

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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APR 13 1 24 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Agriculture TITLE NUMBER: _____

AMENDMENT TO AN EXISTING RULE: YES x, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11B

TITLE OF RULE BEING AMENDED: Auctioneers

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

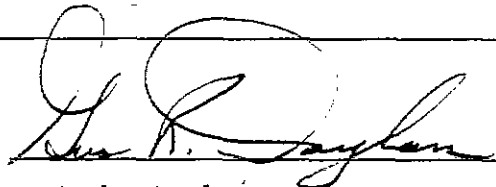
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 145

SECTION 64-9-1 RR, PASSED ON March 10, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 15, 1994


Authorized Signature

Promulgation History Abstract

Legislative Rule
Auctioneers
Series 11B

West Virginia Department of Agriculture

Notice of Hearing - 4/26/93

Hearing Date - 5/26/93

Filed Secretary of State - 8/3/93

Modified and Approved - 9/28/93

Filled with Legislative Rule Making Review - 10/8/93

Passed Legislature in Senate Bill 145 - 3/10/94

WEST VIRGINIA LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2C

SERIES 11B

TITLE: Auctioneers

Section 1. General.

1.1 Scope - This legislative rule establishes general procedures for the licensing of auctioneers.

1.2 Authority - W. Va. Code 19-2C-5.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Declaration Of Policy.

2.1 This rule is for the purpose of implementing West Virginia Code §19-2C-1 et seq pertaining to the licensing of auctioneers.

Section 3. Application.

3.1 The Commissioner shall, within thirty (30) days after receipt of an application, notify the applicant of his/her eligibility to be examined. The thirty (30) day period for action by the commissioner shall not commence until all necessary information has been submitted by the applicant.

3.2 The application shall contain sufficient information to allow the commissioner to determine the applicants eligibility for an auctioneer or apprentice auctioneers license and shall include a statement by two individuals testifying to the applicants character.

Section 4 Bond requirements.

4.1 The amount of bond required under West Virginia Code § 19-2C-4 is \$5,000 for an apprentice auctioneer and \$10,000 for an auctioneer. Corporate surety bonds shall be on forms provided by the commissioner.

4.2 All corporate surety bonds shall be executed by a company authorized to do business in the State of West Virginia as determined by the Secretary of State.

Section 5 License.

5.1 The license numbers issued under West Virginia Code §19-2C-1 et seq are permanent, subject to annual renewal.

5.2 All licenses issued under West Virginia Code §19-2C-1 et seq expire on December 31 of each year unless revoked or suspended.

5.3 Licenses issued at the successful completion of the examination held in October shall be considered as licensure for the upcoming calendar year and no additional fee shall be collected for that year.

Section 6 License renewal.

6.1 All materials required by the commissioner shall be submitted to the Department before the commissioner shall renew a license. Requests which do not contain all of the necessary information shall be considered to have been submitted on the date when the first application for renewal is received.

6.2 On the January 1, 1996 all auctioneers must provide the commissioner with proof of completion of at least three (3) hours of continuing education within the previous year. All auctioneers shall complete three (3) hours of continuing education each subsequent year in order to qualify for license renewal. All continuing education programs must be approved as to subject matter by the commissioner before credit will be granted. Requests for approval must include the name of course, the course provider, the date of instruction, an outline of the course, the instructor or sponsor, the instructor or sponsor's address and the number of hours of instruction. Curricula should be approved in advance and in the case of group instruction the instructor may provide a certified list of those completing the course. Continuing education may include, but is not limited to seminars, correspondence courses, certified home study and formal course work offered through vocational programs, extension programs, colleges and universities, or certified auction schools.

6.3 Auctioneers who have not conducted any auctions in the previous twelve (12) months are exempt from the continuing education provisions for renewal. When an auctioneer resumes conducting auctions he or she must then comply with the provisions of this section.

6.43 Apprentice auctioneers are not required to complete a continuing education program for license renewal.

Section 7 Receipts.

7.1 Upon demand, each auctioneer shall provide a buyer or purchaser with a receipt that includes:

7.1.1 The date on which the purchase was made;

7.1.2 A description of the item or lot;

7.1.3 The price paid for the item or lot purchased; and

7.1.4 The name, license number and permanent address of the auctioneer. This information shall be provided to each customer only once upon demand.

7.2 The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of six months.

Section 8 Examination of applicants.

8.1 The written examination shall test the applicant's knowledge of the West Virginia Auctioneer Law, West Virginia Code §19-2C-1 et seq, rules promulgated thereunder and other fundamentals of the auctioneering profession.

8.2 The oral examination shall test the auctioneer's competency in conducting an auction.

Section 9 Accredited auctioneering schools.

9.1 The commissioner shall annually issue a list of accredited auctioneering schools.

9.2 Any school wishing to be included on the list of accredited auctioneering schools shall submit to the commissioner a complete curriculum, a course schedule, a list of the instructors, credentials of the instructors, the location of school, the cost and any other information considered necessary by the commissioner for a decision on the qualifications of the school to be accredited in West Virginia.

Section 10 Suspension, revocation, expiration or termination of supervising auctioneer's license.

10.1 The suspension, revocation, expiration or termination of a supervising auctioneer's license shall automatically suspend the license of any apprentice auctioneer sponsored or employed by the suspended auctioneer. However, apprentice auctioneers may retain apprentice licenses by transferring to the employment or sponsorship of another licensed auctioneer: Provided, That the request for the transfer is made in writing

and according to the procedures outlined in West Virginia Code §19-2c-6.

Section 11 Reciprocity.

11.1 Any out-of-state resident who holds a valid auctioneer's license in another state may be granted a West Virginia license: Provided, That the state in which he or she is licensed provides similar recognition to a licensee of this State, and that the licensing requirements of the other state are at least equal to those of the State of West Virginia. The commissioner shall annually issue a list of states with whom reciprocity has been formally approved.

Section 12 Waiver of apprenticeship.

12.1 The commissioner may, with the concurrence of the Auctioneer's Board of Review, grant a wavier of the apprenticeship requirements. For an applicant for licensure to be granted a wavier he or she must petition the commissioner for a waiver and provide certified documentation as to the qualifications of the candidate to be an auctioneer without serving an apprenticeship. This documentation should include formal training in the profession, exceptional practical training such as verification of conducting charity or other types of auction which are exempt from the licensing requirements, a description of the candidate's efforts to secure sponsorship and any other information to assist the commissioner in making a ruling. The commissioner will grant a waiver only under exceptional circumstances and will not considered them a routine matter. Under no circumstances shall the commissioner grant a wavier if it is determined that experience in the profession has been gained as a result of auctioneering which was not in compliance with the laws and rules of the State of West Virginia or the State where the experience was gained.

Section 13 Advertising.

13.1 Any circular or other printed material advertising a sale shall contain the name and license number of the auctioneer conducting the sale and any apprentice auctioneer assisting with the sale, and the date, place and exact time of the auction.

Section 14 Contracts.

14.1 All contracts between an auctioneer and a seller shall meet at a minimum the following guidelines:

14.1.1 The contract shall be executed in duplicate; and

14.1.2 The original contract shall be retained by the auctioneer for a period of six months; and

14.1.3 One copy of the contract must be furnished to each person entering into the contract.

14.2 An apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer.

Section 15 Board of review.

15.1 The board of review shall meet at the call of the commissioner, to review the findings of an investigation resulting from a verified complaint received by the department or an investigation initiated by the departments own actions.

15.2 The board of review shall review these findings, all of the material related to the investigation, and any other material considered by the board to be appropriate. The Board of review shall make a recommendation, in writing, to the commissioner as to the course of action for the commissioner on the complaint. Board decisions shall be majority decisions of those members present. A quorum of two members is required for board action.

15.3 When considered appropriate by the commissioner, the board may meet via telephone conference call, but shall only provide a recommendation after receiving and reviewing all of the material pertinent to the complaint.

15.4 A member of the staff of the department, appointed by the commissioner, shall serve as staff for the board and shall be responsible for the presentation of each complaint. The staff member shall not participate in the discussions beyond the reasonable explanation of the facts of the complaint.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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SECRETARY OF STATE

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Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

TO: Bob Morris

AGENCY: Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 28, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 11B TITLE: 61 Agriculture

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Asst Commissioner

DATE: 5-12-94

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

H. B. 4236

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on Agriculture and Natural Resources
then the Judiciary)

A BILL to amend and reenact section one, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of agriculture to promulgate legislative rules relating to auctioneers.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.

(a) The legislative rules filed in the state register on the sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred eighty-three,
5 relating to the commissioner of agriculture (licensing of
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the
8 eighth day of February, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (conduct of beef
10 industry self-improvement assessment program referendum), are
11 authorized.

12 (d) The legislative rules filed in the state register on the
13 fourth day of June, one thousand nine hundred eighty-four,
14 relating to the commissioner of agriculture (feeding untreated
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the
17 fourth day of June, one thousand nine hundred eighty-four,
18 relating to the commissioner of agriculture (registration,
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the
21 first day of November, one thousand nine hundred eighty-four,
22 relating to the commissioner of agriculture (public markets), are
23 authorized.

24 (g) The legislative rules filed in the state register on the
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),
2 are authorized.

3 (h) The legislative rules filed in the state register on the
4 fourth day of June, one thousand nine hundred eighty-four,
5 relating to the commissioner of agriculture (animal disease
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the
8 fifth day of January, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (use of certain
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the
12 eighth day of March, one thousand nine hundred eighty-five,
13 relating to the commissioner of agriculture (increasing certain
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the
16 thirteenth day of January, one thousand nine hundred eighty-six,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the thirty-first day of January,
20 one thousand nine hundred eighty-six, relating to the
21 commissioner of agriculture (licensing of livestock dealers), are
22 authorized.

23 (l) The legislative rules filed in the state register on the
24 eighteenth day of June, one thousand nine hundred eighty-six,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the fifth day of January, one
3 thousand nine hundred eighty-seven, relating to the commissioner
4 of agriculture (West Virginia pesticide use and application act),
5 are authorized.

6 (m) The legislative rules filed in the state register on the
7 eighteenth day of August, one thousand nine hundred eighty-six,
8 modified by the director of the division of forestry of the
9 department of agriculture to meet the objections of the
10 legislative rule-making review committee and refiled in the state
11 register on the fifth day of January, one thousand nine hundred
12 eighty-seven, relating to the director of the division of
13 forestry of the department of agriculture (ginseng), are
14 authorized.

15 (n) The legislative rules filed in the state register on the
16 tenth day of April, one thousand nine hundred eighty-seven,
17 relating to the commissioner of agriculture (schedule of charges
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the
20 thirteenth day of August, one thousand nine hundred eighty-seven,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eighth day of September, one
24 thousand nine hundred eighty-seven, relating to the commissioner
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the
2 fifteenth day of September, one thousand nine hundred
3 eighty-eight, relating to the commissioner of agriculture (sale
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the
6 fifteenth day of September, one thousand nine hundred
7 eighty-eight, modified by the commissioner of agriculture to meet
8 the objections of the legislative rule-making review committee
9 and refiled in the state register on the twenty-sixth day of
10 October, one thousand nine hundred eighty-eight, relating to the
11 commissioner of agriculture (animal disease control), are
12 authorized.

13 (r) The legislative rules filed in the state register on the
14 fifteenth day of May, one thousand nine hundred eighty-nine,
15 modified by the commissioner of agriculture to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the twenty-first day of August,
18 one thousand nine hundred eighty-nine, relating to the
19 commissioner of agriculture (production of milk and cream for
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the
22 seventh day of August, one thousand nine hundred eighty-nine,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the
2 commissioner of agriculture (animal disease control), are
3 authorized.

4 (t) The legislative rules filed in the state register on the
5 tenth day of August, one thousand nine hundred ninety, modified
6 by the commissioner of agriculture to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifth day of October, one thousand nine hundred
9 ninety, relating to the commissioner of agriculture (meat
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the
12 tenth day of August, one thousand nine hundred ninety, modified
13 by the commissioner of agriculture to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the third day of October, one thousand nine hundred
16 ninety, relating to the commissioner of agriculture (agricultural
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the
19 tenth day of August, one thousand nine hundred ninety, modified
20 by the commissioner of agriculture to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the third day of October, one thousand nine hundred
23 ninety, relating to the commissioner of agriculture (public
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred ninety,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the twenty-fourth day of
13 September, one thousand nine hundred ninety-one, relating to the
14 commissioner of agriculture (commercial feed), are authorized
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any
19 commercial feed or feed ingredients used in the manufacture of
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir du poids) of the commercial feed
8 and each feed ingredient used in the feed shall not be required
9 to be listed."

10 (y) The legislative rules filed in the state register on the
11 fourth day of June, one thousand nine hundred ninety-one,
12 modified by the commissioner of agriculture to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the second day of August, one
15 thousand nine hundred ninety-one, relating to the commissioner of
16 agriculture (wood destroying insect treatment standards), are
17 authorized.

18 (z) The legislative rules filed in the state register on the
19 twentieth day of December, one thousand nine hundred ninety,
20 modified by the commissioner of agriculture to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the thirtieth day of April, one
23 thousand nine hundred ninety-one, relating to the commissioner of
24 agriculture (fee structure for the pesticide control act of
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety-one,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twelfth day of November, one
6 thousand nine hundred ninety-one, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the tenth day of September, one
13 thousand nine hundred ninety-one, relating to the commissioner of
14 agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the
16 twenty-sixth day of July, one thousand nine hundred ninety-one,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the sixteenth day of October,
20 one thousand nine hundred ninety-one, relating to the
21 commissioner of agriculture (licensing of pesticide businesses),
22 are authorized.

23 (dd) The legislative rules filed in the state register on the
24 eighth day of August, one thousand nine hundred ninety-one,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative ~~rule-making~~ review committee and
2 refiled in the state register on the second day of October, one
3 thousand nine hundred ninety-one, relating to the commissioner of
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on the
6 eighth day of August, one thousand nine hundred ninety-one,
7 modified by the commissioner of agriculture to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the twenty-fourth day of
10 September, one thousand nine hundred ninety-one, relating to the
11 commissioner of agriculture (assessment of civil penalties and
12 procedures for consent agreements and negotiated settlements),
13 are authorized.

14 (ff) The legislative rules filed in the state register on the
15 eighth day of August, one thousand nine hundred ninety-one,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the twenty-fourth day of
19 September, one thousand nine hundred ninety-one, relating to the
20 commissioner of agriculture (aerial application of herbicides to
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on the
23 eighth day of August, one thousand nine hundred ninety-one,
24 modified by the commissioner of agriculture to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of
2 September, one thousand nine hundred ninety-one, relating to the
3 commissioner of agriculture (frozen desserts and imitation frozen
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code
9 §19-11B-1 et seq. or of these rules against the manufacturer of
10 product and/or the distributor of the mix used to manufacture the
11 product.

12 15.2. The commissioner will assess any violations of W. Va.
13 Code §19-11B-1 et seq. or of this rule to the distributor for mix
14 sampled from unopened containers. The company will not be
15 assessed additional cumulative notices of violations until the
16 commissioner has determined that the firm has had adequate notice
17 of the previous notice, generally 10 days from the mailing of the
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official
20 product sample(s) taken on separate days within a one year period
21 are found to be adulterated or misbranded, the commissioner shall
22 send a written "First Notice" to the manufacturer or distributor
23 whichever is appropriate. This notice shall notify the
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official
4 product sample(s) taken on separate days within a one year period
5 are found to be adulterated or misbranded the commissioner shall
6 send a written "Second Notice" to the manufacturer or distributor
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official
9 product sample(s) within 21 days of the sending of a Second
10 Notice to the manufacturer or distributor, but shall not collect
11 product samples before the lapse of 7 days from the sending of a
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official
14 product sample(s) taken on separate days within a one year period
15 are found to be adulterated or misbranded the commissioner shall
16 send a written "Third Notice" to the manufacturer or distributor
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official
19 product sample(s) within 21 days of the sending of the Third
20 Notice to the manufacturer or distributor, but shall not collect
21 additional product samples before the lapse of 7 days from the
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a
24 period of 24 hours to a manufacturer or distributor when the
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when
2 three out of the last five samples from the same machine are
3 violative. The "Shut-down Order" will normally be issued with
4 the "Third Notice". The "Shut-down Order" will give the reasons
5 for the order, state the portion of the manufacturing or
6 distributing operation that is prohibited from operating while
7 the order is in effect, give conditions of the order, state the
8 length of time that the Shut-down Order will be in effect and
9 specify a time and place for a hearing to be held in this matter.
10 Except that in the case where the public health, safety or
11 welfare is at risk, the commissioner will issue an immediate
12 Shut-down Order and give notice to the manufacturer or
13 distributor under the provisions of subdivision 15.6.a. of this
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down
16 Order without giving the manufacturer or distributor the
17 opportunity to be heard where there is a hazard to the public
18 health, safety or welfare. In these cases, the manufacturer or
19 distributor will be given the opportunity to request a hearing
20 before the commissioner after the notification of the order is
21 received by the manufacturer or distributor. All Shut-down
22 Orders issued due to noncompliance with subdivisions 8.1.c.,
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk to
24 the public health, safety or welfare.

1 15.6.b. The manufacturer or distributor will be responsible
2 for causing all operations covered by the Shut-down Order to
3 cease and follow all other conditions of the order. At the end
4 of the period of the order, the manufacturer or distributor may
5 resume operations without further action by the commissioner.

6 15.7. If after a Shut-down Order has been issued the
7 commissioner finds that effective corrective action has not been
8 taken, he may issue a suspension of the Frozen Desserts
9 Manufacturer Permit. The suspension shall state the time that
10 the suspension will become effective, give the reasons for the
11 suspension and specify a time and place for a hearing to be held
12 in this matter. Except that in the case of a summary suspension
13 the commissioner will give the manufacturer the opportunity to
14 request a hearing in this matter subsequent to the notification
15 of the suspension.

16 15.7.a. All suspensions due to nonconformance to
17 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are summary
18 suspensions.

