

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative CITE AUTHORITY: 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Fee Structure for the Pesticide Control Act of 1990

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 13, 2007 AT 4:00 p. m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Grant Bishop
Pesticide Regulatory Programs
WVDA
1900 Kanawha Boulevard East
Charleston WV 25305-0190

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



State of West Virginia

DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Summary

Fee Structure for the Pesticide Control Act of 1990

§61-12

Amendments to Existing Rule

61-12-2. Examinations.

2.1 Increase fee from \$10 per examination session to \$20 per session.

61-12-3. Classification and Fees of Pesticide Business Licenses.

3.1 Pesticide application business – Increase annual fee from \$50 to \$75.

3.2 Pesticide consultant – Increase annual fee from \$50 to \$75.

3.3 Pesticide dealer – Increase annual fee from \$10 to \$75.

61-12-4. Classification and Fees of Applicator Certificates.

4.1 Commercial applicator – Increase annual fee from \$10 to \$20.

4.3 Registered technician – Increase annual fee from \$10 to \$20.

61-12-5. Product Registration.

5.1 Increase annual fee from \$100 to \$150.



State of West Virginia

DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Statement of Circumstances

Fee Structure for the Pesticide Control Act of 1990

§61-12

Amendments to Existing Rule

The proposed amendment to Title 61, Series 12, Fee Structure for the Pesticide Control Act of 1990, would increase fees for pesticide certification examinations, pesticide application business, consultant and dealer licenses, pesticide product registrations, as well as licenses for commercial pesticide applicators and registered technicians.

Proposed fee increases are as follows:

Pesticide applicator examinations: Increase fee from \$10 per exam session to \$20 per session.

Licensed pesticide application business: Increase annual fee from \$50 to \$75.

Pesticide consultant: Increase annual fee from \$50 to \$75.

Pesticide dealer: Increase annual fee from \$10 to \$75.

Commercial pesticide applicator: Increase annual fee from \$10 per year to \$20.

Registered technician: Increase annual fee from \$10 to \$20.

Pesticide products: Increase annual fee from \$100 to \$150.

Licensing fees for pesticide applicators and pesticide application businesses have not seen an increase in more than 17 years. During that same period of time, staff of the Pesticide Regulatory Programs office has more than doubled. In order to continue the services currently offered by the Department, an increase is necessary. The increases will help to maintain the services currently offered free of charge, such as container recycling, pesticide waste disposal, pesticide and equipment safety training, respirator fit testing, HeartSaver First Aid training, and initial certification and recertification training. Our laboratory equipment requires yearly maintenance contracts. Other costs are incurred in disposal of laboratory chemical waste as a result of sample collection and yearly training and certification of laboratory personnel. Travel costs have increased for field staff to ensure compliance with pesticide licensing and application regulations. Added costs are also involved in an emphasis on compliance assistance for Integrated Pest Management in School and Day Care Centers/Facilities to reduce children's exposure to pesticides and in a program to supply pressure rinse nozzles to pesticide applicators who participate in the pesticide container recycling program. Lack of a fee increase may result in a cost to the applicator for these programs, which many pesticide applicators have come to expect as services of the Department of Agriculture.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fee Structure for the Pesticide Control Act of 1990

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard East
Charleston WV 25305-0190

Phone Number: 304-558-2209 Grant Bishop Email: gbishop@ag.state.wv.us
304-558-2227 Herma Johnson hjohnson@ag.state.wv.us

Fiscal Note Summary

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

Licensing fees for pesticide applicators and pesticide application businesses have not seen an increase in more than 17 years. During that same period of time, staff of the Pesticide Regulatory Programs office has more than doubled. Many innovative programs, such as initial certification training, Ag Safety Days and pesticide container recycling and disposal are currently offered free of charge. Other more traditional services, such as sample collection and analysis and consumer complaint assistance, are also currently offered free of charge. Lack of a fee increase may result in a cost to the applicator for these programs, which many pesticide applicators have come to expect as services of the Department of Agriculture.

The proposed fees are low compared to surrounding states and below the national average.

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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	529,360.00	529,360.00	529,360.00

Rule Title: _____

Rule Title: _____

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

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

Proposed fee increases are as follows:

Pesticide applicator examinations: Increase fee from \$10 per exam session to \$20 per session.

Licensed pesticide application business: Increase annual fee from \$50 to \$75.

