

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

Form #7

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1991 DEC 20 AM 8:35

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

1/22/92

NOTICE OF AN EMERGENCY RULE

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-16A-4, 8 and 9

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 12B

TITLE OF RULE BEING FILED AS AN EMERGENCY: Licensing of Pesticide
Businesses

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

see attached sheet


Signature

LICENSING OF PESTICIDE BUSINESSES
Series 12B

Statement of Facts and Circumstances
Requiring this rule to be filed as an Emergency

This rule is being filed as an emergency for the immediate preservation of public health, safety and welfare. This rule will allow the Department of Agriculture to license and regulate businesses commercially applying or selling pesticide products as required by the Pesticide Control Act of 1990. The often ineffectual application of pesticides by unschooled individuals has led to costly cleanups in both public and private structures. The licensing and other requirements of this rule protects the public from application of pesticides by inexperienced persons and provides data to assist in the protection of the state's groundwater resources. The Department of Agriculture now has procedures in place to allow this rule to be enforced. The implementation of this provision is needed immediately in order to achieve the goals of the Pesticide Control Act of 1990 to protect the public from improper pesticide use.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensing of Pesticide Businesses

Type of Rule: Legislative Interpretive Procedural

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.

DATE: 12-17-91

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Barbara J. Smith, Director of Compliance, WVD Ag.

EMERGENCY RULE TITLE: Licensing of Pesticide Businesses

1. Date of filing: 12-30-91
2. Statutory authority for promulgating the emergency rule:
19-16A-4, 8 and 9
3. Date of filing of proposed legislative rule: 7-26-91
This rule has been approved by LRMRC & filed 10-16-91.
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
New language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
See statement of facts and circumstances on the previous page.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See facts and circumstances under #6.

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

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-4, 8 and 9

1.3 Filing Date -

1.4 Effective Date -

\$61-12B-2 Definitions

2.1 "Commercially" means the activity of conducting business relating to applying, selling, or recommending the use of pesticides on a regular routine basis.

2.2 "Pesticide consultant" means a person commercially recommending the use of pesticides to others.

2.3 "Regulated pesticide dealer" means a dealer commercially selling general use pesticides.

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

\$61-12B-3. General Requirements for all Business Licenses

3.1.a. A pesticide business operating in West Virginia which sells, stores, recommends for use, mixes or applies pesticides shall obtain a valid pesticide business license in one or more of the following categories:

3.1.a.A Licensed Pesticide Application Business.

3.1.a.B Regulated Pesticide Application Business.

Leg. Rule §19-16A
Series XIIB
Sec. 3

3.1.a.C Restricted Use Pesticide Dealer.

3.1.a.D Regulated Pesticide Dealer.

3.1.a.E Pesticide Consultant.

3.1.b Pesticide businesses categorized as Licensed Pesticide Application Businesses, Restricted Use Pesticide Dealers, and Pesticide Consultants shall pay the appropriate license fee as contained in 61 CSR 12. Pesticide businesses categorized as Regulated Pesticide Application Businesses or Regulated Pesticide Dealers shall make application with the commissioner with no license fee requirement.

3.1.c. 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.d. All pesticide business licenses are issued on a calendar year basis and expire at midnight on December 31 of each year. Licensees shall renew their licenses annually by application to the commissioner and payment of the fee required under 61 CSR 12. All licensees shall make application at least 30 days prior to the expiration of the businesses' current license.

§61-12B-4. Requirements for Pesticide Application Business

4.1 General

4.1.a Any person who owns or manages a pesticide application 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 Regulated Pesticide Application Business.

4.1.b All pesticide application businesses shall employ certified commercial applicators or certified public applicators for the various categories or subcategories of their operation. The categories or subcategories as detailed in the Certified Pesticide Applicator Rules (61 CSR 12A) are used for determining the areas in which a pesticide application business operates.

Leg. Rule §19-16A
Series XIIB
Sec. 4

4.1.c All pesticide applications made by pesticide application businesses shall be made by certified commercial applicators, certified public applicators or registered technicians who have completed a training program approved by the commissioner as described in 61 CSR 12A.

