

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

Form #7

Do Not Mark In This Box
Filing Date

2010 JUN -1 PM 2: 56

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: §19-3-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: West Virginia Apiary Law of 1991

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

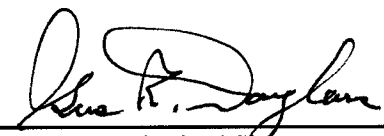
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

(See Attached)

Use additional sheets if necessary


Authorized Signature



FILED

2010 JUN -1 PM 2: 56

State of West Virginia

DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Steve Hannah

Deputy

Janet L. Fisher
Deputy Commissioner

Commissioner

STATEMENT OF FACTS AND CIRCUMSTANCES

ARTICLE 13. INSPECTION AND PROTECTION OF AGRICULTURE

Registration of bees; identification of apiaries; limitation on liability.

Title 61 – Series 2

The West Virginia Department of Agriculture proposes to implement Honey Bee Best Management Practices (HBBMP) as safety standards for the operation of apiaries as promulgated by legislative rules in accordance with article thirteen of W.Va. Code §19-3-4, subsection (c).

Best Management Practices have been developed through consultations with West Virginia Department of Agriculture Apiary Inspectors and review of the following sources: *Model Beekeeping Ordinance for Louisiana Local and Municipal Governments*; *Best Management Practices for Maintaining European Honey Bee Colonies* by the Florida Department of Agriculture; *Best Management Practices for Beekeeping* by the Maine State Beekeepers Association, Inc.; and *Helpful Hints for WV Beekeepers* by the West Virginia Beekeepers Association.

As enacted by the Legislature of West Virginia on March 13, 2010, and in effect from passage, §19-3-4 of the Code of West Virginia, was amended and reenacted relating to limiting the liability of apiary owners and operators; requiring the Department of Agriculture to promulgate best practices rules; and authorizing emergency rule making power.

Under the proposed West Virginia Apiary Rule, Honey Bee Best Management Practices establish general operating guidelines to ensure a higher beekeeper safety standard. Through proposed standards for number and placement of hives and procedural standards for avoidance of Africanized Honey Bee infestation, the risk of potentially harmful stinging incidents to the general public will be reduced. West Virginia beekeepers will sign an agreement that they voluntarily agree to follow these Best Management Practices in order to receive a limitation of liability as amended and enacted in article thirteen of W.Va. Code §19-3-4, subsection (c).



EMERGENCY RULE QUESTIONNAIRE

DATE: June 1, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
Jean Smith, Director of Marketing & Development, 304-558-2210

EMERGENCY RULE TITLE: West Virginia Apiary Law of 1991

1. Date of filing June 1, 2010

2. Statutory authority for promulgating emergency rule:
W.Va. Code §19-3-3

3. Date of filing of proposed legislative rule: June 1, 2010

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopt new language and amend current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

The adoption of Best Management Practices establishes guidelines for beekeepers to follow. The adoption will ensure that higher beekeeper safety standards have been set which will decrease the probability of fatal stinging incidents for the general public. West Virginia beekeepers will sign an agreement that they voluntarily agree to follow these Best Management Practices.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~N/A~~

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The adoption of Best Management Practices establishes guidelines for beekeepers to follow. The adoption will ensure that higher beekeeper safety standards have been set which will decrease the probability of fatal stinging incidents for the general public. West Virginia beekeepers will sign an agreement that they voluntarily agree to follow these Best Management Practices.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Apiary Law of 1991

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

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

Phone Number: 304-558-2210 Email: jsmith@ag.state.wv.us

Fiscal Note Summary

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

There are no changes in fees involved with this rule.

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	N/A	N/A	N/A
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: West Virginia Apiary Law of 1991

Rule Title: _____

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

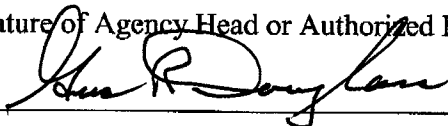
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: _____

6/1/10

Signature of Agency Head or Authorized Representative



TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

FILED

SERIES 2
WEST VIRGINIA APIARY LAW OF 1991 RULE

2010 JUN -1 PM 3: 01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§61-2-1. General.

1.1. Scope. -- These legislative rules establish general operating rules and procedures for the inspection of apiaries, ~~and control of bee diseases-~~ and limitation of liability for beekeepers.

