

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 11 1 55 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative Rule; CITE AUTHORITY WV Code 19-16

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series #9

TITLE OF RULE BEING AMENDED: West Virginia Seed Law 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 13, 1998 AT 1:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

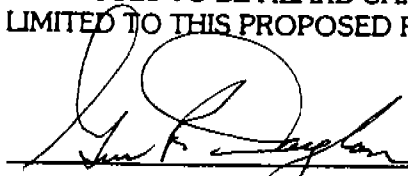
Commissioner Gus R. Douglass

Room 28 Main Unit

State Capitol

Charleston, WV 25305-0170

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 61 Department of Agriculture Series #9

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Blvd. East
Charelston, WV 25305

N/A

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A

Rule Title: Title 61

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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


N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 11, 1998

Signature of Agency Head or Authorized Representative.





State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

Title 61 - Legislative Rules - Department of Agriculture
Series 9
West Virginia Seed Law Regulations
Review of Proposed Changes

The new Agriculture and Forest Seed Law was passed into law as of March 12, 1998. The following is a brief summary of the proposed rule changes for Title 61- Legislative Rules - Series 9 West Virginia Seed Law Regulations :

61-9-3 Clarification of those responsible for complying with the law, obtaining a certificate of registration, paying appropriate poundage and reporting fees, labeling the seed or any other legal requirement if not met by another person;

Incorporation by reference materials added;

61-9-5 Clarification of Appendix Numbering system and Titles;

Seed packaged in regular containers must be tested every 9 months instead of every 12 months as previously required.

61-9-9 The recognition of ounces and/or grams as units of display;

61-9-16 Clarification of those seeds considered prohibited noxious weed seed and restricted noxious weed seed. The addition of special requirements for those seeds considered restricted noxious weed seed or undesirable grass seed found in lawn and turf seed and mixtures;

61-9-17 Clarification of the only type of seed potatoes to be sold in the state of West Virginia;

These proposed changes have been compared to surrounding states and have been found compatible and timely in regard to up-and-coming issues related to the seed industry. As a result, these changes will ensure continued protection to the citizens of West Virginia.

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 9
WEST VIRGINIA SEED LAW REGULATIONS

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SECRETARY OF STATE

§61-9-1. General.

1.1. Scope. -- These legislative regulations declare ~~those seeds that are the seed of Dodder (Cuscuta spp.) to be a~~ noxious seed, sets the size for working samples, establishes germination test dates, germination standards and tolerances, required additional labeling for forest seeds, defines what corn may be sold as "Certified Hybrid," ~~obtaining~~ registration forms, defines sampler or display units and where fee stamps are to be displayed and reporting of pounds sold, provides laboratory service to ~~individuals~~, farmers and dealers and sets fees, establishes methods for sampling, inspecting and analysis, relates to hold-over seed, establishes a seed certification agency and sets requirements for treated seed.

1.2. Authority. -- W. Va. Code §19-16.

1.3. Filing Date. -- ~~June 2, 1975.~~

1.4. Effective Date. -- ~~July 1, 1975.~~

§61-9-2. Authority.

2.1. By ~~virtue of the~~ authority of WV Code, Chapter 19-16, West Virginia Seed Law, ~~the vested in me as~~ Commissioner of Agriculture, ~~I, Gus R. Douglass, do~~ ~~does~~ hereby adopt and declare to be in effect on the first day of July, ~~1975~~, the following regulations and standards for the sale and distribution of agricultural, forest, and vegetable seeds.

§61-9-3. Policy.

3.1 All persons distributing or using agricultural, forest and shrub, and vegetable seeds in the state of West Virginia, including retailers, wholesalers, jobbers and brokers shall be ~~are~~ equally responsible for full compliance with the provisions of WV Code, Chapter 19-16 et seq. All persons are responsible for complying with the law, obtaining a certificate of registration, paying appropriate poundage and reporting fees, labeling the seed or any other legal requirement if not met by another person.

3.2 The documents and/or methodology of the following organizations are incorporated in their entirety by reference;

3.2.1. Association of American Seed Control Officials - Handbook for Seed Inspectors;

3.2.2. United States Department of Agriculture, Title I - V Federal Seed Act; Federal Seed Act Regulations Part 201-202;

3.2.3. Association of Official Seed Analyst - Journal of Seed Technology Vol. 16, No 3;

§61-9-3.4 Weed Seeds And Size Of Working Sample.

