

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND**

ADMINISTRATIVE LAW DIVISION

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

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: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period: Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 07/23/2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Boulevard East
Charleston WV 25305-0190
304-558-2209/304-558-2227

LEGISLATIVE RULE TITLE: Licensing of Pesticide Businesses

1. Authorizing statute(s) citation 19-16A-4, 8 and 9

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
06/13/2007

b. What other notice, including advertising, did you give of the hearing?
Sent a mailing detailing the proposed changes to private and commercial pesticide applicators, pesticide dealers, pesticide application businesses and pesticide product registration companies. Also notified the following associations: Crop Life America (CLA), Consumer Specialty Products Association (CSPA) and RISE (Responsible Industry For A Sound Environment).

c. Date of Public Hearing(s) *or* Public Comment Period ended:
07/13/2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

<u>Herma Johnson, Director</u>	<u>Grant Bishop, Assistant Director</u>
<u>Regulatory & Environmental Affairs Division</u>	<u>Pesticide Regulatory Programs</u>
<u>WVDA</u>	<u>WVDA</u>
<u>1900 Kanawha Boulevard East</u>	<u>1900 Kanawha Boulevard East</u>
<u>Charleston WV 25305-0190</u>	<u>Charleston WV 25305-0190</u>
<u>hjohnson@ag.state.wv.us</u>	<u>gbishop@ag.state.wv.us</u>
<u>304-558-2227</u>	<u>304-558-2209</u>
<u>304-558-3594 fax</u>	<u>304-558-2228 fax</u>

g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

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: _____

Rule Title: Licensing of Pesticide Businesses

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Fees for this rule are addressed in 61-12 (Fee Structure for the Pesticide Control Act of 1990). WVDA is proposing a fee increase relative to this rule.

Date: 6-13-07

Signature of Agency Head or Authorized Representative

Stoneham

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TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

2007 JUL 24 PM 2: 34

SECRETARY OF STATE
STATE OF WEST VIRGINIA

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.

(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.

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



JN Berry, LLC
d/b/a Orkin

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July 2, 2007

Mr. Grant Bishop
WV Dept. of Agriculture
Regulatory & Environmental Affairs Division
1900 Kanawha Blvd. East
Charleston, WV 25305-0190

Dear Mr. Bishop:

I received notice of the proposed changes to the fee structure, and would like to comment. I am not concerned with the raises in fees as they are still a minimal amount, even though the percentage of increase is very large.

However, I am opposed to the requirement to have my license number displayed on all of my vehicles. I own an Orkin Franchise and I am required by Orkin to use their decal system on all of my vehicles. There is not much room to add more and the business license will not help get any new customers. Furthermore, the cost for the new decals will far exceed the fee increases proposed.

Please pass along my comments to those who will be voting on the proposed changes.

Yours truly,

A handwritten signature in cursive script, appearing to read "Jim Berry".

Jim Berry, Owner
Orkin Franchise #912



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

July 10, 2007

Mr. Jim Berry
J N Berry dba Orkin
P.O. Box 145
Parkersburg, WV 26101

In reply to: Your July 2, 2007 letter

Dear Mr. Berry:

Thank you for your comments on the notice of proposed rule changes. All comments and replies are forward to the Legislative Rule Making Review Committee.

I wanted to take this opportunity to comment on your opposition to displaying your company license number on your service vehicles. Although you already have your company name on your vehicles, by including your West Virginia licensed pesticide application business number it would help our inspector(s) distinguish your vehicle(s) from another possible unlicensed franchise from Ohio for example. Cities bordering other States such as Parkersburg often have unlicensed companies coming across the border applying pesticides without proper licensing or certification.

Once again, thank you for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Grant Bishop".

Grant Bishop
Assistant Director
Regulatory and Environmental Affairs Division
Pesticide Regulatory Programs