

Authorized Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: **64CSR51 - Fees For Service**

Type of Rule: X Legislative Interpretive Procedural

Agency: **Health and Human Resources**

Address: **One Davis Square**
Suite 100 East
Charleston, WV 25301

Phone Number: **(304) 356-4090** Email: **becky.a.surface@wv.gov**

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The rule is being updated in several ways. Section 9 on the procedures for Local Health Departments to provide public notice and receive approval from the Bureau for Public health to charge fees for services at the local level has been rewritten and clarified. Corrections and additions have been made to the Appendix for Laboratory service fees. For the Office of Environmental Health Services (OEHS), the permit fees for the category one (\$0.00-\$24,999) Food Manufacturing and Bottled Water Producer facilities in Appendix B are being lowered. The current fee of \$100.00 has been divided into three new categories based on annual gross sales of the establishment. Any fiscal impact (loss of revenue) to the state as a result of this rule revision would be minimal.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2012 Increase/Decrease (use "-")	2013 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Buildings	0	0	0
Equipment	0	0	0
Land	0	0	0
Other Assets	0	0	0
2. Estimated Total Revenues	0	0	0

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

There has been some confusion and misunderstanding of the procedures for Local Health Departments to add or amend their local fee schedules so we wanted to make this rule amendment to clarify those procedures. Also, the state hygienic lab has added some tests and errors in the existing rule have been corrected. The Office of Environmental Health Services (OEHS) currently has 55 facilities that fall under the current category one permit fee. During the initial permit year, OEHS received numerous concerns from facilities that were in the lower half of category one in annual gross sales indicating that the \$100.00 annual permit fee was too expensive. OEHS has taken their concerns into consideration and is proposing a lower permit fee for those affected facilities.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

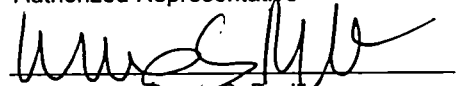
Date

8/30/12

Agency

Department of Health and Human Resources

Authorized Representative



Rocco S. Fucillo
Cabinet Secretary

64CSR51, Fees for Services
Department of Health and Human Resources
Bureau for Public Health
Office of Environmental Health Services

BRIEF SUMMARY

The rule is being updated in several ways. Section 9 on the procedures for Local Health Departments to provide public notice and receive approval from the Bureau for Public Health to charge fees for services at the local level has been rewritten and clarified. Corrections and additions have been made to the Appendix for Laboratory service fees. For the Office of Environmental Health Services (OEHS), the permit fees for the category one (\$0.00-\$24,999) Food Manufacturing and Bottled Water Producer facilities in Appendix B are being lowered. The current fee of \$100.00 has been divided into three new categories based on annual gross sales of the establishment.

STATEMENT OF CIRCUMSTANCES

There has been some confusion and misunderstanding of the procedures for Local Health Departments to add or amend their local fee schedules so we wanted to make this rule amendment to clarify those procedures. Also, the state hygienic lab has added some tests and errors in the existing rule have been corrected. The Office of Environmental Health Services (OEHS) currently has 55 facilities that fall under the current category one permit fee. During the initial permit year, OEHS received numerous concerns from facilities that were in the lower half of category one in annual gross sales indicating that the \$100.00 annual permit fee was too expensive. OEHS has taken their concerns into consideration and is proposing a lower permit fee for those affected facilities.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August , 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Bureau for Public Health
350 Capitol Street, Room 702
Charleston, WV 25301
(304) 558-2971

LEGISLATIVE RULE TITLE: 64CSR51 Fees for Service

1. Authorizing statute(s) citation WV CODE §§16-1-4(h), 16-1-11(d), 16-2-11 (b) (5) and (6),
16-17-1 et seq. and 29B-1-3(5)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

August 24, 2012

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:

August 24, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

N/A

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Room 702
Charleston, WV 25301
ann.a.goldberg@wv.gov
(304) 558-2971 Phone
(304) 558-1035 Fax

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

July 23, 2012 to August 24, 2012

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

[+ Font size -](#)

Public Comment for Fees for Service Rule Response

From : Robb Hodovan <rshodovan@frontier.com>

Thu, Aug 09, 2012 09:35 AM

Subject : Public Comment for Fees for Service Rule Response

To : Linda K Whaley <Linda.K.Whaley@wv.gov>

Reply To : rshodovan@verizon.net

Linda, (Ann Goldberg)

Received your notice requesting public comment concerning Fees for Services Rule, so here is my thought on the matter.

Small business operations in West Virginia are the backbone of our economy. We should be ENCOURAGING not discouraging those trying to stay in business. This fee is unnecessary and doesnot benefit us.

We need for our legislators to come forth with legislation repealing the Fees for Service Rule and take steps to reimburse small businesses (who are barely surviving)who have had to come up with another "fee" to do business in West Virginia.

Levada Hodovan
C.E.O.
Woodbine Jams & Jellies, Inc.

Goldberg, Ann A

From: Whaley, Linda K
Sent: Monday, August 20, 2012 12:06 PM
To: Goldberg, Ann A
Subject: FW: Public Comment for Fees for Service Rule Response

This came to me.
Linda

-----Original Message-----

From: Robb Hodovan [mailto:rshodovan@frontier.com]
Sent: Thursday, August 09, 2012 9:35 AM
To: Whaley, Linda K
Subject: Public Comment for Fees for Service Rule Response

Linda, (Ann Goldberg)

Received your notice requesting public comment concerning Fees for Services Rule, so here is my thought on the matter.

Small business operations in West Virginia are the backbone of our economy. We should be ENCOURAGING not discouraging those trying to stay in business. This fee is unnecessary and doesnot benefit us.

We need for our legislators to come forth with legislation repealing the Fees for Service Rule and take steps to reimburse small businesses (who are barely surviving)who have had to come up with another "fee" to do business in West Virginia.

Levada Hodovan
C.E.O.
Woodbine Jams & Jellies, Inc.

ThistleDew Farm Inc.

www.thistledewfarm.com

RR #1, Box 122
Proctor, WV, 26055 USA
(304) 455-1728
Fax (304) 455-1740
info@thistledewfarm.com

August 20, 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Rm 702
Charleston, WV 25301

Re: 64CSR51, Fees for Services; Food Manufacturing Permit Fees

Dear Ms. Goldberg:

As a small food manufacturer, I feel that these fees intentionally hurt the small businesses in our state. There should be no fee for any business in this state grossing under \$1,000,000.00. We already pay our share of taxes to the local, state and the federal government that enables the health departments and the FDA to inspect our businesses. This additional fee (which I consider a tax) is formulated at a higher percent the less one grosses per year. See Page 18 #8 A Facility Size (measured in Gross Sales). This is very unfair. If you want to tax us, treat us all the same. Use the same percentage fee for all and not close to 5% for someone grossing under \$7,499.00 and less than 1% for a business grossing \$1,000,000.00.

If you must charge additional fees over and above what we are taxed for then perhaps charging according to what it costs you to inspect an establishment would be a fairer option. If it takes your inspector 2 hours to inspect a business then charge for the 2 hours.

Thank you for your time and consideration.



Eleanor T. Conlon, President

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AUG 23 2012

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BUREAU FOR PUBLIC HEALTH



TM

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"Home of West's Best Hot Pepper Butter"

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JEFF'S BREADS
PO BOX 1622
LEWISBURG, WV 24901
304 497 2768

RECEIVED

AUG 24 2012

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

21 August 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Rm.702
Charleston, WV 25301

Re: Comment on 64CSR51, Fees for Services

Dear Ms. Goldberg,

As a small business owner I feel that the proposed fee and fee schedule for Food Manufacturing Facility Permit (annual fee) is unfair and place a harsh burden on all producers' especially small businesses.

My research has shown that quite a few small business owners have gone out of business since the fee was instated and they cite the fee as one of the main reasons for this. . It has been reported 50 food manufacturing businesses have closed their doors in West Virginia due to this fee.

The proposed Food Manufacturing Facility Permit fee schedule is a very large burden on the small business owners. It is also unfair in that the larger manufacturing companies pay a smaller portion of the fee structure than the smaller companies who can afford it less

Manufacturers who gross less than \$1,000,000.00 should be waived or exempted from the fees. Additionally food producers who share the same facility (like me) with others should not have pay for more than one permit for the same facility.

