

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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1992 APR 28 PM 12:02  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 12B

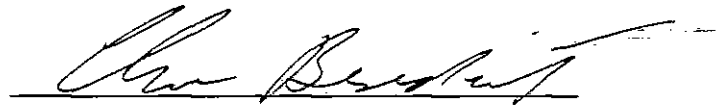
TITLE OF RULE BEING PROPOSED: Licensing of Pesticide Businesses

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Sb1

SECTION 64-9-1 (cc), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 27, 1992



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FILED

1997 APR 28 PM 12:02

OFFICE OF THE ATTORNEY GENERAL  
STATE OF WEST VIRGINIA

Title 61  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE RULE

SERIES XIIB

Title: Licensing of Pesticide Businesses

§61-12B-1 General

1.1 Scope - This legislative rule establishes the requirements governing the operation of pesticide businesses in West Virginia.

1.2 Authority - W. Va. Code 19-16A-4, 8 and 9

1.3 Filing Date -

1.4 Effective Date -

§61-12B-2 Definitions

2.1 "Commercially" means the activity of conducting business relating to applying, selling, or recommending the use of pesticides on a regular routine basis.

2.2 "Pesticide consultant" means a person commercially recommending the use of pesticides to others.

2.3 "Regulated pesticide dealer" means a dealer commercially selling general use pesticides.

2.4 "Restricted Use Pesticide Dealer" means a dealer commercially selling restricted use pesticides.

§61-12B-3. General Requirements for all Business Licenses

3.1. A pesticide business operating in West Virginia which sells, stores, recommends for use, mixes or applies pesticides shall obtain a valid pesticide business license in one or more of the following categories:

3.1.a. Licensed Pesticide Application Business.

3.1.b. Regulated Pesticide Application Business.

3.1.c. Restricted Use Pesticide Dealer.

3.1.d. Regulated Pesticide Dealer.

3.1.e. Pesticide Consultant.

3.2. Pesticide businesses categorized as Licensed Pesticide Application Businesses, Restricted Use Pesticide Dealers, and Pesticide Consultants shall pay the appropriate license fee as contained in 61 CSR 12. Pesticide businesses categorized as Regulated Pesticide Application Businesses or Regulated Pesticide Dealers shall make application with the commissioner with no license fee requirement.

3.3. An applicant for a pesticide business license shall apply for the license on a form to be obtained from the commissioner. All requested information shall be included on the form prior to issuance of the license.

3.4. All pesticide business licenses are issued on a calendar year basis and expire at midnight on December 31 of each year. Licensees shall renew their licenses annually by application to the commissioner and payment of the fee required under 61 CSR 12. All licensees shall make application at least 30 days prior to the expiration of the businesses' current license.

#### §61-12B-4. Requirements for Pesticide Application Business

##### 4.1 General

4.1.a Any person who owns or manages a pesticide application business, which is engaged in the business of applying pesticides upon the lands of another must qualify as either a Licensed Pesticide Application Business or a Regulated Pesticide Application Business.

4.1.b All pesticide application businesses shall employ certified commercial applicators or certified public applicators for the various categories or subcategories of their operation. The categories or subcategories as detailed in the Certified Pesticide Applicator Rules (61 CSR 12A) are used for determining the areas in which a pesticide application business operates.

4.1.c All pesticide applications made by pesticide application businesses shall be made by certified commercial applicators, certified public applicators or registered technicians who have completed a training program approved by the commissioner as described in 61 CSR 12A.

4.1.d Each location of the pesticide application business shall be licensed. Locations requiring a separate license include each branch office, franchise location, sub-office or worker location of a pesticide application business.

#### 4.2 Licensed Pesticide Application Business.

4.2.a A Licensed Pesticide Application Business is a pesticide business commercially applying pesticides for hire.

#### 4.3 Regulated Pesticide Application Business

4.3.a A Regulated Pesticide Application Business is a pesticide business commercially applying pesticides not for hire. Examples of such businesses include, but are not limited to, apartment complexes, office buildings, educational facilities, golf courses, right of way maintenance, etc.