19 15.7.b. A suspension of the Frozen Desserts Manufacturer
20 Permit remains in effect until the manufacturer submits and the
21 commissioner accepts a written plan of correction and a request
22 for a reinstatement of the permit.

23 15.7.c. The commissioner has seven days from the date of
24 receipt of this application to respond to a suspension in the
25 case of violations of subdivisions 8.1.c., 8.1.d. or 8.1.g. of

1 this rule and fourteen days to respond for all other violations
2 of W. Va. Code §19-11B-1 et seq. or these rules. The
3 commissioner will accept or deny the application for a
4 reinstatement of the permit and will give the terms and
5 conditions under which the permit will be reinstated.

6 15.8. If the commissioner finds that after the firm has
7 resumed production following a suspension of their Frozen
8 Desserts Manufacturer Permit that effective corrective action
9 has not been taken, then the commissioner will hold a hearing to
10 determine if the Frozen Desserts Manufacturer Permit should be
11 revoked.

12 15.9. Persons who manufacture a product on an intermittent
13 or infrequent basis, so that the standard enforcement policy
14 cannot apply, will enter into a consent agreement with the
15 commissioner for correction of all items found to be not in
16 conformance with W. Va. Code §19-11B-1 et seq. or these rules.

17 15.10. Whenever an antibiotic or pesticide residue test is
18 found to be above tolerance, the commissioner shall notify the
19 manufacturer and/or distributor immediately of this fact and
20 shall begin an investigation to determine the cause of the
21 residue. The commissioner shall require that any person found to
22 be responsible for the residue shall correct the cause of the
23 residue prior to the resumption of the manufacturing or
24 distribution of the product.

1 15.11. A person who performs a recall by voluntarily
2 removing product from sale and distribution in an effective
3 manner so as to limit the potential harm to the health and
4 well-being of the public may be eligible for exemptions from the
5 normal enforcement policy. The commissioner shall consider the
6 facts of each case when making a decision on an exemption.

7 15.12. The commissioner may apply the enforcement policy in
8 a liberal manner in cases where all official product sample
9 results that involve a product in the form actually sold to the
10 public have been found to be in conformance with W. Va. Code
11 §19-11B-1 et seq. or these rules.

12 15.13. The commissioner may suspend the standard enforcement
13 policy in cases where such action is necessary to protect the
14 public health, safety or welfare.

15 15.14. Resamples will only be taken from machines that were
16 shown to be producing violative product the previous visit,
17 except for resamples needed to check that the nonviolative status
18 is being maintained according to the following schedule:

19 15.14.a. After a first notice and one nonviolative sample,
20 resamples will be taken between 5 to 6 months after the
21 nonviolative sample.

22 15.14.b. After a second notice and one nonviolative sample,
23 resamples will be taken between 3-4 months after the nonviolative
24 sample.

1 15.14.c. Other resamples may be considered necessary to
2 determine that the nonviolative status is being maintained."

3 (hh) The legislative rules filed in the state register on
4 the eighth day of August, one thousand nine hundred ninety-one,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the twenty-fourth day of
8 September, one thousand nine hundred ninety-one, relating to the
9 commissioner of agriculture (West Virginia apiary law of 1991),
10 are authorized.

11 (ii) The legislative rules filed in the state register on
12 the eighth day of August, one thousand nine hundred ninety-one,
13 modified by the commissioner of agriculture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the twenty-fourth day of
16 September, one thousand nine hundred ninety-one, relating to the
17 commissioner of agriculture (disposal of dead poultry), are
18 authorized with the amendments set forth below:

19 On page two, section two, by adding a new subsection to read
20 as follows:

21 "2.8 "Disposal pit" means an opening dug in the ground to a
22 minimum depth of six feet, containing a minimum capacity of 150
23 cubic feet, covered with a minimum of 12 inches of dirt, and
24 provided with one or more openings for the introduction of
25 poultry. The openings shall be a minimum size of eight inches

1 square and equipped with tight lids. A disposal pit shall be
2 located in a site which will prevent contamination of the
3 groundwater or the surface water. This site should conform to
4 the standards established in this rule."

5 On page two, subsection 3.1 after the word "incinerator," by
6 adding the words "disposal pit,"

7 And,

8 On page two, by adding a new section, designated section 4,
9 to read as follows:

10 "§61-1C-4. Standards for Site Location for Disposal Pits.

11 4.1 No part of a disposal pit system shall be located in a
12 poorly drained or filled area, or in any area where seasonal
13 flooding occurs.

14 4.2 No part of a disposal pit system shall be located within
15 10 feet of a building, foundation or property line.

16 4.3 No part of a disposal pit system shall be located within
17 50 feet of a public water supply line or within 10 feet of a
18 private water supply system.

19 4.4 A disposal pit shall be located at least 50 feet from a
20 private well or groundwater supply.

21 4.5 There shall be a minimum of three feet between the
22 bottom of a disposal pit and seasonal groundwater or rock, shale
23 or any other impermeable layer.

1 4.6 The evaluation of the site for installation of a
2 disposal pit shall be based upon percolation test results.
3 Percolation tests shall be performed in the following manner:
4 4.6.1 Location - At least two holes shall be placed over the
5 selected site. The results of these two test holes will be
6 averaged.
7 4.6.2 Holes shall be dug or bored from six to eight inches
8 in diameter at the site where the disposal pit will be installed.
9 The holes should be at least 24 inches in depth.
10 4.6.3 The bottom and sides of the holes shall be scratched
11 with a sharp pointed instrument or wire brush to remove any
12 smeared soil surfaces which interfere with the absorption of
13 water into the soil.
14 4.6.4 Loose dirt shall be removed from the bottom of the
15 test holes and two inches of coarse sand or fine gravel shall be
16 placed into the holes to prevent sealing.
17 4.6.5 An eight or ten penny nail shall be placed in the wall
18 of each hole exactly six inches above the level of sand or
19 gravel.
20 4.6.6 The test hole shall be completely filled with water to
21 ground level. Water in the hole shall be kept to a depth of at
22 least 12 inches for a minimum period of four hours before
23 beginning the percolation rate measurement.
24 4.7 Percolation rate measurement - Upon completion of the
25 above, the water depth in the holes shall be adjusted to the

1 level of the nail. The number of minutes it takes for this six
2 inches of water (all the water) to be absorbed into the soil
3 shall be accurately determined. This time in minutes, divided by
4 six, gives the rate of fall per inch. The average rate of fall
5 must be between five minutes and 60 minutes."