Please take my above comments seriously before you make your decision. The food manufacturing fee is a painful example of an unnecessary and burdensome cost that will hurt all of us.

Thank you,



Jeff Kessler

Owner



August 22, 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Room 702
Charleston, West Virginia 25301

Re: 64SCR51, Facility Permit Fee

Dear Ms. Goldberg,

I have been a West Virginia Food Producer for nearly twenty (20) years. As a Food Processor, I realize that visits to manufacturing plants to insure compliance is necessary. However the recent implementation of the annual fee for Food Facility Permits has posed and is posing a serious threat to present producers.

Last year Blue Smoke Salsa was forced to change its business model after first announcing a complete shutdown of operations due to the hardship imposed by this recent recession. Fortunately, I was able to stay in business with a deeper focus on wholesale manufacturing. Please view this letter as a cry of opposition to this fee (64CSR51). Should you have any questions I can be reached at my Office at 304.658.3800.

Sincerely and thank you,

A handwritten signature in black ink, appearing to read "Robin Hildebrand", is written over a horizontal line.

Robin Hildebrand, President and Founder

Blue Smoke Salsa Inc.

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AUG 23 2012

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

119 East Main Street
Ansted, WV 25812
BlueSmokeSalsa.com

304-658-3800 PHONE
888-SALSA-WV TOLL FREE
304-658-5400 FAX

The Crazy Baker, LLC

A Luscious Experience!



Hall Hitzig ~ Pastry Chef/Owner
HC 66 Box 377 Renick, WV 24966
304-497-2799/FAX 304-497-2221
sales@thecrazybaker.com
www.thecrazybaker.com

20 August 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Rm 702
Charleston, WV 25301

Re: Comment on 64CSR51, Fees for Services

Dear Ms. Goldberg,
As a small business owner I must comment on the proposed fee schedule for Food Manufacturing Facility Permit (annual fee) which I find usurious and onerous.

Small business owners are said to be the backbone and business innovators of America. We are at the forefront of America's business model and efficiency. We lead the way at great cost and risk.

I find that the proposed Food Manufacturing Facility Permit fee schedule is an unnecessary burden on the small business owners. It is also unfair in that the larger manufacturing companies pay a smaller portion of the fee structure than the smaller companies who can afford it less. In fact, up to 50 food manufacturing businesses have closed their doors in West Virginia due to this fee.

I propose that fees for manufacturers who gross less than \$1,000,000.00 be waived or exempted from the fees. I would also propose that the fee be waived for all business's and instead spread the cost out to the whole population which is being served by this permit. Now that would be equitable!

Thank you,

Hall Hitzig
Owner

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AUG 23 2012

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH



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AUG 24 2012

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

August 23, 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Rm 702
Charleston, WV 25301

Re: Comment on 64CSR51, Fees for Services

Dear Ms. Goldberg,

I am writing to comment on the proposed fee schedule change for Food Manufacturing Facility Permit (annual fee) on Page 18 and 19 of 64CSR51, Fees for Service. I have copied the section that I am writing about on page 3 of this letter to reduce confusion.

While I appreciate the lower fee schedule proposed for facilities that have Gross Sales under \$24,999.00, I still believe that the fee schedule places an unfair burden on small manufacturers. If you look at the annual fee burden for the small manufacturer (as the fee schedule is currently written) then it is very clear that companies with Gross Sales less than 1 Million dollars are unfairly carrying the burden of the fee. I have put together a table with Gross Sales and the fee associated with that level of sales as a percent of Gross Sales and also as a percent of that company's profits. (SEE Table 1) I used a 10% Gross profit margin as that is an accepted profit margin for a successful specialty food business. This fee represents as much as 9% of profit of a company selling (\$7500-\$14999) as compared to a company doing 1M in sales at .6%.

If the inequitable nature of the fee schedule is not apparent by Table 1, then I will put it in other terms. Uncle Bunk's, a nationally known company which does less than .5 M in annual sales, routinely has weekly payroll of over \$400. The booth fee for Uncle Bunk's to attend the Country Living Show in Columbus, Ohio is \$400. The produce bill for two weeks of production is usually \$400. The \$400 that Uncle Bunk's spends on this fee is a huge part of our operating budget.

I have heard the justification for the large fee for company's under 1 Million in sales explained as a way to offset the cost of the annual inspection that food manufacturers are required to have. While I understand that there is a cost for our inspection – we at Uncle Bunk's are required to have an FDA inspection every year as we operate a federal cannery and manufacture acidified food products – it is

my understanding that the FDA provides compensation for this inspection when the WV Dept of Health & Human Resources conducts an inspection on our site. In 8 years of operation we have never had more than one inspection, nor have we had a violation causing a follow-up inspection.

I have proposed a new fee schedule as detailed in **Table 2**. This will allow small businesses to hire and buy raw materials during their growth phase and encourage those thinking of starting a food manufacturing business in West Virginia to take the leap. The larger fee for larger establishments will cover the need for multiple inspections.

Table 1

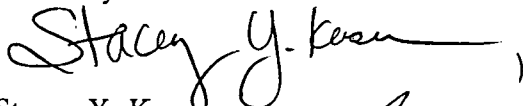
Gross Sales	Fee (\$)	% of Gross Sales	% of Profit
\$0-\$7,499	\$35	100% - .46%	100% - 4%
\$7,500 - \$14,999	\$70	.93% - .46%	9.3% - 4.6%
\$15,000 - \$24,999	\$100	.66% - .4%	6.6% - 4%
\$25,000 - \$49,999	\$200	.8% - .4%	8% - 4%
\$50,000 - \$99,999	\$300	.6% - .3%	6% - 3%
\$100,000 - \$499,999	\$400	.4% - .08%	4% - .8%
\$500,000 - \$999,999	\$500	.1% - .05%	1% - .5%
\$1 M - \$4.9 M	\$600	.06% - .012%	.6% - .12%
\$5 M - \$9.9 M	\$700	.014% - .007%	.14% - .07%
\$10 M - \$24.9 M	\$800	.008% - .0032%	.08% - .032%
\$25 M - \$49.9 M	\$900	.0036% - .0018%	.036% - .018%
\$50 M plus	\$1000	.002%	.02%

Table 2

Gross Sales	Fee (\$)
\$0-\$999,999	\$0
\$1 M - \$4.9 M	\$400
\$5 M - \$9.9 M	\$600
\$10 M - \$24.9 M	\$800
\$25 M - \$49.9 M	\$1000
\$50 M plus	\$1500

Thank you for hearing our concerns.

Sincerely,

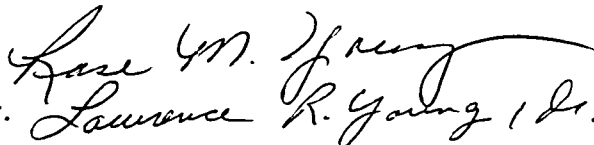


Stacey Y. Kasun

Rose M. Young

Lawrence R. Young, Jr.

Uncle Bunk's, LLC



8. Food Manufacturing Facility Permit (Annual, Expires 6-30)

A. Facility Size (measured in Gross Sales)

1. \$0.00 to \$24,999.00 <u>\$7,499.00</u>	<u>\$35.00</u>
2. <u>\$7,500 to \$14,999.00</u>	<u>\$70.00</u>
3. <u>\$15,000 to \$24,999</u>	\$100.00
2- 4. <u>\$25,000.00 to \$49,999.00</u>	\$200.00
3- 5. <u>\$50,000.00 to \$99,999.00</u>	\$300.00
4- <u>6.</u> <u>\$100,000.00 to \$499,999.00</u>	\$400.00
5- 7. <u>\$500,000.00 to \$999,999.00</u>	\$500.00
6- 8. <u>\$1,000,000.00 to 4,999,999.00</u>	\$600.00
7- 9. <u>\$5,000,000.00 to 9,999,999.00</u>	\$700.00
8- 10. <u>\$10,000,000.00 to 24,999,999.00</u>	\$800.00
9- <u>11.</u> <u>\$25,000,000.00 to 49,999,999.00</u>	\$900.00
18	
10- 12. <u>Greater than \$50,000,000.00</u>	\$1,000.00

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The rule is being updated in several ways. Section 9 on the procedures for Local Health Departments to provide public notice and receive approval from the Bureau for Public health to charge fees for services at the local level has been rewritten and clarified. Corrections and additions have been made to the Appendix for Laboratory service fees. For the Office of Environmental Health Services (OEHS), the permit fees for the category one (\$0.00-\$24,999) Food Manufacturing and Bottled Water Producer facilities in Appendix B are being lowered. The current fee of \$100.00 has been divided into three new categories based on annual gross sales of the establishment. Any fiscal impact (loss of revenue) to the state as a result of this rule revision would be minimal.



