



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON
25305

Gus R. Douglass
Commissioner

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1986 AUG 28 PM 2:48
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture

RULE TYPE: Legislative

RULE TITLE: West Virginia Pesticide Use and Application Act - Enforcement Procedures

A public hearing on the above proposed regulations will be held at 2:30 p.m., Thursday, October 9, 1986, at the Guthrie Agricultural Complex, Building 2, John T. Johnson Conference Room, Charleston, West Virginia 25312.

Comments are not limited and may be oral or written.

A comment period on the above proposed rule has been scheduled and will end on October 10, 1986, at 4:00 P.M. Written comments are to be mailed to the following address: Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305.

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate a review of these comments.

The issues to be heard shall be limited to the proposed regulations.



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FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Pesticide Use and Application Act-Enforcement Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: Dept. of Agriculture Address: Guthrie Center
Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ None	\$ None	\$ None	\$None	\$ None
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The proposed rule will not effect the current program budget.

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 GOVERNMENT OF WEST VIRGINIA

3. Objectives of these rules:

The objective of this rule is to establish procedures to provide for penalty assessment in dealing with violations of the West Virginia Pesticide Use and Application Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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


The proposed procedures will result in a greater variety of enforcement measures that may be taken against regulated groups. As a result, there will be an economic impact of the violators of the Pesticide Use and Application Act.

C. Economic Impact on Citizens/Public at Large.

Through increased enforcement efforts made available by the proposed regulations, the public at large should benefit by more professional operations by the regulated industry.

Date: _____

Signature of Agency Head or Authorized Representative



FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulations for Wood Infestation Reports

Type of Rule: X Legislative Interpretive Procedural

Agency Dept. of Agriculture Address Guthrie Center
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ None	\$ None	\$ None	\$None	\$ None
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The proposed rules will not effect the current program budget.

3. Objectives of these rules:

The objective of these rules is to establish uniform reporting of wood infestation reports required for the sale of homes. The lack of current rules has created a situation whereby the consumer is often misled into buying a home cleared for termites but contains considerable damage or other structural pests.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

The rules will require all pest control companies doing wood infestation inspections to report uniformly and properly. The impact will be on the less reputable companies. The pest control industry as a whole is in favor of these rules.

C. Economic Impact on Citizens/Public at Large.

The cost of wood infestation reports may increase slightly but the overall impact of the rules will benefit the general public. Under the current system, many homeowners are involved in expensive legal action to recover damages as a result of incomplete or improper inspections. The proposed rules will reduce the current legal involvement of home buyers.

Date: _____

Signature of Agency Head or Authorized Representative



PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-16B

GENERAL INDEX

FOR

SERIES XIIe

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STATE DEPARTMENT OF AGRICULTURE
GENERAL INDEX

TITLE: West Virginia Pesticide Use and Application Act - Enforcement Procedures

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 - 1.2 Authority
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- Section 2. Procedure
- Section 3. Consent Agreement/Negotiated Settlement
- Section 4. Penalty Assignment Schedule
- Section 5. Schedule of Penalty Codes
- Section 6. Enforcement Action Levels

PROPOSED
WEST VIRGINIA LEGISLATIVE RULES
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-16B
SERIES XIIIe

FILED
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SECRETARY OF STATE

TITLE: West Virginia Pesticide Use and Application Act - Enforcement Procedures

Section 1. General

1.1 Scope - These legislative regulations establish procedures to provide for penalty assessment in dealing with violations of the West Virginia Pesticide Use and Application Act and promulgated regulations.

1.2 Authority - W. Va. Code 19-16B-4, 19-16B-22, as amended March 8, 1986

1.3 Filing Date

1.4 Effective Date

Section 2. Procedure

2.1 When a determination has been made by the Pesticide Section as to the nature of the charge under the West Virginia Pesticide Use and Application Act, 19-16B-14, the Case Reviewer will be referred, by the Penalty Assessment Schedule (Section 4), to any one of three Schedules of Penalty Codes (Section 5). The schedules will allow the Case Reviewer to establish a point value based on one or more penalty codes. The matrix of penalty codes may require the Case Reviewer to make an additional decision based upon the gravity of the violation, the degree of the violator's culpability, the extent of the violator's effort to comply, and the history of prior violations. By adding the point values of the applicable penalty codes, the Case Reviewer is then directed to the appropriate Enforcement Action Level (Section 6).

