



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Agriculture TITLE-SERIES: 61-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 61-02 WV Apiary Law

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §19-13-3, §19-19-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: (1) To effectively eradicate, suppress or control honey bee pests as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments, retreatments, and fees for the services; and (4) any other rules necessary to effectuate the enforcement of this article.

(b) The commissioner is authorized to conduct apiary education in a manner which advances and promotes bee culture in West Virginia.

(c) The commissioner is authorized to cooperate with the federal government and its agencies, departments and instrumentalities; other West Virginia agencies, departments, divisions, or political subdivisions; and any other state or commonwealth and its agencies, departments or political subdivisions, in order to carry out the effective administration of this article.

(d) The commissioner is authorized to stop the delivery of, to seize, to destroy, to treat or to order returned to point of origin, at the owner's expense, all appliances, bees, bee equipment, bee products or hives transported into or within this state, found to be infected with honey bee pests regardless of whether a valid certificate of inspection is attached.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

6/2/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

7/2/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule establishes general operating rules and procedures for the inspection of apiaries, control of bee diseases, and limitation of liability for beekeepers.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

To establish procedures for registration, inspection, sampling and possible quarantine should any pests be found.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no economic impact

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no economic impact

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no economic impact

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 2
WEST VIRGINIA APIARY LAW

§61-2-1. General.

1.1. Scope. -- This legislative rule establishes general operating rules and procedures for the inspection of apiaries, control of bee diseases, and limitation of liability for beekeepers.

1.2. Authority. -- W. Va. Code §19-13-3, §19-13-4

1.3. Filing Date. -- ~~March 21, 2018~~

1.4. Effective Date. -- ~~April 20, 2018~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on ~~April 20, 2023~~
August 1, ten years from its effective date.

§61-2-2. Definitions.

2.1. "Africanized Honey Bee (AHB)" means hybrids of the African Honey Bee with various European honey bees and which are far more aggressive than the European subspecies.

2.2. "Apiarist or beekeeper" means a person keeping bees.

2.3. "Apiculture or beekeeping" means the management of beehives.

2.4. "Bee Sting" means an injury sustained and inflicted by a worker honey bee.

2.5. "Beehive" means a removable framed housing for a honey bee colony.

2.6. "Caution sign" means a standardized sign with black print on yellow background for posting on or near an apiary as a precaution that honey bees are in the area.

2.7. "Flight path" means the distinct route taken by many bees leaving from or returning to their hive.

2.8. "Honey extraction" means the removal of honey from combs.

2.9. "Honey flow" means the gathering of nectar from flora by honey bees.

2.10. "Honeycomb" means removable frames, containing wax cells which house honey, pollen, or brood (eggs, larvae, pupae).

2.11. "Inspector" means a West Virginia Department of Agriculture inspector or personnel who is authorized to conduct official inspections on behalf of the Department.

2.12. "Pollination" means the transfer of pollen by honey bees from anthers to stigmas of flowers for the purpose of plant fertilization.

~~2.12.~~ 2.13. "Queen" means an adult, mated female that lives in a honey bee colony or hive.

~~2.13.~~ 2.14. "Robbing" means bees attempting to access honey stored or spilled in another hive.

~~2.14.~~ 2.15. "Staging area" means a collection site for holding colonies prior to shipment.

~~2.15.~~ 2.16. "Swarm" means a cluster or flying mass of Honey Bees including workers, queen, and drones.

~~2.16.~~ 2.17. "Undeveloped property" means any idle land that has no structures or facilities intended for human use or occupancy. Property used exclusively for streets, highways, or commercial agriculture is to be considered undeveloped property for the purpose of the West Virginia Honey Bee Best Management Practices (HBBMP).

~~2.17.~~ 2.18. "Water supply" means any available source bees could use for water such as, but not limited to, water taps, hoses, pools, hot tubs, streams, ponds, puddles, etc.

§61-2-3. Registration of bees; Identification of apiaries.

3.1. The Commissioner shall furnish an application for registration of bees to all person known to keep bees. ~~The Commissioner shall mail the applications during the month of June to all persons who have registered their bees during the previous year.~~ Upon receipt of a properly executed bee registration application, the Commissioner shall issue a certificate of registration which will be based upon the information provided on the application.

3.2. ~~Upon receipt of a properly executed bee registration application, the Commissioner shall issue a certificate of registration which will be based upon the information provided on the application.~~ All apiary certificates of registration expire on June 30 of each year, and shall be renewed annually. The Commissioner shall prepare renewal applications and make them available no later than June 1 of each year.

