

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2014 AUG -1 P 1:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Dept. of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-33-1

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 PROPOSED: 32

TITLE OF RULE BEING PROPOSED: Equine Rescue Facilities

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Equine Rescue Facilities

Type of Rule: Legislative Interpretive Procedural

Agency: WV Dept. of Agriculture

Address: 1900 Kanawha Blvd., E
Charleston, WV 25305

Phone Number: 304-558-3200 Email: jodeemartin@wvda.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Equine Rescue Facilities

Rule Title:

Equine Rescue Facilities

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The \$100.00 annual fee for an Equine Rescue Facility license will be remitted by the Commissioner of the WDA to the Human officer or animal control officer in the county where the facility is located, to offset the expense of inspection. If there is no Human officer or animal control officer in that county the money will then be remitted to the Sheriff in that county.

Date: 7-29-14

Signature of Agency Head or Authorized Representative

Walt Helms



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Statement of Circumstance

According to the provisions of §19-33-1 the West Virginia Legislature determined that it was necessary to license Equine Rescue Facilities in the state of West Virginia that are listed as nonprofit organizations having a legitimate and current status under Title 26 U. S. C. 501(c) (3), as amended, that fosters care to unwanted equines due to age, health or other circumstances that deem the equines homeless.

Walt Helmick



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Brief Summary of Proposed Rule
Equine Rescue Facilities
Title 61 Series 32

This legislative rule defines terms, establishes the standards for maintenance of premises of an Equine Rescue facilities, the standards of care and health of the horses kept at the facility, as well as standards for inspection of those facilities. This rule also establishes standards for closure and seizure of horses kept at the facility, and sets for forth penalties.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charlseton, WV 25305
304-558-3200

LEGISLATIVE RULE TITLE: Equine Rescue Facilities

1. Authorizing statute(s) citation 19-33-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 1, 2014

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 31, 2014

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 2014

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jodee Martin/Executive Assistant
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200 304-558-2203 (fax)
jodeemartin@wvda.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

July 1, 2014 - July 31, 2014

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

August 1, 2014

d. Attach findings and determinations and reasons:

Attached

Title
Legislative Rule
West Virginia Department of Agriculture
Series 32
Equine Rescue Facilities

FILED
2014 AUG -1 P 1:30
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 61-32 -1. General.

1.1. Scope. -- This legislative rule defines terms, establishes the standards for maintenance of premises of an Equine Rescue facility, the standards of care and health of the horses kept at the facility, as well as standards for inspection of those facilities. This legislative rule also establishes standards for closure and seizure of horses kept at an Equine Rescue facility.

1.2. Authority. -- West Virginia Code §19-33-1.

1.3. Filing Date. --

1.4. Effective Date. --

§61-32-2. Definitions.

2.1. "APHIS" means Animal and Plant Health Inspection Service.

2.2. "Application" means a request form submitted to the Commissioner of the West Virginia Department of Agriculture requesting to open an Equine Rescue Facility.

2.3. "Body condition score" means an industry accepted evaluation of an animal's body fat and muscle mass as related to skeletal dimension and stage of production.

2.4. "Coggins" means the common name for the agar gel immunodiffusion test for diagnosis of Equine Infectious Anemia (EIA).

2.5. "Commissioner" means the Commissioner of the West Virginia Department of Agriculture.

2.6. "Designated isolation area" means an area with no direct equine contact.

2.7. "Emergency situation" means a serious unexpected and often dangerous situation requiring immediate action.

2.8. "Equine" means any animal in the Family Equidae, including horses, asses, mules, ponies, and zebras.

2.9. "Equine infectious anemia" means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV).

2.10. "Equine rescue facility" means a facility that is listed as a nonprofit organization having a legitimate and current status under Title 26 U.S.C. 501(c)(3) that fosters care to unwanted equines due to age, health or other circumstances that deem the equines homeless.

2.11. "Equine rescue facility license" means a license granted by the Commissioner of the West Virginia Department of Agriculture to an applicant to open an equine rescue facility.

2.12. "Henneke body score" means a numerical scale used to evaluate the amount of fat on a horse's body. Based on both visual appraisal and palpable fat cover of the six major points of the horse that are most responsive to changes in body fat. Scientific method of evaluating a horse's body condition regardless of breed, body type, sex or age.

2.13. "Humane officer" means a person designated by the sheriff in each county to prevent the perpetration or continuance of any act of cruelty upon any animal and to investigate and, upon probable cause, to arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices.

2.14. "Inspection" means an examination of an equine rescue facility to see that the standards of care are met for the horses, facility, and premises, conducted by a county humane officer or county sheriff, in the county that the facility is located.

2.15. "Licensed accredited veterinarian" means any veterinarian licensed to practice veterinary medicine in the state of West Virginia and accredited by the State Veterinarian, APHIS and approved by the Deputy Administrator of USDA, APHIS, VS (United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Service) in accordance with provisions of Part 161, Title 9, Code of Federal Regulations (CFR), and pre-approved to perform certain functions of Federal and cooperative State-Federal programs.

2.16. "Maintenance" means the preservation and upkeep of the premises of an equine rescue facility, as well as the space that horses are kept.

2.17. "Quarantine area" means a confined area with a minimum of 200 yards from any equine under the direct supervision and control of a State or Federal animal health official who shall establish procedures for the accounting of all animals entering or leaving the area with a minimum of 200 yards from any equine.

2.18. "Revocation" means to withdraw a license to operate an equine rescue facility.

2.19. "Seizure" means to take possession of the horses that are kept at an equine rescue facility.

2.20. "Shelter" means any cover man made or natural that gives livestock or poultry protection from the elements.

2.21. "USDA" means the United States Department of Agriculture.

