

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2014 JUL 29 P 2:01

WEST VIRGINIA  
SECRETARY OF STATE

**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

AMENDMENT TO AN EXISTING RULE: YES  NO

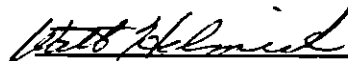
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Fee Structure for the Pesticide Control Act of 1990

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: July 29, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture  
1900 Kanawha Blvd., East  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Fee Structure for the Pesticide Control Act of 1990

1. Authorizing statute(s) citation 19-16A-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 27, 2014 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?  
Mailed a copy of the proposed changes to all firms, Commercial Applicators and Registered Technicians registered with the Department of Agriculture.  
The following mailing were sent to: 1,410 Commercial applicators  
587 Pesticide Businesses, 1,088 Pesticide Registrant Companies, 72 Pesticide Registration Agents

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 28, 2014 at 4:00 PM

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)

July 29, 2014

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

Herma Johnson, Director  
Regulatory and Environmental Affairs  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
304-558-2227  
hjohnson@wvda.us

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- 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)

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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

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b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

## Johnson, Herma

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**From:** Johnson, Herma  
**Sent:** Friday, July 25, 2014 12:03 PM  
**To:** 'frantzbud@yahoo.com'  
**Cc:** Bishop, Grant  
**Subject:** RE: Commercial Applicator fee

Dear Mr. Frantz,

We would like to thank you for your comments concerning the proposed changes to the Fee Structure For The Pesticide Control Act Of 1990 - Title 61 – Series 12.

All comments received will be taken into consideration prior to the 2015 Legislative Session.

Herma Johnson, Director  
Regulatory and Environmental Affairs  
West Virginia Department of Agriculture  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
304-558-2227 Office  
304-558-3594 Fax  
[hjohnson@ag.state.wv.us](mailto:hjohnson@ag.state.wv.us)

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**From:** Bud Frantz [<mailto:frantzbud@yahoo.com>]  
**Sent:** Friday, July 25, 2014 11:51 AM  
**To:** Bishop, Grant  
**Subject:** Commercial Applicator fee

Dear Grant,

I have an applicators permit for forest pest management. I am writing to say that I think a 100% increase in fees is a little too much at one time. I would understand a 50% increase in a year but doubling the fee seems a bit much.

Thank you.

Lowell Frantz  
#C05404

## Johnson, Herma

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**From:** Johnson, Herma  
**Sent:** Thursday, July 10, 2014 12:24 PM  
**To:** 'Craig Martin'  
**Subject:** RE: Applicator fee increase

Mr. Martin,

We would like to thank you for your comments concerning the proposed changes to the Fee Structure For The Pesticide Control Act Of 1990 - Title 61 – Series 12.

All comments received will be taken into consideration prior to the 2015 Legislative Session.

Herma Johnson, Director  
Regulatory and Environmental Affairs  
West Virginia Department of Agriculture  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
304-558-2227 Office  
304-558-3594 Fax  
[hjohnson@ag.state.wv.us](mailto:hjohnson@ag.state.wv.us)

-----Original Message-----

**From:** Craig Martin [<mailto:cmartin@greenerlawncare.com>]  
**Sent:** Monday, July 07, 2014 3:23 PM  
**To:** Johnson, Herma  
**Subject:** Applicator fee increase

To whomever:

Our customers would really raise a fuss if we were to double our fees for service.  
SO DO YOURS!?!

Thanks for your reconsideration,

Craig Martin  
Greener Lawn Care



**Regulatory & Environmental Affairs Division  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. E., Charleston, WV 25305  
304-558-2208**

**Walt Helmick**  
Commissioner

**Herma Johnson**  
Director

**Summary of Proposed Rule  
Fee Structure For The Pesticide Control Act of 1990  
Title 61 – Series 12**

**61-12-4. Classification and Fees of Applicator Certificates**

The Department is proposing an increase in the Commercial Applicator fee from \$10.00 to \$20.00 and an increase of \$10.00 to \$20.00 for Registered Technicians.

**61-12-5. Product Registration**

The Department is proposing an increase in pesticide product registration from \$125.00 to \$150.00.



**Regulatory & Environmental Affairs Division  
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305  
304-558-2208

**Walt Helmick**  
Commissioner

**Herma Johnson**  
Director

**STATEMENT OF CIRCUMSTANCES  
Fee Structure for the Pesticide Control Act of 1990  
Title 61- Series 12**

The West Virginia Department of Agriculture is proposing an increase in the annual fee for Commercial Applicators and Registered Technicians from \$10.00 to \$20.00. The Department is also proposing an increase in the Pesticide Product Registration from \$125.00 to \$150.00 per product.