Fine Chocolates
130 N Queen Street
Martinsburg, West Virginia 25401
www.defluris.com

Voice & fax (304) 264-3698
sales@defluris.com

August 24, 2012

Ann Goldberg, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Rm 702
Charleston, WV 25301

re: 64CSR51, Fees for Services – Food Manufacturing Permit Fees

Dear Ms. Goldberg,

The proposed schedule of fees for the annual Food Manufacturing Facility Permit is unfair to small food facilities when compared to larger ones. The fee is based on the gross sales of a food establishment as stated on the reports filled out during a facility inspection. Below is a chart that shows the percentage of gross income an operator needs to pay this fee. For simplicity, only the top tier of the first 11 categories has been used to make this calculation. For the twelfth category, the arbitrary figure of \$75,000,000.00 was used.

The percentage figure calculated is the percentage of gross sales that goes to pay the fee.

1. \$7499.00	\$35.00	0.46%
2. \$14,999.00	\$70.00	0.46%
3. \$24999.00	\$100.00	0.40%
4. \$49,999.00	\$200.00	0.40%
5. \$99,999.00	\$300.00	0.30%
6. \$499,999.00	\$400.00	0.08%
7. \$999,999.00	\$500.00	0.05%
8. \$4,999,999.00	\$600.00	0.012%
9. \$9,999,999.00	\$700.00	0.007%
10. \$24,999,999.00	\$800.00	0.0032%
11. \$49,999,999.00	\$900.00	0.0018%
12. \$75,000,000.00	\$1000.00	0.0013%

An examination of the data indicates that the higher grossing facilities get a significant discount on the burden of this fee. This unfairly shifts the burden of funding this revenue source to smaller operators who are least able to pay.

The burden of this fees becomes greater when one calculates the percentage of gross profit that this


fee requires. Generally, food manufacturers see a profit margin of 8 - 10% on gross sales. Using 10% as an accepted figure, the above chart becomes:

1. \$7499.00	\$35.00	4.6%
2. \$14,999.00	\$70.00	4.6%
3. \$24999.00	\$100.00	4.0%
4. \$49,999.00	\$200.00	4.0%
5. \$99,999.00	\$300.00	3.0%
6. \$499,999.00	\$400.00	0.8%
7. \$999,999.00	\$500.00	0.5%
8. \$4,999,999.00	\$600.00	0.12%
9. \$9,999,999.00	\$700.00	0.07%
10. \$24,999,999.00	\$800.00	0.032%
11. \$49,999,999.00	\$900.00	0.018%
12. \$75,000,000.00	\$1000.00	0.013%

The proposed changes to the first tier of this fee do nothing to mitigate the burden of this fee.

An effective solution would be to eliminate this fee for food facilities grossing \$999,999.99 or less.

Thank you,


Charlie Casabona

Comments Received for 64CSR51 Fees for Service Rule

Seven letters with comments were received pertaining to the Fees For Service rule. The subject of all 7 letters was Permit Fees for Food Manufacturing Facilities found in Appendix B of this rule.

During the initial permit year, OEHS received numerous concerns from facilities that were in the lower half of category one in annual gross sales indicating that the \$100.00 annual permit fee was too expensive. OEHS has taken their concerns into consideration and is proposing a lower permit fee for those affected facilities.

1. From: Robb Hodovan [mailto:rshodovan@frontier.com]
Sent: Thursday, August 09, 2012 9:35 AM
To: Whaley, Linda K
Subject: Public Comment for Fees for Service Rule Response

Linda, (Ann Goldberg)

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Levada Hodovan
C.E.O.
Woodbine Jams & Jellies, Inc.

Agency Response:

Permit Fees for Food Manufacturing Facilities in West Virginia were approved for the first time in 2010. The Office of Environmental Health Services (OEHS) waited until 2011 to implement the permit fee upon adoption of the Food Manufacturing Rule. Based on concerns of several "size one" food manufacturers, OEHS restructured the size one facilities into three new categories with reductions of 65% and 30% for the two lowest tiers. OEHS feels this was an adequate compromise to address the concerns of small food manufacturers.

2. Thistle Dew Farms (See attached letter-also received by e-mail)

Agency Response:

The Office of Environmental Health Services (OEHS) believes the permit fee structure proposed is less expensive to the facilities. Several factors must be considered when determining the cost to conduct an inspection. Those include travel time to the facility, vehicle costs, prior review of facility files before conducting the inspection, proper equipment and maintenance costs to keep equipment operational, supplies, submission of inspection results into the appropriate databases and the average hourly salary of the inspector. The cost to the agency to conduct an inspection at a small firm far exceeds the permit fee.

The majority of food manufacturers in West Virginia are small firms who generate less than \$1,000,000.00 in gross sales. Of the current permitted firms, only 20 meet or exceed \$1,000,000.00 in gross sales and almost ½ of the firms permitted were originally in the “size one” category which has been restructured to address the concerns of these operators. Food manufacturers in categories 1 thru 5 generated 56.2% of the permit fees collected in 2011. With the proposed changes, the percentage drops to 52.8% of permit fee revenues collected from firms which gross less than \$1,000,000.00. Therefore, in our opinion, those facilities which gross less than \$1,000,000.00 are not unfairly carrying the burden of the fee.

3. Jeff’s Breads (see attached letter)

Agency Response:

While your business may share a facility with another food manufacturer, the permit is issued to the business, not the location. Therefore two separate permits are required. Our records indicate only nine food manufacturers in West Virginia ceased operations since the inception of the permit fee and none of the facilities have indicated that the permit fee was the deciding factor to cease operation.

The majority of food manufacturers in West Virginia are small firms who generate less than \$1,000,000.00 in gross sales. Of the current permitted firms, only 20 meet or exceed \$1,000,000.00 in gross sales and almost ½ of the firms permitted were originally in the “size one” category which has been restructured to address the concerns of these operators. Food manufacturers in categories 1 thru 5 generated 56.2% of the permit fees collected in 2011. With the proposed changes, the percentage drops to 52.8% of permit fee revenues collected from firms which gross less than \$1,000,000.00. Therefore, in our opinion, those facilities which gross less than \$1,000,000.00 are not unfairly carrying the burden of the fee.

4. Blue Smoke Salsa (see attached letter)

Agency Response:

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5. The Crazy Baker (see attached letter)

Agency Response:

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6. Uncle Bunk's (see attached letter)

Agency Response:

The majority of food manufacturers in West Virginia are small firms who generate less than \$1,000,000.00 in gross sales. Of the current permitted firms, only 20 meet or exceed \$1,000,000.00 in gross sales and almost ½ of the firms permitted were originally in the "size one" category which has been restructured to address the concerns of these operators. Food manufacturers in categories 1 thru 5 generated 56.2% of the permit fees collected in 2011. With the proposed changes, the percentage drops to 52.8% of permit fee revenues collected from firms which gross less than \$1,000,000.00. Therefore, in our opinion, those facilities which gross less than \$1,000,000.00 are not unfairly carrying the burden of the fee.

7. DeFluri's Fine Chocolates

Agency Response:

The majority of food manufacturers in West Virginia are small firms who generate less than \$1,000,000.00 in gross sales. Of the current permitted firms, only 20 meet or exceed \$1,000,000.00 in gross sales and almost ½ of the firms permitted were originally in the "size one" category which has been restructured to address the concerns of these operators. Food

manufacturers in categories 1 thru 5 generated 56.2% of the permit fees collected in 2011. With the proposed changes, the percentage drops to 52.8% of permit fee revenues collected from firms which gross less than \$1,000,000.00. Therefore, in our opinion, those facilities which gross less than \$1,000,000.00 are not unfairly carrying the burden of the fee.

FILED

TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2012 AUG 31 PM 12: 26

STATE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 51
FEES FOR SERVICES

§64-51-1. General.

1.1. Scope - This rule establishes reasonable fees for services provided by the Bureau for Public Health and local boards of health. This legislative rule does not supersede other rules which establish fees for services not addressed in this rule. This rule should be read in conjunction with the W. Va. Code. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority - W. Va. Code §§16-1-4(h), 16-1-11(d), 16-2-11(b)(5) and (6), 16-7-1 et seq. and 29B-1-3(5).

