





*sent to all licensed pesticide  
businesses and dealers*

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

State Capitol  
Charleston, WV 25305

Cleve Benedict  
Commissioner

NOTICE OF PUBLIC HEARING FOR COMMENTS ON  
PESTICIDE BUSINESS REGULATIONS

Proposed regulations governing pesticide businesses have been filed with the Secretary of State and a hearing has been scheduled for July 12, 1991 to receive comments. The hearing is scheduled to begin at 1:00 p.m. in the J. T. Johnson Conference Room, Building 2 of the Guthrie Agricultural Complex, Charleston, WV 25312. Comments will be accepted by oral presentation, written or both. Written comments should be submitted to the West Virginia of Agriculture, Pesticide Division, 1900 Kanawha Blvd. E., Charleston, WV 25305.

The regulations cover the licensing of businesses applying pesticides, selling pesticides and operating as a consultant on the use of pesticides. Application businesses are defined as either Licensed Pesticide Application Businesses or Registered Pesticide Businesses. The Licensed Pesticide Application Businesses are those that have traditionally been licensed and regulated since 1975. Registered pesticide businesses are those businesses who apply pesticides in a commercial manner but were previously exempt because they used non-restricted use pesticides. Examples would be applicators for school systems, apartment complexes, highway rights-of-way, etc. Application businesses are required to maintain certified commercial applicators or registered technicians for pesticide applications. Pesticide application businesses are required to keep records of their applications for a 2-year period.

Pesticide dealers of both restricted use and non-restricted use pesticides are required to be licensed. Dealers of restricted use pesticides are licensed as they have been since 1978. Dealers of non-restricted use pesticides are termed Registered Pesticide Dealers. Both types of dealers are required to show their understanding of safe storage, display and distribution of pesticides. Dealers of Restricted Use Pesticides are to keep traditional records of the sale of restricted use pesticides to certified applicators. All dealers are to maintain records on the volume of annual sales of all pesticides. There is an exemption from dealer licensing for grocery stores, drug stores, etc., for the sale of non-restricted use products such as bleaches, disinfectants, aerosols, etc.

Persons operating as a Pest Management Consultant are required to be certified and licensed in their category of expertise. They are to keep records of their recommendations for a 2-year period. A copy of the full regulation may be obtained by calling (304) 348-2209.

JUL 0 8 1991



Cleve Benedict  
Commissioner of Agriculture

*Print to all WV newspapers*  
**NEWS  
RELEASE**

July 8, 1991

Charleston, West Virginia 25305

**Public hearings scheduled for new regulations**

Agriculture Commissioner Cleve Benedict announced a series of public hearings on new regulations and encouraged public participation in the process.

Benedict said the public hearings give the West Virginia Department of Agriculture (WVDA) the opportunity to modify regulations after taking public input into consideration.

In addition to the public hearings, written comments will be accepted until the time of the hearing. The public hearings will be held on the following days:

- July 12, 1 p.m.           Licensing of Pesticide Business
- July 12, 3 p.m.           Regulations to Govern Aerial Application of  
Herbicides to Right of Way
- July 29, 10 a.m.         Frozen Desserts and Imitation Frozen Desserts
- July 29, 2 p.m.         Commercial Feed
- July 30, 10 a.m.         Assessment of Civil Penalties for Consent  
Agreement or Negotiated Settlements  
(Pesticides)
- July 30, 1 p.m.         Certified Pesticide Applicator
- July 31, 10 a.m.         Licensing of Livestock Dealers
- August 1, 10 a.m.        Disposal of Dead Poultry

All hearings will be held in the J. T. Johnson Conference Room in Building 2 of the Guthrie Agricultural Center, Charleston, W.Va., except for the Disposal of Dead Poultry hearing. The Dead Poultry hearing will be held at the Moorefield Agricultural Center.

Comment period deadlines for the following regulations (there are no public hearings) will be July 29 at noon:

- Plant Pest Act
- West Virginia Apiary Law of 1991
- Animal Disease Control

For more information on how to comment on the new regulations, contact Barbara Smith, Director of Compliance, WVDA, at 304/348-2226.

