

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #3

**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: 67

CITE AUTHORITY: Chapter 19, Article 12, Section 3

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

IF NO, SERIES NUMBER OF NEW 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.

Robert G. Moses

5.40

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

LEGISLATIVE RULE TITLE: West Virginia Plant Pest Act

1. Authorizing statute(s) citation Chapter 19 Article 12, Section 3

2. a. Date filed in State Register with Notice of Hearing

June 23, 1995

b. What other notice, including advertising, did you give of the hearing?

For the public comment period I released a news article to statewide media. Written comments were solicited from: West Virginia

Nurserymen's Association, The West Virginia Christmas Tree Growers

Association, and the U.S. Department of Animal and Plant Health Inspection Service.

c. Date of Hearing(s) Comment period was from June 24, 1995 to

4:00 p.m. on July 24, 1995.

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

Attached _____ No comments received NO

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

August 1, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Gary W. Gibson, Assistant Director, Plant Industries Division

West Virginia Department of Agriculture, 1900 Kanawha Blvd., East

Charleston, West Virginia 25305-0191 (304) 558-2212

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.

N/A

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

5.32. It is unlawful for any dealer in nursery stock within the State to offer for sale any nursery stock unless a copy of the current dealer's certificate 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.

§621-14-6. Reciprocal Registration.

6.1. All nurserymen, dealers, or other persons residing or doing business outside of West Virginia who desire to ship nursery stock into the state shall file once each year with the West Virginia Department of Agriculture, previous to shipment, a signed copy of their current resident State certificate of inspection or dealer's registration and a list of the names and addresses of all salesmen or agents operating in the State of West Virginia providing that their resident State accepts West Virginia on a reciprocal basis. 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 dealers 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 firm must file a copy of their current, valid certificate of registration with the commissioner, prior to shipment.

~~§61-14-7. Agent Regulation.~~

~~7.1. Agent's application for registration will be processed only if that agent's name has been filed with the Department by the registered firm or firms which such agent proposes to represent.~~

~~7.2. The agent's permit shall be carried on his or her person at all times.~~

~~7.3. Agents must leave a copy of the purchase order or contract with each customer.~~

§61-14-87. Hinderance To Nursery Inspection.

7.1. When such conditions as the presence of trash, weeds, crowding of stock or other conditions prevent a thorough examination of a nursery, the inspector shall provide a statement in writing to the nurseryman setting forth the treatment to be given. Upon written response from the nurseryman, that said instructions have been carried out, the inspection will be made.

§61-14-98. Collection Of Native Nursery Stock.

98.1. Any person collecting native nursery stock in West Virginia shall apply for and receive a dealer's certificate prior to actually digging and/or selling any such collected stock, unless such person is already certified as a nurseryman.

98.2. Any person who anticipates the digging and/or offering for sale of collected native nursery stock shall make proper application for inspection, prior to collecting each individual shipment. Inspectors 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 inspector designating the place to which such plants are to be moved for inspection. Notice shall be given to the inspector when such plants are so assembled. It shall be considered a violation of these regulations to transport native stock without first obtaining a written directive from the nursery inspector making provisions for inspection.

98.3. A certificate of inspection will be given to the collector for the movement and sale of each shipment of such 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 inspector.

§61-14-109. Vegetable Plants.

109.1. 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 any inspection no more than three (3) days prior to removal from the soil.

§61-14-110. Definitions.

~~11.1. The definition of infested or infected shall be interpreted as "Actually Infested or Infected with a Pest or so Exposed to Infestation that it would be reasonable to believe that Infestation Exists."~~

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

10.2. "Insect, Noxious Weed and Plant Pest Dissemination Violation" means any violation of Section 19-12-14 of the Act, which requires that a permit be issued for the introduction or distribution of live insects, noxious weeds or plant pests.

10.3. "Inspection Violation" means any violation of Sections 19-12-11, 19-12-8 or 19-12-10 of the Act or Section 8 of Rules and Regulations related to the discharge of an inspector's duties.

