

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 8, 1991
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-10B-9

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: XI D

TITLE OF RULE BEING AMENDED: Licensing of Livestock Dealers

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



LIVESTOCK DEALERS

SUMMARY OF THE RULE

These rules amend regulations currently in effect as a result of changes in Chapter 19, Article 10B. These rules adopt language which allows the use of bonding instruments, other than surety bonds, for the purpose of securing livestock sales. The rules also allow the Commissioner to require bonds, of the minimum of \$10,000.00 when evidence indicates that the volume of business of the livestock dealer creates a potential excess liability.

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

This rule is needed as the provisions of §19-10 for bonding were changed by the seventieth legislature.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensing of Livestock Dealers

Type of Rule: Legislative Interpretive Procedural

Agency WVDA Address Room 28, State Capitol, Chas. WV
25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations			SEE NUMBER 2 BELOW		
Equipment					
Other					

2. Explanation of above estimates:

The rule has no affect on revenue.

3. Objectives of these rules:

To protect the sellers of livestock by requiring livestock dealers to be bonded and to protect the health of livestock in West Virginia by requiring record keeping of livestock dealers which will allow for the tracking of diseased animals back to their farm of origin.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

NO

C. Economic Impact on Citizens/Public at Large.

Will provide protection to farmers selling livestock through livestock dealers.

Date:

June 26 1991

Signature of Agency Head or Authorized Representative



DATE: August 8, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

LEGISLATIVE RULE TITLE: Licensing of Livestock Dealers

1. Authorizing statute(s) citation 19-10B-9

2. a. Date filed in State Register with Notice of Hearing:

June 26, 1991

b. What other notice, including advertising, did you give of the hearing?

copies to all licensed livestock dealers (10), Bd. of Div. for

Cattlemen's Assoc. (16), packers and stockyards (2), Public Markets (14),

USDA-APHIS, Farm Bureau, press release to all state newspapers

c. Date of hearing(s): July 31, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

August 8, 1991

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert Williams 348-2210

Barbara Smith 348-2226

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-10B
SERIES XI D

TITLE: Licensing of Livestock Dealers

§61-11D-1. General.

1.1 Scope - These legislative rules are promulgated to establish the general procedures for the licensing of livestock dealers' under the provisions of "The West Virginia Livestock Dealer's Licensing Act," West Virginia Code, section one, article ten-b, chapter nineteen, et seq.

1.2 Authority - W. Va. Code 19-10B-9.

1.3 Filing Date -

1.4 Effective Date

1.5 Amends Former Rule: This legislative rule amends WV 61CSR 11D filed April 1, 1986 and effective April 1, 1986.

§61-11D-2. Definitions.

2.1 For the purposes of this regulation, unless the context clearly indicates otherwise:

2.1.1 "Livestock Producer" means a person selling livestock which he has raised, or livestock which he has purchased and summered or wintered. A person is deemed to have raised an animal, regardless of its age, if he has owned it since its birth. A person is deemed to have purchased and summered or wintered an animal if he acquired such animal after its birth and has held ownership of such animal for a continuous period of sixty (60) days or more.

2.1.2 "Livestock Transaction" means a transaction whereby livestock is bought, sold, received, exchanged or otherwise transferred to or from a livestock dealer.

§61-11D-3. License Applications And Fee.

3.1 An applicant for a livestock dealer's license shall submit his application on forms provided by the Commissioner.

3.2 Each application shall be filed with the Commissioner on or before the thirtieth day of June of a given year for an annual license to be issued for the period commencing the first day

of July of such year and ending on the thirtieth day of June of the following year.

3.3 A fee of thirty dollars (\$30.00) shall be remitted with each application which is filed.

Section 4. Surety Bond Requirements.

4.1 Each applicant for a livestock dealer's license under the provisions of this regulation shall file with the Commissioner either of the following:

4.1.1 A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The Federal the United States Department of Agriculture, Packers and Stockyards Act of 1921, as amended; or

~~4.1.2 A fully executed surety bond, executed by a company authorized to do business in the State of West Virginia, in the amount of ten thousand dollars (\$10,000);~~ A fully executed bond pursuant to the requirements of Chapter 19, Article 10B, Section 4 of the Code of West Virginia.

