

WSR 22-13-000A
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 22, 2022, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-129.

Title of Rule and Other Identifying Information: Chapter 16-228 WAC, General pesticide rules. The department is proposing to modify WAC 16-228-1540 to offer an additional testing option of computerized or virtual-based pesticide licensing testing through a third-party entity. The current option of paper-based testing would continue to be offered. Computer-based testing fees, not to exceed \$65, will be established by contract with a third-party entity and the fee will be posted on the agency website.

Hearing Location(s): On July 26, 2022, at 9:00 a.m. Microsoft Teams meeting: Join on your computer or mobile app by the following link

Date of Intended Adoption: August 2, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., July 26, 2022.

Assistance for Persons with Disabilities: Contact Maryann Connell, phone 360-902-2012, fax 360-902-2093, TTY 800-833-6388, email mconnell@agr.wa.gov, by July 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department oversees the initial and continued certification and licensing of pesticide applicators, dealer managers, consultants, and structural pest inspectors. As part of the licensing process, the department administers pesticide exams to ensure that individuals and businesses that apply, sell, or consult on pesticide products are sufficiently competent to do so and in a safe and effective manner.

Currently, exams are offered primarily in paper format at a few locations on limited dates and are required to be graded and distributed manually.

The department is proposing to add an option for computer- or virtual-based testing environments in which applicants can take exams at professional testing facilities or on other platforms throughout the state. Offering these exams at more locations and at more conven-

ient times will make the exam step in the licensing process more efficient, convenient, and accessible for applicants.

To offer this service, the department must utilize a third-party entity to facilitate access and administration of the certification exams. Exam administration through these third-party entities, however, typically costs more than the department's current paper-based exam fee.

The department will continue to offer paper-based testing. Applicants may utilize the paper-based testing option currently available or may elect to take exams via computer-based or virtual-based platforms at a fee not to exceed \$65 per exam. This fee will be established in contract with a third-party entity and will be posted to the Washington state department of agriculture (WSDA) website.

Reasons Supporting Proposal: Over the past several years, prospective licensees and employers have been requesting improved access to testing services, including more frequent testing sessions, more convenient testing locations, and enhanced exam review. Licensing staff and resources are limited, with testing only available at six established locations statewide on variable schedules. Computer- or virtual-based testing through specialized software is a way to efficiently meet the needs of agency customers.

During the 2020 legislative session, the Washington state legislature passed HB 2624. This bill provided the department authority to contract with a third-party entity to administer the exams and/or the collection of fees. This rule making provides license applicants with more testing options than currently provided by the department.

Statutory Authority for Adoption: RCW 15.58.040, 15.58.240, 17.21.030, 17.21.134.

Statute Being Implemented: RCW 15.58.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Kelle Davis, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, 360-902-1851; Implementation: Christina Zimmerman, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, 360-902-2150; and Enforcement: Tim Schultz, 222 North Havana, Suite 203, Spokane, WA 99202, 509-994-0936.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department has determined that no small business economic impact statement is necessary for this rule making. The department issues pesticide licenses to individuals, not businesses. Business[es] are not required to pay pesticide exam fees for employees, and the final responsibility to pay the exam fee falls on the individual. Therefore, this change has no impact on small businesses.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

June 22, 2022
Robin Schoen-Nessa

OTS-3898.1

AMENDATORY SECTION (Amending WSR 12-22-015, filed 10/29/12, effective 1/1/13)

WAC 16-228-1540 What are the requirements for pesticide examinations? (1) An examination fee of (~~twenty-five dollars~~) \$25 shall be paid prior to administration of any paper-based pesticide or structural pest inspector license examinations. (~~The department reserves the right to restrict the number of applicants examining at any given time.~~)

(2) An examination fee of not more than \$65 shall be paid prior to the administration of each computer-based pesticide or structural pest inspector license examination. If a third-party entity administers a computer-based licensing exam, an applicant shall pay the exam cost established in the vendor's contract with the department, not to exceed the amount set in this section. The department will post this exam fee to its website.

(3) The director may administer the pesticide exams, may contract with an examination or testing vendor to administer the exams, or both.

(4) The department reserves the right to restrict the number of applicants taking examinations at any given time.

(5) Any individual who fails any pesticide licensing examination twice shall be required to wait at least (~~fourteen~~) 14 days before retaking that examination a third time. Subsequent testing shall be at the director's discretion.

(~~3~~) (6) An applicant shall complete the application form for a pesticide or structural pest inspector license and pay the required license application fee and testing fee at the time pesticide or structural pest inspector examinations are given, unless prior arrangements have been made.

(~~4~~) (7) Pesticide and structural pest inspector examination scores shall not be released by the department until the license application fee and testing fee have been paid.

[Statutory Authority: 2012 2nd sp.s. c 7, RCW 17.21.030, 15.58.040, and chapter 34.05 RCW. WSR 12-22-015, § 16-228-1540, filed 10/29/12, effective 1/1/13. Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1540, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 15.58, 17.21 RCW. WSR 00-22-073, § 16-228-1540, filed 10/30/00, effective 11/30/00. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1540, filed 10/20/99, effective 11/20/99.]