2.2 These penalty assessment guidelines are designed to include most violations encountered of the Act by licensed pesticide application businesses, dealers of restricted use pesticides, certified applicators and non-certified applicators. However, there may be situations which arise that are not adequately covered by these guidelines. In such cases, the Director of the Plant Pest Control Division and the Program Leader of the Pesticide Section shall determine the appropriate course of action and make a recommendation for such action to the Commissioner of Agriculture. After review of the circumstances, the Commissioner may concur with the recommendation or give direction for other appropriate action.

Section 3. Consent Agreement/Negotiated Settlement

3.1 Consent agreements or negotiated settlements are intended as a mechanism to settle violations without expensive costs to both parties for administrative or criminal hearings. Violations stated for the Enforcement Levels E2 through E8 for commercial applicators and PE2 through PE6 for private applicators are characterized by acts recognized by the violator and settlement is desired without a hearing. The violator is informed of the violation(s) and a level of enforcement action is proposed. If the violator agrees with the intended level of action, a consent agreement

form is signed and returned with payment of the assessed penalty and/or the violator's certification/licensing documents are surrendered for the scheduled time period.

3.2 In the event that the violator disagrees with the findings of the investigation and/or level of enforcement action, a meeting may be requested with the regulating Division to offer any mitigating circumstances as to why the investigative findings or level of enforcement action should be altered. The outcome of the meeting will be a signed agreement of the negotiated settlement or the scheduling of an administrative hearing.

3.3 In the event of an administrative hearing, the hearing officer shall not be bound by these guidelines and may levy such penalty, if any, deemed appropriate and as prescribed in 19-16B, 14 and 22C.

3.4 Any Consent Agreement or Negotiated Settlement agreed upon and signed by the violating party and the duly appointed representative of the Commissioner shall be deemed as a penalty levied through an administrative hearing for purposes of collection and such other action as deemed proper and included in the consent agreement or negotiated settlement.

Section 4. Penalty Assignment Schedule

4.1 This section lists the unlawful acts specified in 19-16B-14 and assigns a penalty schedule (PS), contained in Section 5 of these regulations, to the violation.

	<u>Penalty Schedule</u>
4.1.1 Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;	PS II C
4.1.2 Made a pesticide use recommendation or application inconsistent with the labeling as registered by the United States Environmental Protection Agency or commissioner's state restrictions for the use of that pesticide;	PS III
4.1.3 Applied unknown, ineffective or improper pesticides;	PS III
4.1.4 Operated faulty or unsafe equipment;	PS III
4.1.5 Operated in a faulty, careless or negligent manner;	PS III
4.1.6 Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder, or of any lawful order of the commissioner;	PS II

Penalty Schedule

4.1.7	Refused or neglected to keep and maintain the records required by this article, or to make reports when and as required;	PS III
4.1.8	Made false or fraudulent records, invoices or reports;	PS II
4.1.9	Engaged in the business of applying a pesticide on the lands of another without having a licensed pesticide application business license;	PS I
4.1.10	Engaged in the business of applying a restricted use pesticide on the lands of another without having a licensed certified applicator in direct supervision;	PS II
4.1.11	Used fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;	PS II
4.1.12	Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;	PS I
4.1.13	Aided or abetted a license or an unlicensed person to evade the provisions of this article or allowed one's license, permit or certification to be used by another person;	PS I
4.1.14	Made false or misleading statements during or after an inspection, concerning any infestation or infection of pests found on land;	PS II C
4.1.15	Impersonated any federal, state, county or city inspector or official;	PS I, PC 3
4.1.16	Advertised as proof of professionalism in securing business, that the licensee is certified or licensed by the Department of Agriculture or the commissioner of Agriculture; or	PS II

Penalty Schedule

4.1.17	Failed to comply with any provision of this article or any regulation issued thereunder.	PS II
4.1.17.1	Supervision SEC 8	PS II
	8.01 General	PS II B
	8.02 Fumigation or Structural	PS II B
4.1.17.2	Record Keeping SEC 12	PS II
4.1.17.3	Storage and Disposal SEC 14	PS II
4.1.17.4	Termite Regulations	PS II B
4.1.17.5	ROW Regulations	PS II B
4.1.17.6	Picloram Regulations	PS II B

Section 5. Schedule of Penalty Codes

5.1 This section lists the Penalty Codes (PC) and point values to be used in determining a level of enforcement action. The case review officer is referred to the appropriate Penalty Schedule based on the violation(s) determined in Section 4. After further consideration of the circumstances of the violation, the case review officer makes a determination of the appropriate penalty code and level of severity (A,B,C) to determine a point value. After adding all point values, the case reviewer is referred to Section 6 to determine a level of enforcement action.