4.1.2.1 The bond shall guarantee ~~guaranteeing~~ that the applicant shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the Commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase, and

~~4.1.2.2 The bond shall guarantee guaranteeing that a seller of livestock who is adjudged by a court of competent jurisdiction to have been wronged or damaged by any fraud or fraudulent practices of the applicant shall have a right of action for his damages for compensation against such bond.~~

4.1.3 The Commissioner may require a bond in excess of ten thousand dollars (\$10,000) when evidence shows that the volume of business of the livestock dealer creates a potential liability in excess of ten thousand dollars.

§61-11D-5. Maintenance Of Records Of Transactions.

5.1 Except as otherwise provided in Subsection 5.2 of this section, every person licensed as a livestock dealer under the provisions of this 19-10B of the Code of West Virginia shall maintain a record of livestock transactions in an official transactions record book provided by the Commissioner. Any such transactions record book shall be and remain the property of the department, and the delivery of such transactions record book or

books to the licensed livestock dealer shall in no way affect the ownership of such transactions record book by the Department. As a condition of receiving a license to function as a livestock dealer, each licensee shall agree to use reasonable care and diligence to preserve and protect the transactions record book assigned to such licensee. Upon the request of the licensee, the Commissioner shall provide such additional transactions record book or books as he may deem necessary for the licensee to comply with the provisions of this regulation.

5.2 The Commissioner may authorize a licensee to maintain a record of livestock transactions in an alternate record book, ledger or automated data storage and retrieval system, instead of the transactions record book prescribed in Subsection 5.1 of this section, if:

5.2.1 The commissioner determines that such alternative record book, ledger or automated data storage and retrieval system will permit the recording of information in such a manner that the commissioner can, by examining such alternative record book ledger or a printout of an automated data storage and retrieval system, readily obtain the same information which would otherwise be required to be provided through the use of the official transactions record book of the Department.

5.2.2 The Commissioner determines that such alternative method ~~or~~ of record keeping will allow for the correction of records and the notation of the correction of records in accordance with the provisions of Subsection 5.3 of this section; and

5.2.3 The licensee demonstrates to the Commissioner that such alternative method of record keeping is a normal function of his business operations and, by eliminating duplicating work, will result in a significant reduction in the licensee's administrative costs of doing business.

5.3 Each livestock transaction in which a licensee is a party, either for his own account or that of another person, shall immediately be entered in the transactions record book provided by the Department or in such alternative record as may be authorized by the Commissioner pursuant to the provisions of Subdivision 5.2.2 of this section. The information relating to such livestock transaction shall be accurate and legible as to each detail hereinafter required, and shall not be altered, obliterated, defaced or erased, except that a notation may be added to refer to a later entry appearing in the record which corrects information which has been entered concerning the livestock transaction. Once information has been entered relative to a livestock transaction, if it is found that the information so recorded is incorrect, the correct information shall be reentered in the next available space in the record, and a notation shall be added which refers to the

prior livestock transaction which is the subject of correction.
Section 6. Information To Be Recorded By Licensees.

6.1 The licensee's method of record keeping shall provide for the ~~recording~~ recording of the following information for each animal involved in a livestock transaction, as of the time of the livestock transaction:

6.1.1 All ear tag numbers or letters and any other identifying numbers or letters affixed to the animal;

6.1.2 Identifying tattoo numbers, except for vaccination tattoos;

6.1.3 In the case of purebred livestock, the registration number assigned to the animal;

6.1.4 The breed and sex of the animal;

6.1.5 The approximate weight of the animal;

6.1.6 The date of the transaction;

6.1.7 The names and addresses of all owners, sellers, consignors or buyers who are party to the transaction with the licensee.

6.2 The records required to be kept under the provisions of this section shall be retained for at least two (2) years by the licensee, after which such records may be retained by the licensee or turned over to the Commissioner for such retention or disposition as he or she sees fit.

6.3 ~~The records required to be kept under the provisions of this section shall be kept and retained by a livestock dealer only during the period during which he is licensed.~~ In the event a licensee's license is suspended or revoked, or expires upon a failure to renew, the licensee shall forthwith deliver the records to the Commissioner upon the suspension of business.

