

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

Form #4

FILED

SEP 30 12 05 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES  NO

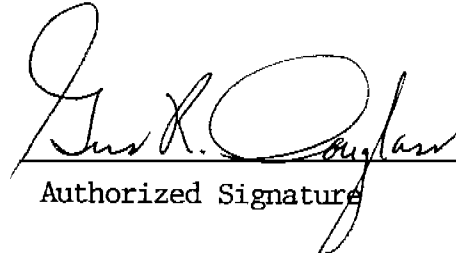
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

\$2.80



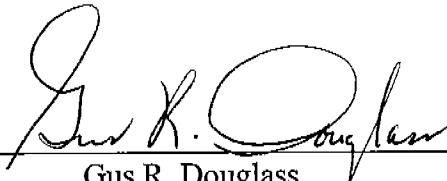
State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

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*, as modified by the Legislative Rule-Making Review Committee.

  
\_\_\_\_\_  
Gus R. Douglass,  
Commissioner of Agriculture

9/29/98  
Date

FILED

SEP 30 12 05 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 61

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

Title: Fee Structure for the Pesticide Control Act of 1990

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**§61-12A-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.

**§61-12A-2 General Examination Fee**

2.1. Each person taking an examination for a license, certification or certificate shall pay 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 used to help defray the costs of training materials, postage and processing of licenses, certification and certificates.

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

3.1. Pesticide application business - each pesticide application business engaged in the business of applying pesticides upon the lands of another shall pay an annual fee of \$50.00. Pesticide application business making non solicited recommendations of

pesticide products, made in the course of normal business practices, are exempt from a pesticide consultant's license and fee.

3.2. Pesticide consultant - each pesticide application business engaged in the business of soliciting or offering services for hire to recommend the use of pesticides on the lands of others shall pay an annual fee of \$50.00.

3.3. Pesticide dealer - each person who sells, wholesales, distributes, offers or exposes for sale, exchanges or gives away any restricted use pesticide within or into this State shall pay an annual fee of \$50.00. Commercial delivery services are not considered distributors of pesticides.

#### **§61-12A-4 Classification and Fees of Applicator Certificates**

4.1. Commercial applicator - 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 shall pay an annual fee of \$10.00.

4.2. Private applicator - a private applicator applying restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by his 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 shall pay a fee of \$10.00 every three years.

4.3. Registered technician - each person qualifying as a registered technician shall pay an annual fee of \$10.00.

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

5.1. Manufacturers of pesticide products shall pay an annual registration fee of \$ 50.00 per product for each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce or 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 for registration as an experimental use product with the State.



FILED

SEP 23 10 27 AM '98

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*State Capitol - Room MB-49*  
*Charleston, West Virginia 25305*  
*(304) 347-4840*

*Senator Mike Ross, Co-Chairman*  
*Delegate Mark Hunt, Co-Chairman*  
*Debra A. Graham, Counsel*

September 23, 1998

*Joseph A. Altizer, Associate Counsel*  
*Rita Pauley, Associate Counsel*  
*Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: David E. Miller  
WV Department of Agriculture  
Capitol Complex  
Building 1, Room M28

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Fee Structure for the Pesticide Control Act of 1990, 61CSR12**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency       ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** West Virginia Department of Agriculture

**Subject:** Fee Structure for the Pesticide Control Act of 1990,  
61CSR12

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PERTINENT DATES

Filed for public comment: May 14, 1998  
Public comment period ended: June 25, 1998  
Filed following public comment period: July 30, 1998  
Filed LRMRC: July 30, 1998  
Filed as emergency:

Fiscal Impact: \$360,000 increase

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WEST VIRGINIA

AUG 20 10 35 AM '98

FILED

ABSTRACT

The proposed rule amends a current legislative rule. It increases the fee for annual registration of each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state from \$25 to \$75.

AUTHORITY

Statutory authority: W.Va. Code, §19-16A-4, which provides, in part, as follows:

...The commissioner of agriculture has the power and duty to carry out the provisions of this article and is authorized to:

...(f) Promulgate rules pursuant to chapter twenty-nine-a of this code, including, but not limited to, the following:

...(7) Establishing a fee structure for licenses, registration and certificate to defray the costs of implementing this article;...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

This issue is for the Committee to decide. Several manufacturers and distributors of pet products expressed concern over the amount of the increase. They suggested two classes of pesticides and two fees, one for agricultural use and one for speciality uses, which would include flea and tick products. The Department considered the comments and determined that the increase was reasonable.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.