~~3~~ 4.1. The working sample for purity analysis and the determination of prohibited weeds shall be at least the weight set forth in the current publication of the Association of Official Seed Analysts as amended.

~~3~~ 4.2. ~~Tolerances.~~ The tolerances for prohibited and noxious weed seeds and purity determinations shall be those as published in the current publication of the Association of Official Seed Analysts as amended.

~~3~~ 4.3. When noxious weeds occur, the total amount present must be ~~shown.~~ designated as number of seeds per ounce or per pound as required by law.

§61-9-4 5. Germination Standards And Tolerances.

4 5.1. The following germination test dates shall apply to seeds packaged in containers as indicated:

4 5.1.1. Seeds packed in regular containers: ~~Twelve (12)~~ Nine (9) months excluding the month in which the test was completed.

4 5.1.2. Seeds packed in "Hermetically" sealed containers: Thirty-six (36) months excluding the month in which the test was completed.

4 5.1.2.1. Seeds and containers classed as "Hermetically" sealed must meet the requirements for packaging as defined in the Federal Seed Act.

4 5.2. The following germination standards as required by ~~6-a-1 WV Code, Chapter 19-16-11~~ 6 (a) of the law are hereby established. The labels on all ~~agricultural~~ seeds germinating less than these standards must show, in addition to other required information, the words "germination below standard" in eight (8) point bold face type.

4 5.2.1. See Appendix Number 1, Minimum Germination Standards for Agricultural Seeds; Appendix Number 2, Minimum Germination Standards for Vegetable Seeds; ~~and~~ Appendix Number 3, Minimum Germination Standards -Forest Seeds.

4 5.3. Standard germination tolerances for agricultural, forest and vegetable seeds. The tolerances shown in ~~Table 1~~ (Appendix Number 4) are applicable to the percentage of germination and also to the sum of germination plus the hard seeds or firm ungerminated seeds of agricultural and forest seeds. There will be no tolerances applied to minimum germination of vegetable seed.

§61-9-5 6. Additional Forest Seed Labeling Requirements.

In addition to the label requirements established by law, the following data shall be shown on the analysis tag and invoice:

~~5~~ 6.1. Origin.

5 6.1.1. For seed collected from ~~an~~ a predominantly indigenous (natural) stand, the area of collection given by latitude and longitude or geographic description or political subdivision such as state or county.

5. ~~6~~.1.2. For seed collected from other than predominantly indigenous stand (plantation), the identity of the area of collection and the seed origin of the stand or state "Origin Not Indigenous."

~~5-6~~.2. The upper and lower elevations within which seed was collected.

~~5-6~~.3. The common name and scientific or genetic name.

5 ~~6~~.4. The year in which such collection was made as required by WV Code, Chapter 19-16-2 (n)(2)(H).

~~5-6~~.5. Germination.

~~5-6~~.5.1. Germination shall be shown in percentage and percentage of firm ungerminated seed; or

~~5-6~~.5.2. As required by WV Code, Chapter 19-16-2(n)(2)(G)(iv) ~~W~~ when such seed is transported or delivered for transportation within the calendar year collected or within six (6) months following the calendar year of collection such seed may bear the statement "Test in Progress" if this be so; or

~~5-6~~.5.3. When such seed is being transported to a consumer, the name of the consumer and the statement "Contract seed not for resale and subject to test to be arranged."

§61-9-6-7. Hybrid Seed Corn.

~~6-7~~.1. Only seed of field corn hybrids that have been certified by an officially recognized certifying agency in the state, province or county in which the seed is grown may be labeled or advertised as "Certified Hybrid Seed Corn."

§61-9-7 8. Certificate Of Registration.

~~7~~ 8.1. Application forms for certificate of registration must be secured from the West Virginia Department of Agriculture, Charleston, West Virginia, and will be furnished upon request.

~~8.2. Special Revenue fund~~ All fees and penalties collected under the provisions of ~~this article~~ WV Code, Chapter 19-16 shall be deposited with the state treasurer in a special revenue account. Such moneys shall be expended by the Commissioner of Agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

§61-9-8-9. Sampler Or Display Unit.

