

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

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Agriculture TITLE NUMBER: 61

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: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
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TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE

SERIES 14  
WEST VIRGINIA PLANT PEST ACT  
REGULATIONS

5.1. All dealers in nursery stock

**§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 19-12-3 5 and 6

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 th 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.**

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, (Rives 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 1. 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 to 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 (1,500') of white-pine stands.

Effective from September 20, 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 of 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 (*Odoxemon*) 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 of 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 cosignee and cosignor.

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 10, 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, *Ceratitidis 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, quince, persimmons, loquat, kumquat, figs, guava, cherry, plum, apple, apricot, peach, pears, 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 quarantines 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, PPQ 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, 1981.



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WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Room M-152, State Capitol  
Charleston, West Virginia 25305  
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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Senator William R. Wooton, Co-Chairman  
Delegate David Grubb, Co-Chairman

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Michael McThomas, Associate Counsel  
Marie Mickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

August 30, 1991

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Cleve Benedict  
Commissioner  
Department of Agriculture  
State Capitol  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: West Virginia Plant Pest Act Regulations

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency     X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Dr. Charles Coffman  
Ms. Barbara Smith  
Compliance Division