

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2013 JUL 19 PM 12:48

CLERK OF COURTS
STATE OF WEST VIRGINIA

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

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-14-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Commercial Feed

IF NO, SERIES NUMBER OF 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.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 19, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
Regulatory and Environmental Affairs Division
1900 Kanawha Blvd., East
Charleston, WV 25305
304-558-2227

LEGISLATIVE RULE TITLE: Commercial Feed 61-5

1. Authorizing statute(s) citation 19-14-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 18, 2013

b. What other notice, including advertising, did you give of the hearing?
The proposed rule change was mailed to all firms registering feed in West Virginia, a total of 633 mailings.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 18, 2013

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

Attached See Attachment No comments received _____

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

July 19, 2013

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Herma Johnson, Director Chad Linton, Assistant Director

1900 Kanawha Blvd., East
Charleston, WV 25305

hjohnson@wvda.us clinton@wvda.us
304-558-2227

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

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.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

**Summary of Proposed Rule
Commercial Feed
Title 61 – Series 5**

61-5-3. Definitions and Terms

3.2. "Small Producer" means any person who manufactures 5 or less small package pet treats, snacks or biscuits; 5 or less bulk pet treats, snacks or biscuits; or a combination of 5 or less small package and bulk pet treats, snacks or biscuits.

61-5-5. Permits; Registration

5.3.d. Small producers shall register annually and pay the registration fee as outlined in Appendix 2.

Appendix Number 2 – Fees of this Rule

<u>Type of Fee</u>	<u>Section Reference</u>	<u>Fee</u>	<u>Registration</u>
Small Producer	5.5	\$20.00	Expires December 31 next following issue. Fee is per each product.



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

**Statement of Circumstances
Commercial Feed
Title 61 – Series 5**

The West Virginia Department of Agriculture proposes to assist small producers of small package pet treats, snacks or biscuits by decreasing the registration fees for producers manufacturing 5 or less of these types of treats. The reduction in the registration fee will enable the producer to determine if their product is marketable and serve as an incentive to small producers to market their products.

The current registration fee is \$40.00 per product and the proposed fee is \$20.00 per product for 5 or less pet treats registered; a reduction of \$100.00 for the 5 products. Manufacturing and registering more than 5 products will remove the producer from the small producer classification and all products registered will revert back to the \$40.00 per product fee.

All other requirements, such as labeling requirement, manufacturing permit, etc. for registering these products will be per the current rule.

A handwritten signature in cursive script, appearing to read "Walt Helmick".

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Commercial Feed Title 61 - Series 5

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East
Charleston, WV 25305

Herma Johnson

Phone Number: 304-558-2227 Email: hjohnson@wvda.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no additional costs to the state; however, it will give small producers an opportunity to start and grow a business in West Virginia by reducing the fee for producers who manufacture 5 or less small package pet treats, snacks or biscuits.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		2,000.00	2,000.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: Commercial Feed Title 61 - Series 5

Rule Title:

Commercial Feed Title 61 - Series 5

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The West Virginia Department of Agriculture had inquires regarding registration of small package pet treats that manufacturers are reluctant to pay the registration fee of \$40.00 per product. The proposed fee is \$20.00 for a small producer manufacturing 5 or less small package treats as outlined in the proposed rule. Any manufacturer starting out will usually begin with producing 5 or less products to determine if the product is marketable and with the proposed fee would see a savings of \$100.00.

By reducing this fee for small producers the Department has the potential of losing \$2,000.00; however, the long term effect may be an increase of small producers.

The Department would be unable to determine an overall increase in revenue as this is a new venture.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 18, 2013

Signature of Agency Head or Authorized Representative



**TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE**

**SERIES 5
COMMERCIAL FEED**

2010 JUN 18 PM 12:49

SECRETARY OF STATE

§61-5-1. General.

1.1. Scope. -- This rule establishes guidelines for permits and registrations, label format and good manufacturing practices for commercial feeds.

1.2. Authority. -- W. Va. Code §19-14-3.

1.3. Filing Date. -- ~~May 7, 2009.~~

1.4. Effective Date. -- July 1, 2009.

~~1.5. Repeal of former rule: This legislative rule repeals and replaces W. Va. §61CSR5 "West Virginia Commercial Feed Law Rules" filed June 24, 1993 and effective July 1, 1993.~~

§61-5-2. Incorporation by Reference.

2.1. The following documents are adopted in their entirety:

2.1.a. Except where otherwise provided, the terms and definitions adopted by the Association of American Feed Control Officials in the 2008 edition of the annual Official Publication of the Association of American Feed Control Officials, Incorporated;

2.1.b. Official Pet Food Regulations as published in the 2008 edition of the Official Publication of the Association of American Feed Control Officials, Incorporated;

2.1.c. Title 21 Code of Federal Regulations Section 589.2000, Animal proteins prohibited in ruminant feed;

2.1.d. Federal Food, Drug, and Cosmetic Act (August 1985), Sections 360(b), 406, 408(a), 409, 512, 706, also known as 21 United States Code;

2.1.e. Title 21 Code of Federal Regulations, Parts 225, 226, 501, 510, 558, 570, 573, 582, and 584 et seq. (April 1, 1990) adopted pursuant to the Federal Food, Drug, and Cosmetic Act (August 1985);

2.1.f. Title 40 Code of Federal Regulations Parts 185 and 186 et seq. (July 1, 1990) adopted pursuant to the Federal Food, Drug, and Cosmetic Act (August 1985); and

2.1.g. Federal Virus, Serum and Toxins Act of 1913 as amended December 23, 1985, also known as 21 United States Code 151- 159.

§61-5-3. Definition and Terms.

3.1. "Electronic Announcements" means computer internet, telephone, facsimile, television and/or radio advertisement sales.

3.2 "Small Producer" means any person who manufactures 5 or less small package pet treats, snacks or biscuits; 5 or less bulk pet treats, snacks or biscuits; or a combination of 5 or less small package and bulk pet treats, snacks or biscuits

§61-5-4. Policy.

4.1. All persons distributing or using commercial feed, including retailers, wholesalers, jobbers and brokers are equally responsible for full compliance with the provisions of W. Va. Code §19-14-1 et seq. Any person who has in his or her possession any unlawful commercial feed is responsible for complying with the law, including registering the commercial feed, paying the tonnage fee, labeling the commercial feed and complying with any other legal requirement, if not met by another person.

4.2. The following persons shall also comply with all provisions of W. Va. Code §19-14-1 et seq. and this rule:

4.2.a. Each person who sells or intends to sell commercial feed directly to a purchaser located within this state via mail-order catalog or electronic announcements used in promoting the sale of feed;

4.2.b. Each person who travels out of this state to purchase commercial feed for distribution or resale within this state; and

4.2.c. Each person who contacts a final purchaser located within this state, either verbally or in writing, to sell commercial feed.

4.3. All human food, stale human food or garbage used as feed is subject to the registration, labeling and inspection fee provisions of W. Va. Code §19-14-5, 8 and 9 and are subject to the inspection, sampling and analysis provisions of W. Va. Code §19-14-3.

4.4. The commissioner shall not assess a tonnage fee on any commercial feed or feed ingredients used in the manufacture of poultry contract feed.

§61-5-5. Permits; Registration.

5.1. Commercial Feed Manufacturer Permit.

5.1.a. Each manufacturer of commercial feed, including customer-formula feed, within the state, subject to the provisions of W. Va. Code §19-14-5(c), shall complete a "Commercial Feed Manufacturer Permit" application with the following information: the corporate or company name; its location; the mailing address; the phone number; the manager's name; the owner's name; and any other information relevant to the manufacture of any commercial feed requested by the commissioner in order to carry out the provisions of W. Va. Code §19-14-1 et seq. or this rule. The manufacturer or his or her authorized representative shall sign and date the "Commercial Feed Manufacturer Permit" application under sworn statement. The application shall be accompanied by the fee set forth in Appendix Number 2 – Fees Of This Rule.

5.1.b. The commissioner shall not refund the application fee paid by a manufacturer or his or her authorized representative who cancels his or her "Commercial Feed Manufacturer Permit".

5.1.c. The commissioner shall refund the application fee paid by a manufacturer if the commissioner refuses the application for a "Commercial Feed Manufacturer Permit".

5.1.d. The commissioner shall not refund the application fee paid by a manufacturer when the commissioner has suspended or revoked the "Commercial Feed Manufacturer Permit".

5.2. Commercial Feed Distributor Permit.

5.2.a. Each distributor subject to the provisions of W. Va. Code §19-14-5(d) shall complete a "Commercial Feed Distributor Permit" application with the following information: the corporate or company name; its locations; the mailing address; the phone number; the contact person; the owner's name and any other information relevant to the distribution of any commercial feed requested by the commissioner in order to carry out the provisions of W. Va. Code §19-14-1 et seq. or this rule. The distributor or his or her authorized representative shall sign and date the "Commercial Feed Distributor Permit" application under sworn statement. The application shall be accompanied by the fee set forth in Appendix Number 2 – Fees of this rule.

5.2.b. The commissioner shall not refund the application fee paid by a distributor or his or her authorized representative who cancels his or her "Commercial Feed Distributor Permit".

5.2.c. The commissioner shall refund the application fee paid by a distributor when the commissioner refuses the application for a "Commercial Feed Distributor Permit".

5.2.d. The commissioner shall not refund the application fee paid by a distributor when the commissioner has suspended or revoked the "Commercial Feed Distributor Permit".

5.3. Commercial Feed Registration.

5.3.a. Each person registering a commercial feed shall complete a commercial feed registration application with the following information: the corporate or company name; its location; the mailing address; the phone number; the contact person; the owner's name; and the brand and product name of each feed to be registered. The commissioner may request additional information in order to carry out the provisions of W. Va. Code §19-14-1 et seq. or this rule. The application shall be accompanied by the fee set forth in Appendix Number 2 – Fees Of This Rule. Commercial feed, other than pet food, in packages over ten pounds or bulk shall be registered permanently. On January 1, the Commissioner shall assess an annual fee of \$10.00 per product to cover administrative costs. Labels are required annually for each product registered in West Virginia.

5.3.a.1. A label for each product listed on a commercial feed registration application shall accompany the application.

5.3.a.2. The registrant or his or her authorized representative shall sign and date the "Commercial Feed Registration" application under sworn statement.

5.3.b. The commissioner shall not consider commercial feeds generally manufactured for and categorized for non-pet use (i.e., horses, pigs, sheep, goats, trout, duck and others) or for wild animal use (i.e., wild bird food) as pet food. The commissioner shall determine the category of other products as pet food or non-pet food on a case-by-case basis.

5.3.c. Small producers shall register annually and pay the registration fee as outlined in Appendix

2.

5.3.e.d. An individual commercial feed registration is required for each pet food biscuit or rawhide chew manufactured in different sizes, such as small, medium, large, or a commercial feed manufactured in different forms, such as pellets, crumbles or mash. The registrant shall provide labels for each product when applying for registration.

5.3.d.e. The commissioner shall not refund the application fee paid by a registrant or his or her authorized representative who cancels his or her "Commercial Feed Registration" in whole or in part.

5.3.e.f. The commissioner shall refund the application fee paid by a registrant when the commissioner refuses the application for a "Commercial Feed Registration" in whole or in part.

5.3.f.g. The commissioner shall not refund the application fee paid by a registrant when the commissioner has suspended or revoked the "Commercial Feed Registration" in whole or in part.

5.3.g.h. The registrant shall notify the commissioner when a product is discontinued or removed from distribution in this state. The registrant shall maintain registration for a product no longer distributed in this state for one additional registration period to allow for the sale or removal of the product on the shelves or the registrant shall immediately withdraw the product from distribution. After that period, the commissioner may hold the registrant, the distributor or the person offering the product for sale responsible for complying with W. Va. Code §19-14-5(e) and this rule.

5.3.h.i. Prior to approval of a registration application or approval of a label for commercial feed which contains additives (including drugs, other special purpose additives, or non-nutritive additives), the commissioner may require the registrant to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

5.3.i.j. If a pet food or specialty pet food requires minor label revisions to conform to labeling requirements, the commissioner shall register the product conditionally for the current registration period. However, if a label requires major revisions, the commissioner shall withhold the product from registration pending revision of the labeling. The commissioner shall offer an applicant adversely affected by the Commissioner's decision an opportunity for a hearing in this matter pursuant to W. Va. Code §19-14-7.

5.3.i.j.1. Minor revisions are those items that are necessary to conform to W. Va. Code §19-14-8, but, without correction, are not likely to cause the purchaser of the product to be misinformed, such as the guaranteed analysis being listed out of order.

5.3.i.j.2. Major revisions may include, but are not limited to, misleading and/or contradictory claims on the label, a misleading product name or other revisions that may mislead or misinform a purchaser.

5.3.j.k. When pet food or specialty pet food labels are changed by the manufacturer of its own accord, the registrant shall submit a new application for a revision to the registration. The commissioner shall waive the application fee for any label revision that involves a change in the net weight or a change in the list of ingredients.

5.3.k.l. The commissioner shall not require registration of any pet chew, bone, toy or exerciser (of any shape or size) made of rawhide, wood or man-made material, whether flavor-coated or unflavored, unless the registrant makes a claim on the product label or labeling that the product is intended for use as an animal food, or that the product provides anything of nutritional value to the animal.

5.3.k.l.m. The commissioner shall consider poultry contract feed to be customer-formula feed.

5.4. The penalty set forth in Appendix Number 2 – Fees Of This Rule shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

§61-5-6. Reports and Inspection Fees.

6.1. Each person required in W. Va. Code §19-14-9(b) to file semi-annual tonnage reports, shall file the reports accompanied by an inspection fee at the rate of thirty-five cents per ton on commercial feed and feed ingredients with a minimum inspection fee of ten dollars for each semi-annual statement. The minimum fee is waived if the total amount of the calculated inspection fee due is two dollars or less.

6.2. Inspection fees due but not remitted to the commissioner within fifteen calendar days following the due date of each semi-annual tonnage report shall be assessed a penalty of ten percent of the inspection fee due, in addition to the inspection fee due. A semi-annual tonnage report with a minimum fee waived, received fifteen calendar days after the due date shall be assessed a penalty of one-hundred dollars.

§61-5-7. Labeling.

7.1. The following information must appear in its entirety on one side of commercial feed labels, except customer-formula feeds, or on one side of the container of any commercial feed. Examples of labeling for a few animal classes are set forth in Appendices 4, 6, 8, 10 and 12 of this rule.

7.1.a. The net weight avoirdupois. The net weight may also be stated in metric units;

7.1.b. The product name, including brand name, if any, under which the commercial feed is distributed;

7.1.b.1. The registrant shall use a brand or product name that is appropriate for the intended use of the feed and that is not misleading. If the name indicates the feed is made for a specific use, the character of the feed shall conform with the specific use. A commercial feed labeled "Dairy Feed," for example, shall be suitable for that purpose.

7.1.b.2. The registrant shall not use a commercial, registered brand or trade name in any guarantee or ingredient listings but may use a commercial, registered brand or trade name in the product name of feeds produced by or for the firm holding the rights to the name.

7.1.b.3. The registrant shall not derive the name of a commercial feed from one or more ingredients of a mixture to the exclusion of other ingredients. The name of a commercial feed shall not be one representing any components of a mixture unless all components are included in the name: Provided, That if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

7.1.b.4. The registrant shall not use the word "protein" in the product name of a feed that contains added non-protein nitrogen.

7.1.b.5. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": Provided, That the registrant may use other percentage values if they are followed by the proper description and conform to good labeling practice. In no case shall the registrant use numbers in the name of the product in a manner that is misleading or confusing to the customer.

7.1.b.6. The registrant shall use a name for a single ingredient feed that is in accordance with the name of the product designated in the Official Definition of Feed Ingredients, as incorporated by reference in section 2 of this rule, unless the commissioner allows otherwise.

7.1.b.7. The registrant may use the word "vitamin," or a contraction thereof, or any word suggesting a vitamin only in the name of a commercial feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in subsection 8.3 of this rule.

7.1.b.8. The registrant may not use the term "mineralized" in the name of a feed except for its use in the phrase "TRACE MINERALIZED SALT." When this phrase is used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

7.1.b.9. The registrant shall qualify the terms "meat" and "meat by-products" to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are made from cattle, swine, sheep or goats;

7.1.c. The guaranteed analysis stating what the commissioner determines by rules is required to advise the user of the composition of the feed and any other necessary information to support claims made on the label. The substances or elements guaranteed shall be determinable by laboratory methods published by the association of official analytical chemists or by an acceptable method supplied by the registrant.

7.1.c.1. When a guarantee is stated, the nutritional guarantee shall be in the following sequence – Crude Protein, Equivalent Crude Protein from Non Protein Nitrogen, Amino Acids, Crude Fat, Crude Fiber, Acid Detergent Fiber, Calcium, Phosphorus, Salt and Sodium. Other required and voluntary guarantees should follow in a general format so that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure. The required and voluntary guarantees for various animal classes or species are set forth in Appendices 3, 5, 7, 9, 11, 13, 14, 15 and 16 of this rule, in consideration of the following exemptions:

7.1.c.1.A. A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

7.1.c.1.A.1. The feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or

7.1.c.1.A.2. The feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total mineral.

