

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

Form #3

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OFFICE OF THE
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: W.Va Code 19-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: West Virginia Plant Pest Act Rule

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: July 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture, Plant Industries
Division, 1900 Kanawha Blvd., East, Charleston, WV
25305-0191

(304) 558-2212

LEGISLATIVE RULE TITLE: West Virginia Plant Pest Act Rule Title 61 Series 14

1. Authorizing statute(s) citation W. Va Code 19-12

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

June 27, 2007

b. What other notice, including advertising, did you give of the hearing?
Over 1500 letters explaining proposed amendments mailed to loggers, log yards, sawmills, nurseries and nursery dealers.

A news release was prepared and released.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 27, 2007 at 11:00 a.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

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

July 27, 2007

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Gary W. Gibson, West Virginia Department of Agriculture, Plant Industries Division
Director, 1900 Kanawha Blvd., East, Charleston, WV 25305-0191
(304) 558-2212 fax (304) 558-2435 ggibson@ag.state.wv.us

- 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)

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.

b. Date of hearing or comment period:

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

July 27, 2007

d. Attach findings and determinations and reasons:

Attached _____



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

TITLE 61
SERIES 14
WEST VIRGINIA PLANT PEST ACT RULE
BRIEF SUMMARY OF PROPOSED RULE

Charges a fee for issuance of Federal and State phytosanitary certificates for all eligible agricultural commodities.

For Federal phytosanitary certificates, the Commissioner will charge a fee of ninety nine dollars (\$99.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and fifty seven dollars (\$57.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued.

For State phytosanitary certificates, the Commissioner may issue state phytosanitary certificates for the export of eligible agricultural commodities. For this service, the Commissioner will charge a fee of fifty dollars (\$50.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and twenty-five dollars (\$25.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued.

No charge will be assessed for noncommercial shipments.



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

TITLE 61
SERIES 14
WEST VIRGINIA PLANT PEST ACT RULE
STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

The export of agricultural commodities (logs, lumber, plant material, etc.) from West Virginia to other states and other countries continues to increase as has the cost of conducting the regulatory activities necessary to insure that these commodities are in compliance with the import regulations of the receiving state or country. Some states, and most foreign countries, will not accept certain agricultural commodities unless they are accompanied by an appropriate state or federal phytosanitary certificate which indicates that the commodity meets their import standards.

Over the years, the West Virginia Department of Agriculture has received funding from the U.S. Department of Agriculture which helped to defray some of the costs associated with these regulatory activities. However this funding is no longer available. The rule being proposed will enable the West Virginia Department of Agriculture to charge a fee for issuing both state and federal phytosanitary certificates. The amount charged for a federal phytosanitary certificate will be equal to that charged by the U.S. Department of Agriculture while the fee charged for issuing a state phytosanitary certificate will be less.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Plant Pest Act Rule Title 61 Series 14

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture, Plant Industries Division

Address: 1900 Kanawha Blvd., East
Charleston, WV 25305-0191

Phone Number: 558-2212 Gary W. Gibson Email: ggibson@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.

Approximately \$41,500.00 in state revenues will be generated.

There will be no cost to the state government other than the United States Department of Agriculture processing fee of \$16.00 per federal phytosanitary certificate and the cost required to reprint hard copies of the law. (We will charge \$99.00 per federal phytosanitary certificate, less the \$16.00 processing fee, which will give us a total of \$83.00 revenue per federal certificate.)

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	FISCAL YEAR		
	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	41,500.00	41,500.00	41,500.00
Personal Services	31,500.00	31,500.00	31,500.00
Current Expenses	10,000.00	10,000.00	10,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	41,500.00	41,500.00	41,500.00

Rule Title: West Virginia Plant Pest Act Rule Title 61 Series 14

Rule Title:

West Virginia Plant Pest Act Rule Title 61 Series 14

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

The proposed fees will generate approximately \$41,500.00 per year. This figure will depend on the actual number of federal and state phytosanitary certificates issued per year and is based on an average of 500 federal phytosanitary certificates per year. The number of state certificates will vary.

The additional funding generated by this action will be used to pay salaries, inspection and travel expenses for issuance of federal and state phytosanitary certificates in support of Plant Pest Regulatory Program operations.

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.

None

Date: June 27, 2007

Signature of Agency Head or Authorized Representative

Sten Vane

**TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE**

**SERIES 14
WEST VIRGINIA PLANT PEST ACT RULE**

§61-14-1. General.

1.1. Scope. -- This legislative rule establishes general operating procedures for the Plant Industries Division.

1.2. Authority. -- W. Va. Code §19-12-3, 5, 6, and 16

1.3. Filing Date. --

1.4. Effective Date. --

§61-14-2. Definitions.

2.1 "Act" means the West Virginia Plant Pest Act (West Virginia Code §19-12-1 et seq.).

2.2 "Administrative Hearing Officer" means a person contracted by the Commissioner to preside over a formal hearing.

2.3 "Commercial Shipment" means articles intended to be transported to another state or country by an individual or combination of individuals, partnership, corporation, company, society, association or other business entity for the purpose of making a profit or procuring customers.

2.4 "Commissioner" means the Commissioner of the West Virginia Department of Agriculture or his or her authorized representative.

2.45 "Compliance Officer" means a person appointed by the Commissioner to preside over an informal hearing arising as a result of this Rule.

2.56 "Consent Agreement" means a document executed between the Commissioner and another party affirming the level of a proposed penalty for an alleged violation or violations.

2.67 "Enforcement Officer" means a person appointed by the Commissioner to carry out the review of alleged violations, assessment of the penalty and the procedure contained in this Rule.

2.78 "Infected" or "Infested" means contaminated with a pest, or so exposed, that it would be reasonable to believe that infection or an infestation exists.

2.89 "Insect, Noxious Weed and Plant Pest Dissemination Violation" means any violation of West Virginia Code §19-12-14, which requires that a permit be issued for the introduction or

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distribution of live insects, noxious weeds or plant pests in this state.

2.910 "Inspection Violation" means any violation of West Virginia Code §§19-12-11, 19-12-8 or 19-12-10 or Section 8 of this Rule related to the discharge of an inspector's duties.

