

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box  
Filing Date

FILED

SEP 30 3 39 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Dept. of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: WV Code 19-16

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

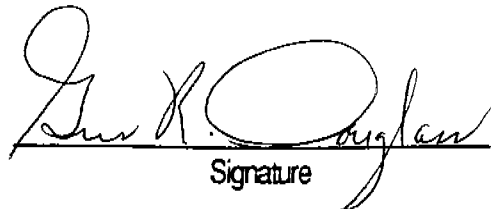
TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached.

Use additional sheets if necessary

  
Signature

\$5.60



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

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

West Virginia Seed Law Regulations

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE  
EMERGENCY AS FOLLOWS:

The changes in the rule requiring labeling of restricted noxious weed seed or undesirable grass seed found in lawn and turf seed and mixtures. Seeds for spring planting begin entering the state in late February and early March and our rule should be in effect.

Testing period for package seed was changed from 12 to 9 months. This will discourage companies from sending old seed into the state.

Also, this rule is being filed as a legislative rule and has received Legislative Rule-Making Review Committee approval.

DATE: 9/30/98

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

EMERGENCY RULE TITLE: West Virginia Seed Law Regulations

1. Date of Filing 9-30-98
2. Statutory authority for promulgating emergency rule:  
WV Code 19-16
3. Date of filing of proposed legislative rule: 6-11-98
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?  
Repeals and replaces a legislative rule.
5. Has the same or similar emergency rule previously been filed and expired?  
No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
The change in the rule reflecting the labeling of restricted noxious weed seed or undesirable grass seed found in lawn and turf seed and mixtures.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

§61-9-5 Required testing of packaged seed changed from 12 to 9 months.

Seeds begin entering the state in late February and March for the  
spring planting season; therefore, we need the rule to be in effect.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

By changing the testing period from 12 to 9 months this will assure

the public will receive seeds that have been properly tested and

discourage companies from sending old seed into the state.



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.

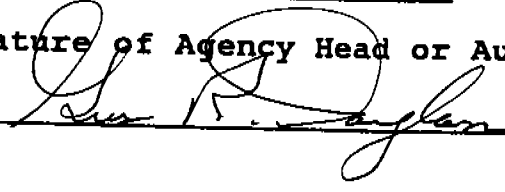
N/A

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 Changes Proposed**

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**

**§61-9-1. General.**

1.1. Scope. -- This legislative rule declares those seeds that are noxious seeds, sets the size for working samples, establishes germination test dates, germination standards and tolerances, specifies 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 §19-16-6

1.3. Filing Date. --

1.4. Effective Date. --

1.5. **Repeal and Replace.** This rule repeals and replaces Department of Agriculture Rule, Title 61 Legislative Rules, Series 9 West Virginia Seed Law, Filed on June 2, 1975 with an Effective Date July 1, 1975.

**§61-9-2. Policy.**

2.1. All persons distributing or using agricultural, forest and shrub, and vegetable seeds in the state of West Virginia, including retailers, wholesalers, jobbers and brokers are equally responsible for full compliance with the provisions of WV Code, §19-16-1 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.

2.2. The documents of the following organizations are incorporated in their entirety by reference;

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

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

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

2.2.4. The Handbook of Seed Testing: Contribution #33 – Cultivar Purity Testing Handbook; Contribution #35 – Seedling Evaluation Handbook; Contribution #25 – Uniform Classification of Weed & Crop Seeds

**§61-9-3 Weed Seeds And Size Of Working Sample.**

3.1. When noxious weeds occur, the total amount present must be shown on the Dealer/Distributor's label, designated as number of seeds per ounce or per pound as required by law.

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

4.1. The following germination test dates apply to seeds packaged in containers as indicated:

4.1.1. Seeds packed in regular containers: Nine (9) months excluding the month in which the test was completed; and

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

4.2. The labels on all seeds germinating less than these standards shall show, in addition to other required information, the words "germination below standard" in eight (8) point bold face type.

4.2.1. The minimum germination standards for the various kinds of seed are contained in the appendix at the end of this rule as follows: 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.

4.3. Standard germination tolerances for agricultural, forest and vegetable seeds. The tolerances shown in 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 the minimum germination of vegetable seed.

**§61-9- 5. 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:

5.1. Seed Origin

5.1.1. For seed collected from 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.

5.1.2. For seed collected from other than predominantly indigenous stand (plantation), the identity of the area of collection and the origin of the stand or the statement "Origin Not Indigenous."

5.2. The upper and lower elevations within which seed was collected;

5.3. The common name and scientific or genetic name;

5.4. The year in which the collection was made as required by WV Code, §19-16-2 (n)(2)(H); and

5.5. Seed Germination

5.5.1. Germination shall be shown in percentage and percentage of firm ungerminated seed;  
or

5.5.2. As required by WV Code, § 19-16-2(n)(2)(G)(iv), when the seed is transported or delivered for transportation within the calendar year collected or within six (6) months following the calendar year of collection the seed may bear the statement "Test in Progress"; or

5.5.3. When the 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. Hybrid Seed Corn.**

6.1. Only seed of field corn hybrids that has 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. Certificate Of Registration.**

7.1. Application forms may be obtained for certificate of registration from the West Virginia Department of Agriculture, Charleston, West Virginia.