1.3. Filing Date - April 9, 2010.

1.4. Effective Date - April 9, 2010.

§64-51-2. Application and Enforcement.

2.1. Application - This rule applies to persons receiving services from the Bureau for Public Health or from local boards of health as created in W. Va. Code §16-2-1, et seq. and also applies to the local boards of health.

2.2. Enforcement - This rule is enforced by the Commissioner of the West Virginia Bureau for Public Health or his or her lawful designee.

§64-51-3. Definitions.

3.1. Adoption - The judicial act of creating the relationship of parent and child where it did not exist previously.

~~3.2. Ambulatory Surgical Facility (ASF) - A facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.~~

~~3.3.~~ 3.2. Asbestos - The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, which contains more than one (1) percent asbestos by weight.

~~3.4.~~ 3.3. Asbestos Abatement - Procedures to control fiber release from asbestos-containing materials. These procedures include removal, encapsulation, enclosure, repair, demolition, renovation, and similar activities.

~~3.5. Assisted Living Residence~~—Any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care. This term replaces the two terms “Personal Care Home” and “Residential Board and Care Home”, previously used in this rule.

~~3.6.~~ 3.4. Basic Public Health Services - Those services that are necessary to protect the health of the public. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion and environmental health protection.

~~3.7. Behavioral Health Center~~—An organization that provides behavioral health services, including all of its locations.

~~3.8. Behavioral Health Services~~—An inpatient, residential or outpatient service for the care and treatment of persons with mental illness, developmental disabilities or substance abuse.

~~3.9. Birthing Center~~—A type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant women.

~~3.10.~~ 3.5. Bottled Water - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

~~3.11.~~ 3.6. Business (or Individual) Providing Vendor Services - Any person proposing to offer or providing services to Registrants in the Radiological Health Program as described in the Bureau’s rule, Radiological Health Regulations, 64CSR23, subsections 5.4. and 5.5.

~~3.12.~~ 3.7. Certificate of Birth (Birth Certificate) - The government’s permanent legal record of the fact of birth of an individual. Information contained within the document is considered to be prima facie evidence of the fact of birth.

~~3.13.~~ 3.8. Certificate of Death (Death Certificate) - The government’s permanent legal record of the fact of death of an individual. Information contained within the document is considered to be prima facie evidence of the fact of death.

~~3.14.~~ 3.9. Certified Copy - A reproduction or abstracted document that is officially endorsed by the custodian of the original document to be an authentic reproduction or abstraction of the original document.

~~3.15.~~ 3.10 Commissioner - The Commissioner of the West Virginia Bureau for Public Health.

~~3.16.~~ 3.11. Decommissioning - Removal of any source of radioactive material as described in the Bureau’s rule, Radiological Health Regulations, 64CSR23, sections 6.59., 11.14.f.2., or 16.23.c. with a dedicated purpose of vacating premises, amendment or cancellation of a registration for possession or storage of radioactive material.

~~3.17.~~ 3.12. Delayed Certificate of Birth (Delayed Birth Certificate) - A certificate of birth filed more than one year after the date of birth. Information contained within the document is abstracted from other sources and is not considered to be prima facie evidence of the fact of birth.

~~3.18.~~ 3.13. Dental Intraoral Machine - A radiation machine with one or more x-ray tubes used for human intraoral diagnostic imaging, as described in the Bureau's rule, Radiological Health Regulations, 64CSR23, section 7.9.

~~3.19.~~ 3.14. Dental Panoramic Machine - Any rotational orthodontic extraoral radiographic device for dental diagnostic imaging.

~~3.20.~~ 3.15. Dental Radiation Machine (Other) - Any radiographic device for dental diagnostic imaging, which is not dental intraoral or dental panoramic, such as cephalometric and extraoral tomography with one or more x-ray tubes.

~~3.21.~~ 3.16. Drinking Water - Water free from biological, chemical, physical and radiological contaminants which cause disease or harmful physiological effects.

~~3.22.~~ 3.17. Emergency Services Consultation - A consultation for radiological health services performed per request for regulatory assistance in the event of an emergency or crisis condition involving a source of radiation. Consultation includes the following per event: investigation, travel time and assessment of incidents or accidents for compliance with the Bureau's rule, Radiological Health Regulations, 64CSR23, involving unusual events such as exposure to ionizing radiation to workers or the public, contamination of persons or the environment, and release, damage, theft or loss of radioactive material.

~~3.23.~~ End Stage Renal Disease (ESRD) Facility — ~~A facility which is approved to furnish at least one specific ESRD service, e.g., that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.~~

~~3.24.~~ 3.18. Food Manufacturing Facility - Any building or group of buildings that manufactures, processes, or packs food for human consumption. This term does not include farms, restaurants or other retail food establishments where food is prepared and served directly to consumers or facilities regulated by the Department of Health and Human Resources rule Grade "A" Pasteurized Milk, 64CSR34.

~~3.25.~~ 3.19. Generator - A person whose activity results in the production of low-level radioactive waste requiring long-term storage and disposal.

~~3.26.~~ 3.20. Health Programs - Community-oriented strategies and activities devised by a local health department to address an identified community health problem, the solution of which will lower a morbidity or mortality statistic.

~~3.27.~~ 3.21. Heirloom Birth Certificate - A presentation quality, oversized, and ornate, certificate of birth suitable for framing and display.

~~3.28.~~ Hospice — ~~A hospice as defined in W. Va. Code §16-51-2(e).~~

~~3.29.~~ Hospital — ~~A hospital as defined in W. Va. Code §16-5B-1.~~

~~3.30.~~ 3.22. Industrial Radiographic Machine - A radiation machine used for all industrial radiography, other than cabinet radiography and shielded room radiography and other than non-diagnostic or non-therapeutic purposes, such as x-ray devices used to examine the macroscopic structure of materials by nondestructive methods using sources of ionizing radiation or to produce radiographic images, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, sections subdivisions 8.3.5. and 8.3.6.

~~3.31.~~ 3.23. Industrial Cabinet X-Ray System - A machine used for industrial radiography conducted in an enclosure or shielded cabinet, such as x-ray devices used primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, ~~sections~~ subdivisions 8.3.1. or 8.3.2.

~~3.32.~~ 3.24. Industrial High Energy Machine - A radiation producing device such as a particle accelerator or cyclotron, and pulse x-ray machine used for nondestructive testing or other radiation producing devices used for irradiation of materials with energies greater than 250 kilovolts.

~~3.33.~~ 3.25. Industrial Radiation Machine (Other) - A radiation machine used for non-human purposes other than those described in this section as: Industrial Radiographic Machine, Industrial Cabinet X-ray System or Industrial High Energy Machine.

~~3.34.~~ 3.26. Innovative/Alternative Type Sewage System - A method of sewage disposal for a single family dwelling or establishment for which design standards have been prepared and listed in the Sewage Treatment and Collection System Design Standards, 64CSR47, as an innovative or alternative system.

~~3.35.~~ 3.27. Legitimation - Legal process by which the status of legitimacy is conferred to a child whose parents were not married at the time of the child's birth but who subsequently marry each other.

~~3.36.~~ 3.28. Local Board of Health - A board of health serving one or more counties or one or more municipalities or a combination thereof created under W. Va. Code §§16-2-1 et seq.

~~3.37.~~ 3.29. Low-Level Radioactive Waste - Radioactive waste that:

~~3.37.1.~~ 3.29.a. Is not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954 (uranium or thorium tailings and waste); and

~~3.37.2.~~ 3.29.b. Is classified as low-level radioactive waste consistent with existing federal law in accordance with the U.S. Nuclear Regulatory Commission rules, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.106., and the Low-level Radioactive Waste Policy Act, Public Law 96-573, as amended by Public Law 99-240, effective January 15, 1986.

~~3.38. Medical Adult Day Care Center — An ambulatory health facility which provides an organized day program of therapeutic, social, and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four-hour long term institutional care to elderly or disabled adults who are in need of these services by virtue of physical and/or mental impairment.~~

~~3.39.~~ 3.30. Medical Diagnostic Machine - A radiographic imaging system with one or more x-ray tubes used for human diagnostic imaging as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsections 3.72. and subdivision 7.2.70, including mobile or fixed radiography, fluoroscopy, computerized tomography, bone density, podiatry, chiropractic or other diagnostic x-ray devices.