2.101 "Noncommercial Shipment" means articles intended to be transported to another state or country but not for the purpose of making a profit or associated with a business transaction.

2.112 "Phytosanitary Certificate" means an official document issued by a state or federal agricultural agency which certifies that specific articles meet the import standards of a specific state or country.

2.113 "Plant Certification Violation" means any violation of Sections 9 or 10 of this Rule that relate to the certification of plant material.

2.124 "Quarantine Violation" means any violation of the White Pine Blister Rust Quarantine, Black Stem Rust Quarantine, West Virginia Gypsy Moth Quarantine, or any other plant protection quarantine or administrative order established under authority of West Virginia Code §19-12-6.

2.125 "Registration Violation" means any violation of West Virginia Code §19-12-9 or Sections 2, 3, 4, 5, or 9 of this Rule related to the requirements for registering a nursery or dealership.

2.136 "Violator" means the person who is alleged to have violated West Virginia Code §19-12-1 et seq., or any rule, order or permit condition imposed pursuant to West Virginia Code §19-12-1 et seq..

§61-14-3. Sale of Nursery Stock.

3.1. No nursery within the State shall sell or offer for sale any nursery stock or deliver any nursery stock within or without the State until it has been inspected and a certificate issued.

3.2 The commissioner shall for each certificate of registration issued and for each registration renewal collect an annual registration fee in the amount of thirty dollars (\$30.00) for each nursery and sixty dollars (\$60.00) for each dealership up to and including five (5) dealerships and eighty dollars (\$80.00) for each dealership thereafter. All certificates of registration expire on the thirtieth day of June next after issue.

§61-14-4. Display of Certificates.

4.1. The certificate of registration issued to any nursery that has been inspected and found to be apparently free of dangerously injurious insects and plant diseases shall be conspicuously displayed to the public at the location where the nursery stock is being offered for sale.

§61-14-5. Multiple Sales Locations.

5.1. A registered nursery with one or more sales locations separated from the parent nursery is not required to register each sales location, but shall have a copy of the registration displayed at each separate sales location.

§61-14-6. Revealing of Sources and Posting Certificates.

6.1. All nursery stock dealerships shall inform the Commissioner of the sources of his or her nursery stock and the Commissioner must be satisfied that nursery stock obtained from these sources is free of dangerously injurious insects and plant diseases before a dealership's certificate is issued. The dealership may make amendments to the original list of sources at any time prior to the purchase of stock.

6.2. It is unlawful for any nursery stock dealerships within the State to offer for sale any nursery stock, unless a copy of the current dealership's certificate of registration is conspicuously displayed to the public at the place of business and unless the certificate of inspection or tag which accompanied the order from the registered nursery is available for inspection upon request.

§61-14-7. Reciprocal Registration.

7.1. All nurseries, dealerships, or other persons residing or doing business outside of West Virginia who desire to ship nursery stock into the State must be registered with the department of agriculture in the state in which their business is located. The West Virginia Department of Agriculture will accept as proof of registration the directory of certified nurseries and dealerships published by their resident state department of agriculture, provided their state accepts West Virginia's directory on a reciprocal basis. In those instances where there is no reciprocity, the out-of-state business shall file a copy of their current, valid certificate of registration with the Commissioner, prior to shipment.

§61-14-8. Hinderance To Nursery Inspection.

8.1. When conditions such as the presence of trash, weeds, crowding of stock or other conditions prevent a thorough examination of a nursery, the Commissioner shall provide the nursery with a written statement describing the procedures necessary to correct the problem which prevented a thorough examination of the nursery. After receiving a written response from the nursery that the corrective procedures have been carried out, the Commissioner shall cause an inspection to be made.

§61-14-9. Collection Of Native Nursery Stock.

9.1. Any person collecting native nursery stock in West Virginia shall apply for and receive a dealership's certificate of registration prior to actually digging and/or selling any collected stock, unless that person is already certified as a nursery.

9.2. Any person who anticipates the digging and/or offering for sale of collected native nursery stock shall make proper application to the Commissioner for inspection, prior to collecting each individual shipment. The Commissioner shall designate a time or times and a place or places where the dug plants are to be assembled for inspection. Uninspected plants shall not be moved from the property where they are collected without a specific written directive from the

Commissioner designating the place to which the plants are to be moved for inspection. The Commissioner shall be given notice when the plants are assembled. It is a violation to transport native nursery stock without first obtaining a written directive from the Commissioner making provisions for inspection.

9.3. The Commissioner shall issue a certificate of inspection to the collector for the movement and sale of each shipment of collected plants found to be free of plant pests. This certificate shall cover only the plants inspected and passed at the time of inspection. Plants not passing inspection shall be destroyed or treated as directed by the Commissioner.

§61-14-10. Vegetable Plants.

10.1. All vegetable plants shipped into the State of West Virginia must be certified to have been grown under an official certification program of the State of origin, or to have been inspected and certified to be apparently free of injurious insects, nematodes, and plant diseases on the basis of an inspection no more than three (3) days prior to their removal from the soil.

§61-14-11. Issuance of Federal Phytosanitary Certificates for Export of Agricultural Commodities.

11.1. The Commissioner may issue federal phytosanitary certificates for the export of eligible agricultural commodities. For this service, the Commissioner will charge a fee of ninety nine dollars (\$99.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and fifty seven dollars (\$57.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued. No charge will be assessed for noncommercial shipments.

§61-14-12. Issuance of State Phytosanitary Certificates for Export of Agricultural Commodities.

12.1. The Commissioner may issue state phytosanitary certificates for the export of eligible agricultural commodities. For this service, the Commissioner will charge a fee of fifty dollars (\$50.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and twenty-five dollars (\$25.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued. No charge will be assessed for noncommercial shipments.

§61-14-113. Assessment of Civil Penalties and Procedures for Consent Agreements and Negotiated Settlements.

