

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

Form #6

DO NOT WRITE IN THIS BOX

**FILED**

APR 23 9 06 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES X, 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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 162

SECTION 64-9-1 (c), PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: June 7, 1996

  
AUTHORIZED SIGNATURE



KEN HECHLER  
Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

March 12, 1996

Gary W Gibson  
Agriculture  
Plant Industries Division  
1900 Kanawha Blvd East  
Charleston, WV 25305

**SB 162** authorizing, **Title 61, Series 14, WV Plant Pest Act** passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 162** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 162 Section 64-9-1(c)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,  
Administrative Law Division



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

Gus R. Douglass  
Commissioner

1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0170  
(304) 558-3550

David E. Miller  
Deputy Commissioner

**PROMULGATION HISTORY**

**TITLE 61, SERIES 14, WV PLANT PEST ACT**  
**AUTHORIZATION CITED IN SB162 SECTION 64-9-1(c)**

First Filing Date -- June 23, 1995

End Of Comment Period - July 24, 1995 at 4:00 P.M.

Filing Date For Modified Rule - October 26, 1995

Final Filing Date - April 23, 1996

FILED

TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE

APR 23 9 06 AM '96

SERIES 14  
WEST VIRGINIA PLANT PEST ACT RULE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§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. -- April 23, 1996

1.4. Effective Date. -- June 7, 1996

**§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 "Commissioner" means the Commissioner of the West Virginia Department of Agriculture or his authorized representative.

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

2.5 "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.

2.6 "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.

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

2.8 "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 distribution of live insects, noxious weeds or plant pests.

2.9 "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.

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

2.11 "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.

2.12 "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 nursery dealer.

2.13 "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 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.

#### §61-14-4. 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 dealers in nursery stock must 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 dealer's certificate is issued. The dealer 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 dealer in nursery stock within the State to offer for sale any nursery stock unless a copy of the current dealer'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 nurserymen, dealers, 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 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 business must 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 such conditions as the presence of trash, weeds, crowding of stock or other conditions prevent a thorough examination of a nursery, the Commissioner shall provide the nurseryman 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 nurseryman 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 dealer's certificate of registration prior to actually digging and/or selling any collected stock, unless that person is already certified as a nurseryman.

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. Notice shall be given to the Commissioner 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 any inspection no more than three (3) days prior to removal from the soil.

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

11.1. Procedure

11.1.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 nursery dealers. However, there may be situations which arise that are not adequately covered by this section. In such 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.

11.1.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.

11.1.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:

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 penalties 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 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:

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 West Virginia Code 19-12-1 et seq. and Rules 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 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.

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

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 or she 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 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.

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 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; and

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 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:

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; and

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 his or her decision.

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

11.2.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.

11.2.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(s) 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 their 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

4233

H. B. 4233

(By Delegates Douglas, Gallagher, Faircloth, Compton,  
Linch and Riggs )

(Introduced January 29, 1996 ; referred to the  
Committee on the Judiciary )

6/14

A BILL to amend and reenact section one, article nine,  
chapter sixty-four of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to authorizing the commissioner of agriculture to  
promulgate legislative rules relating to the West  
Virginia plant pest act.

Be it enacted by the Legislature of West Virginia:

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

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

§64-9-1. Commissioner of agriculture.

(a) The legislative rules filed in the state

4233

1 register on the fifteenth day of August, one thousand nine  
2 hundred ninety-four, authorized under the authority of  
3 section one, article twenty-nine, chapter nineteen, of this  
4 code, modified by the commissioner of agriculture to meet  
5 the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 fourteenth day of October, one thousand nine hundred  
8 ninety-four, relating to the commissioner of agriculture  
9 (West Virginia aquaculture farm rules, 61 CSR 23), are  
10 authorized with the amendments set forth below:

