

**WEST VIRGINIA
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ADMINISTRATIVE LAW DIVISION**

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

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

TITLE OF RULE BEING AMENDED: Integrated Pest Management Programs in Schools and Day Care
Centers/Facilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


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TITLE 61
LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 12J
INTEGRATED PEST MANAGEMENT PROGRAMS IN SCHOOLS
AND CHILD DAY-CARE CENTERS/FACILITIES

61-12J-1 General

1.1. Scope - This legislative rule establishes procedures to provide for integrated pest management programs in schools, child day care centers and family child day care facilities.

1.2. Authority - WV Code §19-16A-4

1.3. Filing Date - April 4, 2006

1.4. Effective Date - July 1, 2006

61-12J-2 Definitions

2.1.3. "Broadcast" means the application of pesticides over an area such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or surfaces.

2.2.4. "Child Day care" means a child day care center or a family child day care facility.

2.3.5. "Child Day care center" means a completed structure used for the care of thirteen or more children on a non-residential basis.

2.1. "~~Consumer information sheet~~" means a fact sheet that is designed for distribution to consumers and contains information on the toxicity of the end use concentration of a pesticide product. In the case of ready-to-use products, "~~consumer information sheets~~" may be the same as "~~material safety data sheets.~~"

2.4.2. "Crack and crevice treatment" means the application of small amounts of insecticides into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors or walls.

2.5.6. "Family child day care facility" means a completed structure used to provide non-residential child care for seven to twelve children.

2.6.7. "Least hazardous materials" means the use of pest control practices and methods, including the use of chemicals in a manner to cause the least practical exposure to the occupants

of a structure. The “least hazardous materials” takes into account the pest control method of application, toxicity of the product and the exposure to the occupants to the practice or methods employed to control pests, such as the use of a non-volatile material formulation and/or application method as opposed to a broadcast application that creates potential for exposure.

2.7.8. “Material safety data sheet” means a fact sheet that is designed for distribution to chemical manufacturing plant workers and refers to the toxicity of the concentrate of a pesticide product. In the case of ready-to-use products, “material safety data sheets” may be the same as “consumer information sheets.”

2.8.9. “Pesticide” means, for the purposes of this rule, the use of insecticides and herbicides that are applied sprayed into or around a building and the adjacent grounds used by a school, child day care center or family child day care facility.

2.9.12. “Re-entry period” means the time that must elapse from the completion of a pesticide application until students or school and child day care employees may enter the building to conduct scheduled activities.

2.10. “School” means a completed structure used for public or private education, grades kindergarten through twelfth grade.

2.11. “School grounds” means the area outside of the school buildings controlled, managed, or owned by the school or school district, including lawns, playgrounds, sports fields, and any other property or facility controlled, managed, or owned by a school.

2.12.13. “Space treatment” means the application of a pesticide that is intended to discharge the pesticide into the air throughout an entire room or area.

2.13.14. “Spot treatment” means the application of a pesticide to a limited area where pests are likely to occur, such as floors, walls, bases or the underside of equipment, turf or ground. A “spot” shall not be more than 2 square feet and shall not be more than 20 percent of a surface area.

61-12J-3 Integrated Pest Management

3.1. Integrated Pest Management is a system of controlling pests in which pests are identified, action thresholds are considered, all possible control options are evaluated and selected controls are implemented. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable pest activity or damage. Choice of control options is based on effectiveness, environmental impact, site characteristics, worker/public health and safety, and economics. The goal of an integrated pest management system is to manage pests and the environment to balance benefits of control, costs,

public health and environmental quality. Integrated pest management takes into account site-specific factors and takes advantage of all pest management options.

3.2. Schools, child day care centers and family child day care facilities or contracted pesticide application businesses covered by this rule shall not apply pesticides unless monitoring as specified in Section 6 of this rule indicates pests are present.

61-12J-4 Integrated Pest Management Programs for Schools

4.1. All schools covered by this rule shall develop and maintain an integrated pest management program. The best management practices contained in "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices," published by the West Virginia Department of Agriculture may be used in the development of the program.

4.2. At a minimum, the integrated pest management program for a school shall contain:

4.2.1. a policy statement;

4.2.2. pest management objectives;

4.2.3. education of the building occupants in integrated pest management practices;

4.2.4. inspection activities;

4.2.5. monitoring activities;

4.2.6. an evaluation of the integrated pest management strategies in practice; and

4.2.7. action thresholds for common pests.

4.3. At the inception of the integrated pest management program, the school or the contracted pesticide application business should make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record ~~shall~~ should be updated periodically prior to the beginning of each school year with a follow-up inspection within six months, with the items to be corrected noted on the record.