~~3.40.~~ 3.31. Medical Therapeutic Machine - A machine designed and used for external beam radiation therapy producing x-rays or electrons, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, section 7.12.b.61.; or particle accelerators used for human therapy as described in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.4.

~~3.41.~~ 3.32. Municipal Sewer System - A system or group of systems as a whole which receives sewage from more than one (1) dwelling or establishment and is operated and maintained by an incorporated municipality, or public service district or sanitary board.

~~3.42.~~ Nursing Home — A nursing home as defined in W. Va. Code §16-5C-2(e).

~~3.43.~~ 3.33. Paternity Acknowledgment (Declaration of Paternity Affidavit) - A legal instrument executed by an unmarried mother (or in some instances a married mother) and a putative father in which both acknowledge the paternity of their child.

~~3.44.~~ 3.34. Permit - As used in this rule, a written document issued by the Commissioner giving a designated person permission to:

~~3.44.1.~~ 3.34.a. Construct, operate, alter or renovate a specific public water system, or bottled water production facility;

~~3.44.2.~~ 3.34.b. Construct, install, extend, alter or operate an approved sewer system or method of sewage disposal, or to collect, remove, transport or dispose of sewage;

~~3.44.3.~~ 3.34.c. Construct, alter, or renovate a recreational water facility or to operate the facility;

~~3.44.4.~~ 3.34.d. Construct, alter, operate or renovate a food manufacturing facility;

~~3.44.5.~~ 3.34.e. Operate a food establishment at state facilities; or

~~3.44.6.~~ 3.34.f. Operate a state institution or state operated school, excluding colleges and universities.

~~3.45.~~ 3.35. Person - An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

~~3.46.~~ 3.36. Presumptive Death Certificate - A certificate of death prepared at the order of a county commission (or other appointed legal entities in other states) under the direction of W. Va. Code §44-9-1, et seq. which provides for the filing of a death certificate of someone presumed and declared dead by the commission.

~~3.47.~~ 3.37. Professional Health Services - A health service delivered by a member of a commonly recognized public health care or allied profession including but not limited to physician, dentist, nurse, sanitarian, physical therapist, social worker, physician assistant, nurse practitioner, certified nurse midwife, dietitian, speech therapist, occupational therapist, hearing therapist, or individual with a graduate or undergraduate degree in a profession recognized by third party payors as eligible for reimbursement for services performed.

~~3.48.~~ 3.38. Public Sewer System - A sewage collection system or systems with or without treatment facilities and serving more than one (1) dwelling or establishment. Ownership of the system is held by and maintenance performed by a single entity. This definition includes municipal sewer systems.

~~3.49.~~ 3.39. Public Water System - A public water system as defined in W. Va. Code §16-1-9a(a).

~~3.49.1.~~ 3.39.a. Community Water System - A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year round residents.

~~3.49.2.~~ 3.39.b. Non-Community Non-Transient Water System - Any public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.

~~3.49.2.a.~~ 3.39.b.1. Service Connection Equivalent - The average number of individuals served by a non-community non-transient public water supply system divided by 2.4.

~~3.50.~~ 3.40 Radiation Machine Facility - Any fixed or mobile facility with one or more radiation machines. (Radiation machines having one or more x-ray tubes).

~~3.51.~~ 3.41. Radiation Producing Device - ~~A Device~~ device or source of radiation as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.72. (Radiation machines having one or more x-ray tubes).

~~3.52.~~ 3.42. Radioactive Material.

~~3.52.1.~~ 3.42.a. Byproduct Radioactive Material [as in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.16.] - Accelerator produced material [as in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.5.] or TENORM [as in the Bureau's rule, Radiological Health Regulations, 64CSR23, section subdivision 16.3.g.], or

~~3.52.2.~~ 3.42.b. Non-byproduct Radioactive Material - Any radioactive material, other than defined as byproduct material in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 3.16., which is technically enhanced naturally occurring radioactive material (TENORM) or accelerator produced.

~~3.53.~~ 3.43. Radioactive Material Inspection - Inspection of all activities associated with radioactive material registration.

~~3.54.~~ 3.44. Radioactive Material Facility Close-out Survey - A confirmatory survey to assay for levels of radioactive contamination.

~~3.55.~~ 3.45. Reciprocity - Reciprocal recognition for out-of-state registration or license to use a radiation-producing device or radioactive material within the State, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsections 5.11., 11.28. and 16.22.

~~3.56.~~ 3.46. Recreational Water Facility - Any natural or artificial body or basin of water which is modified, improved, constructed or installed for the purpose of public swimming or bathing under the control of any person.

~~3.57.~~ 3.47. Registration - Registration of any radiation producing device or radioactive material used within the State, as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsections 3.79. and section 5.

~~3.58. Residential Care Community - A residential care community as defined in W. Va. Code §16-5N-2(k).~~

~~3.59.~~ 3.48. School Radon Testing - The testing of radon levels in public school buildings in all major student occupied areas at or below grade level in accordance with the Air Quality in New Schools Act, W. Va. Code §18-9E-3(b).

~~3.60.~~ 3.49. Sewage - Any excreta or liquid waste containing animal, vegetable, or mineral matter in suspension of solution including, but not limited to, waste from water closets, urinals, lavatories, bathtubs, laundry tubs, washing machines, drinking fountains, sinks, kitchen equipment and other sanitary fixtures or facilities.

~~3.61.~~ 3.50. Sewage Holding Tank - A watertight receptacle designed and constructed to receive and retain untreated or partially treated sewage on a temporary basis. This does not include septic tanks, portable toilets or privies.

~~3.62.~~ 3.51. Sewage System Installer Certification - A process by which a person who installs individual on-site sewer system becomes certified to perform such function under the provisions of the Bureau's rule, Sewage Systems, Sewage Treatment Systems and Sewage Tank Cleaners Regulation, 64CSR9.

~~3.63.~~ 3.52. Shielding Plan - Facility design or modification from a qualified expert of calculated barrier thickness and physical protection from sources of radiation for any fixed or mobile radiation machine, as described in the Bureau's rule, Radiological Health Regulations, 64CSR23, subsection 7.4.

~~3.64.~~ 3.53. Sliding Fee Scale - A charge for service that uses a scale or standard of cost, wages, fees, or the like that varies according to other factors such as cost of living, level of income, or prices.

~~3.65.~~ 3.54. Specimen Collection Kit - A prepackaged group of items used for the acquisition and processing of material to be sent for analytical testing.

~~3.66.~~ 3.55. State Facilities - Any of a number of state owned and operated health care facilities including, but not limited to, state hospitals, behavioral health facilities and other similar facilities. This term does not include colleges and universities.

~~3.67.~~ 3.56. State Institutions - Any of a number of state owned and operated residential or non-residential institutions, including, but not limited to, juvenile detention centers, regional jails, correctional facilities and state operated schools. This term does not include colleges and universities.

~~3.68.~~ 3.57. State Operated School - Any of a number of state owned and operated schools, including, but not limited to, the School for the Deaf and Blind in Romney and the Barboursville School. This term does not include state colleges and universities.

~~3.69.~~ 3.58. Water Well - Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: a water supply, exploration for water, dewatering or heat pump wells, except that this definition does not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under W. Va. Code, Chapters 22, 22A or 22B.

~~3.70.~~ 3.59. Veterinary Machine - Any radiation machine with at least one x-ray tube used by a licensed practitioner of veterinary medicine for diagnostic purposes on non-human subjects.

~~3.71.~~ 3.60. X-Ray Public Health Screening Application - An application which is submitted for agency approval to conduct healing arts screening as defined in the Bureau's rule, Radiological Health Regulations, 64CSR23, ~~section~~ paragraph 7.3.a.11., using diagnostic radiation machines within the State.

§64-51-4. Fees Generally.

4.1. Authority to Assess and Collect Fees - The Commissioner of the Bureau for Public Health and local boards of health may assess and collect fees for the provision of services. Except as specified in subsections 4.2., 5.2. and 9.2. of this rule, the Commissioner and local boards of health may require payment of fees in advance for services. Where the Commissioner has staffed and equipped offices of the Bureau for Public Health to provide the services it is required to perform, the Commissioner may make efficient use of those resources by providing other public health services at reasonable fees established by the Commissioner.