4.3.b Persons doing limited applications of pesticides are exempt from the licensing requirements in this sub-section if:

4.3.b.A the applicator is performing general pest control on his or her own rental property of four rental units or less, and is applying only generally available, ready to use pesticide products such as prepared baits, aerosols or foggers, and the applicator only uses non-pressurized pump sprayers or dusters;

4.3.b.B the applicator is engaged in applying disinfectants in the routine performance of his or her employment in the medical profession or in janitorial duties; or

4.3.b.C the applicator uses non-restricted use pesticides and assists in applying pesticides for the production of an agricultural commodity.

### §61-12B-5. Requirements for Pesticide Dealer Business Licensing.

#### 5.1 General

5.1.a The commissioner shall require any pesticide business which sells, distributes, stores or offers for sale any pesticide in West Virginia to obtain a license as a Restricted Use Pesticide Dealer or as a Regulated Pesticide Dealer.

5.1.b The commissioner shall require each business operating as a Restricted Use Pesticide Dealer to employ commercial applicators certified in the category of Pesticide Storage and Distribution as described in 61 CSR 12A. The commissioner shall not allow any business location or operation to sell restricted use pesticides without a certified commercial applicator present who

shall bear the immediate responsibility for the correct and safe operation of his or her location or operation.

5.1.c The commissioner shall require each applicant for a license as a Regulated Pesticide Dealer to demonstrate his or her knowledge on the storage, display, distribution and transportation of pesticides.

5.2 Exemption - The following Regulated Pesticide Dealers are exempt from the requirements of this rule.

5.2.a Retailers of limited quantities of non-restricted use pesticides, including grocery stores, convenience stores, drug stores, veterinarians and other businesses which sell pesticides such as bleaches, disinfectants, aerosols, etc., for limited household or janitorial use.

5.2.b Delivery services including, but not limited to, the U.S. Postal Service, United Parcel Service, Federal Express, etc., and warehouses temporarily storing products for shipment to retailers.

#### **§61-12B-6. Requirements for Pesticide Consultant Business Licensing.**

6.1 The commissioner shall require all persons commercially recommending the use of pesticides to be licensed as a Pesticide Consultant.

6.2 The specialty categories for a Pesticide Consultant shall conform to the certified commercial applicator categories as described in the Certified Pesticide Applicator rules, 61 CSR 12A. The pesticide consultant shall meet the requirements of a commercial applicator in the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

6.3 Retail sales personnel or certified applicators of any business which has obtained a pesticide application business license, and certified public applicators or company sales representatives certified in the category of Demonstration and Research as described in 61 CSR 12A, are exempt from the provisions of this section.

#### **§61-12B-7. Record Keeping Requirements for Pesticide Businesses.**

##### **7.1 General**

7.1.a Each pesticide business shall maintain at a minimum the records specified in this section as a condition of

obtaining and renewing a license, permit or certificate. The commissioner may require additional records be maintained by other rules adopted under WV Code 19-16A-1 et seq.

7.1.b The commissioner shall have access to all records for the purpose of inspection to determine compliance with WV Code 19-16A-1 et seq. and any rules promulgated under WV Code 19-16A-1 et seq. The commissioner may require a licensed pesticide business to submit these records to his or her office.

7.1.c Each pesticide business shall keep and maintain records required by this section of the rule for a period of at least 2 years.

7.1.d The commissioner may revoke a pesticide business license for failure to keep or to submit these records.

## 7.2. Pesticide Application Business Records.

7.2.a Each Licensed Pesticide Application Business or Regulated Pesticide Business shall keep records detailing the application of all pesticides. The minimum information to be maintained is:

7.2.a.A the pesticide used, including the EPA registration number.

7.2.a.B the formulation, dilution rate and the quantity of the pesticide used. In the case of businesses in the classification of General Pest and Ornamental and Turf pest control, as described in 61 CSR 12A, the records for quantity used may be kept as the total quantity of the product used per day by each applicator when less than 1 gallon of use dilution spray or 1 pound of dust, powder or prepared rodenticide baits are used at any one location. When more than these amounts are used at one location, the quantity of the pesticide for that location shall be maintained separately.

7.2.a.C the date and place of application.

7.2.a.D the pest or pests against which the pesticide was used.

7.2.a.E the applicators name and certification or registration number.