11       On page 1, section 61-23-1, by striking out section  
12 1.1 and substituting in lieu thereof the following:

13       "1.1 The Commissioner will inspect aquaculture  
14 production on a voluntary basis for a period of three  
15 years. At the end of this three year period the  
16 Aquaculture Farm Rule shall be reviewed to determine  
17 whether the rule should become mandatory. Aquaculture  
18 producers wishing to participate in the voluntary  
19 inspection program must apply in writing to the  
20 Commissioner. Once a producer enters the voluntary program  
21 they will be required to produce fish according to all of  
22 the provisions of this rule for the remaining portion of  
23 the three year period. The inspections will be conducted  
24 on a risk assessment basis with the purpose of educating

1 farmers and assuring the production of wholesome, unspoiled  
2 and unadulterated fish and fishery products."

3 On page 4, section 61-23-3, by striking out section  
4 3.1 and substituting in lieu thereof the following:

5 "3.1 All producers of fish participating in the  
6 voluntary inspection program outlined in this rule shall  
7 have and implement a written Hazard Analysis Critical  
8 Control Point Plan, approved by the commissioner, for each  
9 location where fish are grown. The commissioner shall  
10 furnish a model Hazard Analysis Critical Control Point Plan  
11 to the producers for them to follow."

12 On page 5, section 61-23-3, by striking out section  
13 3.4.

14 On page 6, section 61-23-4, by striking out all of  
15 section 4.6 and substituting in lieu thereof the following:

16 "4.6 Septic tanks, home aeration units, vault privy,  
17 or other sewage tanks shall not be located within 50 feet  
18 of a well or groundwater supply used as an aquaculture  
19 water source, or aquaculture production areas in order to  
20 prevent fecal and other contamination of water where fish  
21 are raised for human consumption, except that tanks or  
22 other aquaculture production systems with a barrier  
23 preventing possible contamination may be located closer."

24 On page 8, section 61-23-7, by striking out section

1 7.1 and substituting in lieu thereof the following:

2 "7.1 All fish transported for sale and/or processing  
3 by producers participating in this voluntary program shall  
4 be:"

5 On page 8, section 61-23-7, by striking out section  
6 7.5 and substituting in lieu thereof the following:

7 "7.5 All shipments of human food fish to other  
8 producers, wholesalers, retailers, and/or processors  
9 required to operate under a HACCP plan shall be accompanied  
10 by a written notification stating that any and all drugs,  
11 feed and color additives, pesticides and/or medicated feeds  
12 have been legally administered and withdrawal periods have  
13 been followed. This notification shall include the name,  
14 address, and telephone number of the grower; date of sale;  
15 and the lot number of fish. This notification shall be  
16 signed by the grower. Except that:"

17 On page 8, section 61-23-7, by striking out section  
18 7.5.a. and substituting in lieu thereof the following:

19 "7.5.a. Shipments of fish to other producers before  
20 the completion of a required withdrawal period shall be  
21 accompanied by a written notification including the name  
22 and dose of the drug, feed, color additive, pesticide,  
23 and/or medicated feed; date administered and length of  
24 required withdrawal period; date of sale; and lot number of

1 the fish. This notification shall be signed by the  
2 grower."

3 On page 9, section 61-23-9, by striking out section  
4 9.1 and substituting in lieu the following:

5 "9.1 It is prohibited to:"

6 On page 10, section 61-23-10, by striking out section  
7 61-23-10 in its entirety, and renumbering the remaining  
8 sections.