COMMENTS RECEIVED REGARDING THE
LIVESTOCK DEALER RULE

Written comments

Written comments were received from Mr. Gene H. Boggs and George I. Sponaugle II Esq. on behalf of Mr. Hansel Hedrick. Both comments stated that the record keeping requirements proposed in this rule were unduly expensive and onerous. Attached are the replies to these comments written by Mr. Robert L. Williams, Director, Marketing and Development Division stating the agency response.

Oral comments

Brian J. McCluskey, 4720 Brenda Lane, USDA-APHIS, VS
Acting Area Veterinarian-in-Charge with USDA

Ken Palmer, PO Box 1027, Bedford, VA, USDA Packers and Stockyards
Supervisory Livestock Marketing Specialist

Oral comments were received from 2 individuals during the hearing held on July 31, 1991. (The transcript notes that the date of the hearing was announced as the 30th, however, the actual date was the 31st.)

Mr. McCluskey gave a comment in support of the record keeping requirements as currently written in the regulations. Mr. Palmer stated that the provisions of section 4.1.2.2 regarding a seller adjudged by a court to have been wronged shall be able to have damaged applied against his bond. He stated that this is not what the Packers and Stockyards would allow. He asked that this section be amended or removed.

Agency response

The agency removed section 4.1.2.2 from the rules due to the comment by the Packers and Stockyards representative.

The agency response to the written comments is that record keeping requirements have been effect since 1986 and that these two gentlemen, licensed livestock dealers, should have recognized that these rules were not new if they were complying with current regulations. The USDA-APHIS representative stated that these rules are essential for animal health followup. The record keeping requirements were not amended.

:liv

WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

PUBLIC HEARING FOR LIVESTOCK DEALERS
JULY 26, 1991
10:00 A.M.

Barbara Smith - This hearing is called to order. I want to thank both of you for coming. Sometimes, because we are up on the hill, we get people who come in a little late so if we do we will stop and break a minute and clue them in to what is happening but we will go ahead and get started.

This hearing is to take oral comments for the regulation for licensing of livestock dealers. It is July 30, 1991, and it is approximately 10:05, 10:04 a.m. to be exact. The notice of the hearing was filed in the Secretary of State's office on June 26, 1991, and published in Volume 8, No. 25, of the State Register. This rule amends the regulations currently in effect as a result of changes in Chapter 19, Article 10B. These rules adopt language which allows for the use of bonding instruments other than surety bonds for the purpose of securing livestock sales. The rules also allow the Commissioner to require bonds of a minimum of \$10,000 when evidence indicates that the volume of business of the livestock dealer creates potential excess liability. This rule is based on the amended livestock dealer law that was passed in last year's legislative session.

My name is Barbara Smith and I am the Director of the Compliance Division and I am serving as the Hearing Officer today. Other people from the Department of Agriculture in attendance today are Bob Williams, Director of the Marketing and Development Division, Regina Morgan, Administrative Aide, and Dr. Thomas, Director of the Animal Health Division.

I would like to, at this time, give an explanation of the rule making process so that you all understand at what point we are and where we are going in this. This is an opportunity to take comments on the rules. An opportunity for the public to suggest changes to the rule. After this, the transcript of this hearing will be prepared and all written and oral comments received will be reviewed. If the Commissioner agrees to amend the rule, subsequent to this hearing, that will be prepared and whatever format that rule will be submitted to the Secretary of State in the Legislative Rule Making Committee. The summary of all of the comments will be filed along with the transcript and copies of all of the written comments and they will be part of the public record which is maintained on these premises for at least five years and are also available from the Secretary of State. These will go before the Legislative Rule Making Committee which is a standing committee of the legislature. They review these rules and also may amend them, pass them, or deny them. If they pass them, they go on to the full legislative session next spring. Once again they open them up for review. It is a long drawn out process but that is the way that the process works.

This hearing is for the purpose of taking comments to the proposed rule.

We have two people present at this time who wish to make comment and if you would please, since we are recording it and this recorder won't pick you up from the back of the room, come up here and sit at the table. We will tape the comment from Brian McCluskey.

Brian McCluskey - I am the Acting Area Veterinarian-in-Charge with U.S.D.A. Animal Plant Health Inspection Service, Veterinary Services in West Virginia. In reviewing the proposed legislation, the section that would most interest our agency would have to do with the record keeping, the need for and the content of this record keeping. The frequency of disease in West Virginia, and essentially all over the United States, is becoming so low and the distribution so scattered that tracing back any animal with disease or suspect of having a disease can be rather difficult because there is not much of it out there. The most efficient method of tracing these animals that are suspected of having or actually have the disease is through review and records. The accuracy of records gives you, if they are very accurate, good information back and you are able to find these animals and if not, you may never find them, where they've been and where they've gone. There is such rapid and frequent movement of animals, particularly ones associated with animal dealers, that animals could be lost. It is very important that the stipulations of what is required for these records set forth in the regulations is very adequate. It is what we would require, names, addresses and so fourth. I don't see any problem with that but it is something that is very necessary for us to do our job most efficiently, and to do our job at all.

As I mentioned, I am the Acting Veterinarian-in-Charge and once they replace me I will be a field veterinarian and have done this before and trying to find these animals without adequate records is virtually impossible. From hear say of the dealers, they can't remember and some are not as cooperative as necessary to find them.

Barbara Smith - So Brian, your statement is in support of what is written here and you are not asking for any changes, you are asking that this be maintained just the way it is.

Brian McCluskey - No changes, maintained just the way it is. That's correct.

Barbara Smith - Okay. Thank you. The next person we have is Ken Palmer.

Ken Palmer - Ken Palmer, Supervisory Livestock Marketing Specialist for U.S.D.A. Packers and Stockyards in Bedford, Virginia. West Virginia comes under the jurisdiction of that office. My comments are directed toward Section 4.1.2.2 which states that a seller of livestock who is adjudged by a court of competent jurisdiction to have been wronged or damaged by any fraud or fraudulent practices of the applicant (dealer) shall have a right of action for his damages or compensation against this bond. Under the Packers and Stockyards Act, and the regulations issued thereunder, bonds such as dealer bonds for our registrants, dealers and markets, may only be called upon or claimed upon for the unpaid proceeds due a seller of livestock which is contrary to this section of the proposed regulations. Claims for damages in such as that are not entertained under our bond and our regulations so we do object to that one section. If it remains, bonds that come in, claims under dealer bonds written under our act and regulations would have to be returned and have been returned in the past for things such as commissions, trucking,

failure to pay because of an animal being the wrong type and such. Those types of claims are settled civilly and not as a claimable amount under the bond. That concludes my comments.

Barbara Smith - Thank you. If there are no other comments I will adjourn this hearing, however, generally we wait until a half an hour past the time just in case someone else would show and would wish to make a statement. But, if no one else shows up, this hearing is adjourned.

July 19, 1991

West Virginia Department of Agriculture
Marketing and Development Division
State Capitol Building
Charleston, WV 25305

RE: Proposed Regulations
Licensing of Livestock Dealers

Dear Sirs:

This is in regard to the proposed Regulations implementing Article 10B of Chapter 19 of the West Virginia Code.

These two provisions would cause a lot of additional problems with the license buyer. I would oppose the proposed Regulations strongly.

These provisions would hurt the little business man especially.

Sincerely,


Gene H. Boggs

NOTE:

As the Old Saying Goes; if it works leave it alone.

JUL 22 1991

SPONAUGLE, SPONAUGLE & BOWERS

ATTORNEYS AT LAW

GEORGE I. SPONAUGLE
GEORGE I. SPONAUGLE II
JEFFREY S. BOWERS

BOX 578, CHESTNUT ST.
FRANKLIN, WV 26807
PHONE 304-358-2337
FAX: 304-358-2483

July 12, 1991

West Virginia Department of Agriculture
Marketing and Development Division
State Capitol Building
Charleston, West Virginia 25305

Re: Proposed Regulations
Licensing of Livestock Dealers


Dear Sirs:

I am writing you on behalf of Hansel Hedrick of Riverton, West Virginia, who is a licensed livestock dealer with the State of West Virginia. He has reviewed the proposed Regulations implementing Article 10B of Chapter 19, of the West Virginia Code. By this letter he desires that I enter his objections and protest to the Regulations as they have been proposed. The chief problem in regard to the Regulations deals with Section 61-11D-5, Maintenance of Records of Transactions and 61-11D-6, Information to be recorded by Licensee.

These two provisions would cause untold additional expense and delay in the buying, selling and transfer of livestock. To require licensees to keep the type of record that you are proposing in these regulations would necessitate undue time and expense to implement, especially when you consider that under the regulations each head of livestock is required to be identified, marked, etc. This would necessitate unloading each head of livestock and trying to establish some identifying marks on them and then recording it in the record book. This would take a considerable amount of additional time when one considers that a lot of your licensees will be handling large volumes of cattle, and in reality seems to be counter-productive, since it most surely will result in a decrease in the amount of money paid to the farmer and an increase in the amount of money that the livestock are sold for in order to cover the additional costs and expense that will result from the red tape being imposed by this regulation.

Therefore, please consider this letter as opposition to the implementing of the Proposed Regulations.

Very truly yours,



George I. Sponaugle II

GIS II/lbh

cc: ✓ Mr. Hansel Hedrick

SPONAUGLE, SPONAUGLE & BOWERS

ATTORNEYS AT LAW

GEORGE I. SPONAUGLE
GEORGE I. SPONAUGLE II
JEFFREY S. BOWERS

BOX 578, CHESTNUT ST.
FRANKLIN, WV 26807
PHONE 304-358-2337
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July 12, 1991

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Marketing and Development Division
State Capitol Building
Charleston, West Virginia 25305

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Dear Sirs:

I am writing you on behalf of Hansel Hedrick of Riverton, West Virginia, who is a licensed livestock dealer with the State of West Virginia. He has reviewed the proposed Regulations implementing Article 10B of Chapter 19, of the West Virginia Code. By this letter he desires that I enter his objections and protest to the Regulations as they have been proposed. The chief problem in regard to the Regulations deals with Section 61-11D-5, Maintenance of Records of Transactions and 61-11D-6, Information to be recorded by Licensee.

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Therefore, please consider this letter as opposition to the implementing of the Proposed Regulations.

Very truly yours,


George I. Sponaugle II

JUL 15 1991

GIS II/lbh

cc: Mr. Hansel Hedrick



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

July 25, 1991

Mr. Gene H. Boggs
Rt. 5, Box 43
Franklin, West Virginia 26807

Dear Mr. Boggs:

Thank you for your comments regarding the provisions of the livestock dealer by way of a copy of the letter from Mr. George I. Sponaugle II. I must call to your attention, however, that the two provisions of the regulations which you mention, Section 61-11D-5, Maintenance of Records of Transactions, and 61-11D-6, Information to be Recorded by Licensee, are part of the current regulations which have been in effect since the passage of the law in 1986.

In addition, when you made your initial application for a livestock dealer's license, you signed a statement indicating that you were aware of the rules and regulations of the Livestock Dealer's Licensing Act and that you would comply with the record keeping provisions of that act. I have attached a copy of your initial application for your review.

The only changes in the current regulations with regard to those two sections are grammatical in nature and do not make any substantive change to those regulations.

I do appreciate your comments. The purpose for these records is to insure trace back capabilities for our animal health regulations. That, in addition to the protection of the buyer, is the purpose for the Livestock Dealer Licensing Act and the regulations associated with it.

Your comments will be filed as part of the public record in association with the hearing to be held on July 31, 1991. A copy of this letter in response will also be included as part of the public record.

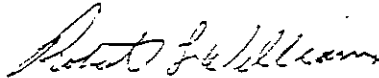
Mr. Gene H. Boggs

-2-

July 24, 1991

We appreciate your taking the time to respond.

Sincerely,



Robert L. Williams
Director
Marketing & Development Division

RLW/cjc

cc: Mr. George I. Sponaugle II
Sponaugle, Sponaugle & Bowers
Attorney's at Law
Box 578, Chestnut Street
Franklin, West Virginia 26807



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

July 25, 1991

Mr. Hansel Hedrick
Rt. 4, Box 31
Riverton, West Virginia 26814

Dear Mr. Hedrick:

Thank you for your comments regarding the provisions of the livestock dealer by way of a copy of the letter from Mr. George I. Sponaugle II. I must call to your attention, however, that the two provisions of the regulations which you mention, Section 61-11D-5, Maintenance of Records of Transactions, and 61-11D-6, Information to be Recorded by Licensee, are part of the current regulations which have been in effect since the passage of the law in 1986.

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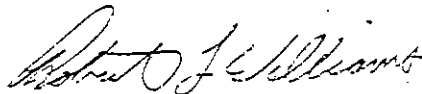
Mr. Hansel Hedrick

-2-

July 24, 1991

We appreciate your taking the time to respond.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Williams".

Robert L. Williams
Director
Marketing & Development Division

RLW/cjc

cc: Mr. George I. Sponaugle II
Sponaugle, Sponaugle & Bowers
Attorney's at Law
Box 578, Chestnut Street
Franklin, West Virginia 26807

JUL 0 8 1991



Cleve Benedict
Commissioner of Agriculture

NEWS RELEASE

July 8, 1991

Charleston, West Virginia 25305

Public hearings scheduled for new regulations

Agriculture Commissioner Cleve Benedict announced a series of public hearings on new regulations and encouraged public participation in the process.

Benedict said the public hearings give the West Virginia Department of Agriculture (WVDA) the opportunity to modify regulations after taking public input into consideration.

In addition to the public hearings, written comments will be accepted until the time of the hearing. The public hearings will be held on the following days:

July 12, 1 p.m.	Licensing of Pesticide Business
July 12, 3 p.m.	Regulations to Govern Aerial Application of Herbicides to Right of Way
July 29, 10 a.m.	Frozen Desserts and Imitation Frozen Desserts
July 29, 2 p.m.	Commercial Feed
July 30, 10 a.m.	Assessment of Civil Penalties for Consent Agreement or Negotiated Settlements (Pesticides)
July 30, 1 p.m.	Certified Pesticide Applicator
July 31, 10 a.m.	Licensing of Livestock Dealers
August 1, 10 a.m.	Disposal of Dead Poultry

All hearings will be held in the J. T. Johnson Conference Room in Building 2 of the Guthrie Agricultural Center, Charleston, W.Va., except for the Disposal of Dead Poultry hearing. The Dead Poultry hearing will be held at the Moorefield Agricultural Center.

Comment period deadlines for the following regulations (there are no public hearings) will be July 29 at noon:

Plant Pest Act
West Virginia Apiary Law of 1991
Animal Disease Control

For more information on how to comment on the new regulations, contact Barbara Smith, Director of Compliance, WVDA, at 304/348-2226.

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 11D
LICENSING OF LIVESTOCK DEALERS

§61-11D-1. General.

1.1. Scope. -- These legislative regulations are promulgated to establish the general procedures for the licensing of livestock dealers under the provisions of "The West Virginia Livestock Dealer's Licensing Act," West Virginia Code, section one, article ten-b, chapter nineteen, et seq.

1.2. Authority. -- W. Va. Code §19-10B-9

1.3. Filing Date. -- April 1, 1986

1.4. Effective Date. -- April 1, 1986

§61-11D-2. Definitions.

2.1. For the purposes of this regulation, unless the context clearly indicates otherwise:

2.1.1. "Bond" means a written instrument issued or executed by a surety or an insurance company licensed to do business in this state, guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase.

2.1.2. "Commissioner" means the Commissioner of Agriculture of the State of West Virginia and his duly authorized representatives.

2.1.3. "Department" means the Department of Agriculture of the State of West Virginia.

2.1.4. "Livestock" means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie and domestic poultry.

2.1.5. "Livestock Dealer" means a person, other than a livestock producer, who buys, receives or assembles livestock for resale, either for his own account or that of another person.

2.1.6. "Livestock Producer" means a person selling livestock which he has raised, or livestock which he has purchased and summered or wintered. A person is deemed to have raised an animal, regardless of its age, if he has owned it since its birth. A person is deemed to have purchased and summered or wintered an animal if he acquired such animal after its birth and has held ownership of such animal for a continuous period of sixty (60) days or more.

2.1.7. "Livestock Transaction" means a transaction whereby livestock is bought, sold, received, exchanged or otherwise transferred to or from a livestock dealer.

2.1.8. "Person" means an individual, partnership, corporation, association or other legal entity.

§61-11D-3. License Applications And Fee.

3.1. An applicant for a livestock dealer's license shall submit his application on forms provided by the Commissioner.

3.2. Each application shall be filed with the Commissioner on or before the thirtieth day of June of a given year for an annual license to be issued for the period commencing the first day of July of such year and ending on the thirtieth day of June of the following year.

