

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 8, 1991
ADMINISTRATIVE LAW DIVISION

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

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-13-3

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
(repeal and replace)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



WEST VIRGINIA APIARY LAW OF 1991
LEGISLATIVE RULES

STATEMENT OF CIRCUMSTANCES

The purpose for repealing the former regulations is primarily due to recent changes in the West Virginia Apiary Law which were enacted July 1, 1991, and to address certain critical issues that were not covered under the former rules.

SUMMARY OF THE RULE

These amendments clearly define the general policies and procedures for the regulatory control of bee diseases in West Virginia. They establish rules for apiary registration which is to be maintained on a voluntary basis with no connected fees. The proposed rules will regulate the importation of bees which are currently posing a threat to the state's beekeeping industry. It also sets guidelines for the sterilization of disease infected apiary equipment and establishes service fees for those who do not wish to comply with the law and/or professional recommendations.

WEST VIRGINIA APIARY LAW OF 1991
LEGISLATIVE RULES

There is a new fiscal note attached to this packet. The amendment to the note was made after the new sterilizing equipment for bee equipment was field tested. The testing showed that the equipment could be sterilized quicker than originally thought. This will reduce the cost per each individual treatment.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Apiary Law of 1991, Legislative Rules.

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture Address: Plant

Industries Division, Charleston, WV 25305

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	After
Estimated Total Cost	\$	\$2,205.	\$00.00	\$2,205	\$2,205
Personal Services	\$	\$1,020.	\$00.00	\$1,020	\$1,020
Current Expenses	\$	\$ 900.	\$00.00	\$ 900	\$ 900
Repairs and Alterations	\$	\$00.00	\$00.00	\$00.00	\$ 0.00
Equipment	\$	\$00.00	\$00.00	\$00.00	\$ 0.00
Other	\$	\$ 285.	\$00.00	\$ 285	\$ 285

2. Explanation of Above Estimates: All figures have been based upon an average calculated daily rate for wages and expenses incurred while performing field assignments in travel status. The calculated daily rates are as follows.

Wages	=	\$ 34.00
Lodging	=	\$ 17.50
Meals	=	\$ 12.50
Fuel costs	=	\$ 9.50

All costs have been further broken down to establish an estimated fee to treat an individual hive unit for \$2.30 per hive.

3. Objectives of These Rules: To establish procedural guidelines for regulatory enforcement of The West Virginia Apiary Law of 1991.

4. Explanation of Overall Economic Impact of Proposed Rules.

A. Economic Impact on State Government. To recover specific operational costs associated with the re-treatment and/or additional sterilization of diseased bee equipment.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens. Any person(s) who keeps bees and knowingly violates the provisions prescribed in the proposed legislative rules under section 61-2-3 and under section 19-13-5 subsection (b) of the West Virginia Apiary Law of 1991, shall, because of non-compliance with written recommendations, be fully responsible for the payment of all fees (\$2.30 per hive unit) connected with the re-treatment of diseased bee equipment.

C. Economic Impact on Citizens/Public at Large. Other than specific individuals in the beekeeping industry, no economic impact will be experienced by any citizen or public at large.

Date: _____

August 5, 1991

Signature of Agency Head or Authorized Representative

Chas. B. Smith

DATE: August 8, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

LEGISLATIVE RULE TITLE: West Virginia Apiary Law of 1991

1. Authorizing statute(s) citation 19-13-3

2. a. Date filed in State Register with Notice of Hearing:

June 26, 1991

b. What other notice, including advertising, did you give of the hearing?

sent to 8 individuals in beekeeping associations (list

attached); Fred Butler and Steve Hannah - WV Farm Bureau;

George Carenbauer, Steptoe & Johnson; press release to all state newspapers.

c. Date of hearing(s): comment period: July 29, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 8, 1991

f. Name and phone number(s) of agency person(s) to contact for additional information:

Dr. Charles Coffman 348-2212

Barbara Smith 348-2226

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 2
WEST VIRGINIA APIARY LAW OF 1991

61-2-1. General.

1.1. Scope. --These legislative regulations establish general operating rules and procedures for the inspection of apiaries and control of bee diseases.