113.1. Procedure

113.1.a. The civil penalty assessment procedures in this section are designed to include most violations of West Virginia Code §19-12-1 et seq. committed by nurseries and dealerships. However, there may be situations which arise that are not adequately covered by this section. In those cases, the enforcement officer shall determine an appropriate course of action and make a recommendation for that action to the Commissioner. After review of the circumstances, the

Commissioner may concur with the recommendation or give direction for other appropriate action as prescribed under the authority of West Virginia Code §19-12-1 et seq.

§13.1.b. The time interval between the first offense and each repeated offense, beyond which the Commissioner will take no enforcement action and clear the violator's records, will be limited to two years for all inspection and plant certification violations. There is no time limit for registration, quarantine, administrative order, and insect, noxious weed and plant pest dissemination violations.

§13.1.c. The enforcement officer reviewing a case shall prepare a finding of facts surrounding any discovered violation of West Virginia Code §19-12-1 et seq. Once a violation is discovered the enforcement officer shall determine:

§13.1.c.A. The appropriateness of a civil penalty or criminal enforcement action; and

§13.1.c.B. The character of the violation and the appropriate enforcement level as stated in the schedule of penalties contained in Table 61-14-A of this Rule. The violations are categorized into the following types:

§13.1.c.B.(a) Registration Violations;

§13.1.c.B.(b) Inspection Violations;

§13.1.c.B.(c) Plant Certification Violations;

§13.1.c.B.(d) Quarantine Violations; and

§13.1.c.B.(e) Insect, Noxious Weed and Plant Pest Dissemination Violations.

§13.1.d. Upon establishing a level of violation, the enforcement officer shall refer to the schedule of penalty levels contained in Table 61-14-A of this rule to determine a monetary assessment. In determining the level of penalty, the enforcement officer shall consider the following factors:

§13.1.d.A. The gravity of the violation;

§13.1.d.B. The degree of the violator's culpability;

§13.1.d.C. The degree of effort put forth by the violator to comply with West Virginia Code §19-12-1 et seq. and Rules promulgated under the Act; and

§13.1.d.D. The violator's history of prior violations.

§13.1.e. Any denial, suspension, revocation or modification by the Commissioner of a permit, compliance agreement or certificate of registration shall be based on satisfactory evidence

that the action taken will help protect the State's agricultural interests from plant pests and/or noxious weeds or that any of the provisions of the permit, compliance agreement, West Virginia Code §19-12-1 et seq., or its Rules have been violated.

‡‡13.1.f. Any consent agreement or negotiated settlement agreed upon and signed by the violating party and the duly appointed representative of the Commissioner is a penalty levied through an administrative hearing for the purpose of collection and for the purposes of any other action as determined proper and included in the consent agreement or negotiated settlement.

‡‡13.2 Consent Agreements and Negotiated Settlements.

‡‡13.2.a. Consent agreements or negotiated settlements are intended as a mechanism to settle violations without expensive costs to both parties for administrative or criminal hearings. The violations cited in the notice of violation are capable of being recognized by the violator and the penalty settlement can be accomplished without a hearing. The enforcement officer shall provide the violator a written notice of violation, by certified mail or personal service, which includes a finding of fact and a proposed level of enforcement action. If the violator agrees with the proposed level of action, he or she shall sign a consent agreement form and return it with payment of the assessed penalty.

‡‡13.2.b. Negotiated Settlement - Right to informal hearing. In the event that the violator disagrees with the findings of the investigation and/or the level of enforcement action, the violator has twenty (20) calendar days from receipt of the notice of civil penalty to request a hearing. The violator has the option of requesting an informal hearing or may request a formal hearing as prescribed under Sub-division 11.2.g. of this rule. During an informal hearing the violator may submit to the compliance officer any mitigating circumstances as to why the compliance officer should alter the investigative findings or level of enforcement action.

‡‡13.2.c. Notice and Scheduling of Informal Hearing. If the violator requests an informal hearing within the twenty-day period, the compliance officer shall schedule a hearing in accordance with the following procedures:

‡‡13.2.c.A. The compliance officer shall notify any authorized representative of the Commissioner who was involved in the investigation of the violation bringing about the informal hearing, and the violator of the time and place of the informal hearing. In scheduling the location of the informal hearing, the compliance officer shall consider the location of the violation and the violator. The compliance officer may schedule the hearing anywhere in the State of West Virginia;

‡‡13.2.c.B. The compliance officer shall notify the parties at least fifteen (15) calendar days prior to the time of the hearing; and

‡‡13.2.c.C. The compliance officer may continue the informal hearing only for good cause shown.

‡‡13.2.d. Informal Hearing Procedures. An informal hearing, as provided by this Rule, is intended to be an informal discussion of the facts which gave rise to the issuance of a notice

of violation. The compliance officer shall conduct the hearing in the following manner:

4413.2.d.A. The compliance officer shall not strictly apply The West Virginia Rules of Civil Procedure and West Virginia Rules of Evidence;

4413.2.d.B. The compliance officer shall not discuss the case "ex parte" with either the enforcement officer or other department employees involved in the case;

4413.2.d.C. A record of the informal hearing is not required, but any party may request that a record be made at that party's expense. Any other party to the hearing may obtain copies of the record at his or her expense; and

4413.2.d.D. At any formal review proceedings which may occur later, no evidence, as to any statement made by one party at the informal hearing, may be introduced as evidence by another party, nor may any statement be used to impeach a witness, unless the statement is or was available as competent evidence independent of its introduction during the informal hearing.

4413.2.e. Negotiated Settlement - Any settlement of the alleged violation based on agreement between the compliance officer and the violator is a negotiated settlement. The violator and the compliance officer shall sign the negotiated settlement document.

4413.2.f. Written Decision

4413.2.f.A. If the violator and the compliance officer are unable to reach an agreement, the compliance officer shall recommend a penalty to the Commissioner.

4413.2.f.B. Within thirty (30) calendar days following the informal hearing, the Commissioner shall issue and furnish to the violator a written decision affirming, decreasing, or dismissing the initial civil administrative penalty assessment and give the reasons for his or her decision.

4413.2.g. Contested Cases, Right to a Formal Hearing.