5.1.1 Schedule I - License Violations

		A	B	C
		<u>Adverse Effects Not Probable</u>	<u>Adverse Effects Unknown</u>	<u>Adverse Effects Highly Probable or Demonstrated</u>
PC-1	1st Offense - No prior written notice of knowledge	4	6	8
PC-2	1st Offense - No prior notice but prior knowledge	8	8	10
PC-3	Each repeated offense	E-10	E-10	E-10

5.1.2 Schedule II - Non-Use Violations

		A	B	C
		<u>Records or Regulations</u>	<u>Special Regulations</u>	<u>Involving Fraud, False or Misleading Statements or Reports</u>
PC-4	1st Offense	4	5	6
PC-5	2nd Offense	6	7	8
PC-6	Each Repeated Offense	8	10	10

5.1.3 Schedule III - Use/Misuse Violations

		A	B	C
		<u>Adverse Effects Not Probable</u>	<u>Adverse Effects Unknown</u>	<u>Adverse Effects Highly Probable or Demonstrated</u>
PC-7	1st Offense	4	6	10
PC-8	2nd Offense or Knowledgeable 1st Offense	8	12	20
PC-9	Each Repeated Offense	12	20	30

5.2 The time interval between a first offense and each repeated offense, beyond which no enforcement action may be taken and which shall clear the applicator's record, shall be limited to 2 years for use violations and 1 year for non-use violations. There shall be no time limit for licensing violations.

Section 6. Enforcement Action Levels

6.1 Schedule I - Enforcement levels (E1-10) are for persons other than certified private applicators. These levels apply to licensed pesticide application businesses, certified commercial applicators, certified public applicators, dealers of restricted use pesticides and non-licensed or non-certified individuals.

6.1.1 Schedule I - Other Than Private Applicators

<u>Pt. Value</u>	<u>Level</u>	<u>Notice of Violations</u>
0 - 6	E1	Notice of Warning
7 - 9	E2	\$25 - \$100 Civil Penalty
10 - 12	E3	\$75 - \$150 Civil Penalty and/or 15 day suspension or denial
13 - 15	E4	\$100 - \$200 Civil Penalty and/or 30 day suspension or denial

<u>Pt. Value</u>	<u>Level</u>	<u>Notice of Violations</u>
16 - 20	E5	\$150 - \$250 Civil Penalty and/or up to 60 day denial or revocation with reinstatement through successful reexamination
21 - 25	E6	\$200 - \$300 Civil Penalty and/or up to 120 day denial or revocation with reinstatement through successful reexamination
26 - 32	E7	\$250 - \$400 Civil Penalty and/or up to 180 day denial or revocation with reinstatement through successful reexamination
33 - 40	E8	\$350 - \$500 and/or up to 360 day denial or revocation with reinstatement through successful reexamination
40	E9	Administrative Hearing
Not Applic.	E10	Criminal Charges

6.2 Schedule II - Enforcement levels (PE1-8) are for certified private applicators.

6.2.1 Schedule II - Private Applicators

<u>Pt. Value</u>	<u>Level</u>	<u>Notice of Violations</u>
0 - 6	PE1	Letter of Correction
7 - 10	PE2	Suspension or denial for 30 days
11 - 16	PE3	Suspension or denial for 60 days
17 - 23	PE4	Revocation or denial for 120 days with reinstatement through successful reexamination
24 - 32	PE5	Revocation or denial for 180 days with reinstatement through successful reexamination
33 - 40	PE6	Revocation or denial for 1 year with reinstatement through successful reexamination
40	PE7	Administrative Hearing
Not Applic.	PE8	Criminal Charges



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS
COMMISSIONER

JOHN D. PERDUE
ASSISTANT COMMISSIONER

August 4, 1988

Mr. Rich O. Hartman, Director
W.Va. Secretary of State's Office
Administrative Law Division
State Capitol
Charleston, WV 25305

Dear Mr. Hartman:

Please consider this our formal request to have the following rules removed from the Rule Monitor of the West Virginia Register:

- 1) Wood Infestation Reports
- 2) Pesticide Use & Application Act -
Enforcement Procedures
- 3) Tobacco Markets

No further action is planned at this time to revive any of the above listed rules.

Sincerely,

John D. Perdue
Assistant Commissioner

JDP:jl1f

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