9 On page 11, section 61-23-12, by striking out section  
10 12.1.a and substituting in lieu thereof the following:

11 "12.1.a. Enter and inspect, during reasonable hours,  
12 any aquaculture production area participating in the  
13 voluntary inspection program, where fish are produced,  
14 sold, stored, or transported. The inspection includes, but  
15 is not limited to, photographing, video taping, verifying,  
16 copying and auditing computer files, records and papers  
17 relating to the production of fish, as is necessary to  
18 determine compliance with this rule and to investigate  
19 consumer complaints. The inspection also includes, but is  
20 not limited to, photographing, video taping, observing and  
21 verifying the premises, vehicles, personnel and  
22 activities;"

23 On page 12, section 61-23-12, by striking out section  
24 12.1.i.

1 On page 13, section 61-23-13, by striking out section  
2 13.3.

3 And,

4 On page 13, section 61-23-13, by striking out section  
5 13.4.

6 (b) The legislative rules filed in the state register  
7 on the twenty-second day of July, one thousand nine hundred  
8 ninety-four, authorized under the authority of section two,  
9 article nine, chapter nineteen, of this code, modified by  
10 the commissioner of agriculture to meet the objections of  
11 the legislative rule-making review committee and refiled in  
12 the state register on the ninth day of August, one thousand  
13 nine hundred ninety-four, relating to the commissioner of  
14 agriculture (animal disease control, 61 CSR 1), are  
15 authorized.

16 (c) The legislative rules filed in the state register  
17 on the fifteenth day of August, one thousand nine hundred  
18 ninety-four, authorized under the authority of section  
19 four, article twenty-nine, chapter nineteen, of this code,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee  
22 and refiled in the state register on the eleventh day of  
23 October, one thousand nine hundred ninety-four, relating to  
24 the commissioner of agriculture (inspection of

1 nontraditional, domesticated animals, 61 CSR 23D), are  
2 authorized.

3 (d) The legislative rules filed in the state register  
4 on the fifteenth day of August, one thousand nine hundred  
5 ninety-four, authorized under the authority of section ten,  
6 article eleven-a, chapter nineteen, of this code, modified  
7 by the commissioner of agriculture to meet the objections  
8 of the legislative rule-making review committee and refiled  
9 in the state register on the fourteenth day of October, one  
10 thousand nine hundred ninety-four, relating to the  
11 commissioner of agriculture (labeling of dairy products for  
12 rBST or rBGH, 61 CSR 4D), are authorized.

13 (e) The legislative rules filed in the state register  
14 on the fifteenth day of August, one thousand nine hundred  
15 ninety-four, authorized under the authority of section one,  
16 article twenty-nine, chapter nineteen, of this code,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee  
19 and refiled in the state register on the fourteenth day of  
20 October, one thousand nine hundred ninety-four, relating to  
21 the commissioner of agriculture (West Virginia fish  
22 processing rules, 61 CSR ~~23D~~ 23A), are authorized.

23 (f) The legislative rules filed in the state register  
24 on the first day of August, one thousand nine hundred

1 ninety-five, authorized under the authority of section  
2 three, article twelve, chapter nineteen, of this code,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the twenty-fifth day  
6 of October, one thousand nine hundred ninety-five, relating  
7 to the commissioner of agriculture (West Virginia plant  
8 pest act, 61 CSR 14), are authorized.

9

10 NOTE: The purpose of this bill is to authorize the  
11 Commissioner of Agriculture to promulgate legislative rules  
12 relating to the West Virginia Plant Pest Act.

13

14 Strike-throughs indicate language that would be  
15 stricken from the present law, and underscoring indicates  
16 new language that would be added.

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SENATE BILL NO. 164

(By Senators Ross, Anderson, Boley,  
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred  
to the Committee on

AGRICULTURE

61-14

A BILL to amend and reenact section one, article nine,  
chapter sixty-four of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to authorizing the commissioner of agriculture to  
promulgate legislative rules relating to the West  
Virginia plant pest act.