**§61-9-8. Sampler Or Display Unit - Reporting of Pounds Seed Sold**

8.1. A sampler or display unit means 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 the seeds.

8.2. For sampler or display units, stamps shall be attached by the Dealer in a conspicuous place on the front of the display unit. The appropriate fees are listed in Appendix Number 6- Registration and Poundage Fees.

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

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

**§61-9-9 Laboratory Service To Individuals, Farmers and Dealers.**

9.1. Seed testing facilities are available for making purity and germination tests for interested persons during the months of September through January inclusive.

9.2. The charges to dealers for the tests are specified in Appendix Number 5 - Testing Fees.

**§61-9-10. Hold Over Seed.**

10.1. Seeds bearing germination test dates older than those specified in Subdivision 5.5.2. of this rule shall be retested and relabeled or removed from sale.

**§61-9-11. Establishment of Certifying Agency.**

11.1. The West Virginia Associated Crop Growers is hereby designated as the official certifying agency for the seeds grown in West Virginia.

**§61-9-12. Treated Seed.**

12.1. For all seeds named and treated as defined in this Rule (for which a separate label may be used) the following is required:

12.1.1. A word or statement indicating that the seed has been treated;

12.1.2. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used; and

12.1.3. 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; and

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

**§61-9-13. Noxious Weed Seeds**

13.1. Noxious weed seeds are divided into two classes - "Prohibited Noxious Weed Seeds" and "Restricted Noxious Weed Seeds".

13.1.1. 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*)

13.1.2. 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 carolinense*), field pepper grass (*Lepidium compestre*), wild morning glory (*Ipomea purpurea*), bindweed (*Convolvulus arvensis*), dodder (*Cuscuta spp*)

13.1.3 . Restricted noxious weed seed in lawn and turf seed and mixtures - except as provided in subdivision 13.1.2 of this section, seed of the following plants are 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*).

13.1.4 The amount of restricted noxious weed seeds set forth in subdivision 13.1.3, of this section shall not exceed 0.5 percent of the total weight of sample.

13.1.5 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".

13.1.6 The restricted noxious weed seed set forth in subdivision 13.1.3, of this section shall not apply to grasses or mixtures clearly labeled for: Pasture, Forage, Hay, Conservation or Spoil bank reclamation usage.

13.1.7. The restricted noxious weed seeds set forth in subdivision 13.1.3, of this rule shall not apply when seeds are present in excess of 5.0% of the whole and the label contains the information required by WV Code, § 19-16-2 (c)(3) relating to labeling of lawn or turf grasses and mixtures.

#### **§61-9-14. Certified Seed Potatoes**

14.1. As required by WV Code § 19-16-2 (o) only "certified seed potatoes" shall be sold in the state of West Virginia.

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 shall 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

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 for vegetable seeds.

APPENDIX NUMBER 5

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.....	5.00	6.00
Alfalfa, clover, millets, rape, sudan grasses, soybeans, sorghums, timothy, vetches, all cereal grains and all other seeds not listed.....	3.00	3.00
Mixtures: Lawn, pasture, etc. .... *Per each ingredient	3.00	10.00
Noxious weed examination .....	3.50	--
Tree and shrub seed .....	3.00	--
Flower seed .....	3.00	--

Proportionate charges will be made for tests and other seed determinations not listed in this Appendix.

## APPENDIX NUMBER 6

### REGISTRATION AND POUNDAGE FEES

- (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#

DATE: 9/30/98

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

EMERGENCY RULE TITLE: West Virginia Seed Law Regulations1. Date of Filing 9-30-98

2. Statutory authority for promulgating emergency rule:

WV Code 19-163. Date of filing of proposed legislative rule: 6-11-98

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Repeals and replaces a legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?

No6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The change from a 12 month to a 9 month test date affects the economic welfare of WV consumers. A grower spends valuable assets in soil preparation, fertilizer, lime, pesticide and seed. If the seed is not viable due to extended germination testing periods much of the investment of the grower will be jeopardized.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

§ 19-16-3: Each certificate of registration expires on the thirty-first of December following the next date of issue. Certificates must be applied for at least 15 days prior to the expiration of the current registration.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The changes from a 12 month to a 9 month test date effects the economic welfare of WV Consumers. A grower spends valuable assets in soil preparation, fertilizer, lime, pesticide and seed. If the seed is not viable due to extended germination testing periods much of the investment of the grower will be jeopardized.

Due to the surrounding states requiring a 9 month germination test date, the consumers of WV will be in danger of receiving seed that has been rejected in those states.