FILED

1991 JUN -4 PM 3:07

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SUMMARY OF LEGISLATIVE RULE 61-12B

This rule establishes a structure for the licensing of various types of pesticide businesses. It provides for the keeping of records for the use of pesticides, the sale of restricted use pesticides and the annual volume of sales for pesticides. The amounts of financial security required for liability is specified for each type of pesticide application business for hire.

STATEMENT OF CIRCUMSTANCE

The passage of the 1990 Pesticide Control Act repealed the earlier Pesticide Use and Application Act, thereby rendering ineffective all regulations in place. This rule reestablishes the licensing requirements of pesticide application businesses for hire and dealers of restricted use pesticides. The rule further provides for the registration of other types of pesticide businesses and dealers as required by the Pesticide Control Act of 1990.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Licensing of Pesticide Businesses

1991 JUN -4 PM 3: 07

Type of Rule:  Legislative  Interpretive  Procedural

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Agency Department of Agriculture Address Guthrie Agriculture Center,  
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 60,000	\$ 0	\$ 0	\$ 60,000	\$ 60,000
Personal Services	50,000	0	0	50,000	50,000
Current Expense	10,000	0	0	10,000	10,000
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The above increase is for two (2) additional inspectors and their related expenses.

3. Objectives of these rules:

These rules comply with the Pesticide Control Act requirements to license all businesses applying pesticides in public places and require training for all persons applying pesticides in such places. The regulations further provide a mechanism to gain information of the volume of use of pesticides in the state and a mechanism to disseminate information to all dealers and applicators information regarding changes in pesticide registration and usage. These two (2) items are necessary and vital to the new groundwater protection activities of the state.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The economic impact for state government is a fiscal one of supplying adequate dollars for training and enforcement as outlined in the Pesticide Act of 1990.

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

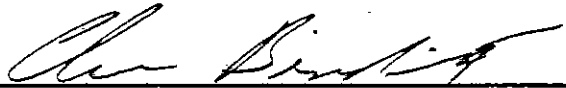
Political subdivision will face a need to provide adequate training to those persons in their employment who apply pesticide in schools, housing authorities and public buildings. The private housing industry, restruant chains, nursing homes, utilities, etc. will also have to provide training for their employees applying pesticides or hire professional people.

C. Economic Impact on Citizens/Public at Large.

The regulations may result in some higher costs of doing business that will be passed on to the consumer. However, these costs will be offset by increased safety for the public and a reduction of clean up costs for incidents such as school contaminations as have been experienced in the past.

Date: May 30, 1991

Signature of Agency Head or Authorized Representative



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1991 JUN -4 PM 3:07

Title 61  
WEST VIRGINIA LEGISLATIVE RULES  
CHAPTER 19-16A  
SERIES XIIB

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Title: Licensing of Pesticide Businesses

**\$61-12B-1 General**

1.1 Scope - This legislative rule establishes the requirements governing the operation of pesticide businesses in West Virginia.

1.2 Authority - W. Va. Code 19-16A-

1.3 Filing Date -

1.4 Effective Date

**\$61-12B-2 Definitions**

2.1 "Commercially" means a person conducting business activities relating to applying, selling, or recommending the use of pesticides on a routine basis as part of their job duties.

2.2 "Dealer of Restricted Use Pesticide" means a dealer commercially selling restricted use pesticides.

2.3 "Licensed pesticide application business" means a pesticide application business commercially applying pesticides for hire.

2.4 "Pest management consultant" means a person commercially recommending the use of pesticides to others.

2.5 "Registered pesticide dealer" means a dealer commercially selling general use pesticides.

2.6 "Registered pesticide business" means a business commercially applying pesticides not for hire.

**§61-12B-3. General Requirements for all Business Licenses**

3.1.A. Any pesticide business operating in West Virginia which sells, stores, recommends for use, mixes or applies pesticides shall obtain a valid pesticide business license or permit pursuant to these regulations.

3.1.B. An applicant for a pesticide business license shall apply for the license on a form to be obtained from the commissioner. All requested information shall be included on the form prior to issuance of the license.

3.1.C. All pesticide business licenses are issued on a calendar year basis and shall expire at midnight on December 31 of each year. Licensees shall renew their licenses annually by application to the commissioner and payment of any required annual fee at least 30 days prior to the expiration of their current license.