4413.2.g.A. As provided in Sub-division 11.2.B. of this Rule or within thirty (30) calendar days after notification of a written decision rendered as a result of an informal hearing, the violator may request a formal hearing before the Commissioner. An administrative hearing officer shall conduct the hearing and the hearing shall comply with the Administrative Procedures Act, West Virginia Code §29A-5-1 et seq.

4413.2.g.B. If no hearing is requested, the compliance officer's decision becomes a final order after the expiration of the thirty-day period and the civil administrative penalty is due and payable.

TABLE 61-14-A

SCHEDULE OF PENALTIES

Registration Violations

Violation - Exposing or offering for sale, selling, delivering, or giving away plants or parts of plants commonly known as nursery stock without having first secured from the Commissioner a certificate of registration. Nursery - (West Virginia Code §19-12-9 and Section 3 of this Rule). Nursery Dealer - (West Virginia Code §19-12-9).

Level of Violation	Level of Penalty
First Offense, No Prior Knowledge	Written Notice
First Offense, Prior Knowledge	\$50 - \$100
Second Offense	\$100 - \$250
Third offense and each repeat offense thereafter.	\$500

Violation - Failure to post the certificate of registration in a conspicuous location at the place of business. Nursery - (Section 4 of this Rule). Nursery Dealer - (Section 6 of this Rule).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$25 - \$50
Third Offense and each repeat offense thereafter.	\$50 - \$100

Violation - Failure of a Nursery Dealer to inform the West Virginia Department of Agriculture about the source of their nursery stock. (Section 6 of this Rule).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$250
Second offense and each repeat offense thereafter. Adverse effects not probable.	\$100 - \$250
Second Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$500 - \$1000

Inspection Violations

Violation - Interfering with an inspector's ability to perform his or her duties. (West Virginia Code §19-12-8).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$100 - \$250
Third Offense and each repeat offense thereafter.	\$500 - \$1000

Violation - Failure to comply with a plant pest control order. (West Virginia Code §19-12-10).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$250
Second Offense and each repeat offense thereafter. Adverse effects not probable.	\$250 - \$500
Second Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$500 - \$1000

Violation - Maintaining conditions which prevent a thorough plant pest examination. (Section 8 of this Rule).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$50 - \$100
Third Offense and each offense thereafter.	\$100

Plant Certification Violations

Violation - Transporting nursery stock without a valid certificate of inspection. (West Virginia Code §19-12-11).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$250
Second Offense. Adverse effects not probable.	\$50 - \$100
Second Offense. Adverse effects probable or demonstrated.	\$250 - \$500
Third Offense and each repeat offense thereafter. Adverse effects not probable.	\$100 - \$250

Third Offense and each repeat offense thereafter. Adverse effects probable or demonstrated. \$500 - \$1000

Violation - Distributing native nursery stock without proper inspection and certification. (Section 9 of this Rule).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$250 - \$500
Second Offense. Adverse effects not probable.	\$100 - \$250
Second Offense. Adverse effects probable or demonstrated.	\$500 - \$750
Third Offense and each repeat offense thereafter. Adverse effects not probable.	\$250 - \$500
Third Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$750 - \$1000

Quarantine Violations

Violation - Failure to comply with the provisions of an administrative order or quarantine. (West Virginia Code §19-12-6).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$500
Second Offense. Adverse effects not probable.	\$300 - \$700
Second Offense. Adverse effects probable or demonstrated.	\$700 - \$1000
Third Offense and each repeat offense thereafter. Adverse effects not probable.	\$500 - \$700
Third Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$1000

Insect, Noxious Weed and Plant Pest Dissemination Violations

Violation - Selling, transporting or distributing plant pests, noxious weeds or insects without a valid permit. (West Virginia Code §19-12-14).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$500

Second Offense and each repeat offense thereafter. Adverse effects not probable.

\$250 - \$500

Second Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.

\$500 - \$1000



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

June 26, 2007

Dear Cooperator:

The West Virginia Department of Agriculture (WVDA) intends to amend the Plant Pest Act Rules to include a fee for issuance of Federal and State phytosanitary certificates for all eligible agricultural commodities. The intended effective date for these fees would be July 2008. The proposed WVDA fees for the federal phytosanitary certificates will be equivalent to the United States Department of Agriculture fees expected to be enacted later this year.

The proposed fee structure, if enacted, will be as follows:

Federal phytosanitary certificates: The Commissioner will charge a fee of ninety nine dollars (\$99.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and fifty seven dollars (\$57.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued. No charge will be assessed for noncommercial shipments.

State phytosanitary certificates: The Commissioner may issue state phytosanitary certificates for the export of eligible agricultural commodities. For this service, the Commissioner will charge a fee of fifty dollars (\$50.00) for export or re-export of a commercial shipment (\$1,250.00 or more in value), and twenty-five dollars (\$25.00) for export or re-export of a low-value commercial shipment (\$1,249.99 or less in value). A fee of fourteen dollars (\$14.00) will be charged for any certificate that is replaced or re-issued. No charge will be assessed for noncommercial shipments.

The purpose of this letter is to inform you of our intentions to start charging for Federal and State phytosanitary certificates as of July 1, 2008, and to provide you with an opportunity to comment on this matter. Comments may be sent to: West Virginia Department of Agriculture, Plant Industries Division, 1900 Kanawha Blvd., East, Charleston, WV 25305-0191. All comments must be received by 11:00 a.m. July 27, 2007.

Sincerely,

Gary W. Gibson, Director
Plant Industries Division
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Office: (304) 558-2212 Fax: (304) 558-2435
Email: ggibson@ag.state.wv.us

NEWS RELEASE July 17, 2007

STATE AGRICULTURE DEPARTMENT INSPECTION PROPOSAL WOULD ASSIST EXPORTERS

West Virginia Commissioner of Agriculture Gus R. Douglass is proposing a plan to allow state inspectors to issue federal phytosanitary certificates, which would streamline export of the state's logs, lumber and other plant material.

A phytosanitary certificate is an official document issued by a state or federal agricultural agency certifying that a regulated article meets the import standards of a receiving state or country.

"If this proposal is approved, it will be of benefit to those agriculture and forestry industries that send logs, lumber and plants from West Virginia to foreign countries, or to states that require phytosanitary certificates, by providing more convenient access to the service," said Commissioner of Agriculture Gus R. Douglass. "International trade is constantly expanding and we need to give our industries every competitive advantage possible."

