



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative

TITLE-SERIES: 61-11H

RULE NAME: Licensing of Livestock Dealers

CITE AUTHORITY: 19-10B-9

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 11H
LICENSING OF LIVESTOCK DEALERS

§61-11H-1. General.

1.1. Scope. -- These legislative regulations are promulgated to establish the general procedures for the licensing of livestock dealers under the provisions of "The West Virginia Livestock Dealer's Licensing Act", W.Va. Code §19-10B-1.

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

1.3. Filing Date. -- ~~January 13, 1986.~~

1.4. Effective Date. -- ~~January 31, 1986.~~

1.5. Sunset Date. -- This rule shall expire and have no further force or effect on August 1, 2031.

§61-11H-2. Definitions.

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

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

2.1.2. "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

2.1.3. "Department" means the department of agriculture of the state of West Virginia.

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

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

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

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

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

§61-11H-3. Surety Bond Requirements.

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

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

3.3. A fee of thirty dollars (30) shall be remitted with each application ~~with~~ which is filed.

§61-11H-4. Surety Bond Requirements.

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

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

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

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

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

§61-11H-5. Maintenance of Records of Transactions.

5.1. Except as otherwise provided in subsection 5.2 of this section, every person licensed as a livestock dealer under the provisions of this regulation shall maintain a record of livestock transactions in an official transactions record book provided by the commissioner. Any such transactions record book shall be and remain the property of the department, and the delivery of such transactions record book or books to the licensed livestock dealer shall in no way affect the ownership of such transactions record book by the department. As a condition of receiving a license to function as a livestock dealer, each licensee shall agree to use reasonable care and diligence to preserve and protect the transactions record book assigned to such licensee. Upon the request of the licensee, the commissioner shall provide such additional transactions record book or books as he may deem necessary for the licensee to comply with the provisions of this regulation.

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

5.2.1. The commissioner determines that such alternative record book, ledger or automated data

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

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

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

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

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

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

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

6.1.2. Identifying tattoo numbers, except for vaccination tattoos;

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

6.1.4. The breed and sex of the animal;

6.1.5. The approximate weight of the animal;

6.1.6. The date of the transaction;

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

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

6.3. The records required to be kept under the provision of this section shall be kept and retained by a livestock dealer only during the period during which he is licensed. In the event a licensee's license is

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suspended or revoked, or expires upon a failure to renew, the licensee shall forthwith deliver the records to the commissioner.