7.1.c.1.B. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

7.1.c.1.C. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

7.1.c.1.D. Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

7.1.c.1.E. The indication for animal class(es) and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species;

7.1.d. An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds or when the statement is not in the interest of consumers. An ingredient statement shall include:

7.1.d.1. The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

7.1.d.2. Collective terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

7.1.d.3. The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (April 1, 1990) of the Federal Drug and Cosmetic Act as amended August, 1985;

7.1.d.4. The common or usual name of substances which are so common that they do not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar; and

7.1.d.5. Other ingredients or additives that the commissioner, by rules, determines necessary.

7.1.d.5.A. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of W. Va. Code §19-14-8(b)(4) shall include:

7.1.d.5.A.1. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, by its common or usual name, or one approved by the Commissioner; and

7.1.d.5.A.2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official publication of the Association of American Feed Control Officials in lieu of the individual ingredients; Provided that:

7.1.d.5.A.2.a. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label; and

7.1.d.5.A.2.b. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state;

7.1.e. The name and principal mailing address of the manufacturer or the distributor;

7.1.f. Adequate directions and precautionary statements for safe and effective use; and

7.1.g. If a drug or drug containing product is used, the label shall contain the following:

7.1.g.1. The established name of each active drug ingredient;

7.1.g.2. The level of each drug used in the final mixture;

7.1.g.3. The purpose of the medication (claim statement);

7.1.g.4. Appropriate cautions and warnings on the use of the commercial feed;

7.1.g.5. Withdrawal statements, if applicable; and

7.1.g.6. The word "medicated" directly following and below the product name in type size no smaller than one-half the type size of the product name.

7.2. Pet food labels, excluding specialty pet foods, shall conform to the Official Pet Food Regulations, incorporated by reference in section 2 of this rule.

7.3. Specialty pet food labels shall conform to the requirements of W. Va. Code §19-14-8.

7.4. The registrant shall provide information to substantiate claims of improvement or newness (i.e., new, improved, introducing, better tasting, more taste than before) when required by the commissioner. The registrant shall limit the use of these claims to six months' production of the feed and shall submit a revised label within six months of original registration. The commissioner shall not require an additional application fee for the submission of a revised label under these circumstances during the current registration period.

7.5. If a manufacturer or distributor sells customer-formula feed in bags, rather than unpackaged feed (bulk), then he or she is not required to label each bag, Provided that an invoice, which supplies all the information required by W. Va. Code §19-14-8(d), accompanies the customer-formula feed at all times that the feed is distributed.

7.6. Poultry contract feed labels shall conform to the requirements of W. Va. Code §19-14-8d, except that:

7.6.a. the name of the grower or feeder shall substitute for the requirements for the name of the purchaser; and,

7.6.b. the net weight (avoirdupois) of the commercial feed and each feed ingredient used in the feed are not required to be listed.

7.7. A Purpose Statement shall be included as part of the label;

7.7.a. The statement of purpose shall contain the specific species and animal classes for which the feed is intended as defined in Subparagraph 7.1.a.3.A of this rule.

7.7.b. The manufacturer has flexibility in describing in more specific and common language the defined animal class, species and purpose while being consistent with the category of animal class defined

in Subparagraph 7.1.a.3.A of this rule which may include, but is not limited to weight ranges, sex, or ages of the animals for which the feed is manufactured.

7.7.c. The purpose statement may be excluded from the label if the product name includes a description of the species and animal classes for which the product is intended.

7.7.d. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. This applies to commercial feeds regulated under Appendix 12.b.10 of this rule.

7.7.e. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. This applies to commercial feeds regulated under Appendix 12.b.10 of this rule.

7.7.f. The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

7.8. The registrant shall not subordinate or obscure the information required by this section by other statements or designs.

§61-5-8. Expression of Guarantees.

8.1. The guarantee for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber and acid detergent fiber shall be in terms of percentage.

8.2. Mineral Guarantees shall be included as part of the label;

8.2.a. When calcium, salt, and sodium guarantees are given in the guaranteed analysis they shall be stated and conform to the following:

8.2.a.1. When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage point;

8.2.a.2. When the minimum is 2.5 % but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point; and

8.2.a.3. When the minimum is above 5.0% or greater the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

8.2.b. When stated, guarantees for minimum and maximum total sodium and salt, and minimum potassium, magnesium, sulfur, phosphorus and maximum fluorine shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater.

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8.2.c. Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquid) may state mineral guarantees in milligrams (mg) per unit (e.g. tablets, capsules granules, or liquids) consistent with the quantity statement and directions for use.

8.3.

8.3.a. Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and shall be stated in mg/lb or in units consistent with those employed for the quantity statement unless otherwise specified:

8.3.a.1. Vitamin A, other than precursors of vitamin A, in International Units per pound;

8.3.a.2. Vitamins D-3 in products offered for poultry feeding, in International Chick units per pound;

8.3.a.3. Vitamin D for other uses, in International Units per pound;

8.3.a.4. Vitamin E, in International Units per pound;

8.3.a.5. Concentrated oils and feed additive premixes containing vitamins A, D and/or E may, at the option of the distributor be stated in units per gram instead of units per pound; and

8.3.a.6. Vitamin B-12, in milligrams or micrograms per pound.

8.3.b. All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin B-6; folic acid; choline; biotin; inositol; p-amino benzoic acid; ascorbic acid; and carotene.

8.4. Guarantees for drugs shall be stated in terms of percent by weight, except:

8.4.a. Antibiotics, present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed;

8.4.b. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed, shall be stated in grams per pound of commercial feed;

8.4.c. Labels for commercial feeds containing growth promotion and /or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specially noted in the Federal Food Additive regulations for certain antibiotics, for which quantitative guarantees are required regardless of the level or purpose of the antibiotic; and

8.4.d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

8.5. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

8.5.a. For ruminants:

8.5.a.1. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5 % protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, _____%

(This includes not more than ____% equivalent crude protein from non-protein nitrogen).

8.5.a.2. Mixed feed concentrates and supplements containing less than 5 % protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, _____%

8.5.a.3. Ingredient sources of non-protein such as Urea, Diammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum, _____%
Equivalent Crude Protein from Non-Protein Nitrogen, minimum, _____%

8.5.b. For non-ruminants:

8.5.b.1. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude protein, minimum _____%
(This includes not more than ____% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

8.5.b.2. Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

8.6. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present) the minimum percentage of phosphorus, and the maximum percentage of fluorine.

8.7. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

8.8. Guarantee for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as : Protease (Bacillus subtilis) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

§61-5-9. Substantiation of Nutritional Suitability.

9.1. A commercial feed, other than a customer-formula feed, shall be nutritionally suitable for its intended purpose as represented by its labeling.

9.2. If the commissioner has reasonable cause to believe a commercial feed is not nutritionally suitable, the commissioner may request the feed manufacturer to either submit an "Affidavit of Suitability" or an alternative procedure acceptable to the commissioner, certifying the nutritional adequacy of the feed. The Affidavit of Suitability or alternative procedure of suitability shall serve as substantiation of the suitability of the feed.

9.3. If an Affidavit of Suitability, or alternative procedure acceptable to the commissioner is not submitted by the feed manufacturer within 30 days of written notification, the commissioner may consider the feed adulterated under W. Va. Code §19-14-10(b) and order the feed removed from the marketplace.

9.4. The Affidavit of Suitability shall contain the following information:

9.4.a. The feed company's name;

9.4.b. The feed's product name;

9.4.c. The name and title of the affiant submitting the document;

9.4.d. A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;

9.4.e. The date of submission; and

9.4.f. The signature of the affiant notarized by a certified Notary Public.

9.5. An acceptable example of the Affidavit of Suitability is set forth in Appendix Number 13 of this rule.

§61-5-10. Ingredients.

10.1. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the commissioner.

10.2. The name of each ingredient shall be shown in letters or type of the same size.

10.3. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

10.4. The term "dehydrated" may precede the name of any product that has been artificially dried.

10.5. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

10.6. Tentative definitions for ingredients shall not be used until adopted as official in the Official Publication of the Association of American Feed Control Officials, Incorporated, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

10.7. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

§61-5-11. Directions for Use and Precautionary Statements.

11.1. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

11.1.a. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and,

11.1.b. Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act.

11.2. Adequate directions for use and precautionary statements are required for feeds containing non-protein as specified in section 12 of this rule.

11.3. Adequate directions for safe and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

§61-5-12. Non-Protein Nitrogen.

12.1. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, or if the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the precautionary statement shall be in type of such size so placed on the label that they will be read and understood by an ordinary person under customary conditions of purchase and use.

12.2. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

12.3. On labels, such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of the product due to the presence of non-protein nitrogen.

§61-5-13. Drug and Feed Additives.

13.1. The Commissioner may require a distributor to submit evidence to prove the safety and efficacy of a commercial feed when used according to the directions furnished on the label, before granting approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives).