Currently, the U.S. Department of Agriculture (USDA) and a number of approved states issue such certificates and collect fees for their work. West Virginia could become certified by having personnel trained by USDA, but the West Virginia Legislature has to approve any new fees. The West Virginia Department of Agriculture's (WVDA) proposal would set fees at the same level as USDA's.

WVDA Plant Industries Division Director Gary Gibson noted that the same service is available at coastal ports, but because of the fees charged by other entities at the ports, the overall cost to the exporter is much higher. Gibson also noted that the number of requests has gone up in recent years. In 1996, WVDA assisted with 97 phytosanitary inspections. From January through August of 2006 [most recent data], WVDA conducted 596 visits. If approved, the fees would go into effect on July 1, 2008.

The West Virginia Department of Agriculture protects plant, animal and human health through a variety of scientific, regulatory and consumer protection programs, as mandated by state law. The Commissioner of Agriculture is one of six statewide elected officials in West Virginia. Currently, Commissioner Gus R. Douglass is the longest-serving agriculture commissioner in the nation. For more information, visit www.wvagriculture.org.

Public Comments and Agency Responses

Comment: 6-28-07 (9:41 a.m.) Email from Corliss Richard to Gary Gibson requesting agency to update mailing list, as R&R has been out of business for over ten years.

From: Corliss Richard [mailto:crichard@3wlogic.net]
Sent: Thursday, June 28, 2007 9:41 AM
To: ggibson@ag.state.wv.us
Subject: [SPAM] - State phytosanitary certificate - Sending mail server found on sbl.spamhaus.org

Re your recent letter to R & R Logging asking for suggestions. My suggestion is that you update your mailing list as R & R Logging has been out of business for over ten years. My husband was killed in 1996 and I closed his business the beginning of 1997.

Response: Forwarded request to Plant Industries Division Executive Assistant Celestine Ervin and she removed R&R Logging from our mailing list.

Comment: 6-28-07 (3:15 p.m.) Roy Henderson (558-3460) telephoned Sherri F. Hutchinson with questions about phytosanitary certificates – who needs them and why. Do you have to have them? Was concerned about shipping lumber to other states and countries.

Response: Mrs. Hutchinson told Mr. Henderson that it all depended on the import requirements on the receiving end. Stated that if without a phytosanitary certificate material might get hung up at the port and then the inspection would cost him more at that point. Gave example of state phytosanitary certificate – send petunias to CA, needs to be treated with insecticide to kill Japanese beetle larvae. Also discussed emerald ash borer, gypsy moth defoliation and Sudden Oak Death (SOD). Mr. Henderson requested SOD fact sheet. Gave that request to Forest Pathologist Jill Rose who mailed the information to. Appalachian Timber Services, 393 Edgar Given Parkway, Sutton, WV 26601 on June 29.

Comment: 6-28-07 (4:12 p.m.) Judy Arbogast contacted Sherri F. Hutchinson about our scoping letter and doesn't understand it. Her husband no longer does logging – is this going to cost them?

Response: Mrs. Hutchinson told Ms. Arbogast that the rule change would not apply to her and her husband and to just disregard the letter and we will take his name off our mailing list.

Comment: 7/2/07 (9:45 a.m.) – Randy Plaughter (782-4108, Salem) contacted Gary W. Gibson. Mr. Plaughter's father owns a farm/timber sales and once sent cattle to China. Asked about impact to him, if any.

Response: Mr. Plaughter was told that if he wanted to send an agricultural product out of the country and that product needed to be accompanied by a federal phytosanitary certificate he would either have to pay the USDA for the certification or the West Virginia Department of Agriculture, if the proposed rule change was approved.

Comment: 7/2/07 (10:00 a.m.) - Jay Engle, Meade/Westvaco (304-392-1604) called and spoke to Plant Regulatory Officer Michael Arnold. He had questions about how the fee structure and guidelines would affect Meade/Westvaco and the pulp industry. They do consider selling veneer logs from time to time and wanted to get a better feel for the situation. Mr. Engle also inquired if he was the only recipient of this letter within the company. The letter was put on his desk since the individual on the mailing address was now retired.

Response: Mr. Arnold told Mr. Engle that the fees would impact Meade/Westvaco and the pulp industry if they needed a federal phytosanitary certificate to send logs or pulpwood overseas. With the proposed rule change the shipper could either pay the USDA or the West Virginia Department of Agriculture for the certificate.

Comment: On 7/2/07 (10:50 a.m.) – Stanley Talago (265-0670 – Bridgeport), operator of a nursery contacted Gary W. Gibson and asked if the proposed fees would impact him.

Response: Mr. Gibson told Mr. Talago the rule change would probably not have any affect on his business since he did not sent plant material out of the country or to states that require state phytosanitary certificates.

Comment: 7-2-07 (3:10 p.m.) Manzella Summers (304) 595-5789 contacted Sherri F. Hutchinson concerning the scoping letter and wondered what to do about letter. Her husband had not been a logger for over 6 years. Does this impact him?

Response: Mrs. Hutchinson told Mrs. Summer that there would be no impact and to disregard the letter.

Comment: 7/3/07 (8:50 a.m.) – Hoy Wiles (789-6218 – Terra Alta) telephoned Gary W. Gibson and asked if the amendments would impact him.

Response: After learning that Mr. Wiles did not export anything Mr. Gibson told him that the rule change would not affect him.

Comment: 7-11-07 (10:40 a.m.) John Chidester, of North Hills Nursery, spoke to Sherri f. Hutchinson and commented that the phytosanitary certificate fees would put him out of business when they became effective. He said he had a very small business and was trying to expand via internet sales which will mean out-of-state sales. He wanted to know if small businesses could be exempt. He claimed to have sold \$11,000 worth of plants this year and hoping to get to \$25,000. He said he can't afford to pay a \$25 phytosanitary certificate when one plant plus shipping is less than \$10.