1.2. Authority. -- WV. Code 19-13- 3

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule: This legislative rule repeals and replaces WV 61CSR2 "West Virginia Apiary Law of 1969" filed September 9, 1969 and effective October 13, 1969.

61-2-2. Registration Of Bees; Identification Of Apiaries.

2.1. The commissioner shall furnish, for the purpose of annual registration, an application for apiary registration to persons who keep bees. Such application shall be furnished on a calendar year basis beginning January 1 and ending December 31 of each year. Applications will be furnished during the month of December to those who have registered their colonies during the previous year.

2.2. Upon receipt of an apiary registration application, the commissioner shall issue a certificate which shall be valid until December 31 of the year issued.

2.3. Persons who keep bees and who have registered their apiaries shall, during the registration period, be required to report to the commissioner additional colonies obtained as packaged bees and honey bee queens imported from any state, province or territory within 10 days of acquisition.

~~2.3.A.~~ Additional colonies that are obtained locally (in-state) from capturing swarms, colony divisions or any other source, shall be reported anytime within the designated annual registration period.

2.4. Persons who import bees in hives or used apiary equipment into West Virginia, bearing a valid certificate of inspection, for the purpose of permanent location, honey production or pollination service to the fruit and vegetable industry, must report to the commissioner, by means of a request for permit

of entry, within ten (10) days prior to arrival within the state.

2.5. Anyone 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 4-H, FFA, or educational promotions sponsored by state or local beekeeping associations shall be under an educational apiary registration exemption until such projects classes or programs have been concluded. At that time said persons must register their bees with the state on an annual basis thereafter. Bees being kept under an educational exemption are not exempt, however, from the treatment provisions of the West Virginia Apiary Law of 1991 when a contagious disease is identified.

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

3.1. It shall be unlawful for any person to keep or maintain bees in any hive or receptacle which does not permit the thorough examination of the brood combs.

3.1.a. Whenever and wherever it shall be found 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 combs, the beekeeper shall be so informed in writing and given twelve (12) months from the initial date of inspection to correct the condition. Whenever or wherever these conditions are not corrected within the allotted time, the commissioner shall cause the colonies to be quarantined until such time as the problem is corrected.

3.1.b. If infectious or contagious bee disease is found in the environs of an apiary equipped with hives that cannot be inspected, the colonies contained in such hives shall be considered affected with the confirmed bee disease(s) and shall be destroyed and/or sterilized as the situation warrants. Due to the nature of contagious bee disease, no 12 month grace period will be granted.

3.2. The inspection of a colony of bees shall consist of removing three (3) or more frames containing developing brood from the hive and examining both sides for evidence of disease.

3.3. After inspecting or handling any disease infected apiary related material and/or appliances, and before proceeding to any other apiary, the inspector shall thoroughly disinfect and/or de-contaminate every portion of his/her person, clothing, and appliances that may have been in contact with infected materials and shall cause every assistant, whether beekeeper or inspector, to do likewise.

3.4. All colonies of bees that are confirmed with a transmissible disease shall be quarantined and, as soon as possible, be treated as the situation warrants in the presence of, or by, an inspector. If the incidence of the disease is such that, in the judgment of the inspector, chemical control treatment may be successful, the affected colonies shall be quarantined and treatment shall be prescribed. The inspector in charge will submit to the apiary owner, in addition to those items required by 19-15-5-b, a written document of policy statements and recommendations for treatment and control of the bee disease. Upon submission of said documents, the apiary owner will, by signed agreement, willingly acknowledge and accept full responsibility for compliance with the quarantine.

3.4.a. All hive parts and/or additional equipment contained in the diseased apiary that may be sterilized and reused shall be sterilized by any acceptable method which the commissioner determines effective for control of bee diseases.

3.4.b. All colonies confirmed infected with any non-contagious bee disease shall be treated in a manner consistent with the best known methods at the time such disease is found. Such methods shall be specified by the inspector in writing.

