

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2008 JUL 30 AM 9:40

OFFICE 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: 19-2-5

AMENDMENT TO AN EXISTING RULE: YES  NO

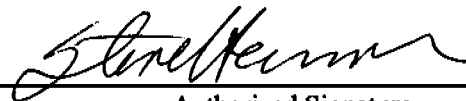
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 8B

TITLE OF RULE BEING AMENDED: Schedule of Charges For Inspection Services: Fruit

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: 7/29/08

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Agriculture  
1900 Kanawha Boulevard East  
Charleston, WV 25305  
Phone: 304/558-3200

LEGISLATIVE RULE TITLE: Schedule of Charges For Inspection Services: Fruit

1. Authorizing statute(s) citation 19-2-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
6/26/08

b. What other notice, including advertising, did you give of the hearing?  
We filed a Public Comment Period. Orchards, Packing Companies and Brokers were  
given notice

c. Date of Public Hearing(s) or Public Comment Period ended:  
7/26/08

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received NA

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

Comment Period 6/26/08

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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)

Jean Smith, Director  
WV Department of Agriculture  
Marketing & Development Division  
1900 Kanawha Blvd East  
Charleston, WV 25305  
Phone: 304/558-2210  
Fax: 304/558-2270  
E-mail: jsmith@ag.state.wv.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.

NA

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b. Date of hearing or comment period:

NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA

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

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

**SUMMARY OF PROPOSED RULE**  
**SCHEDULE OF CHARGES FOR INSPECTION SERVICES: FRUIT**  
**TITLE 61 – SERIES 8B**

**§61-8B-2. Declaration of Policy.**

- a- Add Contract to weekly rate of 40 hours per week.
- b- Change fee for Monday through Friday inspection service to \$640.00 from \$500.00.
- c- Change fee for hourly rate to \$25.00 from \$20.00.
- d- Change overtime per hour rate to \$37.50 from \$30.00.
- e- Add "Plus Current Mileage Rate".
- f- Remove "Fruit Inspection for bruising" replace with "GAP.GHP/Audits" to classify inspection services provided.
- g- Remove "Monday through Friday.....\$350.00"
- h- Change fee for hourly rate to \$75.00 from \$20.00.
- i- Change fee for overtime per hour rate to \$112.50 from \$30.00.
- j- Remove "Minimum certificate fee.....\$6.00"
- k- Add "Plus Current Mileage Rate".
- l- Remove Control
- m- Add Contract to weekly rate of 40 hours per week.

Schedule of Charges For Inspection Services: Fruit  
Title 61 – Series 8B  
Page 2

- n- Change fee for Monday through Friday inspection service to \$500.00 from \$350.00.
- o- Change fee for hourly rate to \$25.00 from \$20.00.
- p- Change fee for overtime per hour rate to \$37.50 from \$30.00
- q- Remove “Minimum certificate fee.....\$6.00”
- r- Change fee for “Per box, basket, carton 25 lbs or less to \$ 0.08 from \$ 0.05.
- s- Change fee for “Per box, basket, carton- 26 lbs or more to \$ 0.10 from \$ 0.06.
- t- Change fee for hourly rate to \$25.00 from \$20.00.
- u- Change fee for overtime per hour rate to \$37.50 from \$30.00
- v- Remove “Minimum certificate fee.....\$6.00”
- w- Remove “Per container any size” replace with “No charge if performed in conjunction with other inspections otherwise..... change fee to \$ 0.05 per carton from 0.01.
- x- Change fee for hourly rate to \$25.00 from \$20.00.
- y- Change fee for overtime per hour rate to \$37.50 from \$30.00
- z- Add “Plus Current Mileage Rate”.



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

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

## **STATEMENT OF CIRCUMSTANCES**

Schedule of Charges for Inspection Services: Fruit  
Title 61, Series 8 B

The West Virginia Department of Agriculture proposes to update the Schedule of Charges for Inspection Services: Fruit Rule these updates provide a more accurate cost incurred by the Department in providing these services. The last update to this fee schedule was 2002. From the date of the last increase; rise in fuel and personnel costs have increased considerably, with this increased burden to a limited budget an increase in these fees is warranted and past due. These changes will also allow the West Virginia Department of Agriculture to remain competitive in providing services that neighboring states provide, along with adhering to fees addressed in Cooperative Agreements held with federal partners such as USDA.

