissioner utilizes three disciplinary tools that bear considerable resemblance to one another and thus, merit further discussion: letter of concern, “violations issued” and letter of admonition.

A letter of concern is issued when the Commissioner is unable to establish that a violation has occurred, but that the relevant conduct is cause for concern. Essentially, a letter of concern constitutes a dismissal with a warning.

A “violations issued,” on the other hand, is issued when the Commissioner is able to prove that a violation has occurred, but that formal disciplinary action is not warranted. These types of violations typically involve recordkeeping or other, business-related types of violations, as opposed to conduct actually involving the misuse or misapplication of pesticides. When “violations issued” are issued, no civil penalty is imposed and the fact that the “violations issued” is issued will not be held against the applicator should future disciplinary action be taken. CDA makes every effort to follow up on situations in which a “violations issued” is issued.

Finally, a letter of admonition is issued when the Commissioner finds that a violation has occurred and formal disciplinary action is necessary. Letters of admonition constitute formal discipline, but rarely involve the imposition of a civil penalty. Rather, a letter of admonition may be considered as an aggravating factor in determining the level of a fine in any future disciplinary actions.

By far, the most common disciplinary tool utilized by the Commissioner is the cease and desist order. The vast majority of cease and desist orders are issued to unlicensed applicators and individuals.

Another commonly used disciplinary tool is the imposition of a fine. Note that during the five-year period indicated, the Commissioner imposed a total of 93 fines. Examining how those fines are determined and how much money is actually collected merits discussion.

Table 12 provides information on the number of fines imposed, the actual dollar amount of the fines imposed, the dollar amount held in abeyance, the dollar amount actually collected and the percentage of fines actually collected.

**Table 12**  
**Fining Information**

<b>Fiscal Year</b>	<b>Number of Fines Imposed</b>	<b>Value of Fines Imposed (\$)</b>	<b>Value of Fines Held in Abeyance (\$)</b>	<b>Value of Fines Collected (\$)</b>	<b>Percentage of Fines Collected (%)</b>
99-00	22	68,950	47,700	21,250	31
00-01	17	34,700	19,650	15,050	43
01-02	22	135,450	92,050	43,400	32
02-03	18	49,525	27,575	21,950	44
03-04	20	46,500	25,950	20,550	44
<b>Total</b>	<b>99</b>	<b>335,125</b>	<b>212,925</b>	<b>122,200</b>	<b>36</b>

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The Commissioner has developed an enforcement matrix to assist staff in determining the appropriate level of fine for certain types of violations. Depending upon the statutory provisions that were violated, if the violation involved fraud, deceit or false or misleading statements, the presumptive fine is \$800 per violation and two years of probation. For violations involving misuse or misapplication of pesticides, the presumptive fine is \$400 per violation and one year of probation. For violations involving records or recordkeeping, the presumptive fine is \$200 per violation and one year of probation.

These presumptive fines serve as the basis for the actual level of fine imposed. However, this can be adjusted upwards or downwards, depending on aggravating and mitigating factors to arrive at a value that is held in abeyance. Examples of aggravating factors include the disciplinary history of the licensee, cooperativeness, actual harm caused and the potential for harm resulting from the violation, the ratio of qualified supervisors to technicians, and the number of applications made by the applicator each year. Examples of mitigating factors include disciplinary history, correction of the violation, the location of the violation and the culpability of the applicator vis-à-vis the qualified supervisor or certified operator.

Fines that are held in abeyance are not collected unless the licensee violates the Act during the period of probation. If such is the case, then the full amount of the fine is collected. If, however, the licensee completes the probationary period without further violations, the amount of the fine that was held in abeyance is dismissed and not collected. This common disciplinary tactic serves to provide a licensee with added financial incentive to remain compliant.

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## **Analysis and Recommendations**

*Recommendation 1 – Continue the Pesticide Applicators’ Act for nine years, until 2015.*

The first sunset criterion asks whether regulation is necessary to protect the public health, safety or welfare. The Pesticide Applicators’ Act (Act) regulates all commercial pesticide applicators, as well as those limited commercial and public applicators that use restricted use pesticides (RUPs) or that have voluntarily registered with the Colorado Commissioner of Agriculture (Commissioner) under the Act. Section 35-10-103(10), Colorado Revised Statutes (C.R.S.), defines “pesticide” as any substance intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant. In simple terms, pesticides are poisons and toxins and the Act regulates those who apply them. Clearly, regulation of pesticide applicators is necessary to protect the public.

However, the U.S. Environmental Protection Agency (EPA), has declared some pesticides more dangerous than others by maintaining a system that differentiates between general use pesticides (GUPs) and RUPs. While both categories still consist of poisons and toxins, GUPs are considered less dangerous and are therefore available to the general public, whereas RUPs are considered to be more dangerous and may be purchased only by licensed pesticide applicators.

Since RUPs are so toxic, even when used properly, very few would argue that regulation of RUP applicators is unnecessary. GUPs, though, are another matter. Adding to this debate is the fact that most of what applicators apply are GUPs.

Two conclusions are reasonable based on this information. First, since GUPs are safe enough to be used by the general public, it is not necessary to regulate those who apply GUPs for hire. Second, GUPs are so effective that licensed applicators continue to use them.

During the course of this sunset review, a representative of the Department of Regulatory Agencies (DORA), met with numerous industry representatives, as well as representatives of environmental protection groups and health care agencies.

Opinion among industry representatives is less than unanimous. Some industry representatives argue that GUPs are so safe that the general public, including a homeowner, can acquire and apply GUPs with no education, experience or other qualifications. While this may be true, it is not persuasive. The GUPs used by applicators are generally used in concentrations that are higher than those available to the general public, and even GUPs pose a risk to the public.