13.2. Satisfactory evidence of safety and efficacy of a commercial feed may be:

13.2.a. When the commercial feed contains additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for that use;

13.2.b. When the commercial feed is itself a drug defined in W. Va. Code §19-14-2(j) and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360 b;

13.2.c. When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxin Act of 1913, as amended;

13.2.d. When the commercial feed is a direct fed microbial product and:

13.2.d.1. The product meets the particular fermentation product definition;

13.2.d.2. The microbial content statement, as expressed in the labeling, is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms." This statement shall appear on the label; and

13.2.d.3. The source is stated with a corresponding guarantee expressed in accordance with subsection 8.7 of this rule; and

13.2.e. When the commercial feed is an enzyme product and;

13.2.e.1. The product meets the particular enzyme definition defined by the Association of American Feed Control Officials; and

13.2.e.2. The enzyme is stated with a corresponding guarantee expressed in accordance with subsection 8.8 of this rule.

§61-5-14. Adulteration.

14.1. A commercial feed is adulterated:

14.1.a. If it bears or contains any poisonous or deleterious substance which may render it injurious to animal or human health; but in the case where the substance is not an added substance, the commercial feed is not considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

14.1.b. For the purpose of W. Va. Code §19-14-10(a), the terms "poisonous" or "deleterious" substances include but are not limited to the following:

14.1.b.1. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry;

14.1.b.2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry;

14.1.b.3. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of 50 milligrams of Fluorine per 100 pounds of body weight;

14.1.b.4. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents;

14.1.b.5. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine);

14.1.c. If it contains any viable weed seeds in screenings or by-products of grains and seeds containing weed seeds when the product is used in commercial feed or sold as a single ingredient feed. Products containing viable weed seed shall be ground fine enough or otherwise treated to destroy the viability of weed seeds prior to distribution.; or

14.1.d. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practices to assure the drug meets the requirements of W. Va. Code §19-14-10 and of this section as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess.

14.2. Tolerances for pesticide residues in commercial feed are those specified in 40 CFR Parts 185 and 186, as incorporated by reference in section 2 of this rule.

§61-5-15. Laboratory Services.

15.1. The commissioner shall make available laboratory facilities for the analysis of feed, hay, grass or silage samples for interested persons on a non-official basis.

15.2. Charges for non-official tests are set forth in Appendix 1 of this rule.

15.3. The commissioner shall not charge a person for an official sample taken by the commissioner in the course of carrying out the powers and duties under W. Va. Code §19-14-3 of this rule.

§61-5-16. Powers and Duties of the Commissioner.

16.1. When sample collection by the commissioner destroys the salability of the product (for example, when an entire package must be collected for analysis), the commissioner shall offer to pay the retailer an amount not more than the wholesale cost of that product to that retailer.

§61-5-17. Enforcement Policy.

17.1. First Notice -- If a commercial feed sample does not conform to W. Va. Code §19-14-1 et seq. or this rule, the commissioner shall issue a first notice to the registrant of the commercial feed. The commissioner shall issue an embargo order for the lot of commercial feed to the custodian of the lot sampled. The commissioner shall take an additional sample from a different lot.

17.2. Second Notice -- If a commercial feed sample does not conform to W. Va. Code §19-14-1 et seq. or this rule, subsequent to the assessment of a first notice, the commissioner shall issue a second notice to the registrant of the commercial feed. The commissioner shall also issue an embargo order for

the lot of commercial feed to the custodian of the lot sampled. The commissioner shall take an additional sample from a different lot.

17.3. Third Notice -- If a commercial feed sample does not conform to W. Va. Code §19-14-1 et seq. or this rule, subsequent to the assessment of a second notice, the commissioner shall issue a third notice to the registrant of the commercial feed. The commissioner shall also issue a general embargo order to the registrant that shall require him or her to remove all lots of that commercial feed from sale and distribution within the state until the embargo is released.

17.4. If a resample indicates that the commercial feed is in compliance with W. Va. Code §19-14-1 et seq. and this rule, then the Commissioner shall cancel all previous notices of violations for that commercial feed.

17.5. The commissioner may take other action as considered necessary in order to carry out the provisions of W. Va. Code §19-14-1 et seq. and this rule.

§61-5-18. Good Manufacturing Practices.

18.1. For the purposes of enforcement of W. Va. Code §19-14-10 and of section 14 of this rule, the commissioner adopts the following regulations as current good manufacturing practices:

18.1.a. The regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in the Code of Federal Regulations, Title 21, Part 225, Sections 225.1-225.202; and

18.1.b. The regulations prescribing good manufacturing practices for Type A Medicated Articles as published in the Code of Federal Regulations, Title, 21, Part 226, Sections 226.1-226.115.

18.1.c. The re-use of bags or totes used for commercial feeds (including customer-formula feed) is permitted if bags or totes are appropriately cleaned so that the re-use of the bags or totes shall not cause adulteration of the feed. A feed manufacturer that intends to re-use bags or totes shall document its cleanout procedures.

§61-5-19. Certain Mammalian Proteins Prohibited in Ruminant Feed.

19.1. Pursuant to W. Va. Code §19-14-10(a), the commissioner adopts the requirements of Title 21, Code of Federal Regulations, 589.2000

APPENDIX NUMBER 1
Charges for tests on non-official samples

Aflatoxin (screen test)	\$25.00 per sample
Ash	\$7.80 per sample
Calcium	\$8.40 per sample
Crude fat	\$7.80 per sample
Crude fiber	\$12.60 per sample
Magnesium	\$10.80 per sample
Moisture - oven	\$7.80 per sample
Phosphorus	\$12.60 per sample
Protein - Kjeldahl	\$7.80 per sample
Total Digestible Nutrients	\$49.80 per sample

APPENDIX NUMBER 2 FEES OF THIS RULE			
TYPE OF FEE	SECTION REFERENCE	FEE	REGISTRATION
Commercial Feed Manufacturer Permit	5.1.1	\$15.00	ANNUAL RENEWAL – Expires December 31 next, following issue
Commercial Feed Distributor Permit	5.2.1	\$10.00	ANNUAL RENEWAL – Expires December 31 next, following issue
Registration - Commercial feed, other than pet food, in packages over 10 pounds or bulk.	5.3.1	\$10.00	REGISTERED ANNUALLY Expires December 31 next, following issue. Fee is per each product.
Registration - Pet food, including specialty pet foods, in packages over ten pounds or bulk.	5.3.1	\$50.00	REGISTERED ANNUALLY Expires August 31 next, following issue. Fee is per each product.
<u>Small Producer – 5 or less small package/bulk pet treats, snack or biscuits.</u>	<u>5.5.d.</u>	<u>\$20.00</u>	<u>REGISTERED ANNUALLY</u> <u>Expires December 31 next</u> <u>following issue. Fee is per each</u> <u>product</u>
Registration - Commercial feed (excluding specialty pet food in packages of one pound or less) in packages of ten pounds and under.	5.3.1	\$40.00	REGISTERED ANNUALLY Expires December 31 next, following issue. Fee is per each product.
Registration - Specialty pet food in packages of one pound or less.	5.3.1	\$20.00	REGISTERED ANNUALLY Expires December 31 next, following issue. Fee is per each product.
Late Penalty - added to the fee for all permits or registrations that are not applied for or renewed within the time limit.	5.4	\$100.00	

Appendix Number 3
Required guarantees for swine formula feeds

a. Animal Classes

- (1) Pre-Starter – 2 to 11 pounds
- (2) Starter – 11 to 44 pounds
- (3) Grower – 44 to 110 pounds
- (4) Finisher – 110 to 242 pounds (market)
- (5) Gilts, Sows and Adult Boars
- (6) Lactating Gilts and Sows

b. Guaranteed Analysis for Swine Complete Feeds and Supplements (all animal classes)

- (1) Minimum percentage of Crude Protein
- (2) Minimum percentage of Lysine
- (3) Minimum percentage of Crude Fat
- (4) Maximum percentage of Crude Fiber
- (5) Minimum and maximum percentage of Calcium
- (6) Minimum percentage of Phosphorus
- (7) Minimum and maximum percentage of Salt (if added)
- (8) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
- (9) Minimum Selenium in parts per million (ppm)
- (10) Minimum Zinc in parts per million (ppm)

Appendix Number 4

Swine Complete and Supplement Feeds (Non-Medicated and Medicated)

BLUE BIRD SUPER PIG FEED

For Starter Pigs Weighing 11 to 44 Pounds

Guaranteed Analysis

Crude Protein (Min).....	20.0%
Lysine (Min).....	1.2%
Crude Fat (Min).....	4.0%
Crude Fiber (Max).....	4.0%
Calcium (Min).....	0.8%
Calcium (Max).....	1.3%
Phosphorus (Min).....	0.65%
Salt (Min).....	0.35%
Salt (Max).....	0.5%
Selenium (Min).....	0.3 ppm
Zinc (Min).....	150. ppm

Ingredient Statement

Grain Products, Plant Protein Products, Processed Grain By-Products, Dried Whey, Calcium Lignin Sulfonate, Animal Fat, Vitamin A Supplement, D-Activated Animal Sterol (source of Vitamin D), L-Lysine, Riboflavin Supplement, Choline Chloride, Biotin, Thiamine Mononitrate, Pyridoxine Hydrochloride, Vitamin E Supplement, Menadione Sodium Bisulfite Complex (source of Vitamin K Activity), Folic Acid, Ethoxyquin (a preservative), Ground Limestone, Dicalcium Phosphate, Salt, Copper Sulfate, Manganous Oxide, Zinc Oxide, Iron Sulfate, Cobalt Carbonate, Calcium Iodate, Sodium Selenite.