Response: Mrs. Hutchinson told Mr. Chidester that it was too late to change wording of the rule change as it was already submitted. She said she would talk to Gary W. Gibson for him to see what Mr. Gibson said (he really wanted to talk to Mr. Gibson). Mrs. Hutchinson discussed the matter with Mr. Gibson and Plant Regulatory Officer Michael Arnold and discovered that Mr. Chedister has never requested a state or federal phytosanitary certificate, but that could change due to internet sales. Mrs. Hutchinson followed up with a return call to Mr. Chidester on 7-12-07 at 8:10 a.m. She explained that the rule passed it was to be effective July 1, 2008. She also told him that only states with Japanese beetle quarantines required a state phytosanitary certificate on plant shipments from West Virginia and those states were Arizona, California, Hawaii, Idaho, Montana, Oregon, Utah, and Washington. She suggested that on his web page he put a disclaimer that certification fees would be passed on to the consumer for plant shipments to those states or suggested that he only ship when he had large orders to cut down on the number of phytosanitary certificates needed. Mrs. Hutchinson sent the following letter to Mr. Chidester:

July 12, 2007

Mr. John Chidester
North Hills Nursery
P.O. Box 129
Rock Cave, WV 26234

Dear Mr. Chidester:

As promised during our phone conversation earlier this morning, I am writing in response to your comment on the proposed legislature to amend the rule allowing the West Virginia Department of Agriculture to charge for issuance of state phytosanitary certificates. Since this has already been filed with the Secretary of State's Office, it is too late to make changes at this point. If passed, this will tentatively be in effect on July 1, 2008. You expressed concern that this will put you out of business because of your small business status. I discussed your concerns with Gary Gibson and Mike Arnold. Mike says he has never issued you a phytosanitary certificate so far, but that your internet sales make this a possibility in the future.

It will definitely impact you, but, hopefully, not as severely as you are anticipating. Keep in mind that not all states require a state phytosanitary certificate to accompany plant shipments. Only Arizona, California, Hawaii, Idaho, Montana, Oregon, Utah and Washington are concerned about introducing Japanese beetle into their state and require a certificate. If plants are sent without the proper certificate, the receiving state has the right to seize the shipment and destroy it.

My suggestion to you would be to put a disclaimer on your web site advising consumers from these states that a phytosanitary certificate is necessary prior to shipment and that they will be responsible for certificate issuance costs after July 1, 2008 (if the amendment passes). Just make it a handling cost.

I hope this has addressed your concerns. I have enclosed my business card for your reference in case you have any further questions.

Sincerely,

Sherri Hutchinson
Assistant Director
Agricultural Pest Survey Programs Unit
Plant Industries Division

Enclosure

Comment: On 7-19-07, Barry Glick (Sunshine Farm and Gardens, Renick) sent an email to Gary W. Gibson (see below) and said that having to pay even a few dollars on a \$20.00 plant order to California, Washington or Oregon will result in a loss of all sales to those states, what can we do here?

From: Sunshine Farm & Gardens [mailto:barry@sunfarm.com]
Sent: Thursday, July 19, 2007 11:18 AM
To: Eric Ewing ; ggibson@ag.state.wv.us
Subject: HELP

Having to pay even a few dollars on a 20.00 order of plants to Cal Wash or OR will lose all sales to those states, what can we do here?

THANKS

Barry
Happy Gardening,
Barry Glick aka Glicksterus maximus aka The Cyber-Plantsman Sunshine
Farm & Gardens HC 67 Box 539 B Renick WV 24966 USA
304-497-2208
EMAIL - barry@sunfarm.com

<mailto:barry@sunfarm.com>

Altitude 3650 feet * Latitude 38.04N * Longitude 80.26W * USDA Zone 5

TAKE A VIRTUAL TOUR OF MY GARDENS AT <http://www.sunfarm.com/tour/>

<<http://www.sunfarm.com/tour/>> ***SUNSHINE FARM & GARDENS WEB PAGE***

<http://www.sunfarm.com>

<<http://www.sunfarm.com/>> ***SPECIAL OFFERS***

<http://sunfarm.com/specials/>

<<http://sunfarm.com/specials/>> ****

Response:

At 11:22 AM 7/20/2007, you wrote:

Good Morning Barry,

This email is in response to your concerns about the proposed fees for issuing state and federal phytosanitary certificates.

The reason the West Virginia Department of Agriculture (WVDA) has decided to start charging fees for state and federal phytosanitary certificates is due to the workload that has been put on our plant regulatory staff as a result of increased plant material exports from West Virginia and the increased travel costs associated with this work. In your situation as a businessman you could pass your operating costs on to your customers. As a state agency, the money we operate on is what the State Legislature gives us, plus any fees that are generated. The fees we are proposing to charge are in line with what the U.S. Department of Agriculture is proposing to charge for comparable service and are based on the value of the commodity shipped.

I hope that as a businessman you can appreciate our point of view with regards to this matter. I know that my response is not what you were hoping to hear, but the fact is the plant regulatory unit of my division can not continue to operate at the level necessary to keep up with the requests we get for certifying plant material for export without

having a secure funding base. When our costs of operating a program increase we either have to cut back on the services that generate the costs or ask for more funding.

We certainly do not want to reduce our ability to export West Virginia products.

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Telephone: (304) 558-2212
Fax: (304) 558-2435

Comment:

From: Sunshine Farm & Gardens [<mailto:barry@sunfarm.com>
<<mailto:barry@sunfarm.com>>]

Sent: Friday, July 20, 2007 11:49 AM

To: Gary Gibson

Subject: Re: Phytosanitary Fees

I understand your point, but it WILL stop ALL of our shipments to CA WA &

OR, can we get you more money from the legislature?

Many other states do not charge.

THANKS

Response:

At 12:38 PM 7/20/2007, you wrote:

If our proposal is accepted it should provide the help we need. In addition to plant shipments that require phytosanitary certificates, we will also certify logs, lumber and other West Virginia agricultural products for export. I believe you will find that states that do not charge for specialty fees will do so in the near future. Their cost for providing such service will necessitate the use of fees.