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Common symptoms of pesticide poisoning include skin irritation, headaches, vision problems, inflamed eyes, dizziness, weakness, excessive sweating, nausea, vomiting, difficulty breathing, irritation of the nose or throat and stomachaches. Additionally, pesticide exposure has been associated with cancer, sterility, miscarriages, birth defects and developmental disabilities. Worse, pesticide poisoning can result in death. In 1998, a Utah farm worker died after being sprayed with pesticides twice in seven days.

Since even the proper use of pesticides poses a significant risk to the public health, safety and welfare, there can be no doubt that the misuse or misapplication of pesticides poses even greater risk to the public health, safety and welfare, as well as to the environment. This risk is compounded by the sheer number of pesticide applications made in Colorado each year, which is estimated to be in the tens of thousands. Thus, DORA concludes, regulation is justified and should be continued.

However, the form of that regulation also needs to be explored because even if the General Assembly were to repeal the Act, regulation of pesticide applicators would not completely cease. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) grants primary jurisdiction over pesticides and their uses to EPA. EPA, however, has delegated most of this authority to the states when those states have implemented legislation such as the Act. Indeed, all 50 states have implemented such legislation; so repealing the Act would render Colorado the only state in the union not to regulate pesticide applicators.

Ironically, Colorado has first hand experience as to what pesticide applicator regulation under EPA looks like because Colorado already has the distinction of being the only state that does not regulate private pesticide applicators. In Colorado, EPA retains jurisdiction over those who apply pesticides to land they own or lease.

Perhaps the most glaring differences between regulation by EPA and regulation by the Colorado Department of Agriculture (CDA) and the Commissioner is one of regulatory philosophy.

With fewer resources in Colorado, EPA's approach to regulation is more enforcement-oriented. For example, in 2002, the EPA fined one Weld County farm over \$200,000 for approximately 200 violations. The violations in this case involved failure to post required notices alerting employees of the pesticides applied over the course of the previous 30 days. EPA takes fewer actions, but when it does, it attempts to select cases with greater likelihood of deterring future violators.

The approach of CDA, on the other hand, has been characterized as "compliance-assistance." This means that when CDA finds violations, inspectors are more likely to assist the violator in correcting the problem, rather than simply imposing a fine and moving on.

Some argue that CDA's approach is overly lax and that it simply encourages applicators to violate the Act because they know that the first time they are caught in violation, very little, if anything will happen to them.

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While there is some validity to this, it is doubtful that EPA's regulation of all pesticide applicators in Colorado would result in greater compliance with FIFRA. Indeed, it is highly unlikely that the federal government would devote any more resources to FIFRA-enforcement in Colorado. As a result, sunseting the Act would most likely result in less regulation of pesticide applicators in this state, not more.

This sunset report acknowledges that CDA's administration of the Act is less than perfect. As a result, there are numerous recommendations contained herein to address some of them. Additionally, there are several issues that arose during the course of this sunset review regarding which no recommendation is made, but that, nevertheless, merit some discussion.

A cursory examination of the individuals regulated by the Act and the rules promulgated by the Commissioner in implementing the Act reveals that technicians are not directly regulated. Although there are several types of technicians, of primary concern during this sunset review were applicator technicians. Applicator technicians are individual employees of commercial, public or limited commercial applicators who are in the field actually applying pesticides.

Although applicator technicians are not directly regulated by the Act, they are indirectly regulated. By rule, applicator technicians must receive between 36 and 160 hours of initial training, depending upon the categories of pesticides with which they work, plus annual continuing education.

During the course of this sunset review, CDA asserted that it lacked direct jurisdiction over applicator technicians and that in order to adequately protect the public, such jurisdiction is necessary. DORA disagrees.

Currently, the Commissioner has jurisdiction over the licensed commercial applicator and registered public and limited commercial applicator for which the technician works, as well as the qualified supervisor who is supposed to be supervising the technician. Part of the justification for regulating qualified supervisors is to limit the number of people who are held responsible for applications. This is because applicator technicians are rarely permanent full-time employees. Rather, many are seasonal employees who lack the desire to attain full licensure and who lack the experience to be held to the same standard as their employers and supervisors.

Thus, by regulating commercial, and certain public and limited commercial applicators, as well as the qualified supervisors and certified operators, the Act imposes a less restrictive, more efficient regulatory program. The individuals and entities responsible for training and providing direction to applicator technicians are regulated and held responsible.

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Additionally, there have been very few disciplinary cases involving technicians. Between 2000 and 2005, CDA filed 36 cases involving the misuse of pesticides and only 67 percent of those involved misuse by a technician. While 36 cases over five years may sound substantial, it must be recalled that there were tens of thousands, perhaps millions of applications during this same period, yet only 36 rose to the level of requiring disciplinary action and barely two-thirds of them involved technicians. As a result, direct regulation of applicator technicians is not warranted at this time.

In spring 2005, EPA intimated that an expansion of regulation to applicator technicians might be warranted.<sup>1</sup> Representatives of CDA have interpreted this as meaning that Congress will amend FIFRA to require the licensing of technicians. However, even if this were to happen, it is several years from implementation and it ignores the fact that, according to the findings of this sunset review, such an expansion is not justified.

Finally, if the Commissioner successfully implements Administrative Recommendation 1 of this sunset report, which can be found on page 41, this issue will be moot. That recommendation advocates for the Commissioner to seek legislation that would grant CDA primacy over private pesticide applicators. Implicit in such primacy is the assumption of jurisdiction, though not necessarily regulation, over all non-licensed users of pesticides. Since applicator technicians are not licensed, the Commissioner and CDA would gain direct jurisdiction over them.

Another critical issue that arose during the course of this sunset review pertained to the Act's preemption of local regulation of pesticide applicators. While some argue that preemption has served to hinder environmental protection by preventing local governments from imposing more restrictive laws, it can also reasonably be argued that maintaining a uniform system of regulation that contains minimal safeguards is actually serving to protect the public more than would a system of patchwork local regulation.