3.3. A fee of thirty dollars (\$30.00) shall be remitted with each application which is filed.

§61-11D-4. Surety Bond Requirements.

4.1. Each applicant for a livestock dealer's license under the provisions of this regulation shall file with the Commissioner either of the following:

4.1.1. A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The Federal Packers and Stockyards Act of 1921, as amended; or

4.1.2. A fully executed surety bond, executed by a company authorized to do business in the State of West Virginia, in the amount of ten thousand dollars (\$10,000):

4.1.2.1. Guaranteeing that the applicant shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the Commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase, and

4.1.2.2. Guaranteeing that a seller of livestock who is adjudged by a court of competent jurisdiction to have been wronged or damaged by any fraud or fraudulent practices of the applicant shall have a right of action for his damages for compensation against such bond.

§61-11D-5. Maintenance Of Records Of Transactions.

5.1. Except as otherwise provided in Subsection 5.2 of this section, every person licensed as a livestock dealer under the provisions of this regulation shall maintain a record of livestock transactions in an official transactions record book provided by the Commissioner. Any such transactions record book shall be and remain the property of the department, and the delivery of such transactions record book or books to the licensed

livestock dealer shall in no way affect the ownership of such transactions record book by the Department. As a condition of receiving a license to function as a livestock dealer, each licensee shall agree to use reasonable care and diligence to preserve and protect the transactions record book assigned to such licensee. Upon the request of the licensee, the Commissioner shall provide such additional transactions record book or books as he may deem necessary for the licensee to comply with the provisions of this regulation.

5.2. The Commissioner may authorize a licensee to maintain a record of livestock transactions in an alternate record book, ledger or automated data storage and retrieval system, instead of the transactions record book prescribed in Subsection 5.1 of this section, if:

5.2.1. The commissioner determines that such alternative record book, ledger or automated data storage and retrieval system will permit the recording of information in such a manner that the commissioner can, by examining such alternative record book ledger or a printout of an automated data storage and retrieval system, readily obtain the same information which would otherwise be required to be provided through the use of the official transactions record book of the Department.

5.2.2. The Commissioner determines that such alternative method or record keeping will allow for the correction of records and the notation of the correction of records in accordance with the provisions of Subsection 5.3 of this section; and

5.2.3. The licensee demonstrates to the Commissioner that such alternative method of record keeping is a normal function of his business operations and, by eliminating duplicative work, will result in a significant reduction in the licensee's administrative costs of doing business.

5.3. Each livestock transaction in which a licensee is a party, either for his own account or that of another person, shall immediately be entered in the transactions record book provided

by the Department or in such alternative record as may be authorized by the Commissioner pursuant to the provisions of Subdivision 5.2.2 of this section. The information relating to such livestock transaction shall be accurate and legible as to each detail hereinafter required, and shall not be altered, obliterated, defaced or erased, except that a notation may be added to refer to a later entry appearing in the record which corrects information which has been entered concerning the livestock transaction. Once information has been entered relative to a livestock transaction, if it is found that the information so recorded is incorrect, the correct information shall be reentered in the next available space in the record, and a notation shall be added which refers to the prior livestock transaction which is the subject of correction.

§61-11D-6. Information To Be Recorded By Licensees.

6.1. The licensee's method of record keeping shall provide for the recordation of the following information for each animal involved in a livestock transaction, as of the time of the livestock transaction:

6.1.1. All ear tag numbers or letters and any other identifying numbers or letters affixed to the animal;

6.1.2. Identifying tattoo numbers, except for vaccination tattoos;

6.1.3. In the case of purebred livestock, the registration number assigned to the animal;

6.1.4. The breed and sex of the animal;

6.1.5. The approximate weight of the animal;

6.1.6. The date of the transaction;

6.1.7. The names and addresses of all owners, sellers, consignors or buyers who are party to the transaction with the licensee.

6.2. The records required to be kept under the provisions of this section shall be retained

for at least two (2) years by the licensee, after which such records may be retained by the licensee or turned over to the Commissioner for such retention or disposition as he sees fit.

6.3. The records required to be kept under the provisions of this section shall be kept and retained by a livestock dealer only during the period during which he is licensed. In the event a licensee's license is suspended or revoked, or expires upon a failure to renew, the licensee shall forthwith deliver the records to the Commissioner.