Be it enacted by the Legislature of West Virginia:

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

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

**§64-9-1. Commissioner of agriculture.**

(a) The legislative rules filed in the state

1 register on the fifteenth day of August, one thousand nine  
2 hundred ninety-four, authorized under the authority of  
3 section one, article twenty-nine, chapter nineteen, of this  
4 code, modified by the commissioner of agriculture to meet  
5 the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 fourteenth day of October, one thousand nine hundred  
8 ninety-four, relating to the commissioner of agriculture  
9 (West Virginia aquaculture farm rules, 61 CSR 23), are  
10 authorized with the amendments set forth below:

11 On page 1, section 61-23-1, by striking out section  
12 1.1 and substituting in lieu thereof the following:

13 "1.1 The Commissioner will inspect aquaculture  
14 production on a voluntary basis for a period of three  
15 years. At the end of this three year period the  
16 Aquaculture Farm Rule shall be reviewed to determine  
17 whether the rule should become mandatory. Aquaculture  
18 producers wishing to participate in the voluntary  
19 inspection program must apply in writing to the  
20 Commissioner. Once a producer enters the voluntary program  
21 they will be required to produce fish according to all of  
22 the provisions of this rule for the remaining portion of  
23 the three year period. The inspections will be conducted  
24 on a risk assessment basis with the purpose of educating

1 farmers and assuring the production of wholesome, unspoiled  
2 and unadulterated fish and fishery products."

3 On page 4, section 61-23-3, by striking out section  
4 3.1 and substituting in lieu thereof the following:

5 "3.1 All producers of fish participating in the  
6 voluntary inspection program outlined in this rule shall  
7 have and implement a written Hazard Analysis Critical  
8 Control Point Plan, approved by the commissioner, for each  
9 location where fish are grown. The commissioner shall  
10 furnish a model Hazard Analysis Critical Control Point Plan  
11 to the producers for them to follow."

12 On page 5, section 61-23-3, by striking out section  
13 3.4.

14 On page 6, section 61-23-4, by striking out all of  
15 section 4.6 and substituting in lieu thereof the following:

16 "4.6 Septic tanks, home aeration units, vault privy,  
17 or other sewage tanks shall not be located within 50 feet  
18 of a well or groundwater supply used as an aquaculture  
19 water source, or aquaculture production areas in order to  
20 prevent fecal and other contamination of water where fish  
21 are raised for human consumption, except that tanks or  
22 other aquaculture production systems with a barrier  
23 preventing possible contamination may be located closer."

24 On page 8, section 61-23-7, by striking out section

1 7.1 and substituting in lieu thereof the following:

2 "7.1 All fish transported for sale and/or processing  
3 by producers participating in this voluntary program shall  
4 be:"

5 On page 8, section 61-23-7, by striking out section  
6 7.5 and substituting in lieu thereof the following:

7 "7.5 All shipments of human food fish to other  
8 producers, wholesalers, retailers, and/or processors  
9 required to operate under a HACCP plan shall be accompanied  
10 by a written notification stating that any and all drugs,  
11 feed and color additives, pesticides and/or medicated feeds  
12 have been legally administered and withdrawal periods have  
13 been followed. This notification shall include the name,  
14 address, and telephone number of the grower; date of sale;  
15 and the lot number of fish. This notification shall be  
16 signed by the grower. Except that:"

17 On page 8, section 61-23-7, by striking out section  
18 7.5.a. and substituting in lieu thereof the following:

19 "7.5.a. Shipments of fish to other producers before  
20 the completion of a required withdrawal period shall be  
21 accompanied by a written notification including the name  
22 and dose of the drug, feed, color additive, pesticide,  
23 and/or medicated feed; date administered and length of  
24 required withdrawal period; date of sale; and lot number of

1 the fish. This notification shall be signed by the  
2 grower."

3 On page 9, section 61-23-9, by striking out section  
4 9.1 and substituting in lieu the following:

5 "9.1 It is prohibited to:"

6 On page 10, section 61-23-10, by striking out section  
7 61-23-10 in its entirety, and renumbering the remaining  
8 sections.