10.4. "Plant Certification Violation" means any violation of Sections 9 or 10 of the Rules and Regulations that relate to the certification of plant material.

10.5. "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 Section 19-12-6 of the Act.

10.6. "Registration Violation" means any violation of Section 19-12-9 of the Act or Sections 2, 3, 4, 5, or 9 of the Rules and Regulations related to the requirements for registering a nursery or nursery dealer.

61-14-11. Assessment of Civil Penalties and Procedures for Consent Agreements and Negotiated Settlements.

11.1. Procedure

11.1.a. These civil penalty assessment procedures are designed to include most violations of the Act committed by nurseries and nursery dealers. However, there may be situations which arise that are not adequately covered by these rules. In such cases, the enforcement officer shall determine an appropriate course of action and make a recommendation for such 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 the Act.

11.1.b. If an offense, other than a violation of an administrative order, a quarantine, or Sections 19-12-9 or 19-12-14 of the Act, is not repeated within a period of two years, the violator's record shall be cleared. There is no time limit for violations of an administrative order, a quarantine, or Sections 19-12-9 or 19-12-14 of the Act.

11.1.c. The enforcement officer reviewing a case shall prepare a finding of facts surrounding any discovered violation of the Act. Once a violation is discovered the enforcement officer shall determine:

11.1.c.A. The appropriateness of a civil penalty or criminal enforcement action and

11.1.c.B. The character of the violation and the appropriate enforcement level as stated in the schedule of penalty codes contained in Table 61-14-A of this rule. The violations are categorized into the following types:

11.1.c.B.(a) Registration Violations,

11.1.c.B.(b) Inspection Violations,

11.1.c.B.(c) Plant Certification Violations,

11.1.c.B.(d) Quarantine Violations, and

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

11.1.d. Upon establishing a penalty code, 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:

11.1.d.A. The gravity of the violation,

11.1.d.B. The degree of the violator's culpability,

11.1.d.C. The degree of effort put forth by the violator to comply with the Act and Rules and Regulations promulgated under the Act, and

11.1.d.D. The violator's history of prior violations.

11.1.e. Any denial, suspension, revocation or modification 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, the Act or its rules and regulations have been violated.

11.1.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 purposes of collection and such other action as determined proper and included in the consent agreement or negotiated settlement.

§61-11.2 Consent Agreements and Negotiated Settlements.

11.2.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 shall sign a consent agreement form and return it with payment of the assessed penalty.

11.2.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 their 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-section 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.

11.2.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:

11.2.c.A. The compliance officer shall notify any inspector, or other 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.

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

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

11.2.d. Informal Hearing Procedures. An informal hearing, as provided by these regulations, 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:

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

11.2.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.

11.2.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 their expense.

11.2.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.

11.2.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.

11.2.f. Written Decision

11.2.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.

11.2.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 their decision.

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

11.2.g.A. As provided in Sub-section 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.

11.2.g.B. If no hearing is requested, the compliance officer's decision shall become 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 - (Section 19-12-9 of the Act and Section 2 of the Rules and Regulations). Nursery Dealer - (Section 19-12-9 of the Act).

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

Violation - Failure to post the certificate of registration in a conspicuous location at the place of business. Nursery - (Section 3 of the Rules and Regulations). Nursery Dealer - (Section 5 of the Rules and Regulations).

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

Violation - Failure of a Nursery Dealer to inform the West Virginia Department of Agriculture about the source(s) of their nursery stock. (Section 5 of the Rules and Regulations).

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

Inspection Violations

Violation - Interfering with an inspector's ability to perform their duties. (Section 19-12-8 of the Act).

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

Violation - Failure to comply with a plant pest control order. (Section 19-12-10 of the Act).

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

Violation - Maintaining conditions which prevent a thorough plant pest examination. (Section 8 of the Rules and Regulations).