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

1.3. Filing Date. -- ~~April 23, 1992.~~

1.4. Effective Date. -- ~~April 27, 1992.~~

§61-2-2. Definitions

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

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

2.3. "Apiculture and 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, and/or brood (eggs, larvae, pupae).

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

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

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

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

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

2.16. "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. "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.

§61-2-2. §61-2-3. Registration of Bees; Identification Of Apiaries.

~~2.1.~~ 3.1. The commissioner shall furnish an application for registration of bees to all persons known to keep bees. The commissioner shall mail the applications during the month of December to all persons who have registered their bees during the previous year.

~~2.2.~~ 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. The certificate is valid until December 31 of the year issued.

~~2.3.~~ 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 any such bee diseases, if any, must accompany the request.

~~2.3.a.~~ 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 inspection from the state of origin identifying any bee disease(s) in the bees that were in the equipment, and stating the treatment that has been made, if any, to the vacated equipment shall accompany the request.

~~2.4.~~ 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.

~~2.4.a.~~ 3.4.a. Any person who keeps bees and who has registered his 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.

~~2.5.~~ 3.5. The commissioner shall give an educational bee registration exemption to any person keeping bees for the express purpose of conducting educational 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 must register their bees as provided by W. Va. Code §19-13-1 et seq. and by these rules.

~~2.5.a.~~ 3.5.a. Bees being kept under an educational bee registration exemption are not exempt, however, from the treatment provisions of the W. Va. Code §19-13-1 et seq. and section 5 of these rules when a

transmissible bee disease is identified in the environs of the bees being kept under such exemption.

S61-2-4. Limits on Liability.

4.1. A beekeeper will obtain limits on liability who:

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

4.1.b. Voluntarily conforms with Honey Bee Best Management Practices contained in section 4.2. of these rules.

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

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

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

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

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.)

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

4.2.b.(4) 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 will be no limit on the number of hives.

4.2.c. Hive entrances shall 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 use of barriers (hedges, shrubs or fencing six feet high) shall be employed to redirect the bees' flight pathway and establish bee flight pathways above head height.

4.2.d. West Virginia Beekeepers shall maintain a water source near the colonies at a distance less than the nearest unnatural water supply.

4.2.e. No apiary shall be kept within 50 feet of an established animal that is tethered, kennelled or otherwise prevented from escaping a stinging incident.

4.2.f. West Virginia Beekeepers shall avoid opening colonies for inspection or manipulation when neighbors are present or in the immediate vicinity.

4.2.g. It is strongly encouraged for West Virginia Beekeepers to 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.h. West Virginia Beekeepers shall manage all colonies to minimize swarming.

4.2.i. West Virginia Beekeepers shall replace queens in colonies exhibiting defensive behaviour that may be injurious to the general public or domesticated animals as determined by West Virginia Department of Agriculture apiary staff.

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

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

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

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

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

~~§61-2-3.~~ §61-2-5. Right Of Entry; Apiary Inspections; Quarantines.

~~3-1.~~ 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.

~~3-2.~~ 5.2. No person shall keep or maintain bees in any hive or receptacle which does not permit the thorough examination of the brood combs.

~~3-2-a.~~ 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 such time as the condition is corrected.

~~3-2-b.~~ 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 disease(s) and shall be destroyed and/or sterilized as the situation warrants. In order to protect the beekeeping industry, the commissioner shall require immediate destruction or sterilization of such hives or receptacles.

~~3-3.~~ 5.3. After inspecting or handling any disease infected bee equipment and/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.

~~3-4.~~ 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 will 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, will, 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.

~~3-4.a.~~ 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.

~~3-4.b.~~ 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.

~~3-5.~~ 5.5. In cases involving vacant bee equipment that may have been directly or indirectly exposed to contagious bee disease, the equipment shall undergo sterilization by the commissioner or by the apiary owner by any appropriate method specified by the inspector.

~~3-6.~~ 5.6. The commissioner will 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.

~~3-7.~~ 5.7. The commissioner shall not bring additional regulatory action against any apiary owner who is complying or attempting to comply with the terms of quarantine.

~~3-8.~~ 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 will 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.

~~3-9.~~ 5.9. The commissioner shall review any violation of a quarantine and, depending upon the severity of the violation, shall assess other penalties as provided by W. Va. Code '19-13-1 et seq.