Pesticide consultant: Increase annual fee from \$50 to \$75.

Pesticide dealer: Increase annual fee from \$10 to \$75.

Commercial pesticide applicator: Increase annual fee from \$10 per year to \$20.

Registered technician: Increase annual fee from \$10 to \$20.

Pesticide products: Increase annual fee from \$100 to \$150.

In order to continue the services currently offered by the Department, an increase is necessary. The increases will help to maintain the current services that we offer free of charge, such as container recycling, pesticide waste disposal, pesticide and equipment safety training, respirator fit testing, HeartSaver First Aid training, initial certification and recertification training. Our laboratory equipment requires yearly maintenance contracts, disposal of laboratory chemical waste as a result of sample collection and yearly training and certification of laboratory personnel. Travel costs have increased for field staff to ensure compliance with pesticide licensing and application regulations. Added costs are involved in an emphasis on compliance assistance for Integrated Pest Management in School and Day Care Centers/Facilities to reduce children's exposure to pesticides and in a program to supply pressure rinse nozzles to pesticide applicators who participate in the pesticide container recycling program.


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.

Changes to Title 61, Series 12B rules are also being proposed. One proposed change includes a requirement for pest control companies to display the company name and license number on vehicles. The other change exempts employees of regulated pesticide application businesses from pesticide applicator licensing for the use of over-the-counter, ready-to-use pesticides, with the exception of employees of educational institutions, food handling establishments, health care and convalescent facilities.

Date: 6-13-07

Signature of Agency Head or Authorized Representative



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2007 JUN 13 PM 3:49

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
SERIES 12
FEE STRUCTURE FOR THE PESTICIDE CONTROL ACT OF 1990

OFFICE OF THE
SECRETARY OF STATE

§61-12-1. General.

- 1.1. Scope -- This legislative rule establishes the fee structure to be used under the Pesticide Control Act of 1990.
- 1.2. Authority -- W. Va. Code §19-16A-4.
- 1.3. Filing Date -- ~~May 15, 2004~~
- 1.4. Effective Date -- ~~June 1, 2004~~

§61-12-2. Examinations.

2.1. The Commissioner shall assess each person taking an examination for a license, certification or certificate a fee of ~~\$10.00~~ 20.00 per examination session. This fee is for one or more examinations taken at the same time. This examination fee shall be used to help defray the costs of training materials, postage and processing of licenses, certification and certificates.

§61-12-3. Classification and Fees of Pesticide Business Licenses.

- 3.1. Pesticide application business - The Commissioner shall assess an annual fee of ~~\$50.00~~ 75.00 for each pesticide application business engaged in the business of applying pesticides upon the lands of another. Pesticide application business making non solicited recommendations of pesticide products, made in the course of normal business practices, shall be exempt from a consultant license and fee.
- 3.2. Pesticide consultant - The Commissioner shall assess an annual fee of ~~\$50.00~~ 75.00 for each pesticide application business engaged in the business of soliciting or offering services for hire to recommend the use of pesticide on the lands of others.
- 3.3. Pesticide dealer - The Commissioner shall assess an annual fee of ~~\$10.00~~ 75.00 for each person who sells, wholesales, distributes, offers or exposes for sale, exchanges or gives away any restricted use pesticide within or into this State. Commercial delivery services shall not be deemed as distributors of pesticides.

§61-12-4. Classification and Fees of Applicator Certificates.

- 4.1. Commercial applicator - The Commissioner shall assess an annual fee of ~~\$10.00~~ 20.00 for each person who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as a private applicator.
- 4.2. Private applicator - The Commissioner shall assess a fee of \$10.00 every three years to maintain certification as a private applicator to apply restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by him or her employer or is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

4.3. Registered technician - The Commissioner shall assess an annual fee of ~~\$10.00~~ 20.00 for each person qualifying as a registered technician.

§61-12-5. Product Registration.

5.1. The Commissioner shall assess an annual registration fee of ~~\$100.00~~ 150.00 per product for each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce of between points within this State through any point outside this State.

5.2. Pesticide products used or offered for use within the State under a bonafide experimental research permit issued by the United States environmental protection agency shall be registered but are exempt from the annual registration fee, provided the products are offered at no charge to cooperators and a copy of the experimental research permit is submitted with registration as an experimental use product with the State.