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Telephone: (304) 558-2212
Fax: (304) 558-2435

Comment:

-----Original Message-----

From: Sunshine Farm & Gardens [mailto:barry@sunfarm.com]
Sent: Friday, July 20, 2007 1:57 PM
To: Gary Gibson
Subject: RE: Phytosanitary Fees

THANKS

Comments: On 7-20-07 (12:30 p.m.) the owner of J.D. Logging visited the office of Plant Industries Division and spoke to Sherri F. Hutchinson about whether or not the proposed fees would impact him.

Response: Mrs. Hutchinson asked him if he sold out of state or out of the country and he said no, just in state. Mrs. Hutchinson told him it would not impact him at all.

Comment: At 9:50 a.m. on 7-17-07, Executive Assistant Celestine Ervin contacted Sherri Hutchinson and left a message for her to contact Travis Lambert at 927-0247 regarding the scoping letter.

Response: At 9:50 a.m. Mrs. Hutchinson began trying to return Mr. Lambert's call. At 11:27 a.m. she got through to his voice mail and left a message for him to call her back. He returned her call and said that he worked for Burke/Parsons/Bowlby and that they sold treated railroad ties. Mrs. Hutchinson told him that the proposed rule change (fee structure) should not impact the company because they are shipping treated ties – not raw plant material.

Comment: 7/19/07 – Email from Mr. John Chidester, Rock Cave to Gary W. Gibson (see below). Expressed concern over how the proposed fees would impact his mail order sales.

From: John Chidester [mailto:FuddyDuddy32@cebridge.net]
Sent: Wednesday, July 18, 2007 10:19 AM
To: Bill Hamilton; ggibson@ag.state.wv.us
Subject: [SPAM] - Re: WV Dept of Agriculture Proposed Changes to Pest Act Rules - Sending mail server found on block.blars.org

Reference phone conversation with Sherri Hutchinson on July 11, 2007 and her letter of July 12. Request that the following wording be changed to the proposed rules. Where it reads "No charge will be assessed for noncommercial shipments". Change to read " Shipments under \$300.00 and noncommercial shipments, no charge will be assessed."

Because my shipments average \$20 to \$160 the proposed added cost for phytosanitary certification would prohibit me from ever shipping into these states. I have currently added a disclaimer to my website as recommended in Sherri's letter stating that I cannot ship into the restricted states. However, because my internet sales just started as of this year and comprises at least 75% of my overall sales, I anticipate that the proposed cost for inspecting small orders such as I have would severely restrict my future sales. I am sending this email so that you will have in writing my comments on this proposed legislation. Copy to Delegate Bill Hamilton. John Chidester at North Hills Nursery.

----- Original Message -----

From: [Bill Hamilton](#)

To: FuddyDuddy32@cebridge.net ; john_chdstr@yahoo.com

Sent: Wednesday, July 18, 2007 10:53 PM

Subject: WV Dept of Agriculture

Mr. John Chidester:

Please email me a copy of the letter your are emailing to Mr. Gibson.

Thanks

Delegate Bill Hamilton

Response:

From: Gary Gibson [<mailto:GGibson@ag.state.wv.us>]

Sent: Thursday, July 19, 2007 8:43 AM

To: 'John Chidester'; 'Bill Hamilton'

Cc: Sherri Hutchinson

Subject: RE: [SPAM] - Re: WV Dept of Agriculture Proposed Changes to Pest Act Rules -
Sending mail server found on block.blars.org

Dear Mr. Chidester,

Thank you for taking the time to share with me your concerns about the proposed fee structure for issuing phytosanitary certificates.

The reason the West Virginia Department of Agriculture (WVDA) has decided to start charging fees for state and federal phytosanitary certificates is due to the workload that has been put on our plant regulatory staff as a result of increased plant material exports from West Virginia and the increased travel costs associated with this work. Your statement that the proposed cost for inspecting small orders such as yours would severely restrict your future sales has much in common with the situation facing the WVDA Plant Regulatory Program. It may cost our agency the same amount of time and travel expense to issue a phytosanitary certificate for your \$20 order as it does to certify a \$20,000 shipment of lumber going Indonesia. Yet your request that we base our fee on an amount higher than your average plant shipment means that we would continue to spend more resources and receive nothing in return. In your situation as a businessman you could pass your operating costs on to your customers. As a state agency, the money we operate on is what the State Legislature gives us, plus any fees that are generated. The fees we are proposing to charge are in line with what the U.S. Department of Agriculture is proposing to charge for comparable service and are based on the value of the commodity shipped.

In the letter that Sherri Hutchinson sent you, dated July 12, she gave you some ideas for dealing with the proposed phytosanitary certificate fees. One was to avoid sending regulated material to the eight or so states that require phytosanitary certificates because of Japanese beetle. Another option would be to state on your website that such fees would have to be paid for shipments to certain states. Another option might be to simply increase the price on all your orders by a small amount to cover the cost of certification fees. There are probably more options that a businessman like you can create. After checking our records it appears that you have never requested a state or federal phytosanitary certificate to send plant material, so the proposed fees may not affect your business.

I hope the time I have spent generating this response has been worthwhile. I hope that as a businessman you can appreciate our point of view with regards to this matter. I know that my response is not what you were hoping to hear, but the fact is the plant regulatory unit of my division can not continue to operate at the level necessary to keep up with the requests we get for certifying plant material for export without having a secure funding base. When our costs of operating a program increase we either have to cut back on the services that generate the costs or ask for more funding. We certainly do not want to reduce our ability to export West Virginia products.

Thanks again for your inquiry and I wish you the very best of luck.

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Telephone: (304) 558-2212
Fax: (304) 558-2435

Comments: On 7-20-07 (10:08 a.m.) - Jake Phillips (478-2500) of Hinch Cliff Lumber, Hendricks, WV called Sherri F. Hutchinson and said that he makes and treats pallets and ships to vendors – does the rule change impact him?

Response: After discussing the issue with Mr. Philips, Mrs. Hutchinson told him the rule change would not impact him or his business.

Comment: On 7-23-07, Dinah Campi of Floral Acres Nursery, French Creek, WV emailed Gary W. Gibson regarding the proposed rule change. She was concerned about the effect the fees would have on her plant shipments. (See below).

