

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED
1991 JUN 26 AM 10:14
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY 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 Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 29, 1991 AT 12 noon.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Dr. Charles Coffman
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard East
Charleston, WV 25305-0170

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

2-80

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 JUN 26 AM 10:15

Rule Title: West Virginia Plant Pest Act Regulations

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: Legislative Interpretive Procedural

Agency Agriculture Address 1900 Kanawha Boulevard E.
Charleston, WV 25305-0170

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No change in the activities of the Department of Agriculture will result from the implementation of these rules.

3. Objectives of these rules:

These rules take quarantines that are in the current version of the rules and removes them. The quarantines will be filed in the Orders file as provided under 19-12-2-r of the 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.

None

C. Economic Impact on Citizens/Public at Large.

None

Date:

June 26, 1991

Signature of Agency Head or Authorized Representative

Chris Bensch

FILED

1991 JUN 26 AM 10:15

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 14
WEST VIRGINIA PLANT PEST ACT
REGULATIONS

§61-4-1. General.

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

1.2. Authority.-- W.Va. Code 19-12

1.3. Filing Date. --

1.4. Effective Date --

1.5. Amendment of Rule -- This legislative rule is an amendment to 61CSR14 filed September 15, 1967 and effective October 15, 1967.

§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.

5.3 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.

§61-14-6. 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.

§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.

§61-14-8. 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 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.

§61-14-9. 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 prior to actually digging and/or selling any such collected stock, unless such 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 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.

9.3. 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.

§62-14-10. 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. 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."

APPENDIX I--PLANT-PEST-ORDER-

WHITE-PINE-BLISTER-RUST-QUARANTINE

White--Gooseberries--and--Currants; (Ribes spp.)--as--well--as--certain--of--their horticultural varieties,--found--growing--in West--Virginia,--are--capable--of--harbouring and--disseminating--the--destructive--disease of--White--Pine--(Cronartium--ribicola; Fischer)--commonly--known--as--White--Pine blister--Rust.

REGULATION--2--Growing--and--Dissemination of--Currants--and--Gooseberries--Under authority--of--Article--12,--Chapter--19--of--the State--Code--of--West--Virginia,--a--quarantine--is hereby--established--against--this--disease, prohibiting--the--dissemination,--growing--or other--uses--of--all--species--of--currants--and gooseberries,--including--any--plants, cuttings,--viable--seeds--or--parts--of--these plants--capable--of--propagation,--except--as otherwise--provided--herein,--in--the--following twenty--three--(23)--protected--counties,--where white--pine--blister--rust--is--a--potential hazard.

Twenty-three (23) Protected Counties

- 1--Barbour
- 2--Fayette
- 3--Grant
- 4--Greenbrier
- 5--Hampshire
- 6--Hardy
- 7--Harrison
- 8--Marion
- 9--Mercer
- 10--Mineral
- 11--Monongalia
- 12--Monroe
- 13--Nicholas
- 14--Pendleton
- 15--Pocahontas
- 16--Preston
- 17--Raleigh
- 18--Randolph
- 19--Summers
- 20--Taylor
- 21--Tucker
- 22--Upshur
- 23--Webster

REGULATION--2--Growing--of--European Black--Currants--and--Gooseberries--EUROPEAN BLACK--CURRANTS--PROHIBITED--European--black currant--plants--(Ribes--nigrum)--may--not--be moved--intrastate--to--any--destination--in--West Virginia.

REGULATION--3--Movement--of--Currant (Other--Than--Black--Currant)--and--Gooseberry Plants--Gooseberry--and--Currant--Plants;

other--than--European--Black--Currants,--may--be moved--intrastate--without--restriction--in West--Virginia,--except--that--they--may--be moved--intrastate--to--shipping--points--in--the counties--listed--above--only--when--accompanied by--control--area--permits--secured--from--the Director,--Plant--Pest--Control--Division,--West Virginia--Department--of--Agriculture, Charleston,--West--Virginia,--25305. Control--area--permits--will--not--be--issued--for planting--within--infective--distances,--or within--one--thousand--five--hundred--feet (1500')--of--sizeable--plantings--of--ornamental or--commercial--white--pine--stands.

REGULATION--4--Currants--and--Gooseberry--Plants May--be--Destroyed--If--Growing--in--Location Prohibited--By--This--Quarantine--Quarantine shall--operate--to--permit--representatives--of this--Department--of--enter--all--premises whatsoever--subject--to--the--provisions--of--the Plant--Pest--Act,--and--to--destroy--living plants--of--all--species--of--currants--and gooseberries--found--growing--thereon,--whether or--not--infected--with--the--White--Pine--Blister Rust--Disease,--except--in--the--case--of cultivated--species,--other--than--European black--currants,--the--destruction--is--limited to--plants--within--one--thousand--five--hundred feet--(1500')--of--white--pine--stands.

Effective--from--September--29--1967.

APPENDIX II--PLANT-PEST-ORDER

BARBERRY-AND-BLACK-STEM-RUST-QUARANTINE

Notice--is--hereby--given--that--the common--barberry--(Berberis--vulgaris) (Berberis--vulgaris)--and--its--horticultural varieties,--as--well--as--certain--other--species of--Berberis,--Mahonia,--and--Mahoberberis, found--growing--in--West--Virginia--are--capable of--harboring--the--destructive--disease--Black Stem--Rust--(Puccinia--graminis)--of--wheat, oats,--barley,--rye--and--many--wild--and cultivated--grasses,--resulting--in--material financial--loss--to--growers--of--these--crops--in West--Virginia.

