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SEP 13 11 35 AM '00

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE

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September 12, 2000

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

TO: Ken Hechler, Secretary of State, State Register

TO: Commissioner Gus R. Douglass  
Agriculture, WV Department of  
Capitol Complex  
Building 1, Room 28

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Sale and Distribution of Commercial Fertilizer, 61CSR6**

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

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- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
 

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- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
 

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- 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.
 

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- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.
 

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Department of Agriculture

Subject: Sale and Distribution of Commercial Fertilizer, 61CSR6

PERTINENT DATES

Filed for public comment: June 29, 2000  
Public comment period ended: July 31, 2000  
Filed following public comment period: August 4, 2000  
Filed LRMRC: August 4, 2000  
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 relates to permit, inspection, tonnage and registration fees. It sets forth a fee of \$4 per brand and grade of fertilizer except for fertilizer sold in packages of 10 pounds or less for which the registration fee is \$30 each. The registration fee for each brand of soil amendment, compost and horticultural growing media is \$75 per brand per year. The fee for fertilizer formulation permits has been increased from \$25 to \$35. This section also sets forth a penalty fee of \$10 to be assessed against any person who fails to register a product or fails to register as a manufacturer or distributor.

This section requires an application for registration of any industry by-product as a regulated product to be accompanied by laboratory tests and field trial data proving the product has use and value and is not hazardous.

This section provides for an inspection fee on fertilizer sold in packages over 10 pounds and distributed in this state of 40¢ per ton per quarter. On individual packages containing 10 pounds or less, the inspection fee is \$15 for each brand and grade of

fertilizer. This section also sets forth a collection fee of 10% for inspection fees which have not been paid within 30 days of the end of the quarter. The Commissioner may also assess a penalty on regulated products which are short in weight in the amount of four times the value of the shortage.

Section 4 sets forth labeling requirements including the purpose of the product, brand or grade of the product and directions for application. There are additional labeling requirements for fertilizer, soil amendments, horticultural growing mediums and slowly released plant nutrients.

Section 7 relates to safe use of regulated products. It requires that all regulated products be used in a safe manner which follows any written label directions established by the manufacturer.

Section 9 relating to sampling analysis and investigational allowances has been amended to include schedules for use in determining fertilizer deficiencies and overall index value.

Section 10 provides that the Commissioner is to determine a registrant's sales invoice values charged for soil amending ingredients in determining commercial values.

Section 11 sets forth penalties for deficiencies in nitrogen, available phosphate and soluble potash; soil amendments; secondary and minor elements; and excessive chlorine in tobacco fertilizers.

Section 12 has been amended to require the Commissioner to determine and publish annually, the commercial values per unit of nitrogen, available phosphate and soluble potash in fertilizer in this state.

Section 13 permits any person, registrant, distributor or possessor from whom a violative sample was collected, to request a hearing within 15 days of receiving notice of the sample. It also sets forth civil and criminal penalties for violating the statute and the rule.

Section 14 states that all rules previously adopted are rescinded and is unnecessary.

AUTHORITY

Statutory authority: W.Va. Code, §19-15-12, which provides as follows:

The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The commissioner may enforce such rules relating to investigational allowances, definitions, records, fees and the distribution of regulated products as may be necessary to carry into effect the full intent and meaning of this article, including protection of the environment.

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?

The proposed rule should have been completely rewritten and based on the statute. Because the statute has been completely rewritten, it is difficult to follow the proposed rule.

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.