

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

Form #2

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2007 JUN 13 PM 3:49

OFFICE REGISTRATION
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, 8 and 9

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12B

TITLE OF RULE BEING AMENDED: Licensing of Pesticide Businesses

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

West Virginia Rules for Licensing of Pesticide Businesses

§61-12B

Amendments to Existing Rule

4.2. Licensed Pesticide Application Business

4.2. a. A. Add the requirement for Licensed Pesticide Application Businesses to place identification of company name and license number on all motor vehicles used to transport pesticides or devices used in pest control.

(1) outlines the size of the lettering to include in bold print not less than 2 inches high, and

(2) outlines the location of the information on both sides of the vehicle.

4.3 Regulated Pesticide Application Business

4.3.b.D Allow employees of regulated pesticide application businesses, with the exception of educational institutions, food handling establishments, health care and convalescent facilities, to apply over-the-counter, ready-to-use pesticides without having to obtain a certified pesticide applicator's license.



State of West Virginia

DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner

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Steve Hannah
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Statement of Circumstances

West Virginia Rules for Licensing of Pesticide Businesses

§61-12B

Amendments to Existing Rule

One proposed amendment would require Licensed Pesticide Application Businesses to place identification of company name and license number in lettering of at least two inches in size on both sides of all motor vehicles used to transport pesticides or devices used in pest control. Pesticide Regulatory Officers now encounter many unmarked pest control and lawn care company vehicles from surrounding states. Having a method in place to differentiate legitimate pest control companies from unlicensed companies will aid in compliance assistance and help to prevent unlicensed companies from operating in West Virginia.

The second proposed amendment to Title 61, Series 12B, Licensing of Pesticide Businesses permits application of over-the-counter, ready-to-use pesticides without a certified applicator's license. The rules currently do not allow persons to purchase and apply such pesticides as part of their jobs without becoming certified commercial pesticide applicators. It is felt that the requirement for licensing to apply an over-the-counter, ready-to-use pesticide to a person's place of business is overly restrictive. Owners and employees of schools, day care centers, hospitals, nursing homes and restaurants would not be affected by this amendment and would still be required to obtain certification, due to the higher risk populations and/or situations involved.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensing of Pesticide Businesses

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.

One proposed change in this rule is of subject matter that includes requirements for identification of pest control company vehicles. The other change would exempt 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.

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	0.00	0.00	0.00

Rule Title: _____

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TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 12B
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. -- ~~April 23, 1992~~

1.4. Effective Date. -- ~~April 27, 1992~~

§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 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. Licensed Pesticide Application Business.

3.1.b. Regulated Pesticide Application Business.

3.1.c. Restricted Use Pesticide Dealer.

3.1.d. Regulated Pesticide Dealer.

3.1.e. Pesticide Consultant.

3.2. 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.

3.3. 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.

3.4. 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.

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.

4.2.a.A. Vehicle Identification Requirement. The pesticide business name and license number shall appear on each motor vehicle transporting pesticides or devices used in pest control. The license number, which shall be preceded by the abbreviation for the West

Virginia Department of Agriculture, namely "WVDA", and the business name shall be:

(1) In bold print not less than 2 inches high; and

(2) Displayed on both sides of the vehicle.

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 sub-section 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.

4.3.b.D. the applicator uses or supervises the use of ready to use non-restricted pesticides as part of their duties only on properties owned or leased by their employers except those persons identified in 61-12J, where open food is stored, processed and sold, health care facilities, and convalescent facilities.

§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 ready to use 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.

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 W. Va. 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 W. Va. Code §19-16A-1 et seq. and any rules promulgated under W. Va. 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:

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.

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 sub-section 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 sub- section.

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.

§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 W. Va. Code §19-16A-1 et seq. or the rules promulgated thereunder.