



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative

TITLE-SERIES: 61-37

RULE NAME: Agritourism

CITE AUTHORITY: §19-36-1

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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 37
AGRITOURISM

§61-37-1. General.

1.1. Scope. – This legislative rule implements the Agritourism Responsibility Act, W. Va. Code §19-36-1 *et seq.* It establishes duties of agritourism professionals and participants in agritourism activities, clarifies the relationship between agritourism and other laws, and provides for the promotion and marketing of agritourism.

1.2. Authority. – W. Va. Code §19-36-1

1.3. Filing Date. – ~~April, 9, 2024~~

1.4. Effective Date. – ~~April 15, 2024~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect on August 1, 2034~~1~~.

§61-37-2. Definitions.

2.1. “Agritourism” means any lawful activity carried out on a farm or ranch that allows members of the general public for recreational, entertainment, or educational purposes to view or enjoy rural activities. Agritourism specifically includes public or private weddings, and receptions and events held on working (or active) farms or ranches, ~~or activities that take place on a forest farm.~~

2.2. “Agritourism business” means any person, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group or entity which is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

2.3. “Agritourism professional” means owners, operators, employees, and volunteers working for or under the direction of the operators of an agritourism business. This term includes agritourism business employees, volunteers, and operators.

2.4. “Commissioner” means the Commissioner of the West Virginia Department of Agriculture.

2.5. “Equipment” means the items necessary for a particular agritourism activity.

2.6. “Facilities” means a place, amenity or piece of equipment designed, built, installed, or provided to serve a specific function or service.

2.7. "Farm" means an area of land used for the production, cultivation, growing, harvesting, or processing of agricultural products.

2.8. "Guided activities" means activities led by an agritourism professional as part of an agritourism business.

2.9. "Inherent risks" are those dangers or conditions that are part of an agritourism activity including certain hazards, natural conditions of land and terrain, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and/or ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

2.10. "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

2.11. "Posted warnings" means any and all signs placed at the site of the agritourism activity by the agritourism professional related to the proper operation of the agritourism activity, appropriate and/or inappropriate actions by agritourism participants, and any other directions or information to be observed and heeded by agritourism participants.

2.12. "Ranch" means an area of land used for the breeding and/or raising of animals.

2.13. "Occasional use" means the use of an agricultural structure on an irregular or intermittent basis for activities other than those defined by W. Va. Code §15A-11-5(h).

2.14. "Agricultural Structure" means a structure used primarily for the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

§61-37-3. Duties of agritourism operators.

3.1. Each agritourism business shall post and maintain signs that contain the following notice:

NOTICE

Under West Virginia law, there may be limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism business if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to landscape, terrain, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

3.1.a. Signs must be placed in a clearly visible location at both the entrance to the agritourism location and at the site of the agritourism activity. If the entrance to the location and the site of the activity are the same, only one sign is required.

3.1.b. The notice on each sign must be clearly legible, with each letter to be a minimum of one inch in height.

3.1.c. Failure to display the required notice will prevent an agritourism business from invoking the immunity provided by the Agritourism Responsibility Act.

3.2. If an agritourism professional utilizes a contract for the providing of professional services, instruction, or the rental of equipment to a participant, the notice contained in section 3.1. must be included in clearly legible print.

3.2.a. This section applies whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity.

3.2.b. The notice in a contract shall be presumed to be in clearly legible print if the caption is typewritten or printed in at least twelve-point bold upper-case type and the body of the notice is typewritten or printed in at least eight-point regular type.

3.2.c. Failure to include the required notice in any such contract will prevent an agritourism business or agritourism professional from invoking the immunity provided by the Agritourism Responsibility Act.

3.3. All agritourism professionals shall make reasonable and prudent efforts to determine the ability of a participant to safely engage in the agritourism activity. An agritourism professional reserves the right to refuse participation if he or she determines that a participant imposes a safety risk to himself or others.

3.4. All agritourism professionals shall make known to any participant, via written warning, verbal warning, or posted warnings, any dangerous condition as to land or facilities under the lawful possession and control of the operator of which the operator knows or through the exercise of due diligence should know, by advising the participant in writing or by conspicuously posting warning signs upon the premises.