9 On page 11, section 61-23-12, by striking out section  
10 12.1.a and substituting in lieu thereof the following:

11 "12.1.a. Enter and inspect, during reasonable hours,  
12 any aquaculture production area participating in the  
13 voluntary inspection program, where fish are produced,  
14 sold, stored, or transported. The inspection includes, but  
15 is not limited to, photographing, video taping, verifying,  
16 copying and auditing computer files, records and papers  
17 relating to the production of fish, as is necessary to  
18 determine compliance with this rule and to investigate  
19 consumer complaints. The inspection also includes, but is  
20 not limited to, photographing, video taping, observing and  
21 verifying the premises, vehicles, personnel and  
22 activities;"

23 On page 12, section 61-23-12, by striking out section  
24 12.1.i....

1           On page 13, section 61-23-13, by striking out section  
2 13.3.

3           And,

4           On page 13, section 61-23-13, by striking out section  
5 13.4.

6           (b) The legislative rules filed in the state register  
7 on the twenty-second day of July, one thousand nine hundred  
8 ninety-four, authorized under the authority of section two,  
9 article nine, chapter nineteen, of this code, modified by  
10 the commissioner of agriculture to meet the objections of  
11 the legislative rule-making review committee and refiled in  
12 the state register on the ninth day of August, one thousand  
13 nine hundred ninety-four, relating to the commissioner of  
14 agriculture (animal disease control, 61 CSR 1), are  
15 authorized.

16           (c) The legislative rules filed in the state register  
17 on the fifteenth day of August, one thousand nine hundred  
18 ninety-four, authorized under the authority of section  
19 four, article twenty-nine, chapter nineteen, of this code,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee  
22 and refiled in the state register on the eleventh day of  
23 October, one thousand nine hundred ninety-four, relating to  
24 the commissioner of agriculture (inspection of

1 nontraditional, domesticated animals, 61 CSR 23D), are  
2 authorized.

3 (d) The legislative rules filed in the state register  
4 on the fifteenth day of August, one thousand nine hundred  
5 ninety-four, authorized under the authority of section ten,  
6 article eleven-a, chapter nineteen, of this code, modified  
7 by the commissioner of agriculture to meet the objections  
8 of the legislative rule-making review committee and refiled  
9 in the state register on the fourteenth day of October, one  
10 thousand nine hundred ninety-four, relating to the  
11 commissioner of agriculture (labeling of dairy products for  
12 rBST or rBGH, 61 CSR 4D), are authorized.

13 (e) The legislative rules filed in the state register  
14 on the fifteenth day of August, one thousand nine hundred  
15 ninety-four, authorized under the authority of section one,  
16 article twenty-nine, chapter nineteen, of this code,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee  
19 and refiled in the state register on the fourteenth day of  
20 October, one thousand nine hundred ninety-four, relating to  
21 the commissioner of agriculture (West Virginia fish  
22 processing rules, 61 CSR ~~23D~~ 23A), are authorized.

23 (f) The legislative rules filed in the state register  
24 on the first day of August, one thousand nine hundred

1 ninety-five, authorized under the authority of section  
2 three, article twelve, chapter nineteen, of this code,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the twenty-fifth day  
6 of October, one thousand nine hundred ninety-five, relating  
7 to the commissioner of agriculture (West Virginia plant  
8 pest act, 61 CSR 14), are authorized.

9

10 NOTE: The purpose of this bill is to authorize the  
11 Commissioner of Agriculture to promulgate legislative rules  
12 relating to the West Virginia Plant Pest Act.

13

14 Strike-throughs indicate language that would be  
15 stricken from the present law, and underscoring indicates  
16 new language that would be added.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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FILED

WILLIAM H. HARRINGTON  
Chief of Staff

JUL 11 11 04 AM '96 JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

(Plus all the volunteer  
help we can get)

TO: GARY W GIBSON

AGENCY: AGRICULTURE

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 24, 1996

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

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

SERIES: 14 TITLE: 61 AGRICULTURE

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

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

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

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

\*\*\*\*\*

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

SIGNED: Gary W. Gibson

TITLE OF PERSON SIGNING: Assistant Director - Plant Industries Div.

DATE: July 10, 1996

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