~~8-9~~.1. A sampler or display unit is interpreted to mean a display collection of garden or vegetable seeds commonly known as "Packet Seeds" originally packed in primary consumer containers of eight (8) ounces (226.8 grams) or less by the person, firm or corporation who has registered to sell such seeds.

§61-9-9-10. Display Of Fee Stamps And Reporting Of Pounds Of Seed Sold.

~~9-10.1.~~ For sampler or display units, stamps shall be attached in a conspicuous place on the front of the display unit . Appropriate fee listed in Appendix Number 6- Registration and Poundage Fees.

~~9-10.2.~~ For seeds requiring a sworn statement of pounds sold, the total poundage of each kind sold shall be reported on a form supplied by the Commissioner and the fee paid at the rate prescribed by law - Appendix Number 6 - Registration and Poundage Fees.

~~9-10.3.~~ For seed potatoes: The number, variety and size of containers bought, offered or exposed for sale shall be reported by the person first entering such seed potatoes into West Virginia trade channels on forms provided by the Commissioner. Such person first offering seed potatoes for sale within the State of West Virginia shall furnish to his customers an invoice bearing the statement "West Virginia Seed Fee ~~Declared and Paid,~~" if this be so. Such statement may also be used by wholesale dealers on an arrears basis to accommodate their bookkeeping systems: **Provided, T** that such arrears payments shall be not later than the fifteenth day of the following month for the previous ~~month~~ reporting period. Any person having in his custody any lot of seed potatoes and who is unable to produce such evidence of the seed fee having been paid shall be liable for payment of such fee.

~~§61-9-10-11.~~ Laboratory Service To Individuals, Farmers And Dealers.

~~10-11.1.~~ As provided for in subdivision (4), ~~subsection (b), section six~~ WV Code, Chapter 19-16-6 (m) of the law, facilities are available for making purity and germination tests for interested persons, and the months of ~~July- September through December-~~ January inclusive, are designated as the time when this service is available.

~~10-11.2.~~ Charges ~~for to dealers~~ for such tests shall be those in ~~Table II as follows:~~ See Appendix Number 5 - Testing Fees.

~~§61-9-11-12.~~ Sampling, Inspecting, Analyzing And Testing Agricultural, Forest And Vegetable Seeds.

~~11-12.1.~~ The methods of sampling, analyzing and testing agricultural, forest, and vegetable seeds shall be those adopted by the Association of Official Seed Analysts and in general use in seed laboratories.

~~§61-9-12-13.~~ Hold Over Seed.

~~12-13.1.~~ Seeds bearing germination test dates older than those specified in Sections ~~4-1-1, 5.1.1 and 4.1.2.5.1.2~~ of these rules must be retested and relabeled or removed from sale.

~~§61-9-13-14.~~ Establishment Of Certifying Agency.

~~13-14.1.~~ As provided by law, the West Virginia Associated Crop Growers is hereby designated as the official certifying agency for the seeds grown in West Virginia.

~~§61-9-14-15.~~ Treated Seed.

~~14-15.1.~~ For all seeds named and treated as defined in this Act (for which a separate label may be used) the following is required:

~~14-15.1.1.~~ A word or statement indicating that the seed has been treated.

14-15.1.2. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.

14-15.1.3. If the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes." ~~The caution for mercurial and similarly toxic substances shall be a poison statement or symbol.~~

14-15.1.4. If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

161-9-16. Noxious Weed Seeds

16.1 Noxious weed seeds are divided into two classes - "Prohibited Noxious Weed Seeds" and "Restricted Noxious Weed Seeds" as defined in the following:

16.1.1. Prohibited noxious weed seeds in this state are the seeds of quack grass (*Agropyron repens*), Johnson grass (*Sorghum halapense*), Canada thistle (*Carduus arvensis*), perennial sow thistle (*Sonchus arvensis*), serrated tussock (*Nassella trichotoma*);