3.5. Persons who unknowingly own bees that are, upon inspection, determined to have a contagious disorder must have all affected apiary equipment sterilized. No further regulatory action will be taken as long as the person complies with the terms of the quarantine.

Persons who are found in violation of the terms of the quarantine shall be subject to further regulatory action and shall be charged a fee for any additional sterilization treatment(s) of affected apiary material.

Fees that are charged for subsequent treatment(s) to sterilize disease contaminated bee equipment shall be calculated at a rate of \$2.30 per hive. Such rate will be charged to recover the costs for conducting such treatment(s).

WEST VIRGINIA APIARY LAW OF 1991
LEGISLATIVE RULES

AGENCY MODIFICATION TO THE RULE AS A RESULT OF COMMENTS

The agency modified subsection 2.3 as a result of comments received. This requirement for a reporting within 10 days applies only to bees that have been imported from outside the state. Section 2.3.a. has been added. This section states that the addition of colonies obtained from bees within the state will require notification to the Department within the registration period.

WEST VIRGINIA APIARY LAW OF 1991
LEGISLATIVE RULES
STATEMENT OF COMMENTS RECEIVED

On July 2, 1991, representatives of eight leading state and local beekeeping organizations were officially contacted to submit written comments concerning the proposed changes to the apiary rules. Although a larger response was anticipated only two letters (see attachments) were received as of the July 29 deadline. Both statements were basically positive in content but the letter from Mr. Art Zoller Wagner pointed out a couple of concerns.

Mr. Wagner's questions centered around the provisions outlined in section 61-2-2, subpart 2.1. - 2.3.. He pointed out that the 10 day requirement for reporting the acquisition of additional bees was too restrictive and probably would not be complied with. However, upon close review of the scenario outlined in his letter, it seems that Mr. Wagner developed his position out of context in subpart 2.3.. He apparently overlooked the stipulation of "imported from any state, province or territory", which had nothing to do with acquiring honey bee colonies from a local (in-state) source.

In order to help clarify this portion of the rules, I have inserted a second paragraph to address the reporting of additional colonies acquired from in-state sources.

The other question involved the dates stipulated for annual apiary registration. Mr. Wagner questioned whether it would be more appropriate to establish registration on a fiscal year basis rather than a calendar year. Although his ideas are well founded on several points, registration on a fiscal year would extremely complicate the coordination of field assignment schedules. It would also create more field work at a time of year (late fall & winter) when it is nearly impossible to perform such work due to inclement weather conditions. This being the case, the amended rule was left intact.

Brandonville, W. Va

July 24, 1991

Dear Commissioners

In regards to the Series 2 West Virginia Apiary Law of 1991 I feel that the Bee Keeping Industry was very much in need of the changes in this law.

As you know the Bee Industry is a very important part of agriculture.

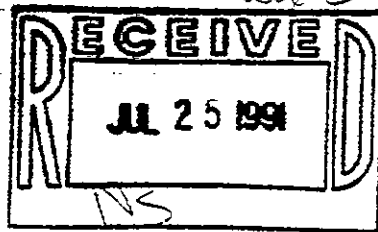
I want to thank you help in getting the law passed.

Yours sincerely

Herbert Shefer

Pres. WVBA

Box 2 Brandonville, W. Va



26525

24 Glenn St.
Morgantown, WV 26505-7417
296-2252
July 15, 1991

Matt Cochran, Bee Specialist
Plant Industries Division
West Virginia Department of Agriculture
Charleston, WV 25305

Dear Matt,

I appreciate your sending me the materials on the WVBA Newsletter. That's the first I've been able to see many of the previous Newsletters. Thanks, too, for your answers to my raw honey questions and the article for the Newsletter.

I've reviewed the proposed rules and regulations and found a problem with only one of them: 61-2-2.3. The rest look reasonable.

I've calculated that, according to rule 61-2-2.3, I would have had to write to you six times this spring and early summer to report the splits I made, the colonies I received from an inactive beekeeper, the swarms I collected, and the colony I removed from the wall of a building. I'm willing to register my hives yearly, but there's no way I would have written six more times to report these increased numbers. The proposed ten day update registration provision will guarantee non-compliance.