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

Plant Certification Violations

Violation - Transporting nursery stock without a valid certificate of inspection. (Section 19-12-11 of the Act).

| <u>Level of Violation</u> | <u>Level of Penalty</u> |
|--|-------------------------|
| <u>First Offense. Adverse effects not probable.</u> | <u>Written Notice</u> |
| <u>First Offense. Adverse effects probable or demonstrated.</u> | <u>\$100 - \$250</u> |
| <u>Second Offense. Adverse effects not probable.</u> | <u>\$50 - \$100</u> |
| <u>Second Offense. Adverse effects probable or demonstrated.</u> | <u>\$250 - \$500</u> |
| <u>Third Offense and each repeat offense thereafter. Adverse effects not probable.</u> | <u>\$100 - \$250</u> |
| <u>Third Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.</u> | <u>\$500 - \$1000</u> |

Violation - Distributing native nursery stock without proper inspection and certification. (Section 9 of the Rules and Regulations).

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

Quarantine Violations

Violation - Failure to comply with the provisions of an administrative order or quarantine. (Section 19-12-6 of the Act).

| <u>Level of Violation</u> | <u>Level of Penalty</u> |
|--|-------------------------------|
| <u>First Offense. Adverse effects not probable.</u> | <u>Written Notice - \$250</u> |
| <u>First Offense. Adverse effects probable or demonstrated.</u> | <u>\$100 - \$500</u> |
| <u>Second Offense. Adverse effects not probable.</u> | <u>\$300 - \$700</u> |
| <u>Second Offense. Adverse effects probable or demonstrated.</u> | <u>\$700 - \$1000</u> |
| <u>Third Offense and each repeat offense thereafter. Adverse effects not probable.</u> | <u>\$500 - \$700</u> |
| <u>Third Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.</u> | <u>\$1000</u> |

Insect, Noxious Weed and Plant Pest Dissemination Violations

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

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Plant Pest Act

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: Plant Industries Division
1900 Kanawha Boulevard, East
Charleston, West Virginia, 25305-0191

1. Effect of Proposed Rule

| | ANNUAL FISCAL YEAR | | | | |
|-----------------------------|--------------------|----------|---------|------|-----------|
| | INCREASE | DECREASE | CURRENT | NEXT | HEREAFTER |
| <u>ESTIMATED TOTAL COST</u> | \$ | \$ | \$ | \$ | \$ |
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 |
| CURRENT EXPENSE | 0 | 0 | 0 | 0 | 0 |
| REPAIRS & ALTERNATIONS | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 |

2. Explanation of above estimates: *N/A*

3. Objectives of these rules: 1) To eliminate unnecessary or outdated regulations
 2) To bring the system used for identifying out-of-state sources of nursery stock into line with those used by other states, which will result in easier access to out-of-state markets for West Virginia nurserymen. 3) To provide a system for levying civil administrative penalties against those who violate the West Virginia Plant Pest Act without expensive costs to both parties for administrative or criminal hearings.

Rule Title: West Virginia Plant Pest Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Negligible. West Virginia nurserymen will be able to market their nursery stock in some states without having to file certain documents. This will eliminate some postage and paperwork.

C. Economic Impact on Citizens/Public at Large.

Violators of the Plant Pest Act will be able to settle violations without expensive costs to the state and the violator for administrative or criminal hearings.

Date:

8-1-95

Signature of Agency Head or Authorized Representative

Robert B. Moore



FORGING A NEW ERA IN WEST VIRGINIA AGRICULTURE

Gus R. Douglass, Commissioner
Robert G. "Bob" Morris, Assistant Commissioner

SUMMARY

West Virginia Plant Pest Act Rules and Regulations

§61-14-3 et seq.

Amendments To Existing Rule

Four rules changes are being proposed for the West Virginia Plant Pest Act. Each will enable the West Virginia Department of Agriculture (WVDA) to conduct its plant pest control activities in a more efficient and cost effective manner, while improving the ability of in-state nurseries to market their nursery stock in other states.

