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APR 19 9 10 AM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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April 17, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gus R. Douglass
Agriculture, WV Department of
Main Building, Room 28
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Traditional Cheese Production, 61CSR4**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

 X

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Department of Agriculture

Subject: Traditional Cheese Production, 61CSR4

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PERTINENT DATES

Filed for public comment: October 26, 1999

Public comment period ended: November 29, 1999

Filed following public comment period: December 27, 1999

Filed LRMRC: December 27, 1999

Filed as emergency: October 26, 1999

Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 sets forth minimum quality standards for acceptable milk.

Section 4 relates to minimum testing requirements. It requires a producer to take samples once a month. The samples are to be analyzed at an official laboratory. It requires that the Commissioner receive a copy of the lab results.

Section 5 sets forth prohibitions regarding the use of milk produced by a farm where milk from the farm contains an inhibitory substance.

Section 6 prohibits a producer from using abnormal milk, as described in that section, for manufacturing purposes.

Section 7 sets forth those conditions under which milk is considered to be adulterated.

SCANNED

Section 8 sets forth construction requirements for a milkhouse or milkroom.

Section 9 sets forth cleanliness requirements for a milkhouse or milkroom.

Section 10 requires farms to have a milking barn or milking parlor of adequate size to permit normal sanitary milking operations. It sets forth sanitary requirements for a milking barn or parlor.

Section 11 sets forth cleanliness standards for milking barns, stables or parlors.

Section 12 sets forth requirements for barnyards.

Section 13 sets forth the requirements for the water supply. It requires the water to come from a source approved by the Department of Health and Human Resources or if from another source, the water must comply with the standards of the DHHR.

Section 14 sets forth standards for the construction, cleaning, storage and handling of milking utensils and equipment.

Section 15 sets forth standards for milking practices. It requires the cleaning and sanitizing of the animals prior to milking and prohibits wet hand milking.

Section 16 relates to the cleanliness and storage of surcingles, milk stools and anti-kickers.

Section 17 sets forth requirements to provide for protection from contamination.

Section 18 requires that hand washing facilities be located convenient to the milking barn, stable, parlor or flush toilet and sets forth the requirements for the facilities.

Section 19 sets forth cleanliness standards for personnel.

Section 20 prohibits any person infected with any communicable disease from working at any dairy farm or cheese making facility,

Section 21 requires that cows milk for processing cheese through traditional methods is to be from herds under a brucellosis eradication program that meets the requirements set forth in that section. It also requires that the herds be located in a Modified Accredited Tuberculosis Area as determined by the USDA.

Section 22 sets forth standards for insect and rodent control.

Section 23 requires the inspection of each dairy farm and cheese manufacturing facility at least two times per year.

Section 24 sets forth construction and facility requirements for cheese kitchens.

Section 25 sets forth requirements for a cheese kitchen's utensils and equipment.

Section 26 prohibits a firm from processing cheese using raw milk from a dairy farm that is not in compliance with the rule.

Section 27 requires persons operating a dairy farm which produces and offers for sale cheeses which are processed using traditional methods to have a permit.

AUTHORITY

Statutory authority: W.Va. Code, §19-11D-3, which provides, in part, as follows:

...The commissioner of agriculture is authorized to promulgate rules pursuant to article three, chapter twenty-nine-a 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.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.