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July 10, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Department of Agriculture

RULE: New Rule, 61CSR33, Rural Rehabilitation Loan Program

DATE FILED AS AN EMERGENCY RULE: July 8, 2014

DECISION NO. 16-14

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

A handwritten signature in cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 16-14)

AGENCY: West Virginia Department of Agriculture  
RULE: New Rule, 61CSR33  
FILED AS AN EMERGENCY RULE: July 8, 2014

- par. 1 The West Virginia Department of Agriculture (Department) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 forty-two 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 July 8, 2014 and with the LRMRC July 8, 2014.
- par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §19-1-11(b) reads:
- (b) The commissioner shall propose emergency and legislative rules for approval in accordance with article three, chapter twenty-nine-a of this code. The rules shall, at a minimum*
- (1) Establish minimum requirements and qualifications for the loan committee, including the addition of public members who have agricultural or business loan experience;*
- (2) Prohibit department employees and loan committee members, and their immediate family members, from receiving program loans;*

- (3) Establish minimum financial requirements for receiving a program loan;*
- (4) Require loans to be used for agricultural or related purposes;*
- (5) Require collateral sufficient to secure the loan;*
- (6) Establish policies for the application, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements and other aspects of the loan program;*
- (7) Require the department to advertise the loan program to the public, including information on the department's website and in the department's market bulletin; and*
- (8) Consider transferring the servicing of program loans to the State Treasurer's Office.*

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. 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. 11 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. 12 The facts and circumstances as presented by the Department are as follows:

The West Virginia Department of Agriculture is requesting to file an emergency rule Title 61 Series 33 Rural Rehabilitation Loan Program.

The West Virginia Legislature passed SB350 in which gave the department emergency rulemaking authority. In addition to the authority granted to us by the passing of SB350 we feel that by waiting for this rule to go through the regular rule making process we will lose an entire growing season.

There is a demand for loans at this time, and these loans will help the citizens of this state to invest in agriculture and agriculture related purposes. Agriculture is a viable industry, and also supports our economy.

par. 13 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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 16-14 or ERD 16-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Department of Agriculture.



NATALIE E. TENNANT  
Secretary of State

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