Section 7, which regulates nursery agents, will be eliminated. Agents are individuals who solicit orders for nursery stock while working under the direct or partial control of a registered nursery or nursery dealer. They represented a nursery or nursery dealer as a "door-to-door salesperson". Twenty years ago, the WVDA had dozens of agents registered. Today, there are none. Mailorder nursery catalogs and readily accessible nursery outlets at shopping malls have eliminated demand for the door-to-door nursery salesperson, as well as most other forms of door-to-door sales. As long as Section 7 remains one of the provisions of the West Virginia Plant Pest Act it will continue to confuse individuals and firms which are trying to comply with the Act. They think that Section 7 requires them to register all their employees as agents, and that was not the intent of the regulation.

Section 5 will be amended by deleting sub-section 5.2, which requires nursery dealers to submit the "names and addresses of all salesmen or agents operating in the State of West Virginia". Removal of sub-section 5.2 will coincide with the elimination of Section 7.

Section 6 requires out-of-state nurseries and nursery dealers to annually file a signed copy of their resident state certificate of registration with the WVDA, prior to shipping nursery stock into the State. An amendment to Section 6 will allow the use of nursery and nursery dealer directories, compiled and distributed by state departments of agriculture, to verify out-of-state registrations, in lieu of the individual filing of certificates. Many states are now using this method of verifying registrations. It eliminates additional clerical work and, when there is reciprocity, eliminates the need for in-state nurserymen to file a copy of their certificate of registration with other states, prior to shipping nursery stock into that state.

The proposed system of assessing civil administrative penalties will allow for the settlement of violations of West Virginia Plant Pest Act without expensive costs to both the violator and the WVDA for administrative or criminal hearings.

STATEMENT OF CIRCUMSTANCES

West Virginia Plant Pest Act Rules and Regulations

§61-14-3 et seq.

Amendments to Existing Rule

Four rule changes are being proposed for the West Virginia Plant Pest Act. Each will enable the West Virginia Department of Agriculture (WVDA) to conduct its plant pest control activities in a more efficient and cost effective manner, while improving the ability of in-state nurseries to market their nursery stock in other states.

Section 7 regulates nursery agents, individuals who solicit orders for nursery stock while working under the direct or partial control of a registered nursery or nursery dealer. Twenty years ago, the WVDA had dozens of agents registered. Today, there are none. Section 7 confuses individuals and firms which are trying to comply with the Act. They think that Section 7 requires them to register all their employees as agents, and that was not the intent of the regulation. Removal of Sub-section 5.2 will coincide with the elimination of Section 7.

Section 6 requires out-of-state nurseries and nursery dealers to annually file a signed copy of their resident state certificate of registration with the WVDA prior to shipping nursery stock into the State. An amendment to Section 6 will allow the use of nursery and nursery dealer directories, compiled and distributed by state departments of agriculture, to verify out-of-state registrations in lieu of the individual filing of certificates. Many states are now using this method of verifying registrations. It eliminates additional clerical work and, when there is reciprocity, eliminates the need for in-state nurserymen to file a copy of their certificate of registration with other states prior to shipping nursery stock into that state.

The proposed system of assessing civil administrative penalties will allow for the settlement of violations of the West Virginia Plant Pest Act without expensive costs to both the violator and the WVDA for administrative or criminal hearings.

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

FILED

Aug 1 11 52 AM '95

SERIES 14
WEST VIRGINIA PLANT PEST ACT REGULATIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§61-14-1. General.

1.1. Scope. -- These legislative regulations establish general operating rules and procedures for the Plant Industries Division.

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

1.3. Filing Date. ---

1.4. Effective Date. --

§61-14-2. Sale of Nursery Stock.

2.1. No nurseryman 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.

§61-14-3. Display of Certificates.

3.1. 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.

§61-14-4. Multiple Sales Locations.

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

§61-14-5. Dealer Registration.

5.1. All dealers in nursery stock must inform the Commissioner of the sources of his 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 dealer's certificate is issued. Amendments to the original list of sources can be made at any time prior to the purchase of stock.

~~5.2. The application for registration must be accompanied by a list of the names and addresses of all salesmen or agents operating in the State of West Virginia.~~