4.4. Pest management objectives and pest threshold levels will vary for each school facility and the occupants of the facility. In order to provide a cross representation of input to the integrated pest management program from the school's occupants and the school community, the Local School Improvement Council as created by West Virginia Code §18-5A-2 may comment on the school's integrated pest management plan.

4.5. Schools covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance review inspection. When any changes are made to the program, they shall submit the revised integrated pest management plan to the Commissioner prior to the initiation of the new plan.

4.6. Schools or contracted pest control operators shall maintain an Integrated Pest Management file in the main office in each school facility. The Integrated Pest Management file shall contain at a minimum the following items or documents:

4.6.1. the adopted integrated pest management plan;

4.6.2. sanitation and maintenance surveys;

4.6.3. monitoring diagrams of the facility;

4.6.4. pest surveillance data sheets;

4.6.5. notification of Level 3 or Level 4 treatment as specified in subsection 8.1 of this rule.

4.6.6.5. treatment records of the facility, including a floorplan indicating treatment locations;

4.6.7.6. labels of pesticide products used at the facility; and

4.6.8.7. ~~copies of consumer information sheets when available and material safety data sheets.~~

4.7. If a school contracts with a pesticide application business for any pesticide applications or monitoring, the business then assumes responsibility for the documents required to be in the Integrated Pest Management file.

~~4.8.7.~~ Upon request, schools or contracted pesticide application businesses covered by this rule shall provide copies of pesticide labels and ~~consumer information sheets when available or material safety data sheets in the absence of consumer information sheets~~ to employees of the school facility or to parents or legal guardians of the school's students.

~~4.9.8.~~ Areas of schools, including such as but not limited to greenhouses, nursery plots or agricultural field plantings, used ~~utilized~~ for vocational agricultural plots or research are exempt from the requirements of this rule.

61-12J-5 Integrated Pest Management Programs for Child Day Care Centers and Family Child Day Care Facilities

5.1. All child day care centers and family child day care facilities covered by this rule shall develop and maintain an integrated pest management program. The best management practices contained in "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices," published by the West Virginia Department of Agriculture may be used in the development of the program.

5.2. At a minimum, the integrated pest management program for a child day care center or family child day care facility shall contain:

- 5.2.1. a policy statement;
- 5.2.2. pest management objectives;
- 5.2.3. education of the building occupants in integrated pest management practices;
- 5.2.4. inspection activities;
- 5.2.5. monitoring activities;
- 5.2.6. an evaluation of the integrated pest management strategies in practice; and
- 5.2.7. action thresholds for common pests.

5.3. At the inception of the integrated pest management program, the child day care should make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record should be updated periodically with the items to be corrected noted on the record.

5.4. All child day care centers or family child day care facilities covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance inspection. When any changes are made to the program, they shall submit the revised integrated pest management plan to the Commissioner prior to the initiation of the new plan.

5.5. Child Day care center or family child day care facility operators or contracted pesticide application businesses shall maintain an Integrated Pest Management file in a central location at each center or facility in operation. The Integrated Pest Management file shall contain at a minimum the following items or documents:

- 5.5.1. the approved integrated pest management plan;

5.5.2. sanitation and maintenance surveys;

5.5.3. monitoring diagrams for the child day care center or family child day care facility;

5.5.4. pest surveillance data sheets;

5.5.5. notification of Level 3 or Level 4 treatment as specified in subsection 8.1 of this rule.

5.5.6.5. treatment records for the child day care center or family child day care facility, including diagrams of treatment locations;

5.5.7.6. labels of pesticide products used at the child day care center or family child day care facility; and

5.5.8.7. ~~copies of consumer information sheets when available and material safety data sheets for the products used at the child day care center or family child day care facility.~~

5.6. If a child care center or facility contracts with a pesticide application business for any pesticide applications or monitoring, the business then assumes responsibility for the documents required to be in the Integrated Pest Management file.

5.7.6. Child Day care centers and family child day care facilities covered by this rule shall provide copies of pesticide labels and consumer information sheets when available or material safety data sheets in the absence of consumer information sheets to a child's parents or legal guardians upon request.

61-12J-6 Monitoring for Pest Infestations

6.1. Monitoring Program

6.1.1. Each school, child day care center or family child day care facility shall have a monitoring program. The monitoring program shall include inspecting areas of the facility for pest evidence, entry points, food, water and harborage sites, and estimating pest population levels. Each school, child day care center or family child day care facility shall evaluate the information gained through monitoring to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

6.1.2. Each school, child day care center or family child day care facility shall conduct a monitoring program in suspect areas of their facility on an ongoing basis. Sticky traps designed for cockroaches and other crawling insects shall be placed along wall/floor junctions,

on vertical surfaces, behind appliances, in closets, cabinets and shelves, and in other areas where insects have been seen.

