

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED

JUN 22 11 09 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Aug 2, 1995

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-16A-4-(h)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

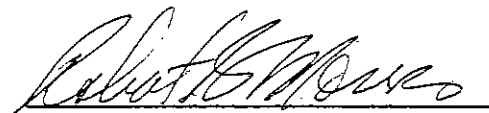
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 12J

TITLE OF RULE BEING FILED AS AN EMERGENCY: Integrated Pest Management Programs for
Schools and Day Care Centers.

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:

The 1995 Legislature passed House Bill 2471 requiring establishment of an integrated pest management program by July 1, 1995. This program will reduce the use of pesticides in schools and reduce the risk to the children and employees of those facilities.



Signature

Use additional sheets if necessary

5.00



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

Gus R. Douglass
Commissioner

1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0170
(304) 558-3550

Robert G. Morris
Assistant Commissioner

Statement of Circumstances for Proposed Emergency Rule
61CSR12J

Integrated Pest Management Programs for Schools
and Day Care Centers

During the 1995 session the West Virginia Legislature passed legislation (House Bill 2471) requiring the Department of Agriculture to promulgate emergency and legislative rules establishing an integrated pest management program to be implemented into schools and day care centers in the State. The rules are required to address the use of the least hazardous materials, that pesticides can only be applied when monitoring indicates pests are present, that pesticides cannot be applied in the presence of students or employees of school and day care centers, a definition of pesticides for the integrated pest management program, and a system of prior notification to parents and school and day care center employees. These regulations meet those requirements.

The legislation also requires the Department of Education and the Department of Health and Human Resources to begin the implementation of the integrated pest management program in schools and day care centers by August 15, 1995.

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture, Robert G. Morris 558-2201

EMERGENCY RULE TITLE: Integrated Pest Management Programs for Schools and Day Care Centers.

1. Date of Filing _____

2. Statutory authority for promulgating emergency rule:

State Code Chapter 19-16A-4(h)

3. Date of filing of proposed legislative rule: _____

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

This rule adopts new language.

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 1995 Legislature passed House Bill 2471 requiring the establishment of rules for and integrated pest management program by July 1, 1995. This program will reduce the use of pesticides in schools and day care centers and reduce the risk to children and employees of those facilities.

Integrated Pest Management in Schools and Day Care Centers: Summary of Legislative and Emergency Rules

Emergency and Legislative Rules, Title 61, Series 12J, establishing procedures for integrated pest management programs in schools and day care centers have been filed by the West Virginia Department of Agriculture in order to implement House Bill 2471 passed during the 1995 Legislative Session.

Definitions. The rules define the terms "crack and crevice treatment," "broadcast," "least hazardous materials," "pesticide," "school," "space treatment," "spot treatment," and "re-entry period." The rules further explain the characteristics of integrated pest management in urban situations.

Integrated Pest Management Programs. The rules require schools and day care centers to develop and maintain integrated pest management programs containing at a minimum a policy statement, pest management objectives, education of building occupants in integrated pest management practices, inspection and monitoring activities, and an evaluation of those integrated pest management strategies in use in the facility.

In addition, each school and day care centers is to maintain an integrated pest management file containing a copy of the integrated pest management plan, monitoring diagrams, treatment records with locations, labels of pesticide products used, and copies of material safety data sheets. Copies of pesticide labels and material safety data sheets are to be provided to employees and to parents or guardians of students or children upon request. Exceptions to these rules are made for such areas of a school as greenhouses, nursery plots, or agricultural field plantings.

Monitoring Program. The rules further specify the components of the monitoring program that are to be part of each facility's integrated pest management plan. These components include a floorplan of the facility indicating the number and location of each trap; weekly inspection of each trap with the date, the trap number and location, the trap condition, the numbers and species of pests trapped, any other evidence of pests, any need for pest management, and the name of the person performing the monitoring indicated on a Pest Surveillance Data Sheet; replacement of the traps every two months, when the adhesive is no longer tacky or the trap is full; and removal and disposition of the pests trapped after counting and identification.

Least Hazardous Control Methods. When monitoring indicates that the level of pest infestation exceeds threshold levels for the facility, the rules outline a hierarchy of pest control methods to be implemented, beginning with nonchemical control methods such as sanitation and

exclusion and proceeding through three levels of chemical control ranked according to the degree of safety based on both inherent toxicity and occupant exposure level. Reentry intervals for building occupants are specified and correspond to the hazard level of the control method used.

Prior Notification. A system for prior notification of employees of schools and day care centers is detailed in the rules, as well as a system for notification of parents or legal guardians of school students and children in day care centers.