**§61-12B-4. Pesticide Application Business**

**4.1 General**

4.1.1 Any person who owns or manages a pesticide business, which is engaged in the business of applying pesticides upon the lands of another must qualify as either a Licensed Pesticide Application Business or a Registered Pesticide Business.

4.1.2 All pesticide application businesses shall maintain certified commercial applicators or certified public applicators in their employment for the various categories or subcategories of their operation. The categories or subcategories as detailed in the certification and training regulations will be used for determining the areas of pesticide application business operation.

4.1.3 All pesticide applications made by pesticide application businesses shall be made by certified commercial applicators, certified public applicators or technicians who have completed a training program approved by the commissioner that has led to their recognition and issuance of a certificate as a "registered technician".

Leg. Rule §19-16A  
Series XIIB

4.1.4 Each location for which the business of applying pesticides for hire is carried on shall be licensed. This includes each branch office franchise location, sub-office or worker locations of a larger business entity.

4.2 Licensed Pesticide Application Business.

4.2.1 A licensed pesticide application business is a pesticide business commercially applying pesticides for hire.

4.3 Registered Pesticide Business

4.3.1 A registered pesticide business is a pesticide business commercially applying pesticides not for hire. Examples of such businesses include, but are not limited to, apartment complexes, office buildings, educational facilities, golf courses, right of way maintenance, etc.

4.3.2 Persons doing limited applications of pesticides are exempt from a registered pesticide business license for the following provisions.

4.3.2.1 The applicator is performing general pest control on their own rental property of four rental units or less, and is applying only generally available, ready to use pesticide products such as prepared baits, aerosols, foggers, and may only use non-pressurized pump applicators;

4.3.2.2 The applicator is engaged in applying disinfectants in the routine performance of their employment in the medical profession or in janitorial duties; or

4.3.2.3 The applicator uses non-restricted use pesticides and assists in applying pesticides for the production of an agricultural commodity.

4.4 Pesticide Dealer Business Licensing Requirements.

4.4.1 Any pesticide business which sells, distributes, stores or offers for sale any pesticide in West Virginia shall obtain a license as a Dealer of Restricted Use Pesticide or as a Registered Pesticide Dealer.

Leg. Rule §19-16A  
Series XIIB

4.4.1.1 Any business operating as a Dealer of Restricted Use Pesticides shall not allow any location or operation to sell restricted use pesticides without a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation of his or her location or outlet.

4.4.1.2 Each applicant or applicant designee for a license as a Registered Pesticide Dealer shall take a written examination to demonstrate their knowledge on the storage, display, distribution and transportation of pesticides.

4.4.2 Exemption from pesticide dealers licensing requirements.

4.4.2.1 Retailers of limited quantities of non-restricted use pesticides, including grocery stores, convenience stores, drug stores, veterinarians and other businesses which sell pesticides such as bleaches, disinfectants, aerosols, etc., for limited household or janitorial use are exempt from these business licensing requirements.

4.4.2.2 Delivery services such as, but not limited to, the U.S. Postal Service, United Parcel Service, Federal Express, etc., and warehouses temporarily storing products for shipment to retailers, are exempt from these business licensing requirements.

4.5 Pest Management Consultants Business Licensing Requirements.

4.5.1 Any person or business which recommends any pesticide for use commercially shall register with the commissioner as a Pest Management Consultant.

4.5.2 The specialty categories for a pest management consultant shall conform to the certified commercial applicator categories established in the certification and training regulations, Series 12A. The pest management consultant shall meet the requirements of a commercial applicator in the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

Leg. Rule §19-16A  
Series XIIB

4.5.3 Retail sales personnel or certified applicators of any business which has obtained a pesticide application business license and company sales representatives certified in Category 10 Demonstration and Research shall be excluded from the provision of registering as a Pest Management Consultant.

#### §61-12B-5. Record Keeping for Pesticide Business.

##### 5.1 General

5.1.1 Each pesticide business shall maintain the following minimum records as a condition of obtaining and renewing a license, permit or certificate. Additional records may be required in other regulations for a specific type of pesticide application.