REGULATION--1--Berberis,--Mahonia--and Mahoberberis--Prohibited--Under--authority of--Chapter--19,--Article--12,--of--the--State Code--of--West--Virginia,--a--quarantine--is hereby--established--throughout--the--State prohibiting--the--maintenance,--propagation, sale--and--movement--within--the--State--of--all species--and--varieties--of--Berberis,--Mahonia, and--mahoberberis--including--any--plants, cutting,--stocks,--scions,--buds,--fruits, seeds,--or--part--of--these--plants--capable--or propagation,--determined--to--be--the--alternate host--of--this--disease,--as--provided--in--these rules--and--regulations.

REGULATION-2- Definitions -- For the purpose of these regulations the following words, names, and terms shall be construed to mean:

2-1- Stem rust -- The disease known as the black stem rust of wheat, oats, barley and rye (*Puccinia graminis*) in any stage of development.

2-2- Berberis -- Any plants, cuttings, stocks, scions, buds, fruits, seeds, or any parts of any species, variety, or hybrid of the genus Berberis commonly known as Berberries.

2-3- Mahonia -- Any plants, cuttings, stock, scions, buds, fruits, seeds, or parts of plants of any species, variety, or hybrid of the genus Mahonia (*Odoxylon*) capable of propagation, commonly known as mahonias, hollygrapes, holly barberries, or Oregon grapes.

2-4- Mahoberberis -- Any plants, cutting, stocks, scions, buds, fruits, seeds, or any parts of plants of species, variety, or hybrid of the genus Mahoberberis, commonly known as mahoberberis.

2-5- Movement -- Transportation by common carrier, truck, private vehicle or otherwise.

REGULATION-3- Eradication of All Rust-Susceptible Berberis, Mahonia and Mahoberberis Plants -- All rust-susceptible species and varieties of Berberis, Mahonia, and Mahoberberis are hereby declared to be a public nuisance and their propagation, growth or possession is prohibited. The Director of the Plant Pest Control Division, insofar as funds are available, is authorized to enter all premises whatsoever subject to the Plant Pest Act, to destroy or cause to be destroyed such plants, seeds, fruits, or parts capable of propagation of susceptible Berberis, Mahonia and Mahoberberis, wherever found, and may cooperate with other agencies and individuals within the State and with the United States Department of Agriculture in the removal of these plants for the control of the black stem rust disease of small grains.

REGULATION-4- Varieties Classified as Susceptible -- Until further notice, all species and varieties of Berberis, Mahonia, and Mahoberberis will be considered susceptible except those tested and designated as rust resistant or immune by the United States Department of Agriculture.

REGULATION-5- Restrictions on Movement, Planting and/or Growing of Rust-Susceptible Berberis, Mahonia and Mahoberberis -- The movement, planting and/or growing of susceptible species and varieties of Berberis, Mahonia, and Mahoberberis, determined to be alternate hosts of Black Stem Rust (*Puccinia graminis*) are hereby prohibited throughout the State.

REGULATION-6- Varieties Classified as Immune or Resistant And Exempt From These Regulations -- No restrictions are placed by these regulations on the movement, planting or growing within the State of any species or varieties of Berberis, Mahonia, or Mahoberberis designated as immune or rust-resistant by the United States Department of Agriculture except as set forth in REGULATION-7.

REGULATION-7- All Packages To Be Plainly Labeled or Stamped For Shipping -- All shipments and/or individual packages of non-susceptible Berberis, Mahonia, or Mahoberberis plants, seeds, or parts thereof capable of propagation, must be plainly marked with the names and address of the consignee and consignor.

Effective from September 20, 1967.

APPENDIX III- PLANT PEST ORDER

WHEREAS -- The mediterranean fruitfly (*Medfly*), *Ceratitis capitata*, is now infesting certain areas of California and is capable of being introduced into West Virginia and into other agricultural areas of the Southeast, and;

WHEREAS -- The Medfly is highly injurious pest of many fruit including apples and peaches, both widely cultivated in West Virginia, and;

WHEREAS -- The Southern Plant Board in emergency session in Atlanta, Georgia, July 20, 1961, recognized the seriousness of having this pest introduced into the southeastern United States and urged the United States Department of Agriculture to impose a quarantine on the entire state of California on account of this pest in order to protect the uninfested regions in the United States, and;

WHEREAS -- The United States Department of Agriculture has not imposed such a quarantine to protect the uninfested areas of the state, now;

THEREFORE -- I, Gus R. Douglass, Agriculture Commissioner of West Virginia, under

authority of the Code of West Virginia, Article 12, Section 19(6), do hereby issue this Plant Pest Order to regulate the movement into and within West Virginia of all fruits and other plant material capable of harboring the Mediterranean fruit fly, *Ceratitis capitata*, originating from or being shipped from the state of California:

1. In order to prevent the introduction of the Medfly into West Virginia the following fruits from California are regulated: grapefruit, lemons, oranges, tangerines, guavas, persimmons, loquat, kumquat, figs, guava, cherry, plum, apple, apricot, peach, pear, nectarines, and any other fruits capable of harboring any life stage of the Medfly.

2. Fruits capable of harboring any life stage of the Medfly from California may enter West Virginia only providing that one of the following conditions have been complied with:

A. Fruits originating from parts of California not under federal or state quarantine for Medfly may enter West Virginia provided they are accompanied by a Certificate of Origin certifying that the area in which the fruits were grown is known to be free of Medfly as determined by standard survey using traps suitably baited for recovery of the Medfly.

B. In all other cases the fruit must bear a certification that they have been fumigated with ethylene dibromide according to the USDA, APHIS, PPE Manual directions.

3. Fruits or other commodities originating in California and entering West Virginia which do not bear certificates as required above will be confiscated and destroyed or returned to the shipper at their expense. This ORDER becomes effective July 20, 1961.