Application of Pesticides. The rules further specify that pesticide applications shall not be made in the presence of students, children in day care centers or employees of schools or day care centers, except those employees who are certified pesticide applicators. An exception is made for application of a pesticide to a localized area of infestation if the infestation causes imminent threat of bodily harm.

Pesticide applications are to be made only by certified commercial pesticide applicators or certified public applicators certified in General Pest Control or by registered technicians under the supervision of a certified applicator as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules. In addition, all persons applying pesticides, supervising the application of pesticides, or providing services as a consultant are required to complete a specialized training program in integrated pest management that has been approved by the commissioner. Pesticide applicators certified in General Pest Control who complete such training prior to July 1, 1996 shall be determined to be certified in Urban Integrated Pest Management. After this date, all persons applying pesticides, supervising the application of pesticides, or providing services as a consultant are to be examined and certified in both General Pest Control and Urban Integrated Pest Management.

Recordkeeping. The rules further specify that records of the integrated pest management program are to be kept for a period of two years and shall be made available upon request to the commissioner to verify the maintenance of the integrated pest management program.

Implementation. Schools and day care centers covered by this rule are to be notified of the rules by August 15, 1995. Facilities shall submit an initial draft of their integrated pest management plans to the commissioner for review by February 1, 1996. Completed integrated pest management plans shall be submitted to the commissioner by August 1, 1996. Pesticide applications to schools and day care centers shall be made in accordance with these rules after September 1, 1996.

#

Rule Title: Integrated Pest Management Programs for Schools and Day Care Centers.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule will result in an increased workload and increased demands on the West Virginia Department of Agriculture. It is expected these rules will result in increased costs for the State's Education Department.

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

The pest control industry will face increased expense in training their employees. The county School Boards will see increased maintenance and pest control fees. School and day care centers are expected to be safer environments for children.

C. Economic Impact on Citizens/Public at Large.

The impact on the citizens/public at large is expected to be negligible.

Date: 6-22-95

Signature of Agency Head or Authorized Representative

Robert B. Mowbray

FILED

JUN 22 11 09 AM '95

TITLE 61
EMERGENCY RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 12J

INTEGRATED PEST MANAGEMENT PROGRAMS IN SCHOOLS
AND DAY CARE CENTERS

61-12J-1 General

1.1. Scope - These legislative rules establish procedures to provide for integrated pest management programs in schools and day care centers.

1.2. Authority - WV Code §19-16A-4

1.3. Filing Date - June 22, 1995

1.4. Effective Date -

61-12J-2 Definitions

2.1. "Crack and crevice treatment" means the application of small amounts of insecticides, using application devices specially designed for this purpose, into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors or walls.

2.2. "Broadcast" means the application of pesticides over an area such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or surfaces.

2.3. "Least hazardous materials" means the use of pest control materials, practices and methods, including the use of chemicals in a manner to cause the least practical exposure or harm to the occupants of a structure. The "least hazardous materials" takes into account the pest control method, toxicity of the product and the exposure to the occupants to the practice or methods employed to control pests, such as the use of a non-volatile material formulation and/or application method as opposed to a broadcast application that creates the potential for exposure.

2.4. "Pesticide" means, for the purposes of this integrated pest management rule, the use of insecticides and herbicides that are sprayed into or around a building and the adjacent play grounds utilized by a school or day care center.

2.5. "School" means a completed structure utilized as a public or private school, grades kindergarten through twelfth grade.

2.6. "Space treatment" means the application of a pesticide that is intended to discharge the pesticide into the air throughout an entire room or area.

2.7. "Spot treatment" means the application of a pesticide to a limited area where pests are likely to occur, such as portions of floors or walls, the base or underside of equipment, turf or ground and shall not be construed to be a broadcast treatment of baseboard areas. A "spot" shall not be more than 2 square feet and shall not be more than 20 percent of a surface area.

2.8. "Re-entry period" means the time that must elapse from the completion of a pesticide application until students or school and day care employees may enter the building to conduct scheduled activities.

61-12J-3 Integrated Pest Management

3.1. Integrated pest management is a system of controlling pests in which pests are identified, action thresholds are considered, all possible control options are evaluated and selected controls are implemented. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable pest activity or damage. Choice of control options is based on effectiveness, environmental impact, site characteristics, worker/public health and safety, and economics. The goal of an integrated pest management system is to manage pests and the environment to balance benefits of control, costs, public health and environmental quality. Integrated pest management takes into account site-specific factors and takes advantage of all pest management options.

3.2. Pesticides shall not be applied unless monitoring as specified in Section 6 of this rule indicates pests are present.