3.5. All agritourism professionals providing equipment to participants shall make a reasonable and prudent effort to routinely inspect such equipment to assure that is in proper working condition and safe for use in the agritourism activity.

§61-37-4. Duties of agritourism participants.

4.1. All participants engaged in an agritourism activity expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in an agritourism activity.

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4.2. All participants shall heed all posted warnings, and perform agritourism activities only in an area or in facilities designated by the operator. In the case of guided activities, all participants shall follow all directions, instructions and refrain from acting in a manner which may cause or contribute to the injury of others.

4.3. All participants shall notify the operator of any medical conditions or circumstances that may interfere or limit the ability to heed instructions, directions, or cause or contribute to the injury of others.

4.4. All participants involved in an accident shall not depart from the area or facility where the agritourism activity has taken place without leaving contact information, including their name, address, and telephone number where they can be reached.

§61-37-5. Maintenance of property status for certain purposes; exceptions.

5.1. The occurrence of agritourism activities does not change the nature or use of property that otherwise qualifies as agricultural for building code and property tax classification purposes.

5.1.a. An owner of farm land ~~must file wishing to maintain Farm Use Land Valuation application~~ of his or her land ~~must comply with the annually application~~ and meet the requirements of his or her county assessor as required by §110CSR1A.

5.1.a.1. New property owners of less than one year who have not filed a Farm Use Land Valuation application may use other "proof" that the property is a farm, including but not limited to: former property valuation records, aerial maps, and receipts for farm equipment or other proof approved by Commissioner.

5.1.a.2. Property owners of less than one acre that do not qualify for farm use valuation may nevertheless apply for an agricultural exemption to local building and fire codes for qualifying agricultural and agritourism structures. This applicant type must provide tangible evidence to the Commissioner for the use of the structure, such as receipts for livestock, farming equipment, or a detailed description of the purpose built structure.

5.1.b. Tangible personal property utilized in agritourism shall be considered to be "employed exclusively in agriculture," and therefore eligible for the personal property exemption contained in W. Va. Code § 11-3-9(a)(28), so long as that tangible personal property would otherwise be eligible for the exemption, save the property's use in agritourism activities, and the tangible personal property's use in agritourism activities less than 50% of its overall use.

5.2. An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structures used for such purposes on a full-time basis so long as such facilities are deemed structurally sound and otherwise safe for the intended use.

5.2.a. Occasional use of an agricultural structure that would otherwise be exempt from a housing or building code pursuant to W. Va. Code §7-1-3n for agritourism purposes shall not affect that structure's exemption from the applicable housing or building code.

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5.2.a.1. New construction used primarily for agriculture would be exempt.

5.2.a.2. New construction of purpose-built buildings may be exempt from code depending on the nature of use, except for the following:

5.2.a.3. Purpose built building for manufacturing and food processing with the exception of farm kitchen.

5.2.a.4. Purpose built building for overnight lodging or sleeping quarters.

5.2.a.5. Purpose built building event centers that are used full time for events.

5.2.b. Should a city or county building official conclude that an agritourism structure subject to a housing or building code is not structurally sound, a statement by a licensed engineer certifying structural soundness shall satisfy the requirements of this section.

5.2.c. Nothing in this rule shall be construed to require the Commissioner or the West Virginia Department of Agriculture to certify or determine that an agritourism facility is structurally sound and otherwise safe for the intended use, as required by section 5.2 of this rule.

5.3. Buildings that are considered "farm structures" pursuant to 87 C.S.R. §1.5 and are therefore exempt from the State Fire Code (87 C.S.R. §1) maintain their status as farm structures and any applicable exemption from the State Fire Code if they are used for occasional agritourism activities.

§61-37-6. Marketing and promotion of agritourism.

6.1. Advertisements and marketing materials are not required to include the notice language contained in section 3.1.

6.2. For the purpose of promotion and marketing of agritourism, the Commissioner is authorized to establish a voluntary registration and support program for agritourism businesses and agritourism professionals. Such program may assess a fee for voluntary registration and participation, provide guidance and advice to agritourism businesses and agritourism professionals, and offer additional assistance with marketing and promotion.

6.3. An agritourism business shall be considered a tourism related business, attraction or event for purposes of eligibility to participate in tourism promotion efforts by the West Virginia Tourism Office.