3.3. Any person who plans to import bees ~~for the express purpose of pollination service, honey production or permanent location~~ shall request a permit for entry from the Commissioner at least ten (10) days prior to the arrival of the bees. A valid certificate of inspection from the state of origin identifying any bee diseases that are affecting the bees and the extent of the bee diseases, if any, must accompany the request.

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3.3.a. Any person who plans to import vacant used bee equipment into the state shall request a permit for entry from the Commissioner at least ten (10) days prior to the arrival of the bee equipment. A valid certificate of the inspection from the state of origin identifying any bee diseases in the bees that were in the equipment, and stating that the treatment has been made, if any, to the vacated equipment shall accompany the request.

3.4. Any person who keeps bees and who has registered them is required to report to the Commissioner additional colonies obtained as packaged bees and any honey bee queens imported from any state, province or territory within 10 days of acquisition.

3.4.a. Any person who keeps bees and who has registered his or her bees who obtains additional colonies from capturing swarms, colony divisions or any other source from within this state, shall report the additional colonies to the Commissioner during the designated annual registration period.

~~3.5. The Commissioner shall give an educational bee registration exemption to any person keeping bees for the express purpose of conducting education beekeeping projects, classes or programs which are under the direction of a governmental entity or a recognized educational organization such as the 4-H, the Future Farmers of America, or educational promotions sponsored by state or local beekeeping associations. At the conclusion of the educational project or participation in the program any person who keeps bees shall register their bees as provided by West Virginia Code §19-13-1 et seq. and by this rule.~~

~~3.5.a. Bees being kept under an educational bee registration exemption are not exempt, however, from the treatment provisions of the West Virginia Code §19-13-1 et seq. and section 5 of this rule when a transmissible bee disease is identified in the environs of the bees being kept under the exemption.~~

§61-2-4. Limits on Liability.

4.1. A beekeeper may obtain limits on liability when he or she: ~~who:~~

4.1.a. Signs a Honey Bee Best Management Practices compliance agreement to be kept on file at the West Virginia Department of Agriculture headquarters; and

4.1.b. Voluntarily conforms with Honey Bee Best Management Practices contained in subsection 4.2. of this rule.

4.2. West Virginia Honey Bee Best Management Practices (HBBMP) are as follows:

4.2.a. West Virginia Beekeepers shall post a honey bee caution sign in or near the apiary.

4.2.b. West Virginia Beekeepers shall limit the number of hives in relation to property lot size in accordance with the following:

4.2.b.1. Less than ½ acre – 4 colonies (1/2 acre = 21,780 sq. ft., roughly 100 ft. x 218 ft.)

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4.2.b.2. More than 1/2 acre, less than 1 acre – 6 colonies (1 acre = 43,560 sq. ft., roughly 150 ft. x 290 ft.); and

~~4.2.3.1.~~ 4.2.b.3. 1 acre or more – 8 colonies (1 acre = 43,560 sq. ft., roughly 150 ft. x 290 ft.)

4.2.c. Regardless of lot size: If all hives are situated at least 200 feet in any direction from all property lines of the lot on which the apiary is situated, or as long as all adjoining property that falls within a 200-foot radius of any hive is undeveloped property, there are no limit on the number of hives.

4.2.d. West Virginia beekeepers:

4.2.d.1. Shall have hive entrances face away from neighboring property and in such a direction that bees fly across the beekeeper's property a sufficient distance to gain a height of six feet. If bordering property is within a distance of 50 feet, the beekeeper shall use barriers (hedges, shrubs or fencing six feet high) to redirect the bees' flight pathway and establish bee flight pathways above head height;

4.2.d.2. Shall maintain a water source near the colonies at a distance less than the nearest unnatural water supply;

4.2.d.3. Shall not keep an apiary within 50 feet of an established animal that is tethered, kenneled or otherwise prevented from escaping a stinging incident;

4.2.d.4. Should avoid opening colonies for inspection or manipulation when neighbors are present or in the immediate vicinity.

4.2.d.5. Should avoid purchasing queens and honey bees from areas that are documented as having been designated as an established Africanized Honey Bee (AHB) zone;

4.2.d.6. Shall manage all colonies to minimize swarming;

4.2.d.7. Shall replace queens in colonies exhibiting defensive behavior that may be injurious to the general public or domesticated animals as determined by Department's apiary staff.

4.2.e. A collection site for holding colonies prior to shipment, or a staging area, shall have undeveloped property surrounded by a natural barrier and shall be marked with a honey bee caution sign.

4.2.f. Anyone transporting colonies shall secure the load and screen entrances or place a net over the colonies to prevent bees from escaping.

4.2.g. West Virginia Beekeepers shall properly discard all pesticides and other control agents after use according to label directions.

4.2.h. Honey Bees used for public demonstrations, entertainment or educational purposes shall be enclosed so as to avoid the release of honey bees to the public.

4.2.i. In the even that Africanized Honey Bee (AHB) infestation is determined to be established in West Virginia by the Department, additional rules promulgated by the Commissioner of Agriculture will be followed.

§61-2-5. Right of entry; Apiary inspections; Quarantines.

5.1. An inspector shall inspect a colony of bees by removing three (3) or more frames containing developing brood from the hive and examining both sides for evidence of bee disease.

5.2. A person shall not keep or maintain bees in any hive or receptacle which does not permit the thorough examination of the brood combs.

5.2.a. Whenever and wherever an inspector finds that the inspection of bees is impossible due to the keeping of bees in hives or other receptacles not equipped to permit the examination of brood combs, the inspector shall inform the beekeeper in writing of the condition, provided that no transmissible bee disease is found in the environs of the hives or other receptacles. The beekeeper has twelve (12) months from the initial date of notification to correct the condition. Whenever or wherever these conditions are not corrected within 12 months from the date of notification of the beekeeper, the Commissioner shall quarantine the colonies until the condition is corrected.

5.2.b. If a transmissible bee disease is confirmed by laboratory analysis in the Department's laboratory or by the United States Department of Agriculture – Agricultural Research Service in the environs of an apiary equipped with hives or receptacles which do not permit the thorough examination of the brood combs, the colonies contained in the hives or receptacles shall be considered affected with the confirmed bee diseases and shall be destroyed ~~or sterilized as the situation warrants~~. In order to protect the beekeeping industry, the Commissioner shall require immediate destruction ~~or sterilization~~ of the hives or receptacles.

5.3. After inspecting or handling any disease infected bee equipment or appliances, and before proceeding to any other apiary, the inspector and every assistant, whether a beekeeper or inspector, shall thoroughly disinfect and/or de-contaminate every portion of their person and clothing, and any appliances that may have been in contact with infected materials.

5.4. The Commissioner shall quarantine all apiaries that are confirmed by laboratory analysis in the Department's laboratory or by the United States Department of Agriculture – Agricultural Research Service as infected with a transmissible bee disease. The inspector will submit to the apiary owner, or person in charge of the apiary, a written document stating the nature of the disease and a statement whether the disease may be successfully treated or not. In addition, the inspector shall include in the document recommendations for treatment, if any, and a statement of policy. Upon receipt of the documents, the apiary owner, or person in charge, shall, by signed agreement, willingly acknowledge and accept full responsibility for compliance with the quarantine and the treatment. The apiary owner shall treat, or cause to treat the quarantined colonies as soon as possible, but no later than fourteen days from the notification.

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5.4.a. If the incidence of the bee disease is such that, in the judgment of the inspector, chemical control treatment may be successful, the apiary owner shall treat the affected colonies, as prescribed by the inspector.

5.4.b. If the incidence of the bee disease is such that, in the judgment of the inspector, no treatment may be successful, as in the case of infection with American foulbrood, then the inspector shall notify the apiary owner that the affected colonies must be destroyed ~~and related equipment sterilized~~. The inspector shall be present during the destruction of the colonies ~~and sterilization of the bee equipment~~.

~~5.5. The Commissioner or the apiary owner shall sterilize, by any appropriate method specified by the inspector, any vacant bee equipment that may have been directly or indirectly exposed to contagious bee disease.~~

~~5.6.~~ 5.5. The Commissioner shall not quarantine any colonies confirmed infected with any non-transmissible parasitic infestation or bee disease. The apiary owner shall, however, be encouraged to treat the colonies according to the written specifications provided by the inspector.

~~5.7.~~ 5.6. The Commissioner shall not bring additional regulatory action against any apiary owner who is complying or attempting to comply with the terms of quarantine.

~~5.8. If the Commissioner finds that any colony of bees that is under quarantine needs to be sterilized, due to the owner violating the terms of the quarantine, or for any other reason, then the Commissioner shall charge the apiary owner a fee of \$2.30 for each hive sterilized. The Commissioner shall charge the fee to recover the costs for the sterilization.~~

~~5.9.~~ 5.7. The Commissioner shall review any violation of a quarantine and, depending upon the severity of the violation, shall assess other penalties as provided by West Virginia Code §19-13-1 et seq.