Feeding Directions:

Feed as the complete ration to starter pigs weighing 11 to 44 pounds.

Manufactured By:
Blue Bird Feed Mill
City, State, Zip

NET WT 50 LB (22.67 kg)

BLUE BIRD SUPER PIG FEED**MEDICATED**

For Starter Pigs Weighing 11 to 44 Pounds.

Administer to swine in a complete feed for reduction of the incidence of cervical abscesses; treatment of bacterial enteritis (salmonellosis or necrotic enteritis caused by salmonella choleraesuis and vibronic dysentery); maintenance of weight gains in the presence of atrophic rhinitis; increased rate of weight gain and improved feed efficiency up to six weeks post-weaning.

Active Drug Ingredients

Chlortetracycline	100 G/T
Sulfathiazole.....	0.011%
Penicillin (from Procaine Penicillin).....	50 G/T

Guaranteed Analysis

Crude Protein (Min)	20.0%
Lysine (Min).....	1.2%
Crude Fat (Min).....	4.0%
Crude Fiber (Max).....	4.0%
Calcium (Min).....	0.8%
Calcium (Max).....	1.3%
Phosphorus (Min).....	0.65%
Salt (Min)	0.35%
Salt (Max).....	0.5%
Selenium (Min)	0.3 ppm
Zinc (Min).....	150. ppm

Ingredient Statement

Grain Products, Plant Protein Products, Processed Grain By-Products, Dried Whey, Calcium Lignin Sulfonate, Animal Fat, Vitamin A Supplement, D-Activated Animal Sterol (source of Vitamin D), L-Lysine, Riboflavin Supplement, Choline Chloride, Biotin, Thiamine Mononitrate, Pyridoxine Hydrochloride, Vitamin E Supplement, Menadione Sodium Bisulfite Complex (source of Vitamin K Activity), Folic Acid, Ethoxyquin (a preservative), Ground Limestone, Dicalcium Phosphate, Salt, Copper Sulfate, Manganous Oxide, Zinc Oxide, Iron Sulfate, Cobalt Carbonate, Calcium Iodate, Sodium Selenite.

Feeding Directions:

Feed as the complete ration to starter pigs weighing 11 to 44 pounds.

Warning: Withdraw 7 days prior to slaughter.

Manufactured By:
Blue Bird Feed Mill
City, State, Zip

NET WT 50 LB (22.67 kg)

Appendix Number 5

Required guarantees for Formula Poultry Feeds (Broilers, Layers and Turkeys)

a. Animal Classes

- (1) Layer – Chickens that are grown to Produce eggs for food, e.g. , table eggs
 - (a) Starting/Growing – From day of hatch to approximately 10 weeks of age.
 - (b) Finisher – From approximately 10 weeks of age to time first egg is produced.
(Approximately 20 weeks of age)
 - (c) Laying – From time first egg is laid throughout the time of egg production.
 - (d) Breeders – Chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle.
- (2) Broilers – Chickens that are grown for human food.
 - (a) Starting/growing – From day of hatch to approximately 5 weeks of age.
 - (b) Finisher – From approximately 5 weeks of age to market, (42 to 52 days).
 - (c) Breeders – Hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.
- (3) Broilers, Breeders – Chickens whose offspring are grown for human food (broilers).
 - (a) Starting/Growing – From day of hatch until approximately 10 weeks of age.
 - (b) Finishing – From approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age.
 - (c) Laying – Fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.
- (4) Turkeys
 - (a) Starting/Growing – Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females) and 16 weeks of age (males).
 - (b) Finisher – Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight).
 - (c) Laying – Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs.
 - (d) Breeder – Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

b. Guaranteed Analysis for Poultry Complete feeds and Supplements (all animal classes)

- (1) Minimum percentage of Crude Protein
- (2) Minimum percentage of Lysine
- (3) Minimum percentage of Methionine
- (4) Minimum percentage of Crude Fat
- (5) Maximum percentage of Crude Fiber
- (6) Minimum and maximum percentage of Calcium
- (7) Minimum percentage of Phosphorus
- (8) Minimum and maximum percentage of Salt (if added)
- (9) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee

Appendix Number 6
Poultry Complete & Supplement Feeds

BLUE BIRD LAYER FEED

Complete Feed for Laying Chickens

Guaranteed Analysis

Crude Protein (Min)	15.0%
Lysine (Min).....	0.65%
Methionine (Min).....	0.35%
Crude Fat (Min).....	3.0%
Crude Fiber (Max).....	3.5%
Calcium (Min).....	3.4%
Calcium (Max).....	4.4%
Phosphorus (Min).....	0.6%
Salt (Min)	0.35%
Salt (Max).....	0.50%

Ingredient Statement

Grain Products, Plant Protein Products, Processed Grain By-Products, Animal Protein Products, Vitamin A Supplement, Vitamin D₃ Supplement, Vitamin E Supplement, Riboflavin Supplement, Niacin Supplement, Calcium Pantothenate, Choline Chloride, Folic Acid, Menadione Sodium Bisulfite Complex (source of Vitamin K Activity), Methionine Supplement, Potassium Sulfate, Calcium Carbonate, Salt, Manganous Oxide, Ferrous Sulfate, Copper Sulfate, Zinc Oxide, Ethylenediamine Dihydriodide, Sodium Selenite.

Feeding Directions:

This is a complete and balanced ration. Feed Blue Bird Layer Feed from time first egg is laid throughout the time of egg production. Always provide plenty of fresh water.

Manufactured By:
Blue Bird Feed Mill
City, State, Zip

NET WT 50 LB (22.67 kg)

Appendix Number 7
Required Guarantees for **Beef Cattle** Formula feeds.

- a. Animal Classes
 - (1) Calves (birth to weaning)
 - (2) Cattle on Pasture (may be specific as to production stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)
 - (3) Feedlot Cattle

- b. Guaranteed analysis for Beef Complete Feeds and Supplements (all animal classes)
 - (1) Minimum percentage of Crude Protein
 - (2) Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added
 - (3) Minimum percentage of Crude Fat
 - (4) Maximum percentage of Crude Fiber
 - (5) Minimum and maximum percentage of Calcium
 - (6) Minimum percentage of Phosphorus
 - (7) Minimum and maximum percentage of Salt (if added)
 - (8) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (9) Minimum percentage of Potassium
 - (10) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

- c. Guaranteed analysis for Beef Mineral Feeds (if added)
 - (1) Minimum and maximum percentage of Calcium
 - (2) Minimum percentage of Phosphorus
 - (3) Minimum and maximum percentage of Salt
 - (4) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (5) Minimum percentage of Magnesium
 - (6) Minimum percentage of Potassium
 - (7) Minimum Copper in parts per million (ppm)
 - (8) Minimum Selenium in parts per million (ppm)
 - (9) Minimum Zinc in parts per million (ppm)
 - (10) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound

Appendix Number 8 Beef Complete and Supplement Feeds / Beef Mineral	
<p>BLUE BIRD BEEF FEED</p> <p>Pasture Extender for Beef Cattle</p> <p style="text-align: center;">Guaranteed Analysis</p> <p>Crude Protein (Min)12.0% (This includes not more than 2.9% equivalent crude protein from non-protein nitrogen)</p> <p>Crude Fat (Min).....2.0%</p> <p>Crude Fiber (Max).....10.0%</p> <p>Calcium (Min).....0.5%</p> <p>Calcium (Max).....1.0%</p> <p>Phosphorus (Min).....0.5%</p> <p>Salt (Min)11.0%</p> <p>Salt (Max).....13.2%</p> <p>Potassium (Min)0.4%</p> <p>Vitamin A (Min).....10,000 IU/lb</p> <p style="text-align: center;">Ingredient Statement</p> <p>Grain Products, Plant Protein Products, Molasses Products, Processed Grain By-Products, Urea, Vitamin A Supplement, Vitamin D₃ Supplement, Vitamin E Supplement, Calcium Carbonate, Monocalcium Phosphate, Salt, Manganous Oxide, Ferrous Sulfate, Copper Oxide, Magnesium Oxide, Zinc Oxide, Cobalt Carbonate, Ethylenediamine Dihydriodide, Potassium Chloride.</p> <p>Feeding Directions: Self-feed to beef cattle on pasture. Feed 4 to 6 pounds per head per day as a pasture extender. Provide plenty of fresh, clean water at all times.</p> <p>Caution: Use as directed. Observe cattle daily and monitor intake. Do not feed additional salt.</p> <p style="text-align: center;">Manufactured By Blue Bird Feed Mill City, State, Zip</p> <p style="text-align: center;">NET WT 50 LB (22.67 kg)</p>	<p>BLUE BIRD BEEF MINERAL</p> <p>Mineral for Beef Cattle on Fescue Pasture</p> <p style="text-align: center;">Guaranteed Analysis</p> <p>Calcium (Min) 11.0%</p> <p>Calcium (Max) 13.0%</p> <p>Phosphorus (Min)..... 6.0%</p> <p>Salt (Min)20.0%</p> <p>Salt (Max).....22.0%</p> <p>Magnesium (Min) 1.0%</p> <p>Potassium (Min)....., 2.0%</p> <p>Copper (Min) 460 ppm</p> <p>Selenium (Min) 9 ppm</p> <p>Zinc (Min) 2,300 ppm</p> <p>Vitamin A (Min) 100,000 IU/lb</p> <p style="text-align: center;">Ingredient Statement</p> <p>Dicalcium Phosphate, Monocalcium Phosphate, Salt, Calcium Carbonate, Potassium Chloride, Distillers Dried Grains with Solubles, Cane Molasses, Manganous Oxide, Ferrous Sulfate, Copper Sulfate, Magnesium Oxide, Zinc Oxide, Ethylenediamine Dihydriodide, Cobalt Carbonate, Iron Oxide, Sodium Selenite, Animal Fat, Vitamin A Supplement, Vitamin D₃ Supplement, Vitamin E Supplement, Manganese Sulfate, Mineral Oil.</p> <p>Feeding Directions: This mineral should be fed in dry, rain-protected feeder. Place near a water source where animals gather. Provide fresh, clean water at all times. Do not feed additional salt.</p> <p>Feed to beef cattle on fescue pasture at the rate of 4 oz./head/day.</p> <p style="text-align: center;">Manufactured By: Blue Bird Feed Mill City, State, Zip</p> <p style="text-align: center;">NET WT 50 LB (22.67 kg)</p>

Appendix Number 9
Required Guarantees for Dairy Formula Feeds

Appendix Number 10
Dairy Complete and Supplement Feeds / Dairy Mineral

BLUE BIRD DAIRY FEED	BLUE BIRD DAIRY MINERAL
Concentrate Ration for Lactating Dairy Cattle	Mixing Mineral for Lactating Dairy Cattle
Guaranteed Analysis	Guaranteed Analysis
Crude Protein (Min).....16.0% (This includes not more than 3.5% equivalent crude protein from non-protein nitrogen) Crude Fat (Min)2.5% Crude Fiber (Max)8.0% Acid Detergent Fiber (ADF) (Max).....14.0% Calcium (Min).....1.0% Calcium (Max).....1.5% Phosphorus (Min).....0.75% Selenium (Min).....0.2 ppm Vitamin A (Min).....7,000 IU/lb	Calcium (Min)..... 16.5% Calcium (Max) 17.0% Phosphorus (Min)..... 4.5% Salt (Min) 5.5% Salt (Max)..... 6.5% Magnesium (Min)..... 5.5% Potassium (Min)..... 6.6% Selenium (Min)..... 3 ppm Vitamin A (Min)..... 115,000 IU/lb
Ingredient Statement	Ingredient Statement
Grain Products, Plant Protein Products, Processed Grain By-Products, Animal Protein Products, Forage Products, Molasses Products, Dicalcium Phosphate, Urea, Mineral Oil, Vitamin A Supplement, Vitamin D ₃ Supplement, Vitamin E Supplement, Ethoxyquin (a preservative), Hemicellulose Extract, Methionine Supplement, Calcium Carbonate, Salt, Manganous Oxide, Magnesium Oxide, Ferrous Sulfate, Copper Sulfate, Zinc Oxide, Potassium Chloride, Calcium Sulfate, Ethylenediamine Dihydriodide, Potassium Sulfate, Sodium Selenite, Natural and Artificial Flavors.	Dicalcium Phosphate, Monocalcium Phosphate, Calcium Carbonate, Sodium Bicarbonate, Potassium Chloride, Salt, Cane Molasses, Vitamin A Supplement, Vitamin D ₃ Supplement, Vitamin E Supplement, Vitamin B ₁₂ Supplement, Riboflavin Supplement, Niacin Supplement, Choline Chloride, Folic Acid, Ethoxyquin (a preservative), Calcium Pantothenate, Menadione Sodium Bisulfite Complex, Zinc Oxide, Manganous Oxide, Magnesium Oxide, Potassium Chloride, Iron Oxide, Copper Oxide, Ferrous Sulfate, Cobalt Carbonate, Ethylenediamine Dihydriodide, Sodium Selenite, Yeast Culture, Natural and Artificial Flavors.
Feeding Directions: Feed 16 pounds per head per day to a 1,200 pound cow. Feed 18.6 pounds per head per day to a 1,400 pound cow. Do not exceed 50% of the total dry matter intake from this feed.	Feeding Directions: Mix this product with grains, sources of protein, and other concentrates to prepare complete concentrated mixes for lactating dairy cows. Feed approximately 1.5 lb of Dairy Mineral on a daily basis. Provide plain white stock salt on a free-choice basis.
Manufactured By: Blue Bird Feed Mill City, State, Zip	Manufactured By: Blue Bird Feed Mill City, State, Zip
NET WT 50 LB (22.67 kg)	NET WT 50 LB (22.67 kg)

Appendix Number 11
Required Guarantees for Equine Formula Feeds

- a. Animal Classes
 - (1) Foal
 - (2) Mare
 - (3) Breeding
 - (4) Maintenance

- b. Guaranteed Analysis for Equine Complete Feeds and Supplements (all animal classes)
 - (1) Minimum percentage of Crude Protein
 - (2) Minimum percentage of Crude Fat
 - (3) Maximum percentage of Crude Fiber
 - (4) Minimum and maximum percentage of Calcium
 - (5) Minimum percentage of Phosphorus
 - (6) Minimum Copper in parts per million (ppm)
 - (7) Minimum Selenium in parts per million (ppm)
 - (8) Minimum Zinc in parts per million (ppm)
 - (9) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

- c. Guaranteed Analysis for Equine Mineral Feeds (all animal classes)
 - (1) Minimum and maximum percentage of Calcium
 - (2) Minimum percentage of Phosphorus
 - (3) Minimum and maximum percentage of Salt (if added)
 - (4) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (5) Minimum Copper in parts per million (ppm)
 - (6) Minimum Selenium in parts per million (ppm)
 - (7) Minimum Zinc in parts per million (ppm)
 - (8) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

Appendix Number 12
Equine Complete and Supplement Feeds

BLUE BIRD 12% TEXTURED HORSE FEED

For Maintenance of Mature Horses

Guaranteed Analysis

Crude Protein (Min)	12.0%
Crude Fat (Min).....	3.0%
Crude Fiber (Max).....	12.0%
Calcium (Min).....	1.0%
Calcium (Max)	1.5%
Phosphorus (Min).....	1.0%
Copper (Min).....	20 ppm
Selenium (Min)	0.20 ppm
Zinc (Min).....	40 ppm
Vitamin A (Min).....	2,000 IU/lb

Ingredient Statement

Grain Products, Plant Protein Products, Processed Grain By-Products, Molasses Products, Roughage Products, Vitamin A Supplement, Vitamin D₃ Supplement, Vitamin E Supplement, Vitamin B₁₂ Supplement, Riboflavin Supplement, Pyridoxine Hydrochloride, Folic Acid, Biotin, Thiamine, Calcium Carbonate, Salt, Dicalcium Phosphate, Manganous Oxide, Ferrous Sulfate, Copper Sulfate, Magnesium Oxide, Zinc Oxide, Ethylenediamine Dihydriodide, Cobalt Carbonate, Potassium Chloride, Sodium Selenite.

Feeding Directions:

Feed ½ to 1 lb of feed per 100 lbs of body weight for the maintenance of mature horses. Feed good quality hay at the rate of 1 to 2 lbs per 100 lbs body weight daily. Provide fresh, clean water at all times.

Important: Feed hay along with this ration, as per directions.

