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(Plus all the volunteer  
help we can get)

November 9, 1998

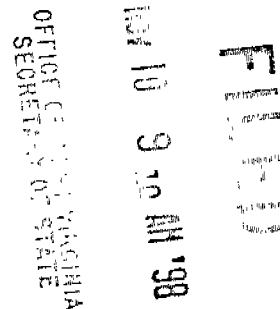
**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

AGENCY: Department of Agriculture

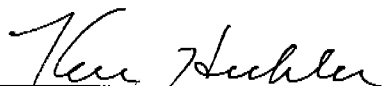
RULE: Amendments, Series 7A, Marketing of Eggs Regulations

DATE FILED AS AN EMERGENCY RULE: September 30, 1998

DECISION NO. 15-98



Following review under WV 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.

  
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**EMERGENCY RULE DECISION**  
**(ERD 15-98)**

**AGENCY:** Department of Agriculture  
**RULE:** Amendments, Series 7A, Marketing of Eggs Regulations  
**FILED AS AN EMERGENCY RULE:** September 30, 1998

- par. 1 The Department of Agriculture (Department) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 September 30, 1998 and with the LRMRC September 30, 1998.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 19-10A-10 reads in part:

*(a) The commissioner shall by legislative rule establish standards for the grading, classification and marketing of shell eggs brought and sold by any person, firm or corporation in the state of West Virginia.*

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 -- WV 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:

Our rule has a temperature change for storing and transporting eggs from 60°F to 45° F. The lower temperature can help avoid illness from Salmonella Enteritidis. The Health Department currently has the 45°F rule. This would make the temperature for holding eggs uniform throughout the state. Our certificates expire on June 30th. Certificates must be applied for 30 days prior to expiration of current permit. Consequently applications need to be mailed in May.

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). . . "health and safety"

par. 14

This decision shall be cited as Emergency Rule Decision 15-98 or ERD 15-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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OFFICE OF THE SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA