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May 12, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Department of Agriculture

RULE: Captive Cervid Farming 61CSR34

DATE FILED AS AN EMERGENCY RULE: April 28, 2015

DECISION NO. 2-15

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 2-15)

AGENCY: West Virginia Department of Agriculture
RULE: 34
FILED AS AN EMERGENCY RULE: April 28, 2015

- 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 April 28, 2015 and with the LRMRC April 28, 2015.
- 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 §19-2H-12 reads:

(a) The commissioner shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement and enforce this article. The rules shall be consistent with the rules of the United States Department of Agriculture in so far as practicable. Any rules promulgated by the commissioner before September 1, 2015, may be emergency rules.

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.

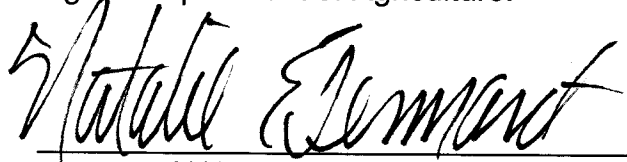
par. 12 The facts and circumstances as presented by the Department are as follows:

Enrolled SB 237 Captive Cervid Farming Act, passed on February 13, 2015 and effective from passage requires that captive cervid farming be regulated as an agricultural business. This duty previously was managed by the West Virginia Division of Natural Resources. The West Virginia Department of Agriculture shall regulate the sale of venison, create an application process, issue, renew, modify and transfer licenses, inspect facilities, transition current facilities to new license procedures, and create penalties. This bill became effective from passage and therefore it is critical to the health and safety of West Virginia Citizens, the captive cervid industry, as well as the West Virginia Department of Agriculture to files this emergency rule.

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 2-15 or ERD 2-15 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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