6 (jj) The legislative rules filed in the state register on the
7 eighth day of August, one thousand nine hundred ninety-one,
8 modified by the commissioner of agriculture to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-fourth day of
11 September, one thousand nine hundred ninety-one, relating to the
12 commissioner of agriculture (licensing of livestock dealers), are
13 authorized.

14 (kk) The legislative rules filed in the state register on the
15 fifteenth day of September, one thousand nine hundred ninety-two,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the eighteenth day of November,
19 one thousand nine hundred ninety-two, relating to the
20 commissioner of agriculture (commercial feed), are authorized.

21 (ll) The legislative rules filed in the state register on the
22 fifteenth day of September, one thousand nine hundred ninety-two,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the nineteenth day of February,

1 one thousand nine hundred ninety-three, relating to the
2 commissioner of agriculture (general groundwater protection rules
3 for fertilizers and manures), are authorized.

4 (mm) The legislative rules filed in the state register on the
5 fifteenth day of September, one thousand nine hundred ninety-two,
6 modified by the commissioner of agriculture to meet the
7 objections of the legislative rule-making review committee and
8 refiled in the state register on the nineteenth day of February,
9 one thousand nine hundred ninety-three, relating to the
10 commissioner of agriculture (primary and secondary containment of
11 fertilizers), are authorized with the amendments set forth below:

12 "On page five, by striking out all of subsection 5.5 and
13 inserting in lieu thereof a new subsection 5.5 to read as
14 follows: 'The operator or his licensed representative shall sign
15 and date each application under oath.'; and

16 On page eighteen, by striking out all of subsection 14.1 and
17 inserting in lieu thereof a new subsection 14.1 to read as
18 follows:

19 'All moneys for the purpose of the enforcement and
20 administration of this rule shall come from general revenue funds
21 appropriated by the legislature for that purpose. The net
22 proceeds of civil penalties collected pursuant to W. Va. Code
23 §20-5M-10a or any civil administrative penalties collected
24 pursuant to W. Va. Code §20-5M-10c will be deposited in the

1 groundwater remediation fund established in W. Va. Code §20-5M-1.
2 et seq.'".

3 (nn) The legislative rules filed in the state register on the
4 fifteenth day of September, one thousand nine hundred ninety-two,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the nineteenth day of February,
8 one thousand nine hundred ninety-three, relating to the
9 commissioner of agriculture (general groundwater protection rules
10 for pesticides), are authorized.

11 (oo) The legislative rules filed in the state register on the
12 fifteenth day of September, one thousand nine hundred ninety-two,
13 modified by the commissioner of agriculture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the nineteenth day of February,
16 one thousand nine hundred ninety-three, relating to the
17 commissioner of agriculture (bulk pesticide operational rules),
18 are authorized.

19 (pp) The legislative rules filed in the state register on the
20 fifteenth day of September, one thousand nine hundred ninety-two,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the nineteenth day of February,
24 one thousand nine hundred ninety-three, relating to the

1 commissioner of agriculture (non-bulk pesticide rules for
2 permanent operational areas), are authorized.

3 (qq) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred ninety-three,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the eighth day of October, one
8 thousand nine hundred ninety-three, relating to the commissioner
9 of agriculture (auctioneers), are authorized.

10

11 NOTE: The purpose of this bill is to authorize the
12 Commissioner of Agriculture to promulgate legislative rules
13 relating to auctioneers.

14

15 Strike-throughs indicate language that would be stricken from
16 the present law, and underscoring indicates new language that
17 would be added.

SENATE BILL NO. 146

(By Senators Manchin, Anderson, Grubb, Macnaughtan
and Minard)

[Introduced January 31, 1994; referred to the
Committee on

AGRICULTURE

Judiciary

A BILL to amend and reenact section one, article nine, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
commissioner of agriculture to promulgate legislative rules
relating to auctioneers.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.

(a) The legislative rules filed in the state register on the
sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges
2 for inspection services: fruit); are authorized.

3 (b) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred eighty-three,
5 relating to the commissioner of agriculture (licensing of
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the
8 eighth day of February, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (conduct of beef
10 industry self-improvement assessment program referendum), are
11 authorized.

12 (d) The legislative rules filed in the state register on the
13 fourth day of June, one thousand nine hundred eighty-four,
14 relating to the commissioner of agriculture (feeding untreated
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the
17 fourth day of June, one thousand nine hundred eighty-four,
18 relating to the commissioner of agriculture (registration,
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the
21 first day of November, one thousand nine hundred eighty-four,
22 relating to the commissioner of agriculture (public markets), are
23 authorized.

24 (g) The legislative rules filed in the state register on the
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),
2 are authorized.

3 (h) The legislative rules filed in the state register on the
4 fourth day of June, one thousand nine hundred eighty-four,
5 relating to the commissioner of agriculture (animal disease
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the
8 fifth day of January, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (use of certain
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the
12 eighth day of March, one thousand nine hundred eighty-five,
13 relating to the commissioner of agriculture (increasing certain
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the
16 thirteenth day of January, one thousand nine hundred eighty-six,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the thirty-first day of January,
20 one thousand nine hundred eighty-six, relating to the
21 commissioner of agriculture (licensing of livestock dealers), are
22 authorized.

23 (l) The legislative rules filed in the state register on the
24 eighteenth day of June, one thousand nine hundred eighty-six,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the fifth day of January, one
3 thousand nine hundred eighty-seven, relating to the commissioner
4 of agriculture (West Virginia pesticide use and application act),
5 are authorized.

6 (m) The legislative rules filed in the state register on the
7 eighteenth day of August, one thousand nine hundred eighty-six,
8 modified by the director of the division of forestry of the
9 department of agriculture to meet the objections of the
10 legislative rule-making review committee and refiled in the state
11 register on the fifth day of January, one thousand nine hundred
12 eighty-seven, relating to the director of the division of
13 forestry of the department of agriculture (ginseng), are
14 authorized.