If local governments were permitted to impose their own laws regarding pesticide applicators, chaos could result from the confusion created when an applicator works in more than one county or more than one municipality. It would be virtually impossible to enforce any standards at all.

Therefore, the General Assembly should maintain the current, statewide uniform system of regulation.

Since the Act represents the least restrictive and most efficient manner in which to regulate pesticide applicators while still protecting the public health, safety and welfare, the General Assembly should continue the Act for nine years, until 2015, consistent with the recommendations contained in this sunset report.

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<sup>1</sup> *Strategic Program Assessment of the Pesticide Safety Education Program*, EPA Office of Pesticide Programs, May 6, 2005, p. 19.

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*Recommendation 2 – Amend the notification provisions for individuals listed on the Registry of Pesticide-Sensitive Persons to include certain structural applications.*

Section 35-10-112(1)(c), C.R.S., requires all licensed commercial applicators and all registered limited commercial and public applicators, prior to applying any pesticide in any turf and ornamental category, to take reasonable actions to provide notice of the date and approximate time of the application to any person who resides on property that abuts the property on which the application is to be made and who is listed on the Registry of Pesticide-Sensitive Persons (Registry).

This means that a person listed on the Registry (pesticide-sensitive person) is entitled to notice only when the application is to be made on property abutting that of the pesticide-sensitive person and only when the application involves a turf and ornamental pesticide. Notice is not, therefore, required if the application is to be made in any category other than turf and ornamental.

Turf and ornamental categories of pesticide applications consist mainly of outdoor applications to lawns, trees and shrubs. Thus, the Act does not require notification to a pesticide-sensitive person who lives in a multi-unit dwelling when, for example, an application is to be made to rid one unit of ants or roaches.

While drift is less of an issue in structural applications such as those described above, it is still an issue. More importantly, however, is the fact that in certain structural applications, the pesticide is intended to remain active in an enclosed space for a period of time, thus increasing the likelihood that a pesticide-sensitive person may become exposed to the pesticide. This is particularly true if the pesticide is applied in an interior hallway or common area.

Requiring structural applicators that apply in the categories of Wood Destroying Organisms Pest Control, Residential/Commercial Pest Control and Interior Plant Pest Control, all of which involve applications indoors, to notify pesticide-sensitive persons of applications should not be overly burdensome because, according to most structural applicators, they already endeavor to provide such notice. This amendment would simply require it.

Importantly, pesticide-sensitive persons are merely entitled to pre-application notice. They are not empowered to halt an application. Pre-application notice merely provides pesticide-sensitive persons with an opportunity to take appropriate precautions to reduce or eliminate the likelihood that they will be exposed to pesticides and, thus, avoid becoming ill.

For all these reasons, the General Assembly should amend the Act to require pre-application notice to pesticide-sensitive persons when structural applications in the categories of Wood Destroying Organisms Pest Control, Residential/Commercial Pest Control and Interior Plant Pest Control are performed in the common areas of multi-unit dwellings or in units adjacent to the unit occupied by a pesticide-sensitive person residing in such multi-unit dwelling.

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*Recommendation 3 – Clarify that notice to pesticide-sensitive persons is required when applications are made to common areas abutting the property or unit of a pesticide-sensitive person and to the property occupied by a pesticide-sensitive person.*

Section 35-10-112(1)(c), C.R.S., requires pre-application notification to individuals listed on the Registry when such applications are to take place on property abutting that of the pesticide-sensitive person. It seems relatively clear that notice must be given, regardless of the type of property to which the application is to be made, so long as it is a turf and ornamental category.

During the course of this sunset review, however, it became clear that there is considerable confusion as to when notice is required if the application is to take place on common areas. For example, is notice required when the application is to take place on a greenway that is owned by a homeowners' association and the pesticide-sensitive person's property abuts this common greenway? Some common areas can be quite large. If the actual application is to occur a mile away, is notice still necessary? What about three blocks?

Another common example envisions a multi-building complex with green space between buildings. If the pesticide sensitive person lives in one building, but the application is to take place outside a building 1,000 feet away, but in a common area, is the pesticide-sensitive person entitled to pre-application notification? This is particularly confusing when trying to determine what constitutes the property of the pesticide-sensitive person in such a complex.

Additionally, many people, including pesticide-sensitive persons, occupy single-family homes that they rent. It is not uncommon for the property owner to retain responsibility for lawn care and maintenance, during the course of which, the property owner may arrange for the application of pesticides. Since the pesticide-sensitive person occupies the property, and the Act only requires pre-application notice for properties abutting the property to be treated, the pesticide-sensitive person may not learn of the application until after the fact. This defeats the spirit of the Registry and the related pre-application notification requirement.

To clarify these types of situations, the General Assembly should clarify that notice must be given to a pesticide-sensitive person when that individual's property or unit is adjacent to a common area or when a pesticide-sensitive person occupies the property to be treated.

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*Recommendation 4 – Repeal the requirement that licensed commercial and registered limited commercial and public applicators use or recommend only registered devices. Direct the Commissioner to specify, by rule, which devices, when employed for hire, require licensure as a commercial applicator. Specify that such devices be restricted to those posing a significant risk to public health and safety.*

Section 35-10-103(2), C.R.S., defines “commercial applicator” as “any person who engages in the business of applying pesticides or operating a device for hire.”

Section 35-10-103(5), C.R.S., defines “device” as:

Any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms or in living man or other living animals); except that “device” shall not include equipment used for the application of pesticides when sold separately therefrom.

Additionally, section 35-10-117(2)(b), C.R.S., prohibits any licensed commercial applicator, or registered limited commercial or public applicator, from using or recommending the use of any device not registered by the Commissioner pursuant to the Pesticide Act, which can be found at 35-9-101, *et seq.*, C.R.S.

