

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #6

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FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: 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 Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

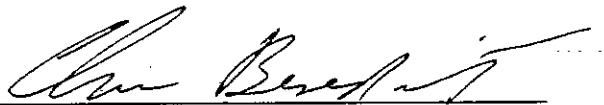
TITLE OF RULE BEING PROPOSED:   

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Sb1

SECTION 64-9-1 (bb), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 11, 1992



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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 Plant Industries Division.

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

1.3. Filing Date. -- April 23, 1992

1.4. Effective Date. -- May 11, 1992

**§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."

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Bill Agri, Plant Pest 61-14

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H. B. 4248

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the  
Committee on the Judiciary)

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 register on the  
sixth day of April, one thousand nine hundred eighty-three,

4248

1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers), are  
22 authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 eighth day of August one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the tenth day of September, one  
13 thousand nine hundred ninety-one, relating to the commissioner of  
14 agriculture (West Virginia plant pest act) are authorized.

15  
16 NOTE: The purpose of this bill is to authorize the  
17 Commissioner of Agriculture to promulgate legislative rules  
18 relating to the West Virginia Plant Pest Act.

19  
20 Strike-throughs indicate language that would be stricken from  
21 the present law, and underscoring indicates new language that  
22 would be added.



KEN HECHLER  
Secretary of State  
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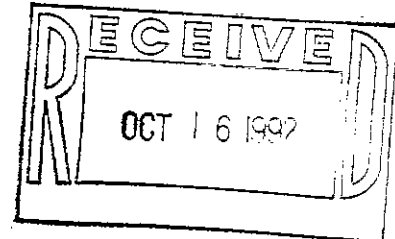
STATE OF WEST VIRGINIA

SECRETARY OF STATE

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TO: Barbara Smith

AGENCY: Department of Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY 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: 18 TITLE: SI Department of Agriculture

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

SIGNED: Barbara J. Smith

TITLE OF PERSON SIGNING: Director of Compliance

DATE: 11-9-92

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

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

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

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

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