5.1.2 The commissioner shall have access to these records for the purpose of inspection for compliance and may require a licensed pesticide business to submit these records to his or her office.

5.1.3 The records of each type of following pesticide business shall be kept and maintained for a period of at least 2 years.

5.1.4 Failure to keep or to submit these records is grounds for revocation of a pesticide business license.

##### 5.2. Pesticide Application Business Records.

5.2.1 Each licensed pesticide application business or registered pesticide business shall keep records detailing the application of all pesticides. The minimum information to be maintained shall be:

5.2.1.1 The pesticide used, including EPA registration number.

5.2.1.2 The formulation, dilution rate and the quantity used. In the case of businesses in the classification of General Pest and Ornamental and Turf pest control, the records for quantity used may be kept as the total quantity used per day by

Leg. Rule §19-16A  
Series XIIB

each applicator when less than 1 gallon of use dilution spray or 1 pound of dust, powder or prepared rodenticide baits are used at any one location. When more than these amounts are used at one location, the quantity for that location shall be kept.

5.2.1.3 The date and place of application.

5.2.1.4 The pest or pests against which the pesticide was used.

5.2.1.5 The applicators name and certification or registration number.

### 5.3 Pesticide Dealer Records

5.3.1 Dealers of restricted use pesticides shall keep and maintain records on the sale or other disposition of restricted use pesticides to include as a minimum:

5.3.1.1 Pesticides sold or otherwise disposed of, including formulation, for example Pest-A-Way 80% WP.

5.3.1.2 Quantity, in weight and/or volume.

5.3.1.3 Date of sale or disposition.

5.3.1.4 Name and address of the purchaser or receiver, including the certified applicators identification number.

5.3.1.5 Verification of intent to apply by a certified applicator in the sale of a restricted use pesticide to a non-certified customer for application by others. The verification of intent shall be on a form as provided by the commissioner.

5.3.2 All licensed pesticide dealers shall, on a calendar year basis, keep records on the volume of annual sales of all pesticide products. These records shall contain the following information:

5.3.2.1 The name and EPA registration number of the pesticide sold, including formulation. For example Pest-A-Way 80% WP., Registration No. 3215-514.

Leg. Rule §19-16A  
Series XIIB

5.3.2.2 The quantity sold, in weight and/or volume.

5.3.3 The record keeping requirements of 5.3 above may be satisfied by invoices or bills of lading, provided they are kept separate from the licensees other sale records, are readily available and contain the above information.

#### 5.4 Pest Management Consultant

5.4.1 A pest management consultant shall maintain for a period of 2 years records of each pesticide recommendation made. The information to be kept and maintained shall consist of:

5.4.1.1 Date of recommendation.

5.4.1.2 The name and address of the customer, including the site of application if different.

5.4.1.3 Name of the pest(s) being controlled.

5.4.1.4 Name or type of plants, animals or description of sites being treated.

5.4.1.5 Pesticide recommended, including common name and formulation.

5.4.1.6 Dosage rate of the pesticide recommended.

#### §61-12B-6. Financial Security Requirement.

##### 6.1 General

6.1.1 All pesticide application businesses are required to furnish evidence of financial security with the commissioner prior to the issuance of a pesticide application business license.

##### 6.2 Licensed Pesticide Application Business

6.2.1 The commissioner shall not issue a pesticide application business license until the applicant has filed evidence of financial security with the commissioner, which may consist of a surety bond or comprehensive general liability insurance policy or certification thereof from an insurance company authorized to do business in West Virginia. Such financial security shall be for the amount and kind for each category of licensed applicator as follows:

Leg. Rule \$19-16A  
Series XIIB

6.2.1.1 Agriculture Plant Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.2 Animal Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.3 Forest Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.4 Ornamental and Turf Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.5 Seed Treatment - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.6 Aquatic Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

6.2.1.7 Right of Way Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

Leg. Rule §19-16A  
Series XIIB

6.2.1.8 Industrial, Institution, Structural and Health-Related Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,00.00) for property damage.

6.3 Liability for Pesticide Use.

6.3.1 Liability for Pesticide Use.

Nothing in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the commissioner.