16.1.2. Restricted noxious weed seeds in this state are the seed of wild onion (*Allium vineale*), hawk weed (*Hieracum spp.*), buckhorn (*Plantago lanceolata*), English charlock or wild mustard (*Brassica arvensis*), corn cockle (*Agrostemma gilthago*), oxeye daisy (*Chrysanthemum leucanthemum*), Indian mustard (*Brassica juncea*), star thistle (*Centurea solstitialis*), wild carrot (*Daucus carota*), horse nettle (*Solanum carolinan*), field pepper grass (*Lepidium compestre*), wild morning glory (*Ipomea purpurea*), bindweed (*Convolvulus arvensis*), dodder (*Cuscuta spp.*);

16.2 Restricted Noxious Weed Seed in Lawn and Turf Seed and Mixtures.

16.2.1 Except as provided in 16.3, seed of the following plants shall be restricted noxious weed seed and shall be listed on the tag or label under the heading "Noxious Weed Seed" or "Undesirable Grass Seed" by name and number per pound or ounce when present in bentgrass, Kentucky bluegrass, Chewing fescue, hard fescue, red fescue, varieties of named turf-type tall fescue, varieties of perennial ryegrass, or a mixture containing any of these grasses: Bentgrass - creeping, colonial, velvet - (*Agrostis spp.*); Bermuda grass, giant Bermuda grass (*Cynodon dactylon*); Annual bluegrass (*Poa annua*); Rough bluegrass (*Poa trivialis*); Meadow fescue (*Festuca pratensis*); Tall fescue (*Festuca arundinacea*); Orchard grass (*Dactylis glomerata*); Redtop (*Agrostis gigantea*); Timothy (*Phleum pratense*); Velvet grass (*Holcus lanatus*).

16.2.2 Restricted noxious weed seed set forth in 16.2.1, may not exceed 0.5 percent by weight.

16.2.3 If included on the tag or label, seed designated as noxious weed seed in other states shall be listed under the heading "Noxious Weed Seed" or "Undesirable Grass Seed".

16.3 Restricted Noxious Weed Seed Additional Exceptions

16.3.1 The restricted noxious weed seed set forth in 16.2.1, may not apply to grasses or mixtures clearly labeled for: Pasture, Forage, Hay, Conservation or Spoil bank reclamation usage.

16.3.2. The restricted noxious weed seeds set forth in 16.2.1 may not apply when seeds are present in excess of 5.0% of the whole and the label contains the information required by WV Code, Chapter 19-16-2 (c)(3) (relating to labeling of lawn or turf grasses and mixtures).

§61-9-17. Certified Seed Potatoes

17.1. As required by law, only “certified seed potatoes” shall be sold in the state of West Virginia.

§61-9-15 16. §61-9-18. Supersedure And Effective Date.

15-18.1. The foregoing regulations and standards supersede all orders, rules, regulations and standards heretofore issued and now in effect. The Commissioner reserves the right to revoke, suspend, rescind or amend any rules, regulations or standards herein set forth.

APPENDIX NUMBER 1
Minimum
 GERMINATION STANDARDS

For Agricultural Seeds (Including Hard Seeds)

<u>Seed</u>	<u>Germination</u>	<u>Seed</u>	<u>Germination</u>
Alfalfa	75	(b) Blue	65
Barley	80	(c) Fescues	70
Buckwheat	80	(d) Orchard	75
Clovers:		(e) Rye	80
(a) Alsike	80	(f) Sudan	70
(b) Crimson	75	Lespedeza	75
(c) Ladino	80	Millet	70
(d) Red	80	Oats	75
(e) Sweet	75	Rye	70
(f) White	80	Sorghum	65
Corn	80	Soybeans	75
Cow Peas	65	Timothy	75
Grasses:		Vetch	80
(a) Bentgrass, (hulled		Wheat	80
redtop creeping,		All other seeds not	
etc.)	75	listed above	50

APPENDIX NUMBER 2
Minimum
 GERMINATION STANDARDS

For Vegetable Seeds (Including Hard Seeds)