From: Dinah Campi [mailto:dinah@floralacres.com]
Sent: Friday, July 20, 2007 9:16 PM
To: ggibson@ag.state.wv.us
Subject: amendment to Plant Pest Act

Gary W. Gibson, Director
Plant Industries Division
1900 Kanawha Boulevard, East
Charleston, WV 25305

July 20th, 2007

Dear Mr. Gibson;

I have recently become aware of a pending change to the Plant Pest Act that would just about put me out of business. As I understand the proposal, the Dept of Agriculture would start charging me \$39.00 for a certificate on each plant order.

Please tell me this isnt so.

I own a small daylily nursery in French Creek, WV and would not be able to continue to sell online if I had to pay this high fee.

My website is www.floralacres.com

If I sold a \$25.00 daylily order, my customer would expect to pay the shipping charge. This is expected with any mailorder. The extra fee would make it impossible for me to continue to sell my product.

Please let me know if you recieve this email.

I am very upset. I am sending this comment as I am afraid that you will not get my letter in time. PLEASE dont pass this proposal.

Thank You,
Dinah Campi
owner
FLORAL ACRES
Rt 1 Box 26E
French Creek, WV 26218

304-924-6462

Response: Mr. Gibson emailed he back and explained that she had never requested a phytosanitary certificate in all the years that she has been a registered nursery. (See below).

From: Gary Gibson [mailto:GGibson@ag.state.wv.us]
Sent: Monday, July 23, 2007 10:47 AM
To: 'Dinah Campi'
Cc: Sherri Hutchinson
Subject: RE: amendment to Plant Pest Act

Dear Ms. Campi,

This email is in response to your concerns about the proposed fees for issuing state and federal phytosanitary certificates.

I checked our records and could not find an instance where we have ever issued a phytosanitary certificate to your business. I did see where you have maintained a nursery registration with the West Virginia Department of Agriculture for several years, and that registration expired three weeks ago. So judging from past experience, the proposed fees would likely not impact your business.

The reason the West Virginia Department of Agriculture (WVDA) has decided to start charging fees for state and federal phytosanitary certificates is due to the workload that has been put on our plant regulatory staff as a result of increased plant material exports from West Virginia and the increased travel costs associated with this work. In your situation as a business owner you could pass your operating costs on to your customers. As a state agency, the money we operate on is what the State Legislature gives us, plus any fees that are generated. The fees we are proposing to charge are in line with what the U.S. Department of Agriculture is proposing to charge for comparable service and are based on the value of the commodity shipped.

I hope that as a business owner you can appreciate our point of view with regards to this matter. The fact is the plant regulatory unit of my division can not continue to operate at the level necessary to keep up with the requests we get for certifying plant material for export without having a secure funding base. When our costs of operating a program increase we either have to cut back on the services that generate the costs or ask for more funding. We certainly do not want to reduce our ability to export West Virginia products.

Thank you for responding to our proposed amendments to the West Virginia Plant Pest Act. I hope I have helped alleviate your concerns. It appears that our proposed fee schedule will no affect you, based on your history with this agency. If you have any further questions about this matter, please contact me.

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Telephone: (304) 558-2212
Fax: (304) 558-2435

Comment: Continuation of email from Dinah Campi

From: Dinah Campi [mailto:dinah@floralacres.com]
Sent: Monday, July 23, 2007 1:09 PM
To: Gary Gibson
Subject: Re: amendment to Plant Pest Act

Hi Gary

My state inspector was here last week and gave me the papers and reminded me that my license had expired. I have already taken care of that. I can only pray now that I will have my bookwork in order as I do not want to be breaking any laws if I ship any plants. The West Virginia Wildlife Center sent out an agent two weeks ago to inspect crop damage from the deer and gave me special permits to thin out the herd that ate all the buds off the daylilies. It seems to be a rough year for the daylily business. Thanks for your quick response as I am concerned about the proposal keeping me from doing online sales.

Sincerely,

Dinah Campi

Response: Again to Ms. Campi's email message:

----- Original Message -----

From: Gary Gibson

To: 'Dinah Campi'

Cc: Sherri Hutchinson

Sent: Monday, July 23, 2007 1:24 PM

Subject: RE: amendment to Plant Pest Act

The states that will probably require a state phytosanitary certificate are: California, Oregon, Washington, and a couple of other western states. Like I said in my earlier email, you haven't needed a state or federal phytosanitary certificate in the past and if you avoid the few states that require them you won't even know that the fees are in place. If you have any questions about the regulations of other states, check with Plant Regulatory Officer Mike Arnold. He would be the person to work with you on such matters.

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Telephone: (304) 558-2212
Fax: (304) 558-2435

Comment: Final email from Ms. Campi.

From: Dinah Campi [mailto:dinah@floralacres.com]

Sent: Monday, July 23, 2007 5:53 PM

To: Gary Gibson

Subject: Re: amendment to Plant Pest Act

Hi again;

Thanks again for the quick response - I do appreciate it

Dinah

JUL 24 2007

Gary W. Gibson
Plant Industries Division
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191

July 21, 2007

RE: proposed amendment to the Plant Pest Act Rules

Dear Mr. Gibson;

Hopefully you received my email yesterday asking you to consider how this amendment would affect small nurseries like mine. I am sending this letter by registered mail just to make sure you get this by the time requirement. This is too important not to make sure you receive it.

I sell daylilies online and if you will look at my website, www.floralacres.com you will see that the average price is \$5.00 for 1 daylily order. Most times a customer will order several, since they are required to pay shipping with their order. Thus, an average order is between \$20.00 to \$30.00.

If I have to add this additional fee to my orders, I might as well close down the nursery. This would put me out of business. PLEASE DON'T ADD THIS ADDITIONAL FEE REQUIREMENT.

I have been told in the past that you cant fight city hall, etc etc....but...This will put me out of business. I have been operating this small nursery in Upshur county for about 10 years and I have to place it in your hands.

Sincerely,



Dinah Campi
Owner
FLORAL ACRES
Rt 1 Box 26E
French Creek, WV 26218

304-924-6462
Dinah@floralacres.com