



FILED

2010 JUL -8 AM 11:38

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

July 6, 2010

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Department of Agriculture

RULE: Amendment, 61CSR2, West Virginia Apiary Law of 1991

DATE FILED AS AN EMERGENCY RULE: June 1, 2010

DECISION NO. 6-10

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 6-10)

AGENCY: West Virginia Department of Agriculture
RULE: Amendment, 61CSR2, West Virginia apiary Law of 1991
FILED AS AN EMERGENCY RULE: June 1, 2010

- par. 1 The West Virginia Department of Agriculture (Department) has filed the above amendment to an exiting 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 June 1, 2010 and with the LRMRC June 1, 2010.
- 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 §19-3-3 reads:

§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.
(a) 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.

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:

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.

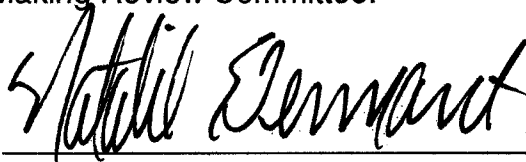
As enacted by the Legislature of West Virginia on March 13, 2010, and in effect from passage, 19-3-4 of the Code of West Virginia, was amended and reenacted relating to limiting the liability of apiary owners and operators; requiring the Department of Agriculture to promulgate best practices rules; and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

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 6-10 or ERD 6-10 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, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2010 JUL -8 AM 11:38

FILED