

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Agriculture

Department State Plant Board

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-225-1598

Statutory Authority for Promulgating Rules Ark. Code Ann. § 8-7-1206(a)(1)

Rule Title: Rules Under the Arkansas Pesticide Control Act

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date
November 14 - 16, 2021

December 13, 2021

January 28, 2021

November 5, 2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Linda Luebke

linda.luebke@agriculture.arkansas.gov

January 31, 2022

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Wade Hodge
Signature

501-225-1598

Phone Number

wade.hodge@agriculture.arkansas.gov

E-mail Address

Chief Counsel

Title

January 31, 2022

Date



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

January 31, 2022

Honorable John Thurston
Arkansas Secretary of State
State Capitol, Suite 256
500 Woodlane Street
Little Rock, Arkansas 72201-1094

Enclosed are Transmittal Sheets and a copy of a Final Rule.

- Rules Under the Arkansas Pesticide Control Act

The rule was approved at the Arkansas State Plant Board meeting held November 5, 2021.

The rule was reviewed and approved by the Administrative Rules Subcommittee of the Arkansas Legislative Council on January 26, 2022 and the Arkansas Legislative Council on January 28, 2022.

If more information is needed, please contact me.

Sincerely,

Wade Hodge
Chief Counsel

WH:ll

RULES UNDER THE ARKANSAS PESTICIDE CONTROL ACT

RULE NO. 1. Registration Fees; Expiration of Registration -

- (1) The registration fee for each pesticide product registered shall be \$250. Registrations shall expire December 31 of the year for which registered. This fee does not include the Abandoned Agricultural Pesticide Disposal Fee as established pursuant to Ark. Code Ann. § 8-7-1206(a)(1).
- (2) All registrants shall pay an Abandoned Agricultural Pesticide Disposal Fee of \$70 per year for each registered pesticide beginning July 1, 2022, and for each additional year thereafter.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture/Plant Board
DIVISION Plant Industries
DIVISION DIRECTOR Scott Bray
CONTACT PERSON Wade Hodge
ADDRESS #1 Natural Resources Drive, Little Rock AR 72205
PHONE NO. 501-219-6361 FAX NO. _____
E-MAIL wade.hodge@agriculture.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Scott Bray
PRESENTER E-MAIL scott.bray@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Whittaker
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Abandoned Pesticide Disposal Fee
- 2. What is the subject of the proposed rule? To provide a fee for participating in the Abandoned Pesticide Disposal Program.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No x _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes No X If yes, please provide a brief summary explaining the rule. See attached summary.

Does this repeal an existing rule? Yes _____ No x If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 8-7-1206(a)(1)
7. What is the purpose of this proposed rule? Why is it necessary? See attached summary
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov
9. Will a public hearing be held on this proposed rule? Yes _____ No TBD _____
If yes, please complete the following: Hearing will be held if requested
Date: December 13, 2021
Time: 9:30
Place: 1 Natural Resources Drive
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
December 13, 2021
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
February 1, 2022
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. Please give the names of persons, groups, or organizations that you expect to comment on these

rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture/Plant Board
DIVISION Plant Industries
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Abandoned Pesticide Disposal Fee

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes X No _____
The financial impact will be the increased collection of fees.
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____

Next Fiscal Year

General Revenue _____
Federal Funds _____

Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

\$_70.00 per pesticide__

Next Fiscal Year

\$_70.00 per pesticide_____

Approximately 8,000 products requiring the fee are registered annually. Under the proposed rule, Pesticide manufacturers will pay a \$70 disposal fee for each product registered with the Department. Currently there are approximately 653 companies registering 1 or more products, 36 of which register 50 or more products. The fee is currently \$50, so a company registering 50 products pays \$2,500. With the fee increasing to \$70, that same company would pay \$3,500 yearly.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$__N/A_____

Next Fiscal Year

\$__N/A_____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes_____ No____x_____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

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Wes Ward
Secretary of Agriculture

November 12, 2021

SUMMARY OF THE PROPOSED ARKANSAS STATE PLANT BOARD RULES AMENDING THE ANNUAL PESTICIDE DISPOSAL FEE FOR ALL REGISTERED PESTICIDE PRODUCTS

Purpose

This memorandum analyzes the proposed amendments to the Arkansas State Plant Board (Plant Board) Rules Under the Arkansas Pesticide Control Act, Ark. Code Ann. § 8-7-1201 et seq, setting the amount of the annual pesticide disposal fee in rule.

Background

The Arkansas Pesticide Control Act requires pesticide manufacturers to register all pesticide products annually with the Arkansas Department of Agriculture (Department). That Act required pesticide manufacturers to pay an annual \$50 pesticide disposal fee for each registered pesticide. The Act was amended by Act 364 of 2021 which provided that the Plant Board would, by rule, establish the amount of the annual disposal fee, not to exceed \$100 per product. The proposed rule amendment sets the annual disposal fee at \$70 per product beginning July 1, 2022. Therefore, this is not a new fee, but the amount of the fee is now established in rule instead of in statute.

The rule amendment was drafted based upon the recommendation of the Abandoned Pesticide Advisory Board, which is comprised of members from the Arkansas Department of Agriculture, the Arkansas Department of Energy and Environment, Arkansas Farm Bureau, the University of Arkansas Cooperative Extension Service, and the United States Natural Resources Conservation Service. The Abandoned Pesticide Advisory Board also solicited input from pesticide manufacturers, all of whom were supportive of the fee change.

Key Points

- Current law requires all pesticide manufacturers to register their products annually with the Department and pay a pesticide disposal fee for each product registered. The fees are used to collect, transport, and dispose of unwanted pesticides in Arkansas.
- Act 364 of 2021 provided that the Plant Board shall establish by rule the amount of the annual pesticide disposal fee not to exceed \$100 per product.
- The proposed rule amendment sets the annual pesticide disposal fee at \$70.
- A fee increase is needed to keep pace with the rising costs of pesticide disposal.

Discussion

Revenues from the fee are used for the collection, transportation, and disposal of unwanted pesticides through a third-party contractor. Average Department annual revenue from the fee is approximately \$400,000 per year. The Department has disposed of over 5.2 million pounds of unwanted pesticides since 2005.

The Department has historically performed an average of fifteen abandoned pesticide collection events per year. However, due to increased third-party disposal costs, the Department has reduced the number of collections to ten per year. Increasing the annual pesticide disposal fee to \$70 per product will enable the Department to return to fifteen collection events per-year.