## 7.3 Pesticide Dealer Records

7.3.a General - All licensed Restricted Use Pesticide Dealers and Regulated Pesticide Dealers shall, on a calendar year basis, keep records on the volume of annual sales of all pesticide products. These records shall contain the following information:

7.3.a.A the name and EPA registration number of the pesticide sold, including its formulation. For example Pest-A-Way 80% WP., Registration No. 3215-514.

7.3.a.B the quantity of the pesticide sold, in weight and/or volume.

7.3.b Restricted Use Pesticide Dealers shall keep and maintain records on each sale or other disposition of restricted use pesticides. The minimum information to be maintained is:

7.3.b.A the pesticides sold or otherwise disposed of, including its formulation, for example Pest-A-Way 80% WP.

7.3.b.B the quantity of pesticides in weight and/or volume.

7.3.b.C the date of sale or disposition of the pesticide.

7.3.b.D the name and address of the purchaser or receiver, including the certified applicators identification number.

7.3.b.E a verification of intent to apply by a certified applicator in the sale of a restricted use pesticide to a non-certified customer for application by others. The verification of intent shall be on a form provided by the commissioner.

7.3.c The record keeping requirements of this subsection may be satisfied by invoices or bills of lading, provided they are kept separate from the licensees' other sale records, are readily available and contain the information required in this subsection.

#### 7.4 Pesticide Consultant

7.4.a A Pesticide Consultant shall maintain records of each pesticide recommendation made. The minimum information to be maintained is:

7.4.a.A the date of recommendation.

7.4.a.B the name and address of the customer, including the site of application if different from the customer's address.

7.4.a.C the name of the pest(s) being controlled.

7.4.a.D the name or type of plants or animals or a description of sites being treated.

7.4.a.E the pesticide recommended, including its common name and formulation.

7.4.a.F the dosage rate of the pesticide recommended.

**§61-12B-8. Financial Security Requirement.**

8.1 All Licensed Pesticide Application Businesses are required to furnish evidence of financial security to the commissioner prior to the issuance of a pesticide application business license.

8.2 Minimum Financial Security - The commissioner shall not issue a pesticide application business license until the applicant has filed evidence of financial security with the commissioner, in any of the following forms: a surety bond, a comprehensive general liability insurance policy, or certification thereof from an insurance company authorized to do business in West Virginia. The financial security required for each category or sub-category of license as specified in 61 CSR 12A is to be no less than the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for property damage.

**§61-12B-9 Liability for Pesticide Use**

9.1 Nothing in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides, even though such use conforms to the requirements of WV Code 19-16A-1 et seq. or the rules promulgated thereunder.



2-57

Bill Agri, Pesticide Bus. 61-12B

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H. B. 4247

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the  
Committee on Agriculture and Natural Resources  
then the Judiciary)

10 A BILL to amend and reenact section one, article nine, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 commissioner of agriculture to promulgate legislative rules  
14 relating to the licensing of pesticide businesses.

15 Be it enacted by the Legislature of West Virginia:

16 That section one, article nine, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS  
20 TO PROMULGATE LEGISLATIVE RULES.

21 §64-9-1. Commissioner of Agriculture.

22 (a) The legislative rules filed in the state register on the  
23 sixth day of April, one thousand nine hundred eighty-three,

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1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers), are  
22 authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 twenty-sixth day of July one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the sixteenth day of October,  
13 one thousand nine hundred ninety-one, relating to the  
14 commissioner of agriculture (licensing of pesticide businesses)  
15 are authorized.

16

17 NOTE: The purpose of this bill is to authorize the  
18 Commissioner of Agriculture to promulgate legislative rules  
19 relating to the licensing of pesticide businesses.

20

21 Strike-throughs indicate language that would be stricken from  
22 the present law, and underscoring indicates new language that  
23 would be added.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

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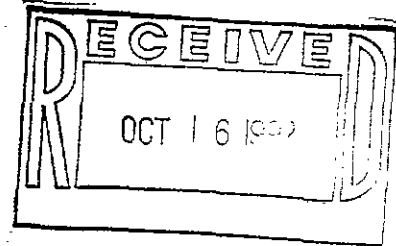
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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)



TO: Barbara Smith

AGENCY: Department of Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 12B TITLE: 61 Department of Agriculture

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Barbara J. Smith

TITLE OF PERSON SIGNING: Director of Compliance

DATE: 11-12-92 (see page 244)

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.