<u>Seed</u>	<u>Germination</u>	<u>Seed</u>	<u>Germination</u>
Artichoke	60	Lettuce	80
Asparagus	70	Muckmelons	75
Beans, Bush	70	Mustard	75
Beans, Lima	70	Okra	50
Beans, Pole	75	Onion	70
Beets	65	Parsley	60
Broccoli	75	Parsnips	60
Brussel Sprouts	70	Peas	80
Cabbage	75	Pepper	55
Cardoon	60	Pumpkin	75
Carrot	55	Radish	75
Cauliflower	75	Rhubarb	60
Celery	55	Rutabaga	75
Celeriac	55	Salsify	75
Chicory	65	Soybeans, edible	75
Collards	80	Sorrel	60
Corn	75	Spinach	60
Cucumber	80	Spinach (New Zealand)	40
Dandelion	45	Squash	75
Egg Plant	60	Swiss Chard	65
Endive	70	Tomato	75
Fetticus	70	Tomato (husk)	50
Kale	75	Turnip	80
Kohl Rabi	75	Watermelon	70
Leek	60		

APPENDIX NUMBER 3
Minimum
GERMINATION STANDARDS

Forest Seeds (Includes Firm Ungerminated Seeds)

<u>Seed</u>	<u>Germination</u>
Red Pine (<i>Pinus resinosa</i>)	85
Scotch Pine (<i>Pinus sylvestris</i>)	85
Shortleaf Pine (<i>Pinus echinata</i>)	85
Virginia Pine (<i>Pinus Virginiana</i>)	85
Eastern White Pine (<i>Pinus strobus</i>)	85
Colorado Blue Spruce (<i>Picea pungens</i>)	80
Norway Spruce (<i>Picea abies</i>)	80
Red Spruce (<i>Picea rubens</i>)	80
Douglas Fir (<i>Pseudotsuga menziesii</i>)	70
Balsam Fir (<i>Abies balsamea</i>)	30
Frazer Fir (<i>Abies fraseri</i>)	30
Eastern Hemlock (<i>Tsuga canadensis</i>)	30
Japanese Larch (<i>Larix leptolepis</i>)	60
Red Oak (<i>Quercus borealis</i>)	60
White Oak (<i>Quercus alba</i>)	60
Black Cherry (<i>Prunus serotina</i>)	60
Black Walnut (<i>Juglans nigra</i>)	60
Black Locust (<i>Robinia pseudoacacia</i>)	50
Sycamore (<i>Platanus occidentalis</i>)	30

All other forest seed must be labeled in accordance with actual germination test results and seed shall be stored in appropriate containers at a temperature of not more than thirty-eight (38) degrees F.

APPENDIX NUMBER 4

Table I

Germination Standard Tolerances
Agricultural and Forest Seeds

<u>FOUND BY TEST</u>	<u>TOLERANCE</u>
96 or over	5
90 or over but less than 96	6
80 or over but less than 90	7
70 or over but less than 80	8
60 or over but less than 70	9
Less than 60	10

No tolerance will be allowed on minimum germination standards herein set forth for vegetable seeds.

APPENDIX NUMBER 5

TABLE II

Charges for Tests
TESTING FEES

	CHARGES FOR GERMINATION	CHARGES FOR PURITY
All vegetables	\$2.25	\$ --
Bentgrasses, redtop, bluegrasses, brome grasses, orchard grass, tall oat grass, fescues, rye grasses and all other chaffy grasses	3.00 <u>5.00</u>	3.00 <u>6.00</u>
Alfalfa, clover, millets, rape, sudan grasses, soybeans, sorghums, timothy, vetches, all cereal grains and all other seeds not listed	2.25 <u>3.00</u>	2.25 <u>3.00</u>
Mixtures: Lawn, pasture, etc. *Per each ingredient	2.25 <u>3.00</u>	6.00 <u>10.00</u>
Noxious weed examination	3.50	--
Tree and shrub seed	3.00	--
Flower seed	2.25 <u>3.00</u>	--

Proportionate charges will be made for tests and other seed determinations not listed above.

APPENDIX NUMBER 6

REGISTRATION AND POUNDAGE FEES

By authority of regulation issued under WV Code, Chapter 19, Article 1, Section 4b, 16-3, the following fees changes are adopted as of July 1, 1985.

- (1) Registration of Seedsman - \$2.00
- (2) Packet Display Stamps - \$2.00 each
- (3) Poundage Fee for Forest and Forage Seeds - \$0.20 x 100#
- (4) Poundage Fee for Agriculture Crop Seeds - \$0.10 x 100#
- (5) Seed Potatoes - \$0.04 x 100#