4.2. Exemption from Fees Generally - No individual may be denied health care services because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them.

4.3. Fees for Copies of Public Records - Copies of public records which may be disclosed shall be furnished at a charge of fifty cents (50¢) per page on 8½ x 11" or 8½ x 14" paper. Copies of documents produced on larger paper may be furnished at actual cost, which includes but is not limited to materials, operator's time, and transportation and delivery charges. Copying fees may be required to be paid before issuance of the copies.

4.4. Fee for Record Searches - Requests for information estimated to require more than ten (10) minutes to search records or to compile may be charged at the rate of fifty dollars (\$50) per hour, and payment may be required before issuance of the information.

4.5. Fee for Location Information - When the service provided is location information of licensees, permit holders, or other persons, the fee shall be at the rate of twenty-five cents (25¢) per location.

§64-51-5. Laboratory Service Fees.

5.1. Laboratory Services for Which a Fee May be Charged - Except as provided in subsection 5.2. of this rule, the Commissioner may charge a fee for each test or group of tests including specimen collection kits, as listed in Appendix A of this rule. The Laboratory may charge for bacteriological and chemical analyses of environmental water samples, clinical specimens, and for the certification of laboratories to conduct drinking water tests.

5.2. Exemption from Laboratory Fees - Fees shall not be charged when:

~~5.2.1.~~ 5.2.a. Laboratory tests are authorized by the Commissioner as part of an epidemiological investigation or the charging of the fee would significantly and adversely affect the public health;

~~5.2.2.~~ 5.2.b. Tests on second or additional specimens are required by the Commissioner because of the inability to make or complete a test, or because the testing operation or procedure is unsatisfactory for any reason;

~~5.2.3.~~ 5.2.c. Specimens are determined to be unsatisfactory for testing at the time of submission;
or

~~5.2.4.~~ 5.2.d. The exemption of fees provision of subsection 4.2. of this rule applies.

§64-51-6. Environmental Health Fees.

The Commissioner may charge a fee for each environmental health service listed in Appendix B of this rule.

§64-51-7. Health Facility Fees.

The ~~Commissioner~~ Department may charge a fee for each service provided to health facilities listed in Appendix C of this rule. The Office of Health Facilities Licensure and Certification has been relocated within the Department of Health and Human Resources. It is under the auspices of the Office of the Inspector General (OIG). From and after its effective date, the Fees for Health Facilities appearing in Appendix C of this rule shall transfer to a new legislative rule, Office of Health Facilities Licensure and Certification Fees for Services, 69CSR8, promulgated by the Office of the Inspector General.

§64-51-8. Health Statistics Center Fees.

The Commissioner may charge a fee for each service provided as listed in Appendix D of this rule: Provided, that the state registrar may furnish services to state agencies and to organized charities, free of charge, when the services are required before presenting claims to the federal government, or to the state for public assistance, and; provided further, that the state registrar shall make an accurate record of all services provided for the above purposes.

§64-51-9. Fees for Services Provided by Local Boards of Health.

9.1. Services for Which a Local Board of Health May Propose Fees - Except as provided in subsection 9.2. of this section, a local board of health may propose fees for all its services, including but not limited to professional health services, screenings, injections, assessments, counseling done for health-related issues, classes which teach healthy habits, lifestyles, or maintenance of health when there is a preexisting disease condition present, case management on behalf of patients whether in the home, clinic or through written and oral communications by letter or phone, and inspections.

9.2. Exception from Local Board of Health Fees - The public health mission to provide first for general community safety means that fees for service will not be charged to individuals in the following circumstances:

~~9.2.1.~~ 9.2.a. In the case of a community epidemic, natural disaster, civil upheaval, toxic contamination, and other like situations where common good is at issue;

~~9.2.2.~~ 9.2.b. In the case of individuals seeking medical evaluation, treatment or epidemiologic follow-up, including administrative costs, associated with sexually transmitted disease and tuberculosis; or

~~9.2.3.~~ 9.2.c. In the case where the exemption from fees provision of subsection 4.2. of this rule applies.

9.3. Basis for Fees - Local board of health maximum fees may be based on the actual cost of service delivery plus administrative overhead. Administrative overhead may include but is not limited to: 1) salaries and wages; 2) other direct costs; and 3) that portion of the general and administrative costs, to include the administrator, secretaries, clerks, financial management and other overhead expenses, which

contribute to the delivery of the service, and 4) other relevant factors that support or influence the proposed fees.

~~9.4. Fee Proposals By Local Boards of Health — A local board of health proposing to charge fees under this rule shall approve an annual program plan and budget for the current fiscal year which includes:~~

~~9.4.1. Proposed health programs as defined in subsection 3.26. of this rule;~~

~~9.4.2. An accounting of fee collections in the previous fiscal year and in the current fiscal year, and projected fee collections in the remainder of the current fiscal year and during the next fiscal year;~~

~~9.4.3. A proposed schedule of fees; and~~

~~9.4.4. A proposed sliding fee scale to be implemented by the local board. The sliding fee scale may be based on annual federal poverty level guidelines as published by the Bureau for Public Health for other programs or on an alternative system proposed by a local board of health for providing services at a reduced fee based on an individual's ability to pay.~~

~~9.5.~~ 9.4. Posting of Proposed Fees - After a local board of health's adoption of a proposed schedule of fees and sliding fee scale, the board shall post, publish or otherwise inform the public living in the area served by the board of the proposal and allow for a thirty (30) day comment period.

~~9.6.~~ 9.5. Submission of Proposal for Approval - A local board of health proposing to charge fees shall submit to the Commissioner of the Bureau for Public Health:

~~9.6.1. A budget and program plan including the information required in subsection 9.4. of this rule;~~

9.5.a. A copy of the minutes of the Local Board of Health meeting where the fee(s) were approved and voted on, signed by Board Chair;

~~9.6.2.~~ 9.5.b. A copy of the posted notice of and the current and proposed schedule of fees and a description of the public notice process;

9.5.c. A proposed sliding fee scale to be implemented by the local board. The sliding fee scale may be based on annual federal poverty level guidelines as published by the Bureau for Public Health for other programs or on an alternative system proposed by a local board of health for providing services at a reduced fee based on an individual's ability to pay;

9.5.d. Copies of the posted notice and a description of the public notice process;

~~9.6.3.~~ 9.5.e. A copy of comments received on the proposed fees; and

~~9.6.4.~~ 9.5.f. A copy of the Local Health Department's response to the comments.

9.6. Annual Fees for Services Reporting Requirements – Local boards of health with approved fee schedules shall submit the following to the Bureau:

9.6.a. An annual report detailing the revenues generated from fees collected within ninety (90) days of the end of the fiscal year.

9.7. Emergency Fees - Establishment of fees other than in accordance with subsection ~~9.6~~ 9.5. of this rule may be accomplished only upon petition by the local board of health to the Commissioner in response to an emergency or as a relevant factor associated with the provision of services and may include, but is not limited to, supply shortages, federal or other funding reductions of policy changes impacting the ability to provide services.

9.8. Approval or Rejection of Fees of Local Boards of Health by the Commissioner of Public Health - The Commissioner shall approve or reject a local board of health's proposed budget and program plan and fees. If there is a rejection, the local board of health may propose a revision. Upon approval by the Commissioner of the proposed fees, the local board of health shall file the approved fee schedule with the clerk of all the county commissions or municipalities of which the board is a part, or in the case of a combined board of health, the filings shall be with the clerks or recorders of all the participating county commissions and municipalities. After the local board of health has made all the required filings, it may charge the approved fees.

9.9. Notice of Uncompensated Care - Signs shall be prominently displayed in a public health clinic in as many languages as a substantial number of patients speak, as well as signs in pictures for those who do not read, that inform the public that services related to sexually transmitted disease and tuberculosis, and other health care services in the public health clinic may not be denied for inability to pay.

9.10. Local Board of Health Account - All local board of health fees collected together with accounting documentation shall be deposited into an account designated for local board of health purposes. The monies for a municipal board of health shall be deposited with the municipal treasury in the service area. The monies for a county board of health shall be deposited with the county treasury in the service area. The monies for a combined local board of health shall be deposited in an account as designated in the plan of combination.

9.11. Annual Audits - Local boards of health are subject to annual audits and must be in compliance with tax procedures required by the state and shall annually develop a budget for the next fiscal year under W. Va. Code §6-9-7.