Manufactured By:
Blue Bird Feed Mill
City, State, Zip

NET WT 50 LB (22.67 kg)

Appendix Number 13
Required Guarantees for **Goat and Sheep** Formula Feeds

- a. Animal Classes
 - (1) Starter
 - (2) Grower
 - (3) Finisher
 - (4) Breeder
 - (5) Lactating

- b. Guaranteed Analysis for Goat and Sheep Complete Feeds and Supplements (all animal classes)
 - (1) Minimum percentage of Crude Protein
 - (2) Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added
 - (3) Minimum percentage of Crude Fat
 - (4) Maximum percentage of Crude Fiber
 - (5) Minimum and maximum percentage of Calcium
 - (6) Minimum percentage of Phosphorus
 - (7) Minimum and maximum percentage of Salt (if added)
 - (8) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (9) Minimum and maximum Copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm)
 - (10) Minimum Selenium in parts per million (ppm)
 - (11) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

Appendix Number 14
Required Guarantees for **Duck and Geese** Formula Feeds.

- a. Animal Classes
 - (1) Ducks
 - (a) Starter – 0 to 3 weeks of age
 - (b) Grower – 3 to 6 weeks of age
 - (c) Finisher – 6 weeks to market
 - (d) Breeder Developer – 8 to 19 weeks of age
 - (e) Breeder – 22 weeks to end of lay
 - (2) Geese
 - (a) Starter – 0 to 4 weeks of age
 - (b) Grower – 4 to 8 weeks of age
 - (c) Finisher – 8 weeks to market
 - (d) Breeder Developer – 10 to 22 weeks of age
 - (e) Breeder – 22 weeks to end of lay

- b. Guaranteed Analysis for Duck and Geese Complete Feeds and Supplements (for all animal classes)
 - (1) Minimum percentage of Crude Protein
 - (2) Minimum percentage of Crude Fat
 - (3) Maximum percentage of Crude Fiber
 - (4) Minimum and maximum percentage of Calcium
 - (5) Minimum percentage of Phosphorus
 - (6) Minimum and maximum percentage of Salt (if added)
 - (7) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee

Appendix Number 15
Required Guarantees for **Fish** Complete Feeds and Supplements

- a. Animal Species shall be declared in lieu of animal class
 - (1) Trout
 - (2) Catfish
 - (3) Species other than trout or catfish

- b. Guaranteed analysis for all Fish Complete Feeds and Supplements
 - (1) Minimum percentage of Crude Protein
 - (2) Minimum percentage of Crude Fat
 - (3) Maximum percentage of Crude Fiber
 - (4) Minimum percentage of Phosphorus

Appendix Number 16
Required Guarantees for **Rabbit** Complete Feeds and Supplements

- a. Animal Classes
 - (1) Grower – 4 to 12 weeks of age
 - (2) Breeder – 12 weeks of age and over

- b. Guaranteed analysis for Rabbit Complete Feeds and Supplements (all animal classes)
 - (1) Minimum percentage of Crude Protein
 - (2) Minimum percentage of Crude Fat
 - (3) Minimum and maximum percentage of Crude Fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units)
 - (4) Minimum and maximum percentage of Calcium
 - (5) Minimum percentage of Phosphorus
 - (6) Minimum and maximum percentage of Salt (if added)
 - (7) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (8) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

Appendix Number 17

The required guarantees of **grain mixtures with or without molasses and feeds other than those described** in Appendices 3, 5, 7, 9, 11, 13, 14, 15 and 16 shall include the following items, unless exempted in Part 7.1.a.3.A.1., in the order listed:

- a. Animal class(es) and species for which the product is intended.
- b. Guaranteed analysis
 - (1) Minimum percentage of Crude Protein
 - (2) Maximum or minimum percentage of equivalent Crude Protein from Non-Protein Nitrogen as required in Section 8.5.
 - (3) Minimum percentage of Crude Fat
 - (4) Maximum percentage of Crude Fiber
 - (5) Minerals in formula feeds, to include in the following order:
 - (a) Minimum and maximum percentage of Calcium
 - (b) Minimum percentage of Phosphorus
 - (c) Minimum and maximum percentage of Salt (if added)
 - (d) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee
 - (e) Other Minerals
 - (6) Minerals in feed ingredients – as specified by the official definitions of the Association of American Feed Control Officials
 - (7) Vitamins in such terms as specified in Section 8.3.
 - (8) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content
 - (9) Viable lactic acid producing microorganisms for use in silages in terms specified in Section 8.7.
 - (10) A commercial feed (e.g. vitamin/mineral premix, base mix, etc.)intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose. Article II of AAFCO's "Criteria for Labeling Nutritional Indicators" is not applicable to the label guarantees for these specialized commercial feeds.


Dear Director and Assistant Director;

I am writing in support of the proposed rule change to define a "Small Producer" to register annually and pay the registration fee of \$20.00 as opposed to \$40.00.

As a small startup pet treat business it is very difficult to register each treat for \$40.00 as we have yet to sell any treats and even when we do it will take several treats, as they are smaller to make up for the fee of \$40.00.

Thank you for your time and hopefully support of the proposed rule change to allow small businesses to have a chance to be successful in West Virginia.

Sincerely,


Susan Starkey JoAnn Stringer

Co-Owners Happy Tails! (Until We Treat Again)

Susan Starkey

JoAnn Stringer



Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

July 2, 2013

Ms. Susan Starkey
Ms. JoAnn Stringer
Happy Tails!
3330 Owl Creek Road
Morgantown, WV 26508

Dear Ms. Starkey and Ms. Stringer:

Thank you for your positive comments regarding the proposed rule change to the West Virginia Commercial Feed Rule.

We feel this change will allow small producers an opportunity for growth.

Again, thank you for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson, Director

TO: 1900 Kanawha Blvd. E., Charleston, WV 25305, (305)558-2208 West Virginia
Department of Agriculture, Regulatory & Environmental Affairs Division,

FROM: PETPORT USA, INC. 1160 Railroad Avenue, Pittsburg, CA 94565 (925)439-9243

ATTN: DIRECTOR HERMA JOHNSON, OR ASSISTANT DIRECTOR CHAD LINTON

RE: PROPOSED RULE CHANGE, COMMERCIAL FEED TITLE 61- SERIES 5

Dear Herma or Chad,

I write to inform the department that my company is pleased with the proposed rule change, which in effect lowers the rate for "Small Producers" to \$20 (previously \$40). As a small producer of pet treats, we would prefer that the rate for Small Producers be reduced further –or better yet, that an absolute exclusion (\$0 paid) be applied in the case of Small Producers.

Each year each state in the USA requires that we comply with their own laws and fees regarding feed production/distribution/sales. Setting aside the logistical difficulty of complying with all the states different rules and regulations concerning this subject, our small company still needs to pay the overly burdensome fees each year, and –depending on the state –sometimes several times a year. Fees such as those imposed by your state and others are the reason why it is so hard for a small business to sell goods in America. While this paperwork and associated fees might be less burdensome for a large corporation, for a small corporation such as ourselves it is often the difference between whether a product can be sold for a profit or not.

I hope the Department takes the above words at face value when considering the proposed changes to Title 61. Thank you for your time.

Best,
Erick Gonzalez
Research and Development
Petsport USA, Inc.
Erick@petsportusa.com

JUL 17 2013

JUL 7 2013



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

July 17, 2013

Mr. Erick Gonzalez
Petport USA, Inc.
1160 Railroad Avenue,
Pittsburg, CA 94565

Dear Mr. Gonzalez:

Thank you for your comments regarding the West Virginia Commercial Feed Rule. We feel by lowering the fee for small producers will encourage growth of these companies.

