

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #1

**FILED**

JUN 12 3 11 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Department of Agriculture TITLE NUMBER: 61

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

AMENDMENT TO AN EXISTING RULE: YES X 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 NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:   

DATE OF PUBLIC HEARING: July 20, 2000 TIME: 1:00 pm

LOCATION OF PUBLIC HEARING: West Virginia Dept. of Agriculture  
Pesticide Regulatory Programs Unit  
Bldg. 7, 4720 Brenda Lane  
Charleston, WV 25312

COMMENTS LIMITED TO: ORAL     , WRITTEN     , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Dept. of Agriculture  
Pesticide Regulatory Prog:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

1900 Kanawaha Blvd. E.  
Charleston, WV 25305-0190

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Authorized Signature

\$3.60

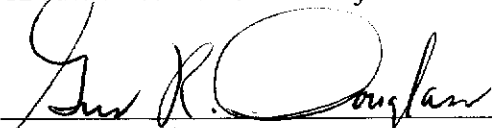
State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

AGENCY APPROVAL OF FILING

The West Virginia Department of Agriculture approves the filing of an amendment to Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990*.

  
Gus R. Douglass,  
Commissioner of Agriculture

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6/09/00  
Date

State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

SUMMARY OF PROPOSED RULE

The West Virginia Department of Agriculture proposes to amend the Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990* by increasing the fee for pesticide product registration and correcting an error created the last time the rule was amended. The amount of the increase is from the current fee of \$50.00 per product to \$100.00 per product. The fee for a pesticide dealer license was erroneously increased during the last rule making legislation. That fee is being returned to the original amount of \$10.00 per dealer establishment. All other fees associated with the rule remain the same with no change.

State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

STATEMENT OF CIRCUMSTANCE

Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act* is being amended to increase the revenue to the Department of Agriculture in order to maintain services to the citizens of the State. The basic general revenue funding for the Pesticide Regulatory Programs has not increased since 1990. The Federal pesticide grant dollars available to the program have not increased since 1994. Due to increased responsibilities and demands upon the regulatory programs operated by the Department, an increase in the funding level is warranted to maintain the present level of services and to cover the rising inflationary costs in the program. Without the fee increase, further deterioration of the program funding will result in a loss of personnel and services that can affect the immediate preservation of the public health, safety and welfare.

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    Department of Agriculture

Address    1900 Kanawha Boulevard East

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 350,000	\$	\$ 350,000	\$ 350,000	\$ 350,000
PERSONAL SERVICES	185,000		185,000	185,000	185,000
CURRENT EXPENSES	95,000		95,000	95,000	95,000
REPAIRS & ALTERATIONS	20,000		20,000	20,000	20,000
EQUIPMENT	50,000		50,000	50,000	50,000
OTHER					

2. Explanation of above estimates:

The estimates include actual costs of personnel, laboratory expenses, travel and other operational costs for the enforcement of the Pesticide Control Act of 1990.

3. Objectives of these rules:

This rule is being amended to provide needed funding to continue offering regulatory oversight and services to the citizens of the state. The primary funding of costs to this point have been paid from federal dollars received from the EPA through grants. The grant dollars have not increased since 1994 and reserve resources have been exhausted. Additional funding needs to be obtained in order to maintain the current program services.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Approval of the fee increase will have no adverse impact on the State. The fees paid by pesticide registrants are paid to all states and West Virginia's fees are below the average fee paid in the nation. The fee increase will raise the West Virginia fee to the average paid by registrants. If the rule is not approved, then the State will not be in a position to continue the operation of the Pesticide Regulatory Programs Unit at the current level. The resulting loss of positions and current expense dollars will impact the EPA grants and possibly result in the loss of federal dollars to the State. If that occurs, the State will not be in a position to meet the mandate of the Pesticide Control Act of 1990.

B. Economic Impact on Political Subdivisions; Specific Industries: Specific groups of Citizens.

Approval of the rule amendment will have no adverse impact on Political Subdivisions. The fee is paid to all states by the pesticide registrants and our fee is well below the average fee paid. Increasing the fee will bring our state near the average fee paid and is not expected to cause any increase in the cost of pesticide products to any political unit in the state.

C. Economic Impact on Citizens/Public at Large

No group of citizens is expected to be impacted by the approval of the fee increase. The amount people pay for pesticides is dependent on marketing factors and not registration fees. For instance, the state of Virginia charges \$150.00 per product, but in a survey of homeowner products, it was found that they were cheaper in Winchester, Virginia than in Martinsburg, West Virginia. These two cities are comparable in size and are approximately 30 miles apart. At that time the West Virginia registration fee was \$25.00, six times less than the Virginia registration fee. If the money to support pesticide programs cannot be gotten from the fee increase, then general revenue dollars would need to be appropriated, thereby causing a larger demand on state tax dollars.

The only industry this fee increase will impact is the pesticide manufacturers. The fee should not adversely impact West Virginia businesses. Eleven pesticide manufacturers operate 15 manufacturing sites in the state. Those manufacturers have to pay registration fees to all states, regardless of state in which their manufacturing plant is located. Only one of these manufacturers is a West Virginia based company. That company would see a total increased cost of \$100.00 to register their 2 products.

Date: 6/7/00

Signature of Agency Head or Authorized Representative

*Dampier Miller*

FILED

TITLE 61

JUN 12 3 11 PM '00

WEST VIRGINIA LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE OFFICE OF WEST VIRGINIA  
CHAPTER 19-16A SECRETARY OF STATE  
SERIES XII

Title: Fee Structure for the Pesticide Control Act of 1990

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**§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 - West Virginia Code 19-16A-4

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former rule - This legislative rule repeals and replaces WV61CRS12 "Fee Structure For The Pesticide Control Act of 1990" effective ~~December 20, 1990~~ June 1, 1999.

**§61-12-2 Definitions**

2.1. Each person taking an examination for a license, certification or certificate shall be assessed a fee of \$10.00 per examination session. This fee is for one or more examinations taken at the same time. This examination fee is to 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 - an annual fee of \$50.00 shall be assessed for each pesticide application business engaged in the business of applying pesticides upon the lands of another. Pesticide application business make 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 - an annual fee of \$50.00 shall be assessed 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 - an annual fee of \$510.00 shall be assessed 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 - an annual fee of \$10.00 shall be assessed of 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 - a fee of \$10.00 shall be assessed 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 - an annual fee of \$10.00 shall be assessed of each person qualifying as a registered technician.

#### **§61-12-5 Product Registration**

5.1. An annual registration fee of \$5100.00 per product shall be assessed of 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 must be registered but shall be exempt from annual registration fee, provided such 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.