4.1.d Each location of the pesticide application business shall be licensed. Locations requiring a separate license include each branch office, franchise location, sub-office or worker location of a pesticide application business.

4.2 Licensed Pesticide Application Business.

4.2.a A Licensed Pesticide Application Business is a pesticide business commercially applying pesticides for hire.

4.3 Regulated Pesticide Application Business

4.3.a A Regulated Pesticide Application 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.b Persons doing limited applications of pesticides are exempt from the licensing requirements in this subsection if:

4.3.b.A the applicator is performing general pest control on his or her 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 or foggers, and the applicator only uses non-pressurized pump sprayers or dusters;

4.3.b.B the applicator is engaged in applying disinfectants in the routine performance of his or her employment in the medical profession or in janitorial duties; or

4.3.b.C the applicator uses non-restricted use pesticides and assists in applying pesticides for the production of an agricultural commodity.

Leg. Rule §19-16A
Series XIIB
Sec. 5

§61-12B-5. Requirements for Pesticide Dealer Business Licensing.

5.1 General

5.1.a The commissioner shall require any pesticide business which sells, distributes, stores or offers for sale any pesticide in West Virginia to obtain a license as a Restricted Use Pesticide Dealer or as a Regulated Pesticide Dealer.

5.1.b The commissioner shall require each business operating as a Restricted Use Pesticide Dealer to employ commercial applicators certified in the category of Pesticide Storage and Distribution as described in 61 CSR 12A. The commissioner shall not allow any business location or operation to sell restricted use pesticides without a certified commercial applicator present who shall bear the immediate responsibility for the correct and safe operation of his or her location or operation.

5.1.c The commissioner shall require each applicant for a license as a Regulated Pesticide Dealer to demonstrate his or her knowledge on the storage, display, distribution and transportation of pesticides.

5.2 Exemption - The following Regulated Pesticide Dealers are exempt from the requirements of this rule.

5.2.a 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.

5.2.b Delivery services including, but not limited to, the U.S. Postal Service, United Parcel Service, Federal Express, etc., and warehouses temporarily storing products for shipment to retailers.

§61-12B-6. Requirements for Pesticide Consultant Business Licensing.

6.1 The commissioner shall require all persons commercially recommending the use of pesticides to be licensed as a Pesticide Consultant.

Leg. Rule §19-16A
Series XIIB
Sec. 6

6.2 The specialty categories for a Pesticide Consultant shall conform to the certified commercial applicator categories as described in the Certified Pesticide Applicator rules, 61 CSR 12A. The pesticide 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.

6.3 Retail sales personnel or certified applicators of any business which has obtained a pesticide application business license, and certified public applicators or company sales representatives certified in the category of Demonstration and Research as described in 61 CSR 12A, are exempt from the provisions of this section.

§61-12B-7. Record Keeping Requirements for Pesticide Businesses.

7.1 General

7.1.a Each pesticide business shall maintain at a minimum the records specified in this section as a condition of obtaining and renewing a license, permit or certificate. The commissioner may require additional records be maintained by other rules adopted under WV Code 19-16A-1 et seq.

7.1.b The commissioner shall have access to all records for the purpose of inspection to determine compliance with WV Code 19-16A-1 et seq. and any rules promulgated under WV Code 19-16A-1 et seq. The commissioner may require a licensed pesticide business to submit these records to his or her office.

7.1.c Each pesticide business shall keep and maintain records required by this section of the rule for a period of at least 2 years.

7.1.d The commissioner may revoke a pesticide business license for failure to keep or to submit these records.

7.2. Pesticide Application Business Records.

7.2.a Each Licensed Pesticide Application Business or Regulated Pesticide Business shall keep records detailing the application of all pesticides. The minimum information to be maintained is:

Leg. Rule §19-16A
Series XIIB
Sec. 7

7.2.a.A the pesticide used, including the EPA registration number.