Your comments will be taken under consideration.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson, Director

June 16, 2013

To: WV Ag Commissioner Walt Helmick
Chris Ferro
Herma Johnson
Jean Smith
Chad Linton

From: Jenn Dinsmore
RusLyn Confections, Inc.
Dbu Poochie's Choice

RE: Proposed changes to the Commercial Feed Rule

I am receipt of the proposed changes to the Commercial Feed Rule as it pertains to pet treats. I spoke to Herma Johnson this past Friday and expressed my concerns to what is proposed. They are as follows:

- 1.) Ms. Johnson explained that changing governing legislation can't pertain to just WV producers but must include any manufacturer that registers in WV to sell treats in WV. She said that these proposed amendments were mailed to 42 companies. Forty one of these manufacture outside WV and sell to entities inside WV. RusLyn is the only company inside the borders who the amendments would affect. Quite honestly we would not be affected as explained in 3.). Also, this does not address "Distributed by" companies.
- 2.) My company should not be grouped with multi-million dollar companies who manufacture outside WV and sell distribute inside our borders to large chain supermarkets such as Krogers, Giant Eagle; large box retailers such as K-Mart and WalMart, and pet store giants such as PetsMart and WalMart. We cannot produce the volume that is required to supply these stores.
- 3.) Our total gross wholesale sales of dog treats sold to retailers in the state in 2013 totaled \$14,848.98. We operate on a 40% markup which amounts to roughly \$6,000 profit. In order to sell within the state in 2013 we paid the Dept. of Ag over \$600 in product registration fees. (The proposed fees could have been as high as \$1800). We cannot compete with the multi-million dollar company whose products are produced in China and distributed across the US to pay the fees proposed.
- 4.) A few months ago I met with representatives of the Dept. of Ag concerning registration costs of our dog treats. I presented samples of what we sell inside the state. This included the hand dipped dog bones in three flavors which we package in 3 different sizes: small cello bag, ½ and 1 lb bags, and in bulk. **Same product same guaranteed analysis but packaged in different sizes.** We also manufacture a caramel jerky log, poochie paw sucker, dog cake mix kit, hand dipped peanut butter decorated with seasonal motif such as stars for July 4th, and holiday cookies such as ghosts and pumpkins, Christmas trees and peanut butter boys. The committee was also made aware that

we sell hand dipped dog bones that are packaged in cello to Tamarack and sell hand dipped bulk to WV Marketplace, Exotic Jungle and Bulk Foods. This is all the same product but packaged differently to help the customer serve their customer base better. We do not sell volumes to mammoth retailers! Our market is WV owned companies. **(We sell more than 5 dog treats eventhough most of what we sell is the same dog treats just packaged in different sizes).** **RusLyn, although a very small producer would not come under the proposed legislation. So what is it's purpose?**

- 5.) The proposed rule 61-5-3 (3.2) defines "Small Producer" means any person who manufactures 5 or less small packaged pet treats. . . . Ms. Johnson said this includes any manufacturer who sells 5 or less pet treats inside WV. But this is a double meaning. "Person" is not the definition of "Corporation" which constitutes many companies that would be given this break in registration fees. Also, corporations such as Iams, Nestle-Purina, Science Diet, Hartz Mountain are very large corporations and should not be in the same category as "small producer".
- 6.) I don't see where the law would be affected that much per the new proposal as in Article 14 Par. 19-14-5. Permits; registration. (4.) Specialty pet food in packages of one pound or less shall be registered annually. A registration fee of twenty dollars per product shall accompany each application for registration. Folks what is the definition of "Specialty Pet Food"? I believe we are a specialty pet food and have been paying double the fee for many years. The proposed additional regulations pretty much reiterates what is law now but adds the term "dog treats".
- 7.) I do not understand why we can't have legislation that helps small producers of dog treats. Why can't a law pertain just to companies located within the state whose owners live here and sell here? Why can't a law be written for all companies that come under Dept. of Ag regulation such as pet food, cow feed, farmer's who make cheese, companies who sell spring water? Why can't you write a law that gives WV agriculture companies a break?
- 8.) The PA registration of commercial animal feed is the best example I can share again. The fee is 10 cents per ton with a minimum fee of \$25 plus a \$15. Yearly registration fee. They do inspect and do analyze the guaranteed analysis even though they do not require the repetition of sending the department copies of the same labels year after year. (PA has a great Ag web site). As you are aware we pay fees in several states and none of the yearly fees are as high as what we pay in our own state.
- 9.) I do not see where the proposed legislation will help any small producer in any field of agriculture who produces and lives inside the state of WV any good.



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

July 16, 2013

Ms. Jenny Dinsmore
Ruslyn Confections Inc.
P.O. Box 4265
Star City, WV 26504

Dear Ms. Dinsmore:

We received your comments regarding changes to the proposed Commercial Feed Rule.

I want to clarify a couple of your concerns related to the proposed rule change. The letter outlining the changes was mailed to 633 companies registering feed products in West Virginia; however, only 42 companies that are currently registered would be affected by this rule.

Per the West Virginia Commercial Feed Law 19-14-2 the definition for "Person" means an individual, partnership, association, fiduciary, firm, company, corporation or any organized group of persons whether incorporated or not. The definition for "Specialty Pet" means any domesticated pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, birds, tropical fish, goldfish, snakes and turtles. This rule does not apply to Specialty Pet products.

We do appreciate your comments and will take them under consideration.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson, Director



Great eda

Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

① I am a small company
I have 1 employee
Ridiculous to pay like

NOTICE OF 30 DAY PUBLIC COMMENT PERIOD

PROPOSED RULE CHANGE
COMMERCIAL FEED
TITLE 61 - SERIES 5

New Hampshire
hundreds!!

② Every product tested - result
Need to be payed to EVERY other Dept of Ag

The West Virginia Department of Agriculture filed with the Secretary of State's Office proposed changes to the Commercial Feed Rule. Only the changes noted below are being proposed.

Please review and submit written comments to Herma Johnson, Director (hjohnson@wvda.us) or Chad Linton, Assistant Director (clinton@wvda.us) at the West Virginia Department of Agriculture, Regulatory and Environmental Affairs Division, 1900 Kanawha Blvd., East, Charleston, WV 25305-0170 by July 18, 2013.

61-5-3. Definitions and Terms.

3.2 "Small Producer" means any person who manufacturers 5 or less small package pet treats, snacks or biscuits; 5 or less bulk pet treats, snacks or biscuits; or a combination of 5 or less small package and bulk pet treats, snacks or biscuits.

61-5-5. Permits; Registrations.

Small producers shall register annually and pay the registration fee as outlined in Appendix 2.

Appendix Number 2 - Fees of this Rule

Type of Fee	Section Reference	Fee	Registration
Small Producer	5.5	\$20.00	Expires December 31 Next following issue. Fee is per each product.

Yes
may in a small stall
Not affordable for SM companies
Better



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

July 10, 2013

Crazy Corn
6166 ¼ Sepulveda Blvd.
Van Nuys, CA 91411

RE: Proposed West Virginia Commercial Feed Rule Change

We received your comments regarding the proposed West Virginia Commercial Feed Rule change.

We feel by lowering the fee from \$40.00 to \$20.00 for persons who manufacture five or less small package pet treats, snacks or biscuits will encourage growth for the small producer.

Thank you for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson, Director

6166 1/4 Sepulveda Bl.
Van Nuys, CA 91411

SANTA CLARITA CA 913

06 JUL 2013 PM 1.1



W.V. Dept of Agriculture
1900 Kanawha Bl. E
Charleston, WV 25305

25305017099



NH
is like product
#50 / P

Johnson, Herma

From: Frank Wiechers <Frank@Perfectlyfrank.us>
Sent: Wednesday, July 03, 2013 3:30 PM
To: Johnson, Herma; Linton, Chad
Subject: Proposed Rule Change Commercial Feed

Dear Ladies and Gentlemen:

I am writing you in regard to the proposed rule change in regards to title 61 - series 5.

I am a on-the-side company, producing candles, wax melts, jewelry and I am looking into producing dog treats to be sold locally at vendor fairs, craft shows and such. We (my wife and I) attend about 10-15 of these shows a year, and we believe in selling a good quality product.

I have been looking into selling dog treats, and - as other products we sell - want to do it right. While I have noticed other vendors selling dog treats unlicensed, in not norm-conforming packages and without any analysis, we have been holding off on the production and introduction until we had more money at hand.

An additional fee would be contraindicated - especially since this fee is coined only to small producers - I believe that small producers should be encouraged, not discouraged, to bring their product to market.

Also, in the market we are in, we have to make sure that we sell enough treats to pay for licensing, analysis and such - compared to others, who just sell a treat in a paper bag that is unlabeled. Since there is no enforcement of these unlawful treats, I believe that the person who "wants to do it right", such as me, should not have to pay an additional fee.

Please contact me regarding any questions you may have.

We will have a website at www.companionusa.us - I have been building the site for a while, but it's not open for the public (yet).

Thank you!

Frank Wiechers
Managing Member, Perfectly Frank, LLC

--
Perfectly Frank, LLC
PO Box 462
Lost Creek, WV 26385
USA



**Regulatory & Environmental Affairs Division
West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2208

Walt Helmick
Commissioner

Herma Johnson
Director

July 8, 2013

Mr. Frank Wiechers
Perfectly Frank, LLC
P.O. Box 462
Lost Creek, WV 26385

Dear Mr. Wiechers:

We received your e-mail regarding the proposed change to the West Virginia Commercial Feed Rule.

All feed, whether small or large package for small or large animals, is required to be register in West Virginia. A copy of the West Virginia Commercial Feed Law and Rule are enclosed for your review. All fees are listed in Appendix 2 of the Rule.

Currently the fee for small package feed in packages ten pounds and under is \$40.00 and our proposed rule is lowering this to \$20.00 to encourage small producers.

You stated you observed pet treats being marketed without proper labels in the market you are selling your candles, etc. If you would send me the information on the location of this market, we will have one of our Regulatory Officer's visit and speak with the individuals selling these products.

Thank you for your comments and I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson, Director

Enclosure