Section 35-9-103(5), C.R.S., defines “device” in a manner that is identical to section 35-35-10-103(5), C.R.S., and section 35-9-110, C.R.S., stipulates that only devices registered by the Commissioner may be lawfully sold in the state.

However, as a practical matter, not every device sold in the state is registered because, according to a plain reading of the definition of “device,” even a fly swatter should be registered. Fly swatters are not registered. Whether the Commissioner has failed to fulfill the statutory mandate dictated by the Pesticide Act or whether the Commissioner has interpreted the Pesticide Act with an eye to practicality is beyond the scope of this sunset review.

Regardless, the sale of unregistered devices has created a problem with respect to applicators governed by the Act. According to a strict reading of the Act, a commercial applicator may neither use nor recommend the use of a fly swatter simply because the Commissioner has failed to register fly swatters. This is absurd.

An additional consideration is whether a commercial applicator license should even be required for the use of some devices. While the health and environmental effects of the misuse or misapplication of pesticides is clear, as discussed in Recommendation 1 of this sunset report, the same cannot be said of devices.

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The broad definition of “device” encompasses everything from fly swatters, snap traps and bird spikes to live traps and explosives. Obviously some pose a risk to public health and safety and some do not.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. It is difficult to see how public protection is enhanced by requiring a commercial applicator license to place bird spikes, which are registered, while at the same time prohibiting a commercial applicator from recommending the use of fly swatters, which are not registered.

While some public health risks may exist -- for example, trapping a hanta-virus-infected rodent -- this is not true for all devices.

Therefore, the General Assembly should repeal the requirement that licensed or registered applicators use or recommend only registered devices, thereby allowing such applicators to use or recommend unregistered devices, such as fly swatters.

The General Assembly should also direct the Commissioner to specify, by rule, which devices, when employed for hire, require licensure as a commercial applicator. These devices should be restricted to those posing a significant risk to public health and safety.

*Recommendation 5 – Limit the number of terms that members of the Pesticide Advisory Committee may serve to no more than two, three-year terms.*

The Act specifies that the terms of members of the Pesticide Advisory Committee (Advisory Committee) are to last three years, but it does not specify the number of terms a member may serve.

Term limits have become the norm in Colorado political life. The Governor is limited to two terms and members of the General Assembly even have term limits. Additionally, virtually all of the members of the professional licensing boards in DORA are subject to term limits.

Proponents of term limits argue that they ensure that new people are given the opportunity to serve. They also argue that term limits help to reduce the likelihood of boards becoming dominated by a single, long-serving member.

This is particularly salient with respect to the Advisory Committee because two members have served for 16 years each and another member has served for 12 years.

Opponents of term limits often argue that term limits help to eliminate institutional memory because turnover eliminates the long-serving members that possess the institution’s memory.

These arguments against term limits are far less convincing when it comes to service on the Advisory Committee. CDA staff provides the institutional memory. Additionally, the

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Advisory Committee is an advisory body, which lends credence to the proposition that new people should be afforded the opportunity to serve and to present new ideas.

However, two positions on the Advisory Committee should be exempted from any term limits. These are the positions outlined in sections 35-10-125(2)(g) and (h), C.R.S., one representing Colorado State University (CSU) and one representing the Colorado Department of Public Health and Environment (CDPHE). These two seats should be exempted from the term limits because, historically, they have been held by individuals in certain positions. For example, the representative of CDPHE is the Manager of the Vector Control Program. Vectors are insects that transmit disease to humans. Therefore, the individual holding this position is uniquely qualified to sit on the Advisory Committee and the removal of this individual would prove a loss to the Advisory Committee and CDA.

For these reasons, the General Assembly should establish term limits for members of the Advisory Committee such that no member, other than those discussed herein, may serve more than two, three-year terms.

*Recommendation 6 – Authorize the Commissioner to outsource the development and administration of the licensing examinations.*

Section 35-10-118(3), C.R.S., provides:

The commissioner shall determine the content of each such examination required for the administration of this article and the amount of any examination and examination-grading fee. Any examination-grading fee established by the commissioner is limited to the actual administrative costs incurred in the grading of the examinations. The commissioner shall establish a passing score of each examination, which reflects a minimum level of competency in the class or subclass for which the applicant is being tested.

As a practical matter, this provision requires the Commissioner to both develop and administer the licensing examinations authorized under the Act.

In order to provide the Commissioner with greater flexibility and to enhance administrative efficiency, the General Assembly should expressly grant the Commissioner the ability to either develop examinations or to adopt commercially available examinations, and to either administer or to out-source the administration of these examinations.

There are a number of advantages to outsourcing the development and administration of examinations. First, most testing companies or owners of national examinations ensure that the examinations are psychometrically valid and legally defensible. Since this is all that these entities do, they can usually do so at less expense than can the state.

Second, outsourcing the administration aspect of the examinations would make it easier, and possibly less expensive, for licensing candidates to take the examinations because any contract to outsource could require multiple testing sites around the state, thereby making it

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easier to get to the examination and likely obviating the need for candidates to incur travel expenses.

Importantly, the implementation of this recommendation would not require that the Commissioner outsource the development or administration of examinations. Rather, it would simply provide the Commissioner with the statutory authority to do so at such time as it becomes financially advantageous to do so.

For these reasons, the General Assembly should authorize the Commissioner to adopt national examinations and to outsource the administration of examinations.

*Recommendation 7 – Replace all provisions establishing renewal cycles with provisions authorizing the Commissioner to establish renewal cycles administratively, but not to exceed three years.*

Pursuant to section 35-10-106(5), C.R.S., all commercial applicator licenses are valid for one year and all expire on January 1 each year. Pursuant to section 35-10-116(1), C.R.S., all qualified supervisor and certified operator licenses are valid for three years and expire on the anniversary date of the license.

In order to take full advantage of advances in technology and to realize administrative efficiencies, the Commissioner should be authorized to establish renewal cycles administratively. However, license renewal cycles should be limited to no longer than three years. This would permit the Commissioner to spread the workload of license renewals over many months and many years, thus maximizing the use of CDA staff and resources.