6.1.3. Components of the monitoring program shall include:

6.1.3.a. A floorplan of the school, child day care center or family child day care facility showing the number and accurate location of each trap;

6.1.3.b. Periodic inspection of each trap at no greater than monthly intervals year round with the following information recorded on a Pest Surveillance Data Sheet:

6.1.3.b.A. The trap number and its location;

6.1.3.b.B. The date checked;

6.1.3.b.C. The trap's condition (either OK or needs to be replaced);

6.1.3.b.D. The numbers and kinds of insects, arthropods, rodents or other pests trapped;

6.1.3.b.E. Pest damage or other evidence of pests such as feces, cast skins, or rub marks;

6.1.3.b.F. Any need for pest management; and

6.1.3.b.G. The name of the person performing the monitoring activity;

6.1.3.c. Removal and disposal of the trap after catch numbers are recorded and identification is confirmed, to prevent counting specimens more than one time and to prevent their use as food by other insects or rodents; and

6.1.3.d. Replacement of the traps when the adhesive is no longer tacky.

6.2. When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the school, child day care center or family child day care facility and pest type, the progressive levels of pest control techniques and chemical applications as outlined in Section 7 of this rule shall be followed in controlling the pest population. If monitoring indicates that pest populations do not meet or exceed threshold levels, no pesticides shall be applied.

61-12J-7 Use of the Least Hazardous Materials - Re-entry Intervals

7.1. In an integrated pest management program, persons responsible for pest management ~~shall~~ ~~should~~ evaluate all possible control options. Control options range from non-chemical methods to least hazardous pesticides to pesticides with a higher degree of risk to human health. In keeping with the legislative mandate for integrated pest management, the licensed pesticide applicator ~~pest control contractor~~ shall, after monitoring for pest infestations, proceed in controlling pests using the least hazardous method that is both practical and effective as outlined in this section.

7.1.1. Level 1 - Non-chemical Control Methods

7.1.1.a. Pest-preventive measures should be incorporated into existing structures. These preventive measures reduce the need for pesticide applications, and include sanitation, such structural repairs as sealing cracks, and such physical and mechanical controls as screens, traps, and air doors. A school, child day care center or family child day care facility shall consult the West Virginia Department of Agriculture's best management practices document "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices" for integrated pest management strategies for specific sites. Every facility will experience slightly different combinations of pests.

7.1.2. Level 2 - Least Hazardous Materials

7.1.2.a. If non-chemical pest management methods alone are ineffective or impractical, it may be necessary for a school, child day care center or family child day care facility to incorporate a pesticide into the integrated pest management program. Although all pesticides are inherently toxic, there are a number of pesticide materials that are determined to be of low impact to occupants because of their organic or biological nature, low toxicity, relative non-volatility, and/or low or non-existent exposure to the occupants due to the manner in which they are applied as baits, gels or dusts into cracks and crevices or wall voids.

7.1.2.b. The least hazardous pesticides are those with a Caution signal word (EPA toxicity categories III and IV) including dusts – pyrethrin and pyrethroid, boric acid, disodium octaborate tetrahydrate, silica gel, and diatomaceous earth; insecticidal soaps; insect growth regulators; biological control agents — fungi, bacteria, nematodes; or materials formulated as baits in tamper-resistant containers or for crack and crevice or void placement only.

7.1.2.c. There is no re-entry interval for these products due to their level of safety.

7.1.3. Level 3 - Crack and Crevice and Spot Treatments

7.1.3.a. Schools, child day care centers or family child day care facilities shall apply products with an EPA Caution signal word but not listed under Level 2 as crack and crevice or spot treatments.

7.1.3.b. Products applied by these methods provide for reduced, minimal use of liquid materials that may present some, but limited volatility of the pesticide applied. Exposure to occupants is minimal.

7.1.3.c. The re-entry interval for which students and employees shall remain out of the treated area of the facility after the conclusion of treatment is four hours or the time period specified on the pesticide label as registered by the United States Environmental Protection Agency, which ever is greater.

7.1.4. Level 4 - Broadcast Applications and Space Treatments

7.1.4.a. Products with a Caution signal word applied by broadcast application or as a space treatment or products with a Warning or Danger signal word applied by any application method.

7.1.4.b. Products applied by these methods create the greatest opportunities for exposure at the time of application due to drift or volatility. However products applied as fogging agents are usually of low mammalian toxicity and pose little exposure after label re-entry times specified by the United States Environmental Protection Agency.

7.1.4.c. The re-entry interval for which students and employees are to remain out of the treated area of the facility after the conclusion of treatment is eight hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater, except when the air in the treated area can be purged by the heating, cooling and ventilation system, the period of reentry shall be 4 hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater.

61-12J-8 Prior Notification

8.1. If a licensed pesticide application business is contracted to make a Level 3 or Level 4 pesticide application, the licensee shall provide notification to the school or child care administrator 48 hours in advance of the application.