15 (n) The legislative rules filed in the state register on the
16 tenth day of April, one thousand nine hundred eighty-seven,
17 relating to the commissioner of agriculture (schedule of charges
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the
20 thirteenth day of August, one thousand nine hundred eighty-seven,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eighth day of September, one
24 thousand nine hundred eighty-seven, relating to the commissioner
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the
2 fifteenth day of September, one thousand nine hundred
3 eighty-eight, relating to the commissioner of agriculture (sale
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the
6 fifteenth day of September, one thousand nine hundred
7 eighty-eight, modified by the commissioner of agriculture to meet
8 the objections of the legislative rule-making review committee
9 and refiled in the state register on the twenty-sixth day of
10 October, one thousand nine hundred eighty-eight, relating to the
11 commissioner of agriculture (animal disease control), are
12 authorized. --

13 ---(r) The legislative rules filed in the state register on the
14 fifteenth day of May, one thousand nine hundred eighty-nine,
15 modified by the commissioner of agriculture to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the twenty-first day of August,
18 one thousand nine hundred eighty-nine, relating to the
19 commissioner of agriculture (production of milk and cream for
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the
22 seventh day of August, one thousand nine hundred eighty-nine,
23 modified by the Commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the
2 commissioner of agriculture (animal disease control), are
3 authorized.

4 (t) The legislative rules filed in the state register on the
5 tenth day of August, one thousand nine hundred ninety, modified
6 by the commissioner of agriculture to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifth day of October, one thousand nine hundred
9 ninety, relating to the commissioner of agriculture (meat
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the
12 tenth day of August, one thousand nine hundred ninety, modified
13 by the commissioner of agriculture to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the third day of October, one thousand nine hundred
16 ninety, relating to the commissioner of agriculture (agricultural
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the
19 tenth day of August, one thousand nine hundred ninety, modified
20 by the commissioner of agriculture to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the third day of October, one thousand nine hundred
23 ninety, relating to the commissioner of agriculture (public
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred ninety,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the twenty-fourth day of
13 September, one thousand nine hundred ninety-one, relating to the
14 commissioner of agriculture (commercial feed), are authorized
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any
19 commercial feed or feed ingredients used in the manufacture of
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir dupois) of the commercial feed
8 and each feed ingredient used in the feed shall not be required
9 to be listed."

10 (y) The legislative rules filed in the state register on the
11 fourth day of June, one thousand nine hundred ninety-one,
12 modified by the commissioner of agriculture to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the second day of August, one
15 thousand nine hundred ninety-one, relating to the commissioner of
16 agriculture (wood destroying insect treatment standards), are
17 authorized.

18 (z) The legislative rules filed in the state register on the
19 twentieth day of December, one thousand nine hundred ninety,
20 modified by the commissioner of agriculture to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the thirtieth day of April, one
23 thousand nine hundred ninety-one, relating to the commissioner of
24 agriculture (fee structure for the pesticide control act of
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety-one,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twelfth day of November, one
6 thousand nine hundred ninety-one, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the tenth day of September, one
13 thousand nine hundred ninety-one, relating to the commissioner of
14 agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the
16 twenty-sixth day of July, one thousand nine hundred ninety-one,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the sixteenth day of October,
20 one thousand nine hundred ninety-one, relating to the
21 commissioner of agriculture (licensing of pesticide businesses),
22 are authorized.

23 (dd) The legislative rules filed in the state register on the
24 eighth day of August, one thousand nine hundred ninety-one,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the second day of October, one
3 thousand nine hundred ninety-one, relating to the commissioner of
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on the
6 eighth day of August, one thousand nine hundred ninety-one,
7 modified by the commissioner of agriculture to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the twenty-fourth day of
10 September, one thousand nine hundred ninety-one, relating to the
11 commissioner of agriculture (assessment of civil penalties and
12 procedures for consent agreements and negotiated settlements),
13 are authorized.

14 (ff) The legislative rules filed in the state register on the
15 eighth day of August, one thousand nine hundred ninety-one,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the twenty-fourth day of
19 September, one thousand nine hundred ninety-one, relating to the
20 commissioner of agriculture (aerial application of herbicides to
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on the
23 eighth day of August, one thousand nine hundred ninety-one,
24 modified by the commissioner of agriculture to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of
2 September, one thousand nine hundred ninety-one, relating to the
3 commissioner of agriculture (frozen desserts and imitation frozen
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code
9 §19-11B-1 et seq. or of these rules against the manufacturer of
10 product and/or the distributor of the mix used to manufacture the
11 product.

12 15.2. The commissioner will assess any violations of W. Va.
13 Code §19-11B-1 et seq. or of this rule to the distributor for mix
14 sampled from unopened containers. The company will not be
15 assessed additional cumulative notices of violations until the
16 commissioner has determined that the firm has had adequate notice
17 of the previous notice, generally 10 days from the mailing of the
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official
20 product sample(s) taken on separate days within a one year period
21 are found to be adulterated or misbranded, the commissioner shall
22 send a written "First Notice" to the manufacturer or distributor
23 whichever is appropriate. This notice shall notify the
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official
4 product sample(s) taken on separate days within a one year period
5 are found to be adulterated or misbranded the commissioner shall
6 send a written "Second Notice" to the manufacturer or distributor
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official
9 product sample(s) within 21 days of the sending of a Second
10 Notice to the manufacturer or distributor, but shall not collect
11 product samples before the lapse of 7 days from the sending of a
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official
14 product sample(s) taken on separate days within a one year period
15 are found to be adulterated or misbranded the commissioner shall
16 send a written "Third Notice" to the manufacturer or distributor
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official
19 product sample(s) within 21 days of the sending of the Third
20 Notice to the manufacturer or distributor, but shall not collect
21 additional product samples before the lapse of 7 days from the
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a
24 period of 24 hours to a manufacturer or distributor when the
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when
2 three out of the last five samples from the same machine are
3 violative. The "Shut-down Order" will normally be issued with
4 the "Third Notice". The "Shut-down Order" will give the reasons
5 for the order, state the portion of the manufacturing or
6 distributing operation that is prohibited from operating while
7 the order is in effect, give conditions of the order, state the
8 length of time that the Shut-down Order will be in effect and
9 specify a time and place for a hearing to be held in this matter.
10 Except that in the case where the public health, safety or
11 welfare is at risk, the commissioner will issue an immediate
12 Shut-down Order and give notice to the manufacturer or
13 distributor under the provisions of subdivision 15.6.a. of this
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down
16 Order without giving the manufacturer or distributor the
17 opportunity to be heard where there is a hazard to the public
18 health, safety or welfare. In these cases, the manufacturer or
19 distributor will be given the opportunity to request a hearing
20 before the commissioner after the notification of the order is
21 received by the manufacturer or distributor. All Shut-down
22 Orders issued due to noncompliance with subdivisions 8.1.c.,
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk to
24 the public health, safety or welfare.