*Recommendation 8 – Amend section 35-10-126, C.R.S., to direct that all money realized through fines be credited to the state's General Fund.*

Section 35-10-126, C.R.S., provides that all fines collected pursuant to the Act are credited to the Commercial Pesticide Applicator Fund, which is the agency's cash fund.

Ordinarily, when an agency is given fining authority, any funds generated by such fines are credited to the state's General Fund. This is done so that the agency has no incentive to impose fines, other than taking legitimate disciplinary action.

In situations such as the one at issue here, where fines are credited to the agency's cash fund, there can be a perceived conflict of interest -- an agency can increase revenues by imposing more fines. For cash funded agencies, this can allow them, and in some cases require them, to reduce license and other fees.

Recall that in fiscal year 03-04, the Commissioner collected approximately \$20,500 in fines and issued or renewed 2,226 licenses. To make up for this loss of funding, license fees can be expected to increase by approximately \$9 per license. This is not an exorbitant sum and

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is a small price to pay for the assurance that the Commissioner will not increase fines in order to accommodate the loss of funds elsewhere.

Although no allegations of impropriety have been levied against the Commissioner or CDA during the course of this sunset review, DORA makes this recommendation as a policy matter so as to prevent any such allegations from arising in the future.

*Recommendation 9 – Repeal section 35-10-118(2)(d), C.R.S., and permit all fees assessed pursuant to the Act to be established administratively so as to cover the actual costs of administering the Act.*

Section 35-10-118(2)(d), C.R.S, mandates that the fee for a commercial applicator license not exceed \$350 per year. However, section 35-10-118(7), C.R.S., authorizes the Commissioner to determine the amount of any licensing fee based on the actual cost of administering and enforcing the Act.

The current license fee for commercial applicators is \$350. Pursuant to the Act, this fee cannot be increased, even if the costs of administering the program increase. As a result, the Commissioner must increase the license fees of other license categories, namely qualified supervisors and certified operators, to cover the actual cost of administering the Act.

Since the regulatory program established pursuant to the Act is a cash funded program and since the statutory establishment of a fee for the commercial applicator license artificially shifts the costs of the program to other license categories, the General Assembly should repeal section 35-10-118(2)(d), C.R.S., thereby authorizing the Commissioner to establish all fees so as to cover the actual cost of administering the Act.

*Recommendation 10 – Amend section 35-10-112(1)(a), C.R.S., so as to eliminate the need to publish the Registry in hard-copy.*

Pursuant to section 35-10-112(1)(a), C.R.S, the Commissioner must update the Registry at least annually and,

the published registry shall be provided to all commercial, limited commercial and public applicators on record with the Commissioner. Names added after the most recently published registry shall be available from the department upon request.

The Commissioner has interpreted “publish” to mean the creation and dissemination of a hardcopy Registry. Perhaps this is a correct interpretation given that the Act also directs the Commissioner to provide applicators with the Registry, and hardcopy delivery is the most obvious way to fulfill this statutory mandate. Additionally, much is made of an “official” published version of the Registry, as opposed to an “unofficial” electronic version.

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Given advances in technology, increases in printing and mailing costs and the widespread availability of the Internet, it is no longer practical to require the Commissioner to publish hardcopies of the Registry. An electronic version would be easier and less expensive to maintain and disseminate.

Therefore, the General Assembly should remove such restrictive language so as to enable the Commissioner to work with the Advisory Committee to determine the most efficient, cost-effective way of ensuring that all applicators who need to provide notice pursuant to the Registry have access to current information.

*Recommendation 11 – Authorize the Commissioner to reinstate an expired license within six months of the expiration date, upon payment of a reinstatement fee and a showing that all renewal criteria had been satisfied as of the license expiration date.*

Section 35-10-116(5), C.R.S., essentially grants to licensees a 30-day grace period in which to renew a license. If a licensee fails to renew within this time frame, the licensee must apply for a new license, which necessarily entails re-testing in each of the categories of pesticide with which that licensee works. This could be particularly onerous for a licensee who has satisfied all of the renewal requirements, but simply forgot to mail in the license renewal form.

Therefore, the General Assembly should authorize the Commissioner to reinstate expired licenses within six months of expiration upon payment of a reinstatement fee and a showing that all renewal requirements had been satisfied as of the expiration date of the license.

*Recommendation 12 – Repeal section 35-10-127, C.R.S., as obsolete.*

Section 35-10-127, C.R.S., directs the Commissioner to promulgate rules no later than December 31, 1991. That date has long since past and this section is now obsolete. Therefore, the General Assembly should repeal section 35-10-127, C.R.S.

*Recommendation 13 – Amend section 35-10-125(2)(h), C.R.S., to refer to the Colorado Department of Public Health and Environment.*

Section 35-10-125(2)(h), C.R.S., specifies that one member of the Advisory Committee be a representative of the “department of health.” However, the full, legal name of the department of health is the “Department of Public Health and Environment.” The Act should be amended to reflect the correct name of that department.

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*Administrative Recommendation 1 – The Commissioner should bring forward legislation to assume primacy over the regulation of private pesticide applicators.*

Recall that the Act regulates commercial applicators and those public and limited commercial applicators that use RUPs or that opt to register with the Commissioner. Additionally, the Act regulates qualified supervisors and certified operators. The Act, however, specifically exempts from the provisions of the Act, private pesticide applicators.