61-12J-4 Integrated Pest Management Programs for Schools

4.1. All schools covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

4.2. At a minimum, the integrated pest management program for a school shall contain:

4.2.a. a policy statement;

- 4.2.b. pest management objectives;
- 4.2.c. education of the building occupants in integrated pest management practices;
- 4.2.d. inspection activities;
- 4.2.e. monitoring activities; and
- 4.2.f. an evaluation of the integrated pest management strategies in practice.

4.3. At the inception of the integrated pest management program, the school shall make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record shall be updated every six months with the items corrected so noted on the record with the date of correction.

4.4. Pest management objectives and pest threshold levels will vary for each school facility and the occupants of the facility. In order to provide a cross representation of input to the integrated pest management program from the schools occupants and the school community, the Local School Improvement Council as created by §18-5A-2 shall review and approve the school's integrated pest management plan.

4.5. The completed integrated pest management plan shall be filed with the commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted to the commissioner prior to the initiation of the new plan.

4.6. Schools shall maintain an integrated pest management file for each school facility. The integrated pest management file shall contain at a minimum the following items or documents:

- 4.6.a. the adopted integrated pest management plan;
- 4.6.b. monitoring diagrams of the facility;
- 4.6.c. treatment records of the facility, including diagrams of treatment locations;
- 4.6.d. labels of pesticide products used at the facility; and
- 4.6.f. copies of material safety data sheets.

4.7. Upon request, copies of pesticide labels and/or material safety data sheets shall be provided to employees of the school

facility or to parents or legal guardians of the school's students.

4.8. Exceptions - Areas of schools, such as, but not limited to, greenhouses, nursery plots or agricultural field plantings, utilized for vocational agricultural plots or research, are exempt from the requirements of these rules.

61-12J-5 Integrated Pest Management Programs for Day Care Centers

5.1. All day care centers covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Buildings, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

5.2. At a minimum, the integrated pest management program for a day care center shall contain:

5.2.a. a policy statement;

5.2.b. pest management objectives;

5.2.c. education of the building occupants in integrated pest management practices;

5.2.d. inspection activities;

5.2.e. monitoring activities; and

5.2.f. an evaluation of the integrated pest management strategies in practice.

5.3. At the inception of the integrated pest management program, the day care center shall make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record shall be updated every six months with the items corrected so noted on the record with the date of correction.

5.4. The completed integrated pest management plan shall be filed with the commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted to the commissioner prior to the initiation of the new plan.

5.5. Day care center operators shall maintain an integrated pest management file for each facility in operation. The Integrated Pest Management file shall contain at a minimum the following items or documents:

- 5.5.a. the approved integrated pest management plan;
- 5.5.b. monitoring diagrams for the facility;
- 5.5.c. treatment records for the facility, including diagrams of treatment locations;
- 5.5.d. labels of pesticide products used at the facility; and
- 5.5.e. copies of material safety data sheets for the products used at the facility.

5.6. Copies of pesticide labels and material safety data sheets shall be given to child's parents or legal guardians upon request.

61-12J-6 Monitoring for Pest Infestations

6.2. Monitoring Program

6.2.a. An integrated pest management program consists of a cycle of inspection, identification, monitoring, evaluation and choosing the appropriate method of control. Routine inspection and accurate identification of pests are vital steps in integrated pest management to ensure that control methods will be effective. Once the pest has been identified and the source of its activity pinpointed, habitat modifications, primarily exclusion, repair and sanitation efforts, may greatly reduce the prevalence of the pest. Monitoring includes inspecting areas for pest evidence, entry points, food, water and harborage sites, and estimating pest population levels. The information gained through monitoring is evaluated to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

6.2.b. A monitoring program shall be conducted in each facility on an ongoing basis. Sticky traps designed for cockroaches and other crawling insects shall be placed along wall/floor junctions, on vertical surfaces, behind appliances, in closets, cabinets and shelves, and in other areas where insects have been seen. Three to five traps shall be used in each room or area monitored.

6.2.c. Components of the monitoring program shall include:

6.2.a.A. A floorplan of the facility showing the number and location of each trap;

6.2.a.B. Weekly inspection of each trap with the following information recorded on a Pest Surveillance Data Sheet:

- 6.2.a.B.(a). Trap number and location;
 - 6.2.a.B.(b). Date checked;
 - 6.2.a.B.(c). Trap condition (either OK or needs to be replaced);
 - 6.2.a.B.(d). Numbers and species of insects, arthropods, rodents or other pests trapped;
 - 6.2.a.B.(e). Pest damage or other evidence of pests such as feces, cast skins, or rub marks;
 - 6.2.a.B.(f). Any need for pest management; and
 - 6.2.a.B.(g). The name of the person performing the monitoring activity;
- 6.2.a.C. Replacement of the traps at least every 2 months or when the adhesive is no longer tacky or when trap is full, whichever comes first; and
- 6.2.a.D. Removal and disposition of the insects trapped after numbers are recorded and identification is confirmed, to prevent counting specimens more than one time and to prevent their use as food by other insects or rodents.

6.3. When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the facility and pest type, the progressive levels of pest control techniques and chemical applications as outlined in Section 7, Use of the Least Hazardous Materials, shall be followed in controlling the pest population.

61-12J-7 Use of the Least Hazardous Materials - Re-entry Intervals

7.1. Level 1 - Non-chemical Control Methods

7.1.a. Pest-preventive measures shall be incorporated into existing structures. Such preventive measures reduce the need for pesticide applications, and include sanitation, such structural repairs as sealing cracks, and such physical and mechanical controls as screens, traps, and air doors. Consult the West Virginia Department of Agriculture's best management practices document "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", or the most recent revision, for integrated pest management strategies for specific sites. Note that every facility will experience slightly different combinations of pests.

7.2. Level 2 - Least Hazardous Materials

7.2.a. If non-chemical pest management methods alone are ineffective or impractical, it may be necessary to incorporate a pesticide into the integrated pest management program. Although all pesticides are inherently toxic, there are a number of pesticide materials that are determined to be of low impact to occupants because of their organic or biological nature, low toxicity, relative non-volatility, and/or low or non-existent exposure to the occupants due to the manner in which they are applied as baits, gels or dusts into cracks and crevices or wall voids.

7.2.b. The least hazardous pesticides are those with a Caution signal word (EPA toxicity categories III and IV) such as botanical pesticides - pyrethrin and the synthetic pyrethroids; the inorganic insecticides - boric acid, disodium octaborate tetrahydrate, silica gel, and diatomaceous earth; insecticidal soaps; insect growth regulators; biological control agents - fungi, bacteria, nematodes; baits in tamper-resistant containers or for crack and crevice placement only.

7.2.c. There is no re-entry interval for these products due to their level of safety.

7.3. Level 3 - Crack and Crevice and Spot Treatments

7.3.a. Products with an EPA Caution signal word but not listed under Level 2 and applied as crack and crevice or spot treatments.

7.3.b. Products applied by these methods provide for reduced, minimal use of liquid materials that may present some, but limited volatility of the pesticide applied. Exposure to occupants is minimal.

7.3.c. The re-entry interval for which students and employees are to remain out of the facility after the conclusion of treatment is four hours or the time period specified on the pesticide label as registered by the United States Environmental Protection Agency, whichever is greater.

7.4. Level 4 - Broadcast Applications and Space Treatments

7.4.a. Products with a Caution signal word applied by broadcast application or as a space treatment or products with a Warning or Danger signal word applied by any application method.

7.4.b. Products applied by these methods create the greatest opportunities for exposure at the time of application due to drift or volatility. However products applied as fogging agents are usually of low mammalian toxicity and pose little exposure after label re-entry times specified by the United States Environmental Protection Agency.

7.4.c. The re-entry interval for which students and employees are to remain out of the facility after the conclusion of treatment is eight hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, whichever is greater.

61-12J-8 Prior Notification

8.1. Employees of Schools and Day Care Centers

8.1.a. All schools and day care centers shall notify their employees at least 24 hours in advance of the application pesticides in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.2.a. School administrators shall notify their employees through routine announcement or individual notice to each employee of a facility where pesticides are being applied.

8.2. Parents or Legal Guardians of Students of Schools

8.2.a. At the beginning of each school year, or at the time a student is enrolled into the school, school administrators shall notify the parents or guardians of the right to be informed of the application of pesticides in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.2.b. The notification to the parents or guardians shall contain a registration form, whereby the parent or guardian can request to be notified by the school administrator of the application of pesticides.

8.2.c. The administrator of the school shall provide notification to the parent or guardian requesting such notification at least 24 hours in advance of the pesticide application.

8.3. Parents or Legal Guardians of Children in Day Care Centers

8.3.a. At the time a day care center operator signs a contract or other agreement for the care of a child, the operator shall notify the parent or guardian of the right to be informed of the application of a pesticide in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.3.b. The day care center operator shall post and make available to the parent or guardian, notification of the application of pesticides at least 24 hours in advance of any pesticide application. Such notification shall be placed at the register where the parent or guardian signs the child into and out of the day care center.