1 15.6.b. The manufacturer or distributor will be responsible
2 for causing all operations covered by the Shut-down Order to
3 cease and follow all other conditions of the order. At the end
4 of the period of the order, the manufacturer or distributor may
5 resume operations without further action by the commissioner.

6 15.7. If after a Shut-down Order has been issued the
7 commissioner finds that effective corrective action has not been
8 taken, he may issue a suspension of the Frozen Desserts
9 Manufacturer Permit. The suspension shall state the time that
10 the suspension will become effective, give the reasons for the
11 suspension and specify a time and place for a hearing to be held
12 in this matter. Except that in the case of a summary suspension
13 the commissioner will give the manufacturer the opportunity to
14 request a hearing in this matter subsequent to the notification
15 of the suspension.

16 15.7.a. All suspensions due to nonconformance to
17 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are summary
18 suspensions.

19 15.7.b. A suspension of the Frozen Desserts Manufacturer
20 Permit remains in effect until the manufacturer submits and the
21 commissioner accepts a written plan of correction and a request
22 for a reinstatement of the permit.

23 15.7.c. The commissioner has seven days from the date of
24 receipt of this application to respond to a suspension in the
25 case of violations of subdivisions 8.1.c., 8.1.d. or 8.1.g. of

1 this rule and fourteen days to respond for all other violations
2 of W. Va. Code §19-11B-1 et seq. or these rules. The
3 commissioner will accept or deny the application for a
4 reinstatement of the permit and will give the terms and
5 conditions under which the permit will be reinstated.

6 15.8. If the commissioner finds that after the firm has
7 resumed production following a suspension of their Frozen
8 Desserts Manufacturer Permit that effective corrective action
9 has not been taken, then the commissioner will hold a hearing to
10 determine if the Frozen Desserts Manufacturer Permit should be
11 revoked.

12 15.9. Persons who manufacture a product on an intermittent
13 or infrequent basis, so that the standard enforcement policy
14 cannot apply, will enter into a consent agreement with the
15 commissioner for correction of all items found to be not in
16 conformance with W. Va. Code §19-11B-1 et seq. or these rules.

17 15.10. Whenever an antibiotic or pesticide residue test is
18 found to be above tolerance, the commissioner shall notify the
19 manufacturer and/or distributor immediately of this fact and
20 shall begin an investigation to determine the cause of the
21 residue. The commissioner shall require that any person found to
22 be responsible for the residue shall correct the cause of the
23 residue prior to the resumption of the manufacturing or
24 distribution of the product.

1 15.11. A person who performs a recall by voluntarily
2 removing product from sale and distribution in an effective
3 manner so as to limit the potential harm to the health and
4 well-being of the public may be eligible for exemptions from the
5 normal enforcement policy. The commissioner shall consider the
6 facts of each case when making a decision on an exemption.

7 15.12. The commissioner may apply the enforcement policy in
8 a liberal manner in cases where all official product sample
9 results that involve a product in the form actually sold to the
10 public have been found to be in conformance with W. Va. Code
11 §19-11B-1 et seq. or these rules.

12 15.13. The commissioner may suspend the standard enforcement
13 policy in cases where such action is necessary to protect the
14 public health, safety or welfare.

15 15.14. Resamples will only be taken from machines that were
16 shown to be producing violative product the previous visit,
17 except for resamples needed to check that the nonviolative status
18 is being maintained according to the following schedule:

19 15.14.a. After a first notice and one nonviolative sample,
20 resamples will be taken between 5 to 6 months after the
21 nonviolative sample.

22 15.14.b. After a second notice and one nonviolative sample,
23 resamples will be taken between 3-4 months after the nonviolative
24 sample.

1 15.14.c. Other resamples may be considered necessary to
2 determine that the nonviolative status is being maintained."

3 (hh) The legislative rules filed in the state register on
4 the eighth day of August, one thousand nine hundred ninety-one,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the twenty-fourth day of
8 September, one thousand nine hundred ninety-one, relating to the
9 commissioner of agriculture (West Virginia apiary law of 1991),
10 are authorized.

11 (ii) The legislative rules filed in the state register on
12 the eighth day of August, one thousand nine hundred ninety-one,
13 modified by the commissioner of agriculture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the twenty-fourth day of
16 September, one thousand nine hundred ninety-one, relating to the
17 commissioner of agriculture (disposal of dead poultry), are
18 authorized with the amendments set forth below:

19 On page two, section two, by adding a new subsection to read
20 as follows:

21 "2.8 "Disposal pit" means an opening dug in the ground to a
22 minimum depth of six feet, containing a minimum capacity of 150
23 cubic feet, covered with a minimum of 12 inches of dirt, and
24 provided with one or more openings for the introduction of
25 poultry. The openings shall be a minimum size of eight inches

1 square and equipped with tight lids. A disposal pit shall be
2 located in a site which will prevent contamination of the
3 groundwater or the surface water. This site should conform to
4 the standards established in this rule."

5 On page two, subsection 3.1 after the word "incinerator," by
6 adding the words "disposal pit,"

7 And,

8 On page two, by adding a new section, designated section 4,
9 to read as follows:

10 "§61-1C-4. Standards for Site Location for Disposal Pits.