Section 35-10-104(2), C.R.S., provides that the Act does not apply to:

(a) Any person who performs the following acts for the purposes of producing any agricultural commodities on property owned or rented by him or his employer or, if such acts are performed without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person:

(I) The operation of a device or the supervision of such operation;

(II) The use or supervision of the use of any pesticides except those designated for limited use by the commissioner pursuant to section 35-9-108(5);

(b) Any individual who operates a device or uses any pesticide or who supervises, evaluates, or recommends such acts on the property of another without compensation; or

(c) Any individual who uses a device or applies any pesticide or who supervises such acts at his home or on his property, when such use or supervision is not compensated and is not in the course of conducting a business. Nowhere is it the intent of the general assembly to prevent private citizens from using legal chemicals for the control of weeds and pests on their own property.

In short, then, the Commissioner has no jurisdiction over farmers who apply pesticides on the land they own or rent, or over homeowners who apply pesticides themselves to their own property. These classifications of individuals are commonly referred to as “private applicators.”

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Under FIFRA, EPA has jurisdiction over all applicators not regulated by state law. In this manner, EPA has jurisdiction over homeowners who, for example, apply GUPs in their home to eliminate ants and who apply GUPs in their backyards to eliminate weeds. EPA also has jurisdiction over farmers who apply GUPs and RUPs to their croplands. Additionally, since the Act does not regulate applicator technicians and does not require public and limited commercial applicators that use only GUPs to register with the Commissioner, EPA has jurisdiction over applicator technicians and those public and limited commercial applicators that have not registered with the Commissioner.<sup>2</sup>

This is not to say, however, that EPA issues credentials to all of these individuals and entities. Rather, EPA has jurisdiction over the use of pesticides by individuals not regulated by the Commissioner. For example, a homeowner may purchase a GUP at the local gardening center without any type of credential, but if that homeowner applies the pesticide in a manner that is contrary to the GUP's label<sup>3</sup> or the GUP drifts onto a neighbor's property and kills, for example, a rose bush, EPA would have jurisdiction to investigate any complaints arising out of such incidents and to take legal action against the homeowner.

Similarly, if an applicator technician misapplies a pesticide, EPA would have jurisdiction over the applicator technician, whereas the Commissioner would have jurisdiction over the applicator technician's commercial applicator employer.

EPA does, however, certify private applicators engaged in agricultural production and who use RUPs. Recall that under FIFRA, only approved applicators (i.e., those holding state-issued licenses or registrations, or EPA-issued certifications) may legally obtain and use RUPs.

EPA's certification process, however, leaves much to be desired. Since Colorado is the only state that has not assumed responsibility for regulating private applicators, EPA has developed a "questionnaire" that private applicator certification candidates must answer. In this respect, FIFRA severely binds the hands of EPA.

FIFRA prohibits EPA from requiring an examination and prohibits EPA from denying a certification to anyone. As a result, EPA must refer to its examination as a "questionnaire," and it cannot fail anyone. Rather, if a candidate answers too many questions incorrectly, EPA returns the questionnaire to the candidate and asks that the candidate try again. If the candidate refuses, EPA must issue a certification.

As a result, the questionnaire is exceedingly easy. In fact, a study guide accompanies the questionnaire, and each question on the questionnaire references the page number in the study guide on which the correct answer may be found.

Although EPA's Region VIII headquarters are located in Denver, EPA's three investigators field questions and complaints from Colorado, Wyoming and all Indian Reservations located within Region VIII and travel among those states to conduct investigations.

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<sup>2</sup> Recall that public and limited commercial applicators must register with the Commissioner if they use RUPs, but such registration is optional if they only use GUPs.

<sup>3</sup> Recall, the label is the law.

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Thus, the degree to which EPA regulation of private applicators protects Colorado is highly questionable. So, too, is the effectiveness of that regulation.

As of August 10, 2005, there were 11,736 active EPA private applicator certifications in Colorado.

Between October 1, 2001, and September 30, 2004, EPA Region VIII received 93 complaints regarding private applicators and conducted 328 inspections. These inspections resulted in 107 notices of warning, 15 “stop sale, use or removal” orders and 21 civil complaints. All of these statistics are Colorado-specific.

FIFRA grants EPA the authority to impose fines of \$1,100 per violation. At first blush this seems relatively insignificant, but it adds up. For example, in 2001, EPA investigators conducted a routine inspection of a Weld County vegetable farm that employed several hundred workers. At the conclusion of this inspection, EPA investigators issued a warning to the farm’s owners for failure to adequately post, in an area available to employees, its pesticide application records. Such records, often referred to as worker protection standards or “WPS,” must inform employees as to the names, locations, concentrations, methods of application and times of pesticide application for all applications for the preceding 30 days. Should an employee become ill, these required postings permit the employee to more readily identify the pesticide that may be causing the illness.

EPA returned to this same Weld County farm in 2002 to follow up on the 2001-inspection. EPA found that the farm’s owners were still in violation of the WPS posting requirements. EPA found that 200 pesticide applications had been made in the preceding 30 days, with each constituting a separate violation. At \$1,100 per violation, this Weld County farm was fined \$220,000.

This example lends credence to the commonly held belief that EPA does not take action often, but when it does, the results can be devastating. Since EPA’s resources are spread thinly, it must focus its enforcement actions so as to have maximum deterrent effect.

However, representatives of EPA are quick to point out that the example cited above was extraordinary. Most cases result in fines of only \$2,000 to \$3,000.

Another issue related to EPA jurisdiction over private applicators has to do with timeliness and regulatory philosophy. Recall from earlier discussions that it is widely believed that CDA’s approach to regulation can be characterized as “compliance assistance,” whereas EPA’s can be characterized as “enforcement.” The difference is that when a CDA inspector identifies a violation during an inspection, the CDA inspector so informs the subject of the inspection and offers suggestions on how to correct the problem and come into compliance, thereby preventing or reducing harm. Depending on the severity of the violation, a warning may or may not be issued. If a warning is not issued, the inspector will likely conduct a follow-up inspection. If the violation has not been corrected, more formal steps will be taken.