This increase will help maintain the services currently offered free of charge, such as container recycling, pesticide waste disposal, pesticide and equipment safety training, respirator fit testing, HeartSaver First Aid training and initial certification and recertification training. The laboratory equipment required yearly maintenance contracts. Other costs that are incurred is disposal of laboratory chemical waste as a results of sample collection and yearly training and certification of laboratory personnel. Travel costs have increased for field staff to ensure compliance with pesticide licensing and application regulations. Added costs are also involved in an emphasis on compliance assistance for Integrated Pest Management in School and Day Care/Facilities to reduce children's exposure to pesticides.

A handwritten signature in black ink, appearing to read "Walt Helmick".

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Fee Structure for the Pesticide Control Act of 1990

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East  
Charleston, WV 25305  
Herma Johnson

Phone Number: 304-558-2227 Email: hjohnson@wvda.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This increase will help maintain the services currently offered free of charge, such as container recycling, pesticide waste disposal, pesticide and equipment safety training, respirator fit testing, HeartSaver First Aid training and initial certification and recertification training. The laboratory equipment required yearly maintenance contracts. Other costs that are incurred is disposal of laboratory chemical waste as a results of sample collection and yearly training and certification of laboratory personnel. Travel costs have increased for field staff to ensure compliance with pesticide licensing and application regulations. Added costs are also involved in an emphasis on compliance assistance for Integrated Pest Management in School and Day Care/Facilities to reduce children's exposure to pesticides.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>		318,500.00	318,500.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>		318,500.00	318,500.00

Rule Title: Fee Structure for the Pesticide Control Act of 1990

Rule Title:

Fee Structure for the Pesticide Control Act of 1990

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The West Virginia Department of Agriculture is proposing an increase in the annual fee for Commercial Applicators and Registered Technicians from \$10.00 to \$20.00 for each category. The Department is also proposing an increase in the Pesticide Product Registration from \$125.00 to \$150.00 per product.

This increase will help maintain the services currently offered free of charge, such as container recycling, pesticide waste disposal, pesticide and equipment safety training, respirator fit testing, HeartSaver First Aid training and initial certification and recertification training. The laboratory equipment required yearly maintenance contracts. Other costs that are incurred is disposal of laboratory chemical waste as a results of sample collection and yearly training and certification of laboratory personnel. Travel costs have increased for field staff to ensure compliance with pesticide licensing and application regulations. Added costs are also involved in an emphasis on compliance assistance for Integrated Pest Management in School and Day Care/Facilities to reduce children's exposure to pesticides.

**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.

Date:

6/25/14

Signature of Agency Head or Authorized Representative

Walt Helmick

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE 2:02

SERIES 12  
FEE STRUCTURE FOR THE PESTICIDE CONTROL ACT OF 1990

**§61-12-1. General.**

1.1. Scope. -- This legislative rule establishes the fee structure to be used under the Pesticide Control Act of 1990.

1.2. Authority. -- W. Va. Code '19-16A-4.

1.3. Filing Date. -- ~~April 8, 2008.~~

1.4. Effective Date. -- ~~July 1, 2008.~~

**§61-12-2. Examinations.**

2.1. The Commissioner shall assess each person taking an examination for a license, certification or certificate a fee of \$20.00 per examination session. This fee is for one or more examinations taken at the same time. This examination fee shall be used to help defray the costs of training materials, postage and processing of licenses, certification and certificates.

**§61-12-3. Classification and Fees of Pesticide Business Licenses.**

3.1. Pesticide application business - The Commissioner shall assess an annual fee of \$60.00 for each pesticide application business engaged in the business of applying pesticides upon the lands of another. Pesticide application business making non solicited recommendations of pesticide products, made in the course of normal business practices, shall be exempt from a consultant license and fee.

3.2. Pesticide consultant - The Commissioner shall assess an annual fee of \$60.00 for each pesticide application business engaged in the business of soliciting or offering services for hire to recommend the use of pesticide on the lands of others.

3.3. Pesticide dealer - The Commissioner shall assess an annual fee of \$60.00 for each person who sells, wholesales, distributes, offers or exposes for sale, exchanges or gives away any restricted use pesticide within or into this State. Commercial delivery services shall not be deemed as distributors of pesticides.

**§61-12-4. Classification and Fees of Applicator Certificates.**

4.1. Commercial applicator - The Commissioner shall assess an annual fee of ~~\$10.00~~ \$20.00 for each person who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as a private applicator.

4.2. Private applicator - The Commissioner shall assess a fee of \$10.00 every three years to maintain certification as a private applicator to apply restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by him or her employer or is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

4.3. Registered technician - The Commissioner shall assess an annual fee of ~~\$10.00~~ \$20.00 for each person qualifying as a registered technician.

**§61-12-5. Product Registration.**

5.1. The Commissioner shall assess an annual registration fee of ~~\$125.00~~ \$150.00 per product for each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State.

5.2. Pesticide products used or offered for use within the State under a bonafide experimental research permit issued by the United States environmental protection agency shall be registered but are exempt from the annual registration fee, provided the products are offered at no charge to cooperators and a copy of the experimental research permit is submitted with registration as an experimental use product with the State.