§64-51-10. Administrative Due Process.

10.1. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1. In the case of a request for a hearing on a local board of health fee, the Commissioner may direct the local board of health to conduct the hearing.

Appendix A. Laboratory Service Fees.**1. Fees for Environmental Chemistry Laboratory Service****A. Inorganic Chemicals/Miscellaneous Tests****1. Metals**

Analyses for all metals ~~except mercury~~: \$15.00

Analyses may include, but are not limited to, arsenic, barium, beryllium, cadmium, thallium, chromium, nickel, lead, antimony, manganese, selenium, silver, sodium, aluminum, zinc and copper.

2. Mercury by cold vapor \$25.00

3. Analytes by ion chromatography (IC) \$15.00
per ~~analyte~~ analyte per each sample

Analyses may include, but are not limited to, ~~fluoride~~ fluoride, chloride, chlorite, chlorate, sulfate, nitrate, nitrite, ortho-phosphate, bromide and bromate.

4. Analytes by ion selective electrode \$10.00

Analyses may include, but are not limited to, fluoride and pH.

5. Miscellaneous Individual Tests

a. Alkalinity (Total) As CaCO ₃	\$10.00
b. Calcium by Titration	\$15.00
c. Calcium Hardness	\$10.00
d. Chloramines	\$12.00
e. Chlorine, Free	\$12.00
f. Chlorine, Total	\$12.00
g. Conductivity	\$10.00
h. Dissolved Solids, Total	\$13.00
i. Hardness, Total	\$10.00
j. Hydrogen Sulfide	\$10.00
k. Magnesium by Titration	\$15.00
l. Foaming Agents	\$15.00
m. Nitrate	\$15.00
n. Nitrate + Nitrite	\$15.00
o. Ortho-Phosphate	\$15.00
p. Phosphate, Total	\$16.00
q. Silica	\$15.00
r. Turbidity (NTU)	\$12.00
<u>s. Cyanide</u>	<u>\$25.00</u>
<u>t. Nitrite</u>	<u>\$15.00</u>

B. Organic Compounds (Fees Include Sample Preparation)

1. EPA Regulated Volatile Compounds (VOCs)	\$200.00
2. EPA Unregulated Volatile Compounds (VOCs)	\$200.00
3. EPA Regulated Synthetic Organic Compounds (SOCs):	
a. Organohalide and Chlorinated Pesticides /Polychlorinated Biphenyl (PCB Screen) Package <u>Analyses may include, but are not limited to, Endrin, Lindane, Heptachlor, Heptachlor epoxide, Methoxychlor, Chlordane, Toxaphene, Hexachlorobenzene, and Hexachlorocyclopentadiene</u>	\$185.00
b. Nitrogen-Phosphorous Pesticide Package <u>Analyses may include, but are not limited to, Alachlor, Atrazine, and Simazine</u>	\$150.00
c. Carbamate Pesticides Package <u>Analyses may include, but are not limited to, Aldicarb, Aldicarb Sulfone, Aldicarb Sulfoxide, Carbofuran, and Oxamyl (Vydate)</u>	\$150.00
d. Diquat	\$150.00
e. Endothall	\$150.00
f. Glyphosate	\$150.00
g. Esters Package <u>Analyses may include, but are not limited to, includes Di (2-ethylhexyl) Adipate and Di (2-ethylhexyl) Phthalate</u>	\$150.00
h. Benzo (a) pyrene	\$150.00
i. Herbicides Package <u>Analyses may include, but are not limited to, 2,4-D, 2,4,5 – Tp (Silvex), Pentachlorophenol, Dinoseb, Dalapon, and Picloram</u>	\$175.00
j. <u>1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-Chloropropane (DBCP)</u>	<u>\$100.00</u>
4. Disinfection By Products	
a. Trihalomethanes (THMs) Package <u>Analyses may include, but are not limited to, Bromoform, Chloroform, Bromodichloromethane, and Chlorodibromomethane</u>	\$150.00
b. Haloacetic Acids (HAAs) Package <u>Analyses may include, but are not limited to, Bromoacetic Acid, Chloroacetic Acid, Dibromoacetic Acid, Dichloroacetic Acid, and Trichloroacetic Acid</u>	\$190.00

5. Total EPA Regulated Organics <u>Package</u> , includes Pesticides, PCBs, Carbamates, Diquat, Endothall and Glyphosate	\$845.00
6. Other Organic Tests: * Raw and/or Finished	
a. *Total Organic Carbon (TOC)	\$40.00
b. *Specific Ultraviolet Absorption (SUVA)	\$50.00
2. Fees for Environmental Microbiology Laboratory Service	
A. Water Tests <u>Coliform Test</u>	\$15.00
B. Container Rinse Test	\$30.00
C. <u>Heterotrophic Plate Count</u>	<u>\$15.00</u>
3. Sample processing fee	\$5.00
(A sample processing fee will be charged for each sample submitted to the OLS for testing with the exception of samples for Fluoride, pH and Cyanide. Sampling containers are supplied at no charge when requested.)	
4. Fee for Chain of Custody	\$15.00
5. Fees for Certification of Laboratories to Conduct Drinking Water Tests: Certification to perform laboratory testing on water to meet state and Environmental Protection Agency requirements under the Safe Drinking Water Act.*	
A. Chemical Testing:	
1. Inorganic Tests	\$1,000.00
2. Trihalomethanes and Volatile Organic Compounds and Haloacetic Acids	\$1,000.00
3. <u>Herbicides</u> Herbicides , Pesticides and Synthetic Organic Chemicals	\$1,000.00
4. All Other Organic Tests	\$1,000.00
B. Microbiological Testing	\$1,000.00
C. New lab application fee (nonrefundable)	\$150.00
D. Initial consultation fee prior to initial on-site audit	\$500.00
E. Issuance of an updated certificate (for dropped, added or change of status)	\$100.00
F. Fee for follow-up on-site audit	\$500.00

*Laboratories located outside the borders of West Virginia will be assessed the certification fee for the tests approved and shall pay all reasonable expenses required for an on-site inspection.

6. Fees for Specimen Collection Kits:

A. Blood Lead \$15.00

7. The State Hygienic Laboratory may enter into contractual agreements for providing services at a negotiated rate for testing specimens in the conduct of Public Health Investigations, Public Health Interventions and Public Health Risk Assessments.

8. In order to maintain preparedness and assess threats the Lab may charge for testing related to terrorism.

A. Bioterrorism

A reasonable fee established by the Commissioner may be charged in the testing of specimens for the detection of the presence of agents of bioterrorism. Testing may include, but is not limited to, the detection of biological agents causing anthrax, plague, tularemia, botulism, brucellosis, Q fever, or any other suspected agent.

B. Chemical Terrorism

The Commissioner may charge a reasonable fee, based upon an itemization of costs, for the testing of specimens for detection of the presence of agents of chemical terrorism. Testing may include, but is not limited to, the detection of chemical agents such as ricin, cyanide, or any other suspected agent.

Appendix B. Environmental Health Services Fees.**1. Water Systems, Sewage Systems and Swimming Pools****A. Construction/Installation Permits**

Public Water System Project	\$300.00
Public Sewer System or Facility Project	\$300.00
Public Swimming Pool Project	\$200.00
Sewage Holding Tank Project	\$1,000.00
On Site Innovative/Alternative Type Sewage System	
Correcting Failure	\$250.00
New Construction	\$400.00
Sewage System Installer Certification and Renewal	\$150.00

B. Water Well Permits (New Construction)	\$150.00
Public Water System	

2. Bottled Drinking Water/Water Vending Machine Permits

A. Distributors, Annually	\$100.00
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B. Producers and Distributors, Annually**C. Facility Size (measured in Gross Sales)**

1. \$0.00 to \$24,999.00 <u>\$7,499.00</u>	<u>\$35.00</u>
2. <u>\$7,500 to \$14,999.00</u>	<u>\$70.00</u>
3. <u>\$15,000 to \$24,999</u>	\$100.00
2. 4. \$25,000.00 to \$49,999.00	\$200.00
3. 5. \$50,000.00 to \$99,999.00	\$300.00
4. 6. \$100,000.00 to \$499,999.00	\$400.00
5. 7. \$500,000.00 to \$999,999.00	\$500.00
6. 8. \$1,000,000.00 to 4,999,999.00	\$600.00
7. 9. \$5,000,000.00 to 9,999,999.00	\$700.00
8. 10. \$10,000,000.00 to 24,999,999.00	\$800.00
9. 11. \$25,000,000.00 to 49,999,999.00	\$900.00
10. 12. Greater than \$50,000,000.00	\$1,000.00