West Virginians are resistant to following rules and cooperating with the government, so it's very important that we make this apiary law as easy as possible for beekeepers. At the same time, compliance with the apiary law is important for our mutual welfare, so encouraging compliance should be a serious concern in formulating these rules.

I see one very simple means of solving this problem: requiring just once a year reporting. It also strikes me that July 1 would be a more useful due date for the annual registration than January 1. Most of the increase and decrease in colony numbers occurs in late winter, spring, and very early summer. By July 1, most of the winter-kill colonies have been accounted for, the splits made, the swarms caught, and the package bees installed. A July 1 registration would give you a much more accurate accounting of number of colonies for any particular year's production season.

There may be a strongly compelling reason to require update registrations; I am unaware of one. If you do have a good reason for it, then there are several changes that would help with compliance.

First, the yearly registration should be moved to July 1 as suggested above, so that most beekeepers would only have to report once.

Second, the time limit for reporting any increase in colony numbers should be substantially lengthened. A period of 45 days


would allow most beekeepers to complete their spring increases and get through swarm season with only one update registration. Again, if the due date was July 1 and the time period at least 45 days, only the yearly registration would be required for most beekeepers.

Third, only beekeepers who have an increase of more than 10 colonies should be required to file an update. This would alleviate the nuisance of reporting small numbers of increases. With such an exemption, most hobbyists and sideliners would not be required to report their small numbers of new colonies until the next yearly due date. First time beekeepers should still be required to register within, say, 45 days.

The changes I am suggesting would greatly increase compliance with the apiary law. I hope you'll consider reworking 61-2-2.3 to meet these concerns.

Thanks for the opportunity to respond to the proposed regulations. I look forward to hearing at the Fall meeting how all this ends up.

Sincerely,


Art Zoller Wagner

EXECUTIVE MAILING LIST
WEST VIRGINIA BEEKEEPERS ASSOCIATION
&
LOCAL BEEKEEPING ASSOCIATIONS

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Brandonville, WV 25918

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Star Route 3, Box 10-A
Lost River, WV 26811

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3554 Honey Branch Road
Huntington, WV 25701

Bob Aikens
Route 3, Box 30
Martinsburg, WV 25401

JUL 08 1991



Cleve Benedict
Commissioner of Agriculture

NEWS RELEASE

July 8, 1991

Charleston, West Virginia 25305

Public hearings scheduled for new regulations

Agriculture Commissioner Cleve Benedict announced a series of public hearings on new regulations and encouraged public participation in the process.

Benedict said the public hearings give the West Virginia Department of Agriculture (WVDA) the opportunity to modify regulations after taking public input into consideration.

In addition to the public hearings, written comments will be accepted until the time of the hearing. The public hearings will be held on the following days:

July 12, 1 p.m.	Licensing of Pesticide Business
July 12, 3 p.m.	Regulations to Govern Aerial Application of Herbicides to Right of Way
July 29, 10 a.m.	Frozen Desserts and Imitation Frozen Desserts
July 29, 2 p.m.	Commercial Feed
July 30, 10 a.m.	Assessment of Civil Penalties for Consent Agreement or Negotiated Settlements (Pesticides)
July 30, 1 p.m.	Certified Pesticide Applicator
July 31, 10 a.m.	Licensing of Livestock Dealers
August 1, 10 a.m.	Disposal of Dead Poultry

All hearings will be held in the J. T. Johnson Conference Room in Building 2 of the Guthrie Agricultural Center, Charleston, W.Va., except for the Disposal of Dead Poultry hearing. The Dead Poultry hearing will be held at the Moorefield Agricultural Center.

Comment period deadlines for the following regulations (there are no public hearings) will be July 29 at noon:

Plant Pest Act
West Virginia Apiary Law of 1991
Animal Disease Control

For more information on how to comment on the new regulations, contact Barbara Smith, Director of Compliance, WVDA, at 304/348-2226.

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TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 2
WEST VIRGINIA APLARY LAW OF 1969

§61-2-1. General.

1.1. Scope. -- These legislative regulations establish general operating rules and procedures for the inspection of apiaries and control of bee diseases.