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EPA inspectors, on the other hand, may identify a violation during an inspection and say nothing. Representatives of EPA concede that EPA inspectors are instructed not to make determinations in the field. The result of this direction is the perception that EPA inspectors have no interest in assisting with compliance and that their sole mission is to identify violations and to impose penalties.

Therefore, while many of the negative allegations lodged against EPA may be overstated, there are still legitimate reasons for Colorado to assume regulatory primacy over private applicators.

First, efficiencies can be realized by centralizing all regulation of pesticide applicators in the state in one agency: CDA. Gone would be the confusion, for the consumer, as to whether to call CDA or EPA to lodge a complaint. Gone, too, would be the ability of either agency to do nothing with complaints while claiming that the subject matter of a particular complaint lies with the other agency.

Second, CDA inspectors and staff know Colorado and they know pesticides. It is far more efficient for them, rather than EPA inspectors, to go out into the field to conduct inspections and to ensure compliance.

Third, CDA maintains a laboratory in Colorado at which it can conduct tests as to whether and what pesticides may have been applied at a given location. EPA, on the other hand, does not maintain a laboratory for such testing.

Fourth, CDA employs three inspectors who focus on pesticide use in Colorado. EPA, on the other hand, employs three inspectors who focus on not just Colorado, but also Wyoming and Indian reservations within Region VIII.

Therefore, CDA should be able to do a better job of regulating private pesticide use in Colorado than can EPA.

In seeking such primacy, CDA and the Commissioner should ensure that any resulting program accounts for certain, anticipated problems. For example, certain agencies providing legal assistance to migrant farm workers have expressed concern as to whether CDA is truly accessible to all residents of Colorado. This is illustrated by the fact that no one in CDA's Pesticide Section speaks Spanish. Since a large proportion of Coloradans speak only Spanish, the Commissioner should take steps to ensure that these individuals are able to file complaints and that those complaints are investigated. This will become more of an issue if the Commissioner is given regulatory authority over private applicators because many private applicators employ migrant farm workers to work their fields.

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The Commissioner also should ensure that the private applicator licensing examination is psychometrically valid and that it does not provide test-takers with the answers. While there is nothing wrong with an open-book format examination for private applicators, the examination questions themselves should not provide the answers. In such cases, the examination is worthless as a demonstration of competency to handle RUPs. Rather, such examinations only demonstrate whether the examinee can follow directions to the correct page.

At this point, a logical question arises: why is this recommendation being made to the Commissioner rather than directly to the General Assembly?

Any legislation to assume primacy from EPA is going to be highly technical in nature. As the state's expert at handling pesticide applicator regulation and in dealing with EPA on pesticide-related issues, CDA, rather than DORA, possesses the technical expertise to ensure that this piece of legislation covers the necessary areas and addresses whatever concerns EPA may require to be addressed in order to delegate the program to CDA, and thus ensure a stream of federal funding.

Therefore, the Commissioner should bring a bill to the General Assembly to assume primacy over the regulation of private pesticide applicators.

*Administrative Recommendation 2 – The Commissioner should make licensing and disciplinary information available to the public via the Internet.*

Regulation of pesticide applicators is premised on public protection. Inherent in this premise is the ability of the public to access information as to who is licensed and whether they have been disciplined.

The most consumer-friendly and cost-effective way to provide this crucial information to the public is to make it available over the Internet. However, CDA's website currently lacks this information. In fact, in order for a member of the public to determine whether the applicator he/she is contemplating hiring is licensed or has ever been disciplined, he/she must call the CDA to obtain the information. This results in staff devoting time to a task that could be automated and which, given the widespread availability of the Internet, the public could access at any time and from any location.

The Commissioner should, therefore, devote the resources to make this information available on the CDA website.

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## **Appendix A – Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## **Appendix B – Report Regarding the Extent of Local Regulation of Pesticides.**

Section 35-10-128, Colorado Revised Statutes (C.R.S.), provides, in pertinent part:

the department of regulatory agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707(1)(b), C.R.S., or under the police power of any political subdivision of the state.

Section 31-15-707(1)(b), C.R.S., grants to the governing body of each municipality the power to:

construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or sources from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect[.]

Pursuant to this directive, the Department of Regulatory Agencies mailed surveys to 265 municipalities and 64 counties in the state. One hundred forty-three (54 percent) of municipalities and 34 (53 percent) of counties responded to this survey.

Only 17 (9.6 percent) of these local governments reported having enacted a watershed protection ordinance pursuant to section 31-15-707(1)(b), C.R.S., and 10 (5.7 percent) reported having enacted some other pesticide-related ordinance or regulation.

The table below illustrates the responses to this survey. Counties or municipalities from which no response was received are listed, but no response is indicated.

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Adams County				
Alamosa County		X		X
Arapahoe County				
Archuleta County				
Baca County				
Bent County		X		X
Boulder County		X		X

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
City and County of Broomfield				
Chaffee County				
Cheyenne County		X		X
Clear Creek County				
Conejos County				
Costilla County		X		X
Crowley County		X		X
Custer County		X		X
Delta County				
City and County of Denver				
Dolores County		X		X
Douglas County		X		X
Eagle County				
El Paso County				
Elbert County		X		X
Fremont County				
Garfield County	X		X	
Gilpin County		X		X
Grand County		X	X	
Gunnison County				
Hinsdale County		X		X
Huerfano County		X		X
Jackson County				
Jefferson County		X		X
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				
Larimer County		X		X
Las Animas County				
Lincoln County		X		X
Logan County		X		X
Mesa County		X		X
Mineral County				
Moffat County		X		X
Montezuma County				
Montrose County		X		X
Morgan County		X		X
Otero County				
Ouray County		X		X
Park County				
Phillips County				
Pitkin County		X		X
Prowers County		X		X
Pueblo County				

