

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

November 22, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

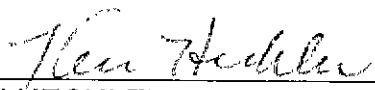
AGENCY: WEST VIRGINIA DEPARTMENT OF AGRICULTURE

RULE: NEW RULE, SERIES 4, TRADITIONAL CHEESE PRODUCTION

DATE FILED AS AN EMERGENCY RULE: OCTOBER 26, 1999

DECISION NO. 19-99

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.



KEN HECHLER
Secretary of State

RECEIVED
NOV 23 1999
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary State.WV.US



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION (ERD 19-99)

AGENCY: WEST VIRGINIA DEPARTMENT OF AGRICULTURE
RULE: NEW RULE, SERIES 4, TRADITIONAL CHEESE PRODUCTION
FILED AS AN EMERGENCY RULE: OCTOBER 26, 1999

- par. 1 The West Virginia Department of Agriculture (Department) has filed the above new 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 October 26, 1999 and with the LRMRC October 26, 1999.

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 §19-11D-3 reads:

The manufacture of cheese products described in §19-11D-2 of this article is exempt from: (a) Pasteurization, packaging, labeling and all other health related requirements established in this code or rules promulgated by the division of health; and (b) regulatory control by the division of health and county or local health departments or sanitarians. Powers of the commission of agriculture set forth in §19-11A-10 of this chapter are applicable to the manufacturing of home and farm-based cheese products described in §2 of this article. The commissioner of agriculture is authorized to promulgate rules pursuant to §29A-3-1 et seq. of this code, considering and promoting traditional methods of cheese production, while providing minimum health and sanitation standards necessary for the protection of the public, including standards for cleanliness, handling and protection from contamination. Emergency rules for this purpose are authorized.

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.

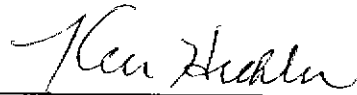
par. 12 The facts and circumstances as presented by the Department are as follows:

The inspection of facilities that manufacture cheese using traditional methods was moved from the local boards of health and placed under the jurisdiction of the Department of Agriculture. Therefore, the Department must monitor these facilities in the interest of the public health.

Also the law (§19-11D) that passed in March of 1999 authorizes emergency rules.

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). . . "public health" and "authorized by the 1999 Legislature."

par. 14 This decision shall be cited as Emergency Rule Decision 19-99 or ERD 19-99 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.



KEN HECHLER
Secretary of State

Entered _____

WEST VIRGINIA DEPARTMENT OF AGRICULTURE
MARTINSBURG, WV 26001
66 JUL 21 10 27 AM '99