61-12J-9 Application of Pesticides to Schools and Day Care Centers

9.1. Pesticide applications shall not be made in the presence of students, children in day care centers or employees of schools or day care center employees, except for school or day care center employees who are certified pesticide applicators, except that pesticides may be applied to a localized area of infestation when students, children or school and day care center employees are present if the infestation causes an imminent threat of bodily harm.

9.2. All pest control methods or practices shall be conducted in conformance to the Use of the Least Hazardous Materials as outlined in Section 7 of this rule.

9.3. All pesticide applications made to schools and day care centers shall be applied in accordance with the integrated pest management plan filed with the commissioner.

9.4. All pesticide applications shall only be made by certified commercial pesticide applicators or certified public applicators certified in General Pest Control, or registered technicians under the supervision of a certified pesticide applicator as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules.

9.5. The commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides, or persons providing services as a consultant to complete a specialized training program in urban integrated pest management.

9.5.a. The specialized urban integrated pest management program must be approved by the commissioner.

9.5.b. Pesticide applicators certified in the General Pest Control sub-category, as detailed in Title 61 Series 12A, Certified Pesticide Applicator Rules, who complete the specialized training program in urban integrated pest management prior to July 1, 1996, shall be determined to be certified in Urban Integrated Pest Management.

9.5.c. After July 1, 1996, the commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides in a school or day care center, or persons providing services as a consultant to schools and day care centers, to be examined and certified in the sub-categories of General Pest Control and Urban Integrated Pest Management, as outlined in Title 61 Series 12A, Certified Pesticide Applicator Rules.

61-12J-10 Record Keeping

10.1. All documents required to be in the integrated pest management files for schools and day care centers, as detailed in subsection 4.6 and subsection 5.5, respectively, of this rule, shall be kept for a period of two years.

10.2. The records required for the integrated pest management files of schools and day care centers shall be made available upon request to the commissioner to verify the maintenance of the integrated pest management program.

61-12J-11 Implementation

11.1. All schools and day care centers covered by this rule will be notified of these emergency rules and timetable for compliance as required by §18-5-9b and §49-2B-17 by August 15, 1995.

11.2. The commissioner shall make available to all schools and day care centers a copy of the integrated pest management materials titled "Integrated Pest Management in School and other Public Institutions, Best Management Practices - 1995" and "Integrated Pest Management in Schools and Other Public Institutions, A Guide for Commercial Applicators".

11.3. All schools and day care centers covered by this rule shall submit an initial draft of their integrated pest management plans to the commissioner for review by February 1, 1996. The commissioner shall review the plans and offer comments when they appear warranted.

11.4. All schools and day care centers covered by this rule shall submit their completed integrated pest management program to the commissioner by August 1, 1996.

11.5. All pesticide applications made to schools and day care centers shall be made in accordance with these rules and the integrated pest management program on file with the commissioner after September 1, 1996.



KEN HECHLER
Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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August 2, 1995

FILED
AUG 2 3 14 PM '95
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Agriculture

RULE: New Rule, Series 12J, Integrated Pest Management Program in Schools and Day Care Centers

DATE FILED AS AN EMERGENCY RULE: June, 22, 1995

FIRST EMERGENCY AMENDMENT: July 31, 1995

DECISION NO. 10-95

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION (ERD 10-95)

AGENCY: Department of Agriculture
RULE: New Rule, Series 12J Integrated Pest Management Programs in
Schools and Day Care Centers

FILED AS AN EMERGENCY RULE: June 22, 1995

FIRST EMERGENCY AMENDMENT: July 31, 1995

- par. 1 The Department of Agriculture (Department) has filed the above new rule as an emergency rule and emergency amendments to this rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State June 22, 1995 and the first amendment July 31, 1995 and with the LRMRC June 22, 1995 and the first amendment July 31, 1995.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §19-16A-4(H) reads:

Classifying or subclassifying certificate or certificates to be issued under this article. Such classification may include, but not be limited to, agricultural, forest, ornamental, aquatic, right-of-way, industrial, institutional, structural or health-relating pest control.

par. 9 §18-5-9b of the WV Code further reads:

By the 15th of August, 1995, the board shall implement the integrated pest management program promulgated under rules by the department of agriculture under authority of §19-16A-4.

par. 10 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- WV Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Department are as follows:

The 1995 Legislature passed HB 2471 requiring establishment of an integrated pest management program by July 1, 1995. This program will reduce the use of pesticides in schools and reduce the risk to the children and employees of those facilities. The rule was amended to be consistent with the agency approved rule that is currently filed with Legislative Rule Making Review Committee.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . time requirement as set forth by the legislature.

par. 15 This decision shall be cited as Emergency Rule Decision 10-95 or ERD 10-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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