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

1.3. Filing Date. -- September 9, 1969

1.4. Effective Date. -- October 13, 1969

§61-2-2. Declaration Of Policy.

2.1. Section four, article thirteen, chapter nineteen of the official Code of West Virginia, sets out certain duties, authority and responsibilities of the Commissioner of Agriculture. Included is the responsibility of promulgating rules and regulations relating to the inspections of apiaries and control of infectious or contagious diseases of bees.

2.2. By virtue of the authority vested in me as Commissioner of Agriculture by section four, article thirteen, chapter nineteen of the official Code of West Virginia, as amended, I, Cleve Benedict, Commissioner of Agriculture, do hereby promulgate the following rules and regulations governing the inspection of apiaries and control of bee diseases in West Virginia.

§61-2-3. Definitions.

3.1. For the purpose of these regulations, the definitions shall be the same as those appearing in the West Virginia Apiary Law of 1969 (19-13-2) with the following additions:

3.1.1. "Full bloom" shall be construed to mean the period from the time the flowers open until the petals fall.

3.1.2. "Spray Materials Injurious to Bees" shall mean any material having insecticidal properties and capable of killing bees when applied to fruit trees while in full bloom.

§61-2-4. Registration Of Bees.

4.1. The commissioner shall furnish an application form to be used by beekeepers to register honey bee colonies.

4.2. Upon receipt of an Application for Registration of honey bees, the Commissioner shall cause to be issued a Certificate of Apiary Registration which shall be valid until the last day of December of the year of issue.

4.3. Persons who have registered their apiaries shall not be required to report additional colonies, obtained through capturing swarms from their own apiary or from packaged bees imported under certification from any state, until the next registration period.

4.4. Bees in hives or used bee equipment imported into a West Virginia apiary under certificate from any state, including West Virginia, must be reported to the Commissioner within ten (10) days of arrival within the state.

4.5. When registering colonies any person possessing or operating one (1) or more apiaries shall show the exact location of, and number of colonies in each apiary.

§61-2-5. Apiary Inspection.

5.1. The Commissioner of Agriculture shall, insofar as is practical, cause all colonies of bees within the state to be inspected each year.

5.2. Inspection of a colony of bees shall consist of lifting one (1) or more brood-containing frames from the colony and examining the brood on both sides of the frame for evidence of disease.

5.3. It shall be unlawful for any person to keep or maintain bees in any hive other than a hive which permits a thorough examination of every brood comb to determine the presence of disease.

5.4. Whenever and wherever it shall be found that inspection of bees is impossible due to the keeping of bees in box hives, gums, logs, barrels or other domiciles not equipped with moveable frames permitting ready examination of combs, the beekeeper shall be so informed in writing and given until the time of the next registration in which to correct the condition. Whenever or wherever these conditions are not corrected within the allotted time the Commissioner shall cause these colonies to be quarantined and/or destroyed by burning.

If American foulbrood or other serious bee disease shall be found in the environs of an apiary equipped with hives that cannot be inspected, the colonies housed in such hives shall be considered to have American foulbrood or other serious bee diseases and shall be destroyed by burning.

5.5. After inspecting or handling any infected apiary, bees, hives or any apiary appliance and before proceeding to any other apiary, the inspector shall thoroughly disinfect every portion of his person and clothing and every tool and appliance used by him that may have been in contact with infected materials and shall cause every assistant with him to do likewise.

5.5.1. All colonies of bees infected with American foulbrood shall be quarantined and as soon as possible be destroyed by burning in the presence of, or by an inspector, in a pit suitable for the purpose and preferably in late evening, except that if the infection is so light that, in the judgment of the inspector, treatment may be successful, the infected colonies shall be

quarantined and treatment shall be prescribed by the inspector.

5.5.2. All hive parts or equipment from such diseased colonies that may be sterilized and reused shall be so sterilized by fire or by such other means as the inspector may direct.

5.5.3. All colonies found to be infected with any bee disease other than American foulbrood shall be quarantined and treated in a manner consistent with the best known methods at the time such disease is found. Such methods to be specified by the inspector.