2.22. "West Virginia Equine Rescue Standards" means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities.

§61-32-3. Issuance of license.

3.1. Any person who is requesting a license to operate an Equine Rescue Facility shall submit an application to the Commissioner of the West Virginia Department of Agriculture.

3.2. The application shall include:

3.2.a. Name of person responsible for the facility;

3.2.b. Address of the facility;

3.2.c. A detailed drawing and measurements of the facility including;

3.2.c.1. Quarantined area; and

3.2.c.2. Isolation area.

3.2.c.3. Phone number of the person responsible for the facility;

3.2.c.4. All veterinary records pertaining to each equine at the facility including;

3.2.c.5. Name of veterinarian; and

3.2.c.6. Phone number of veterinarian.

§61-32-4. Annual fee.

4.1. The annual fee for an equine rescue facility license shall be \$100.

4.2. This fee shall be remitted by the Commissioner of the West Virginia Department of Agriculture to the humane officer in the county where the facility is located to offset the expense of inspecting that facility.

§61-32-5. Standards of care for equine.

5.1. The following criteria shall be considered standards of care for equine:

5.1.a. Drink;

5.1.b. Water containers shall be cleaned regularly and free of any hazard.

5.1.c. Feed;

5.1.d. Equine shall be provided a diet sufficient to maintain a healthy weight and body condition. Any body condition score of less than three (3) shall be unacceptable; unless the animal is under the supervision of a licensed veterinarian. Geriatric or ill horses may have less than an ideal body condition.

5.2. The following criteria shall be met for scoring the body condition of equine:

5.2.a. Poor. Animal is extremely emaciated, Spinous rocesses (portion of the vertebra of the backbone which project upward), ribs, tailhead, and bony protrusions of the pelvic girdle (hooks and pins) are prominent. Bone structure of withers, shoulders, and neck are easily noticeable. No fatty tissues can be felt.

5.2.b. Very Thin. Animal is emaciated. Slight fat covering over base of the spinous processes. Transverse processes (portion of vertebrae which project outward) of lumbar (loan area) vertebrae feel rounded. Spinous processes ribs, shoulders, and neck structures are faintly discernible.

5.2.c. Thin. Fat is built up about halfway on spinous processes. Transverse processes cannot be felt. Slight fat cover over ribs. Spinous processes and ribs are easily discernible. Tailhead is prominent, but individual vertebrae cannot be visually identified. Hook bones (protrusion of pelvic girdle appearing in upper, forward part of the hip) appear rounded, but are easily discernible. Pin bones (bony projections of pelvic girdle located toward rear, mid-section of the hip) are not distinguishable. Withers, shoulder, and neck are accentuated.

5.2.d. Moderately Thin. Negative crease along back (spinous processes of vertebrae protrude slightly above surrounding tissue). Faint outline of ribs is discernible. Fat can be felt around tailhead (prominence depends on confirmation). Hook bones are not discernable. Withers, shoulders, and neck are not obviously thin.

5.2.e. Moderate. Back is level. Ribs cannot be visually distinguished, but can be easily felt. Fat around tailhead feels soft. Fat begins to be deposited along the sides of the withers , behind the shoulders, and along sides of neck.

5.2.f. Moderate to Fleshy. May have slight crease down back. Fat over ribs feels spongy. Fat around tailhead feels soft. Fat begins to be deposited along the sides of the withers, behind the shoulders, and along sides of neck.

5.2.g. Fleshy. May have crease down back. Individual ribs can be felt, but with noticeable filling of fat between ribs. Fat around tailhead is soft. Fat is deposited along withers, behind shoulders, and along neck.

5.2.h. Fat. Crease down back. Difficult to feel ribs. Fat around tailhead is very soft. Area along withers is filled with fat. Area behind shoulder is filled in flush with the rest of the body. Noticeable thickening of neck. Fat is deposited along inner buttocks.

5.2.i. Extremely fat. Obvious crease down back. Patchy fat appears over ribs. Bulging fat around tailhead, along withers, behind shoulders, and along neck. Fat along inner buttocks may rub together. Flank is filled in flush with the rest of the body.

§61-32-6. Standards of care for equine rescue facility.

6.1. Equine shall be provided with sufficient space.

6.1.a. Stalls in which equine are housed untethered for more than four (4) hours shall be large enough to allow horses to turn around completely, lie down comfortably, and stand completely erect.

6.1.b. Stalls shall have adequate ventilation and drainage and be kept free of excessive waste.

6.1.c. If equine is tethered, it shall be done in a way and under the supervision sufficient to minimize the risk of injury.

6.1.d. Pastures shall be routinely monitored for the presence of hazards.

6.1.e. Space shall be provided for exercise that is sufficient to maintain an equine's health.

6.2. The follow practices shall be authorized:

6.2.a. Castration;

6.2.b. Identification;

6.2.c. Hoof trimming;

6.2.d. Shoeing;

6.2.e. Artificial insemination;

6.2.f. Embryo transfer;

6.2.g. Navel dipping;

6.2.h. Breeding soundness evaluations;

6.2.i. Surgery;

6.2.j. Dental care; and

6.2.k. Restraint by use of a twitch.

6.3. The following practices shall be prohibited:

6.3.a. Soring.

§61-32-7. Standards for inspection.

7.1. All equine rescue facilities shall be inspected two (2) times per year.

7.2. If the standards of care that are listed in §61- -5. of this article, and the standards in the AAEP Care Guidelines for Equine are not met the facility shall be closed.

7.3. In the case of an emergency situation a facility may be exempt from closure.

§61-32-8. Penalties.

8.1. Any person who violates any provision of this article or rules adopted hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 for the first offense, and for a second or subsequent offense shall be fined not less than \$500 nor more than \$2,500.