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Rio Blanco County		X		X
Rio Grande County		X		X
Routt County		X		X
Saguache County		X		X
San Juan County				
San Miguel County		X		X
Sedgwick County				
Summit County		X		X
Teller County		X		X
Washington County				
Weld County		X		X
Yuma County				
Aguilar		X		X
Akron		X		X
Alamosa		X		X
Alma				
Antonito				
Arriba				
Arvada				
Aspen				
Ault				
Aurora	X			X
Avon		X		X
Basalt		X		X
Bayfield		X		X
Bennett		X		X
Berthoud				
Bethune		X		X
Black Hawk	X			X
Blanca				
Blue River				
Boone				
Boulder				
Bow Mar		X		X
Branson		X		X
Breckenridge				
Brighton		X		X
Brookside				
Broomfield				
Brush				
Buena Vista				
Burlington		X		X
Calhan	X			X
Campo		X		X
Canon City		X		X

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Carbondale				
Castle Rock				
Cedaredge				
Centennial		X		X
Center				
Central City				
Cheraw				
Cherry Hills Village		X		X
Cheyenne Wells				
Coal Creek				
Cokedale		X		X
Collbran	X			X
Colorado Springs		X	X	
Columbine Valley		X		X
Commerce City				
Cortez				
Craig		X		X
Crawford		X		X
Creede		X		X
Crested Butte				
Crestone		X		X
Cripple Creek	X			X
Crook				
Crowley				
Dacono				
De Beque				
Deer Trail				
Del Norte				
Delta				
Dillon				
Dinosaur				
Dolores		X		X
Dove Creek		X		X
Durango		X		X
Eads		X		X
Eagle		X		X
Eaton				
Eckley		X		X
Edgewater				
Elizabeth		X		X
Empire		X		X
Englewood		X		X
Erie	X			
Estes Park		X	X	
Evans		X		X

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Fairplay				
Federal Heights		X		X
Firestone				
Flagler				
Fleming		X		X
Florence	X			X
Fort Collins		X		X
Fort Lupton				
Fort Morgan				
Fountain				
Fowler				
Foxfield		X		X
Fraser		X		X
Frederick				
Frisco	X			X
Fruita		X		X
Garden City		X		X
Genoa		X		X
Georgetown	X			X
Gilcrest		X		X
Glendale		X		X
Glenwood Springs		X		X
Golden	X			X
Granada				
Granby				
Grand Junction		X		X
Grand Lake				
Greeley		X		X
Green Mountain Falls		X		X
Greenwood Village				
Grover				
Gunnison		X		X
Gypsum				
Hartman		X		X
Haswell		X		X
Haxtun		X		X
Hayden				
Hillrose		X		X
Holly		X		X
Holyoke				
Hooper		X		X
Hot Sulphur Springs				
Hotchkiss		X		X
Hudson				
Hugo				

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Idaho Springs		X		X
Ignacio				
Iliff		X		X
Jamestown	X			X
Johnstown				
Julesburg				
Keenesburg		X		X
Kersey		X		X
Kim				
Kiowa				
Kit Carson				
Kremmling		X		X
La Jara				
La Junta				
La Salle				
La Veta				
Lafayette	X			X
Lake City		X		X
Lakeside		X		X
Lakewood				
Lamar				
Larkspur				
Las Animas		X		X
Leadville		X		X
Limon		X		X
Littleton		X		X
Lochbuie				
Log Lane Village				
Lone Tree				
Longmont		X		X
Louisville		X		X
Loveland		X	X	
Lyons				
Manassa		X		X
Mancos		X		X
Manitou Springs	X			X
Manzanola		X		X
Marble				
Mead		X		X
Meeker		X		X
Merino				
Milliken				
Minturn		X		X
Moffat				
Monte Vista		X		X

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Montezuma				
Montrose				
Monument		X		X
Morrison				
Mountain View		X		X
Mountain Village				
Mt. Crested Butte				
Naturita		X		X
Nederland				
New Castle				
Northglenn	X		X	
Norwood		X		X
Nucla		X		X
Nunn				
Oak Creek		X		X
Olathe				
Olney Springs		X		X
Ophir				
Orchard City		X		X
Ordway				
Otis				
Ouray				
Ovid		X		X
Pagosa Springs		X		X
Palisade				
Palmer Lake				
Paonia				
Parachute	X			X
Parker				
Peetz		X		X
Pierce				
Pitkin		X		X
Platteville		X		X
Poncha Springs		X		X
Pritchett		X		X
Pueblo				
Ramah				
Rangely		X		X
Raymer				
Red Cliff	X			X
Rico		X		X
Ridgway		X		X
Rifle				
Rockvale		X		X
Rocky Ford				

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Romeo		X		X
Rye		X		X
Saguache				
Salida				
San Luis		X		X
Sanford				
Sedgwick		X		X
Seibert		X		X
Severance				
Sheridan		X	X	
Silt		X		X
Silver Cliff		X		X
Silver Plume				
Silverthorne				
Silverton		X		
Simla		X		X
Snowmass Village				
South Fork		X		X
Springfield				
Steamboat Springs		X		X
Sterling				
Stratton		X		X
Sugar City				
Superior				
Swink		X		X
Telluride		X		X
Thornton		X	X	
Timnath				
Trinidad		X	X	
Two Buttes		X		X
Vail				
Victor		X		X
Vona		X		X
Walden		X		X
Walsenburg				
Walsh				
Ward				
Watkins		X		X
Wellington				
Westcliffe		X		X
Westminster				
Wheat Ridge		X	X	
Wiggins		X		X
Wiley		X		X
Williamsburg		X		X

Name	Adopted Watershed Ordinance Pursuant to § 31-15-707(1)(b), C.R.S., that Addresses Pesticides		Other Local Pesticide Ordinances or Regulations	
	Yes	No	Yes	No
Windsor		X		X
Winter Park		X		X
Woodland Park		X		X
Wray				
Yampa		X		X
Yuma				
<b>TOTAL</b>	<b>17</b>	<b>160</b>	<b>10</b>	<b>165</b>