8.2.1: Employees of Schools, Child Day Care Centers or Family Child Day Care Facilities

8.2.1.1. All schools, child day care centers or family child day care facilities shall notify their employees through routine announcement or individual notice at least 24 hours in

advance of all applications of pesticides in levels 3 and 4 as detailed in Section 7 of this rule, including applications made after school hours, on a weekend or during a holiday break.

8.3.2. Parents or Legal Guardians of Students of Schools

8.3.2.1. At the beginning of each school year, or at the time a student is enrolled into the school, school administrators shall notify the parents or legal guardians of the right to be informed of the application of level 3 or 4 pesticides as detailed in Section 7 of this rule.

8.3.2.2. The notification to the parents or legal guardians shall contain a registration form, whereby the parent or legal guardian can request to be notified by the school administrator of the application of level 3 or 4 pesticides.

8.3.2.3. The administrator of the school shall provide notification to the parent or legal guardian requesting notification at least 24 hours in advance of all applications of level 3 or 4 pesticides, including applications made after school hours, over a weekend or during a holiday break.

8.3. Parents or Legal Guardians of Children in Child Day Care Centers or Family Child Day Care Facilities

8.3.1. At the time a child day care center or family child day care facility operator signs a contract or other agreement for the care of a child, the operator shall notify the parent or legal guardian of the right to be informed of the application of a level 3 or 4 pesticide as detailed in Section 7 of this rule.

8.3.2. The child day care center or family child day care facility operator shall post and make available to the parent or legal guardian, notification of all applications of level 3 or 4 pesticides at least 24 hours in advance of any pesticide application, including applications made after hours, over a weekend or during a holiday break. The notification shall be placed at the register where the parent or legal guardian signs the child into and out of the child day care center or family child day care facility.

61-12J-9 Application of Pesticides to Schools, and Child Day Care Centers and Family Child Day Care Facilities

9.1. Level 3 and Level 4 pesticide applications shall not be made in the presence of students, children in child day care centers or children in family child day care facilities or employees of schools, child day care centers or family child day care facilities, except for school, child day care center or family child day care facility employees who are certified pesticide applicators. Pesticides may be applied to a localized area of infestation when students, children or school, child day care center or family child day care facility employees are present if the infestation causes an imminent threat of bodily harm.

9.2. All pest control methods or practices shall be conducted in conformance to the Use of the Least Hazardous Materials as outlined in Section 7 of this rule.

9.3. All pesticide applications made to schools, child day care centers or family child day care facilities shall be applied in accordance with the integrated pest management plan filed with the Commissioner.

9.4. All pesticide applications shall only be made by certified commercial pesticide applicators or certified public applicators or registered technicians under the supervision of a certified pesticide applicator as outlined in West Virginia Department of Agriculture Certified Pesticide Applicator Rules, 61 CSR 12A.

9.5. The commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides, or persons providing services as a consultant to complete a specialized training program in urban integrated pest management.

9.5.1. Any specialized urban integrated pest management programs not offered by the commissioner must be approved by the commissioner.

9.5.2. Pesticide applicators certified in the General Pest Control sub-category as detailed in 61 CSR 12A Certified Pesticide Applicator Rules who complete the specialized training program in urban integrated pest management prior to September 1, 1996 shall be determined to be certified in Urban Integrated Pest Management.

9.5.3. After September 1, 1996, the commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides in a school, child day care center or family child day care facility, or persons providing services as a consultant to schools, child day care centers and family child day care facilities to be examined and certified in the sub categories of General Pest Control and Urban Integrated Pest Management as outlined in 61 CSR 12A Certified Pesticide Applicator Rules.

61-12J-10 Record Keeping

10.1. Schools, child day care centers and family child day care facilities covered by this rule shall keep for a period of two years all documents required to be in the Integrated Pest Management Files as detailed in Subsection 4.6 and Subsection 5.5, respectively, of this rule.

10.2. The records required for the Integrated Pest Management of schools, and child day care centers and family child day care facilities shall be made available upon request to the commissioner to verify the maintenance of the integrated pest management program.

10.3. Pesticide application records as required in Subdivision 4.5.5. and Subdivision 5.5.5 of this rule shall contain all of the information required in Subsection 7.2. West Virginia Department of Agriculture Rule, Licensing of Pesticide Businesses, 61 CSR 12B.

61-12J-11 Implementation

11.1. The commissioner shall make available to all schools, child day cares centers and family child day care facilities a copy of the integrated pest management materials titled "Integrated Pest Management in School and other Public Institutions, Best Management Practices" and "Integrated Pest Management in Schools and Other Public Institutions, A Guide for Commercial Applicators".

11.2. All pesticide applications made to schools, child day care centers and family child day care facilities shall be made in accordance with this rule and the integrated pest management programs on file with the commissioner after September 1, 1996.