11 4.1 No part of a disposal pit system shall be located in a
12 poorly drained or filled area, or in any area where seasonal
13 flooding occurs.

14 4.2 No part of a disposal pit system shall be located within
15 10 feet of a building, foundation or property line.

16 4.3 No part of a disposal pit system shall be located within
17 50 feet of a public water supply line or within 10 feet of a
18 private water supply system.

19 4.4 A disposal pit shall be located at least 50 feet from a
20 private well or groundwater supply.

21 4.5 There shall be a minimum of three feet between the
22 bottom of a disposal pit and seasonal groundwater or rock, shale
23 or any other impermeable layer.

1 4.6 The evaluation of the site for installation of a
2 disposal pit shall be based upon percolation test results.
3 Percolation tests shall be performed in the following manner:
4 4.6.1 Location - At least two holes shall be placed over the
5 selected site. The results of these two test holes will be
6 averaged.
7 4.6.2 Holes shall be dug or bored from six to eight inches
8 in diameter at the site where the disposal pit will be installed.
9 The holes should be at least 24 inches in depth.
10 4.6.3 The bottom and sides of the holes shall be scratched
11 with a sharp pointed instrument or wire brush to remove any
12 smeared soil surfaces which interfere with the absorption of
13 water into the soil.
14 4.6.4 Loose dirt shall be removed from the bottom of the
15 test holes and two inches of coarse sand or fine gravel shall be
16 placed into the holes to prevent sealing.
17 4.6.5 An eight or ten penny nail shall be placed in the wall
18 of each hole exactly six inches above the level of sand or
19 gravel.
20 4.6.6 The test hole shall be completely filled with water to
21 ground level. Water in the hole shall be kept to a depth of at
22 least 12 inches for a minimum period of four hours before
23 beginning the percolation rate measurement.
24 4.7 Percolation rate measurement - Upon completion of the
25 above, the water depth in the holes shall be adjusted to the

1 level of the nail. The number of minutes it takes for this six
2 inches of water (all the water) to be absorbed into the soil
3 shall be accurately determined. This time in minutes, divided by
4 six, gives the rate of fall per inch. The average rate of fall
5 must be between five minutes and 60 minutes."

6 (jj) The legislative rules filed in the state register on the
7 eighth day of August, one thousand nine hundred ninety-one,
8 modified by the commissioner of agriculture to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-fourth day of
11 September, one thousand nine hundred ninety-one, relating to the
12 commissioner of agriculture (licensing of livestock dealers), are
13 authorized.

14 (kk) The legislative rules filed in the state register on the
15 fifteenth day of September, one thousand nine hundred ninety-two,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the eighteenth day of November,
19 one thousand nine hundred ninety-two, relating to the
20 commissioner of agriculture (commercial feed), are authorized.

21 (ll) The legislative rules filed in the state register on the
22 fifteenth day of September, one thousand nine hundred ninety-two,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the nineteenth day of February,

1 one thousand nine hundred ninety-three, relating to the
2 commissioner of agriculture (general groundwater protection rules
3 for fertilizers and manures), are authorized.

4 (mm) The legislative rules filed in the state register on the
5 fifteenth day of September, one thousand nine hundred ninety-two,
6 modified by the commissioner of agriculture to meet the
7 objections of the legislative rule-making review committee and
8 refiled in the state register on the nineteenth day of February,
9 one thousand nine hundred ninety-three, relating to the
10 commissioner of agriculture (primary and secondary containment of
11 fertilizers), are authorized with the amendments set forth below:

12 "On page five, by striking out all of subsection 5.5 and
13 inserting in lieu thereof a new subsection 5.5 to read as
14 follows: 'The operator or his licensed representative shall sign
15 and date each application under oath.'; and

16 On page eighteen, by striking out all of subsection 14.1 and
17 inserting in lieu thereof a new subsection 14.1 to read as
18 follows:

19 'All moneys for the purpose of the enforcement and
20 administration of this rule shall come from general revenue funds
21 appropriated by the legislature for that purpose. The net
22 proceeds of civil penalties collected pursuant to W. Va. Code
23 §20-5M-10a or any civil administrative penalties collected
24 pursuant to W. Va. Code §20-5M-10c will be deposited in the

1 groundwater remediation fund established in W. Va. Code §20-5M-1.
2 et seq.'".

3 (nn) The legislative rules filed in the state register on the
4 fifteenth day of September, one thousand nine hundred ninety-two,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the nineteenth day of February,
8 one thousand nine hundred ninety-three, relating to the
9 commissioner of agriculture (general groundwater protection rules
10 for pesticides), are authorized.

11 (oo) The legislative rules filed in the state register on the
12 fifteenth day of September, one thousand nine hundred ninety-two,
13 modified by the commissioner of agriculture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the nineteenth day of February,
16 one thousand nine hundred ninety-three, relating to the
17 commissioner of agriculture (bulk pesticide operational rules),
18 are authorized.

19 (pp) The legislative rules filed in the state register on the
20 fifteenth day of September, one thousand nine hundred ninety-two,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the nineteenth day of February,
24 one thousand nine hundred ninety-three, relating to the

1 commissioner of agriculture (non-bulk pesticide rules for
2 permanent operational areas), are authorized.

3 ~~(gg) The legislative rules filed in the state register on the~~
4 ~~third day of August, one thousand nine hundred ninety-three,~~
5 ~~modified by the commissioner of agriculture to meet the~~
6 ~~objections of the legislative rule-making review committee and~~
7 ~~refiled in the state register on the eighth day of October, one~~
8 ~~thousand nine hundred ninety-three, relating to the commissioner~~
9 ~~of agriculture (auctioneers), are authorized.~~

10

11 NOTE: The purpose of this bill is to authorize the
12 Commissioner of Agriculture to promulgate legislative rules
13 relating to auctioneers.

14

15 Strike-throughs indicate language that would be stricken from
16 the present law, and underscoring indicates new language that
17 would be added.

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March 15, 1994

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Agriculture
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SB 145 authorizing, Title 61, Series 11B, Regulation Governing Auctioneers, passed the Legislature on **March 10, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 145, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 145** section 64-9-1(rr). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division