With the adoption of these changes and increases, the fees will be better in line with the costs incurred by the Department without bringing undue burden to the Department budget or producers in the state.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Schedule of Charges for Inspection Services: Fruit Title 61, Series 8B

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0172

Phone Number: 304-558-2210 Email: jsmith@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.

The proposed raise in fees for 2.2.1., 2.2.3., 2.2.4. and 2.2.5. are needed to cover expenses incurred through performing inspections. These increases are also in line with the fees charged by neighboring states. Fee increases in 2.2.2. are due to a federally mandated increase in conjunction with Cooperative Agreements held between the WVDA and USDA.

**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)
<b>1. Estimated Total Cost</b>	116,429.00	120,000.00	120,000.00
Personal Services	102,300.00	105,600.00	105,600.00
Current Expenses	14,129.00	15,000.00	15,000.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	30,500.00	69,000.00	69,000.00

Rule Title: Title 61 Series 8B

Rule Title: Title 61, Series 8B

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

The increase of fees allow for coverage of expenses incurred in performing inspections are in cooperation with federal and state guidelines. The adjustments represent actual costs attributed to personnel used to complete these inspections throughout the state.

**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: 06/26/2008

Signature of Agency Head or Authorized Representative  
*Struthmann*

FILED

TITLE 61  
WEST VIRGINIA LEGISLATIVE RULE 2008 JUL 30 AM 9:40  
STATE DEPARTMENT OF AGRICULTURE

SERIES 8B  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
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. -- ~~June 21, 2002.~~

1.4. Effective Date. -- ~~June 21, 2002.~~

§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, render inspection service and issue Federal-State Inspection Certificates certify the quality and/or condition for fruit produced, sold, traded, exchanged, transported or otherwise moved in 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:

<u>Contract - Weekly Rate 40 hours per week</u>	
Monday through Friday .....	<del>\$500.00</del> 640.00
Hourly Rate (1 hour minimum).....	<del>\$20.00</del> 25.00
Overtime per hour .....	<del>\$30.00</del> 37.50

2.2.2. ~~Fruit Inspection for bruising.~~  
GAP.GHP/Audits

<del>Monday through Friday .....</del>	<del>\$350.00</del>
Hourly rate (1 hour minimum) .....	<del>\$20.00</del> 75.00
Overtime per hour .....	<del>\$30.00</del> 112.50
<del>Minimum certificate fee.....</del>	<del>\$6.00</del>
<u>Plus Current Mileage Rate</u>	

2.2.3. Fruit Inspection For Quality and Control:

<u>Contract - Weekly Rate 40 hours per week</u>	
Monday through Friday .....	<del>\$350.00</del> 500.00
Hourly rate (1 hour minimum) .....	<del>\$20.00</del> 25.00
Overtime per hour .....	<del>\$30.00</del> 37.50
<del>Minimum Certificate Fee .....</del>	<del>\$6.00</del>
<u>Plus Current Mileage Rate</u>	

2.2.4. Fruit Inspection Package Rate:

Per box, basket, carton 25 lbs or less.....	\$ 0.05	<u>0.08</u>
Per box, basket, carton-26 lbs or more .....	\$ 0.06	<u>0.10</u>
Hourly rate ( 1 hour minimum) .....	<del>\$20.00</del>	<u>25.00</u>
Overtime per hour .....	<del>\$30.00</del>	<u>37.50</u>
<del>Minimum Certificate Fee .....</del>	<del>\$6.00</del>	

2.2.5. FVQ Form 294 (State Sanitary Inspection)

<del>Per container any size</del> <u>No charge if performed in conjunction with other inspections otherwise...</u>		<del>\$ 0.01</del>
<u>0.05 per carton</u>		
Hourly rate {(1 hour minimum)}.....	<del>\$20.00</del>	<u>25.00</u>
Overtime per hour .....	<del>\$30.00</del>	<u>37.50</u>
<u>Plus Current Mileage Rate</u>		

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.