7.2.a.B the formulation, dilution rate and the quantity of the pesticide used. In the case of businesses in the classification of General Pest and Ornamental and Turf pest control, as described in 61 CSR 12A, the records for quantity used may be kept as the total quantity of the product used per day by 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 of the pesticide for that location shall be maintained separately.

7.2.a.C The date and place of application.

7.2.a.D The pest or pests against which the pesticide was used.

7.2.a.E The applicators name and certification or registration number.

7.3 Pesticide Dealer Records

7.3.a General - All licensed Restricted Use Pesticide Dealers and Regulated 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:

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

7.3.a.B the quantity of the pesticide sold, in weight and/or volume.

7.3.b Restricted Use Pesticide Dealers shall keep and maintain records on each sale or other disposition of restricted use pesticides. The minimum information to be maintained is:

7.3.b.A The pesticides sold or otherwise disposed of, including its formulation, for example Pest-A-Way 80% WP.

7.3.b.B The quantity of pesticides in weight and/or volume.

Leg. Rule §19-16A
Series XIIB
Sec. 7

7.3.b.C the date of sale or disposition of the pesticide.

7.3.b.D the name and address of the purchaser or receiver, including the certified applicators identification number.

7.3.b.E a 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 provided by the commissioner.

7.3.c The record keeping requirements of this subsection 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 information required in this subsection.

7.4 Pesticide Consultant

7.4.a A Pesticide Consultant shall maintain records of each pesticide recommendation made. The minimum information to be maintained is:

7.4.a.A The date of recommendation.

7.4.a.B The name and address of the customer, including the site of application if different from the customer's address.

7.4.a.C The name of the pest(s) being controlled.

7.4.a.D The name or type of plants or animals or a description of sites being treated.

7.4.a.E The pesticide recommended, including its common name and formulation.

7.4.a.F The dosage rate of the pesticide recommended.

Leg. Rule §19-16A
Series XIIB
Sec. 8

§61-12B-8. Financial Security Requirement.

8.1 All Licensed Pesticide Application Businesses are required to furnish evidence of financial security to the commissioner prior to the issuance of a pesticide application business license.

8.2 Minimum Financial Security - The commissioner shall not issue a pesticide application business license until the applicant has filed evidence of financial security with the commissioner, in any of the following forms: a surety bond, a comprehensive general liability insurance policy, or certification thereof from an insurance company authorized to do business in West Virginia. The financial security required for each category or sub-category of license as specified in 61 CSR 12A is to be no less than 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.

§61-12B-9 Liability for Pesticide Use

9.1 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 requirements of WV Code 19-16A-1 et seq. or the rules promulgated thereunder.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

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(Plus all the volunteers
help we can get)

January 22, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Agriculture

RULE: New Rule, Series 12B, Licensing of Pesticide Businesses

DATE FILED AS AN EMERGENCY RULE: December 20, 1992

DECISION NO. 4-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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1992 JAN 22 PM 2:21
OFFICE OF THE SECRETARY OF STATE

KEN HECHLER
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STATE OF WEST VIRGINIA

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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 4-92)

AGENCY: Department of Agriculture
RULE: New rule, Series 12B, Licensing of Pesticide
Pesticide Businesses

FILED AS AN EMERGENCY RULE: December 20, 1992

- par. 1 The Department of Agriculture (Department) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State December 20, 1991 and with the LRMRC December 23, 1991.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §19-16A-4(6) reads:

(6) Promulgate rules pursuant to §29A-1-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department are as follows:

This rule is being filed as an emergency for the immediate preservation of public health, safety and welfare. This rule will allow the Department of Agriculture to license and regulate businesses commercially applying or selling pesticide products as required by the Pesticide control Act of 1990. The often ineffectual application of pesticides by unschooled individuals has led to costly cleanups in both public and private structures. The licensing and other requirements of this rule protects the public from application of pesticides by inexperienced persons and groundwater resources. The Department of Agriculture now has procedures in place to allow this rule to be enforced. The implementation of this provision is needed immediately in order to achieve the goals of the Pesticide Control Act of 1990 to protect the public from improper pesticide use.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public health, safety and welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 4-92 or ERD 4-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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SECRETARY OF STATE

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