



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 7 – NOTICE OF AN EMERGENCY RULE (Page 1)

AGENCY **Agriculture**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-08B**

RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This amendment was originally filed on 6/15/17, Agency Approved filed on 7/19/17. The rule was withdrawn on 9/18/17 due to USDA need more time to study the fee increase. USDA has now decided to move forward with the fee increase from \$92/hr to \$108/hr with an effective date of 10/1/17. If WVDA does not follow the fee structure set forth in the Cooperative Agreement with USDA we will be in violation and will not be able to perform the Audits for Fruit Inspection Services.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 61-08B



Rule Id: 16653



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FORM 9 – EMERGENCY RULE QUESTIONNAIRE (Page 1)

AGENCY **Agriculture**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-08B**

RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

PRIMARY CONTACT

Jodee F Martin

WV Department of Agriculture

1900 Kanawha Boulevard, East

Charleston, WV 25305

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FORM 9 – EMERGENCY RULE QUESTIONNAIRE (Page 2)

AGENCY **Agriculture**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-08B**

RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

DATE OF FILING

Monday, November 13, 2017

STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE

§19-2-5, §19-1-4(k)

DATE OF FILING OF PROPOSED LEGISLATIVE RULE

Wednesday, November 01, 2017

DOES THE EMERGENCY RULE ADOPT NEW LANGUAGE OR DOES IT AMEND OR APPEAL A
CURRENT LEGISLATIVE RULE?

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED?

No

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE
EMERGENCY RULE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE,
HEALTH, SAFETY OR WELFARE.

**WVDA has a Cooperative Agreement with USDA to follow the fee structure for GAP/GHP Audits. The
USDA is increasing the fee from \$92/hr to \$108 per hour effective 10/1/17. If we do not comply with
Cooperative Agreement WVDA will be in violation and will not be able to perform the fruit inspections.**

**Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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FORM 9 – EMERGENCY RULE QUESTIONNAIRE (Page 3)

AGENCY **Agriculture**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-**

RULE NAME **Schedule of Charges for Inspection Services Fruit** **08B**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

IF THE EMERGENCY RULE WAS PROMULGATED IN ORDER TO COMPLY WITH A TIME LIMIT ESTABLISHED BY THE CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN.

The WVDA per Cooperative Agreement must follow the fee structure set by USDA for GAP/GHP Audits. Cooperative Agreement 12-25-A-5061 Agricultural Marketing Act of 1946

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY TO PREVENT SUBSTANTIAL HARM TO THE PUBLIC INTEREST.

Violation of the Cooperative Agreement could result in termination of said agreement and would stop WVDA from doing the audits.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Agriculture**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-08B**
RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY §19-2-5, §19-1-4(k)

PRIMARY CONTACT

Jodee F Martin
WV Department of Agriculture
1900 Kanawha Boulevard, East
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CITE AUTHORITY **§19-2-5, §19-1-4(k)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

While any increase in revenue would depend on the amount of audits performed, the figures are based on the amount of audits performed in 2016, multiplied by the average hours to perform an audit and then multiplied by the current \$92/hr rate and the new rate of \$108/hr. 14 Audits X 4 Hours=56hrs X \$92=\$5152.00

14 Audits X 4 Hours = 56 Hrs X \$108=\$6,048.00

Expected revenue increase is based on the expectations would be \$896.00/yr

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Agriculture**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-08B**
RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES			
CURRENT EXPENSES			
REPAIRS AND ALTERATIONS			
ASSETS			
OTHER			
ESTIMATED TOTAL REVENUES		896	896

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Agriculture**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **61-**

RULE NAME **Schedule of Charges for Inspection Services Fruit** **08B**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

While any increase in revenue would depend on the amount of audits performed, the figures are based on the amount of audits performed in 2016, multiplied by the average hours to perform an audit and then multiplied by the current \$92/hr rate and the new rate of \$108/hr. 14 Audits X 4 Hours=56hrs X \$92=\$5152.00

14 Audits X 4 Hours = 56 Hrs X \$108=\$6,048.00

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)

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RULE NAME **Schedule of Charges for Inspection Services Fruit** **08B**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

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.

None noted

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Agriculture**
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RULE NAME **Schedule of Charges for Inspection Services Fruit**

CITE AUTHORITY **§19-2-5, §19-1-4(k)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The current fee structure set by the USDA for GAP/GHP Audits is \$92/hr. A change to the Federal/State Cooperative Agreement requires that as of October 1, 2017 the rate will increase to \$108/hr.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

SERIES 8B
SCHEDULE OF CHARGES FOR INSPECTION SERVICES: FRUIT

§61-8B-1. General.

1.1. Scope. -- This legislative Rule establishes charges for Federal-State Inspection Service for Fruit.

1.2. Authority. -- W. Va. Code §19-2-5.

1.3. Filing Date. -- ~~April 21, 2014~~

1.4. Effective Date. -- ~~May 21, 2014~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect five years from its effective date.

§61-8B-2. Declaration of Policy.

2.1. Fees for Inspection Services. -- W. Va. Code §19-2-5, provides that the Commissioner of Agriculture may, upon request, inspect and issue Federal-State Inspection Certificates, certify the quality, or condition for fruit produced, sold traded, exchanged, transported through the trade channels of West Virginia.

2.2. Schedule of Fees -- For the purpose of defraying the cost of inspection, the following schedule of fees apply:

2.2.1. Fruit Inspection For Processors:

Contract - Weekly Rate 40 hours per week	
Monday through Friday.....	\$640.00
Hourly Rate (1 hour minimum)	\$25.00
Overtime per hour	\$37.50

2.2.2. GAP.GHP/Audits:

Hourly rate (1 hour minimum)	\$92.00 108.00
------------------------------------	---------------------------

2.2.3. Fruit Inspection For Quality:

Contract - Weekly Rate 40 hours per week	
Monday through Friday.....	\$500.00
Hourly rate (1 hour minimum)	\$25.00
Overtime per hour.....	\$37.50

Plus Current Mileage Rate

2.2.4. Fruit Inspection Package Rate:

Per box, basket, carton 25 lbs or less.....	\$ 0.08
Per box, basket, carton 26 lbs or more	\$ 0.10
Hourly rate (1 hour minimum)	\$25.00
Overtime per hour.....	\$37.50

2.2.5. FVQ Form 294 (State Sanitary Inspection)

No charge if performed in conjunction with other inspections otherwise.....	\$ 0.05 per carton
Hourly rate (1 hour minimum)	\$25.00
Overtime per hour.....	\$37.50
Plus Current Mileage Rate	

2.2.6. Expenses:

The Department may bill all necessary expenses and mileage at the WV Department of Agriculture standard rate.

2.2.7. Overtime:

The Department shall charge at the overtime rate per hour for any time in excess of eight (8) hours any single day (Monday through Friday,) or forty (40) hours any single week, or for Saturday, Sunday and holidays.

2.2.8. Special Work:

The Department shall assess fees for irregular size container or special work on the basis of the fee schedule set forth in this rule as closely as practical.