D. Vending Machines, Annually	\$100.00
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Plus <u>annually</u> per machine	10.00
3. Radiological Registration	
A. Business (or Individual) Providing Vendor Services	\$120.00
B. Radioactive Material	\$120.00
C. Radiation Machine Facility (initial or renewal)	\$120.00
D. Reciprocity	\$120.00
E. X-ray Public Health Screening Application	\$120.00
4. Radiological Inspection	
A. Decommissioning	\$500.00
B. Dental Intraoral Machine per Tube	\$60.00
C. Dental Panoramic Machine per Tube	\$70.00
D. Dental (Other than intraoral or panoramic) per Tube	\$70.00
E. Emergency Services Consultation	\$100.00 per hour
F. Industrial Cabinet X-ray System per Tube	\$70.00
G. Industrial High Energy Machine per Tube	\$120.00
H. Industrial Radiographic Machine per Tube	\$70.00
I. Industrial Radiation Machine (Other) per Tube	\$70.00
J. Medical Diagnostic Machine per Tube	\$70.00
K. Medical Therapeutic Machine per Tube	\$250.00
L. Radiation Machine per Tube (Other than Diagnostic or Therapeutic Machines, used for research or other purposes)	\$70.00
M. Radioactive Material Facility Close-out Survey	\$120.00
N. Radioactive Material Inspection	\$170.00
O. Shielding Plan Review	\$70.00
P. Veterinary Machine per Tube	\$90.00
5. Asbestos Abatement	

A. Training Accreditation		
1. Course Approval		
Per discipline/maximum	\$1000.00/\$3000.00	
2. Review Course Approval		\$500.00
B. Notification -- Inspection of Projects		
1. Class I: 10-100 linear ft. or 50-200 sq. ft.		\$50.00
2. Class II: more than 100 and less than or equal to 1000 linear ft. or more than 200 and less than or equal to 2000 sq. ft.		\$200.00
3. Class III: greater than 1000 linear ft. or greater than 2000 sq. ft.		\$500.00
4. Class IV: Annual Industrial Facility		\$1500.00
6. Annual Low-Level Radioactive Waste Generator or Storage Fee		\$12,500.00
7. School Radon Testing		
A. Test fee per sampling point		\$10.00
B. Bureau staff time per hour		25.00
8. Food Manufacturing Facility Permit (Annual, Expires 6-30)		
A. Facility Size (measured in Gross Sales)		
1. \$0.00 to \$24,999.00 <u>\$7,499.00</u>		<u>\$35.00</u>
2. <u>\$7,500 to \$14,999.00</u>		<u>\$70.00</u>
3. <u>\$15,000 to \$24,999</u>		\$100.00
2. 4. <u>\$25,000.00 to \$49,999.00</u>		\$200.00
3. 5. <u>\$50,000.00 to \$99,999.00</u>		\$300.00
4. 6. <u>\$100,000.00 to \$499,999.00</u>		\$400.00
5. 7. <u>\$500,000.00 to \$999,999.00</u>		\$500.00
6. 8. <u>\$1,000,000.00 to 4,999,999.00</u>		\$600.00
7. 9. <u>\$5,000,000.00 to 9,999,999.00</u>		\$700.00
8. 10. <u>\$10,000,000.00 to 24,999,999.00</u>		\$800.00
9. 11. <u>\$25,000,000.00 to 49,999,999.00</u>		\$900.00

10. <u>12.</u> Greater than \$50,000,000.00	\$1,000.00
9. Food Establishment Permits at State Facilities (Annual, Expires 6-30)	
A. Seating Capacity	
1. 0 – 20	\$100.00
2. 21 – 50	\$200.00
3. 51 – 80	\$300.00
4. 81 and over	\$400.00
10. State Institution Permits (Annual, Expires 6-30)	
A. Juvenile Detention Centers, by capacity	
1. 0 – 50	\$50.00
2. 51 – 100	\$100.00
3. 101 and over	\$150.00
B. Regional Jails, by capacity	
1. 0 – 200	\$100.00
2. 201 – 400	\$150.00
3. 401 – 600	\$200.00
4. 601 and over	\$250.00
C. Correctional Centers, by capacity	
1. 0 – 100	\$100.00
2. 101 – 300	\$150.00
3. 301 – 500	\$200.00
4. 501 – 700	\$250.00
5. 701 – 900	\$300.00
6. 901 and over	\$400.00
D. State Operated Schools (Does not include Colleges and Universities)	\$50.00

Appendix C. Health Facility Fees.**1. Site Inspections for New Construction or Major Renovation**

A. Hospitals	\$475.00
B. Ambulatory Surgical Facility	\$400.00
C. Nursing Homes	\$475.00
D. Assisted Living Residence	\$250.00
E. Residential Care Community	\$250.00
F. Behavioral Health Center Locations	\$250.00
G. Medical Adult Day Care Centers	\$200.00

2. Architect's Review of Plans

A. Hospitals	
New Hospitals and Major Additions	\$850.00
Minor Additions and Renovations	\$300.00
B. Ambulatory Surgical Centers	\$200.00
C. Nursing Homes	
New Home and Major Additions	\$750.00
Minor Additions and Renovations	\$200.00
D. Assisted Living Residence - 17 beds and larger	
New Home and Major Additions	\$500.00
Minor Additions and Renovations	\$250.00
E. Assisted Living Residences 4 - 16 beds	
New Homes and Major Additions	\$300.00
Minor Additions and Renovations	\$200.00
F. Residential Care Community	\$500.00
G. Behavioral Health Center Group Homes	\$200.00
H. End Stage Renal Disease (ESRD)	\$200.00
I. Hospice	
New Hospice and Major Additions	\$500.00
Minor Additions and Renovations	\$250.00
J. Birthing Center	\$200.00
K. Overtime Review Requested by Facility (per hour)	\$50.00

L. Medical Adult Day Care	\$150.00
3. Building Inspection of New Projects Prior to Opening	
A. Hospitals	
New Hospital and Major Additions	\$850.00
Minor Additions and Renovations	\$500.00
B. Ambulatory Surgical Facility	\$400.00
C. Nursing Homes	
New Home and Major Additions	\$750.00
Minor Additions and Renovations	\$400.00
D. Behavioral Health Center Locations	\$400.00
E. End Stage Renal Disease (ESRD)	\$400.00
F. Hospice	
New Hospice and Major Additions	\$650.00
Minor Additions and Renovations	\$300.00
G. Birthing Centers	\$400.00
H. Medical Adult Day Care Centers	\$300.00
I. Assisted Living Residences	\$400.00

Appendix D. Health Statistics Center Fees.**1. Fees for services:**

- A. Preparation of a new certificate of birth due to adoption or legitimation. This does not include one certified copy. ~~\$10.00~~ No Charge
- B. Amendment of a certificate following a legal name change, by court order. This does not include one certified copy. \$10.00
- C. Amendment of a certificate subsequent to acceptance of a child support enforcement order or a court ordered determination of paternity. This does not include a certified copy. No Charge
- D. Amendment of a birth certificate after acceptance of a paternity acknowledgment. This does not include a certified copy. No charge within 1 year of birth
\$10.00 after the 1st year
- E. Preparing and filing a delayed certificate of birth or death. This does not include one certified copy. \$15.00
- F. Additional handling charge for non-routine, expedited service and all special delivery, priority, or express mail that requires special attention. Express shipping charges extra at cost. \$5.00 for regular mail
\$10.00 for next day service
- G. Preparing and filing a presumptive death certificate. This does not include one certified copy. No Charge
- H. Amending a birth or death certificate. This does not include one certified copy. No charge within one year of event
\$10.00 after the 1st year of event
- I. Manually preparing an abstracted document from the original on file for certification, upon demand by the customer. This does not include a certified copy of the abstracted certificate. \$10.00
- J. Preparing an heirloom birth certificate from the original document. \$30.00
- K. A fee may be charged for special services not specified in this Appendix. The fee shall be the actual cost for providing the service as determined by the State Registrar.
- L. The State Registrar may waive a fee for service for good cause, including requests from legitimate charities and those on behalf of indigent persons.