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**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

**FILED**

APR 18 11 44 AM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Animal Disease Control

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB64

SECTION 64-9-1 (b), PASSED ON March 11, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 18, 1995



AUTHORIZED SIGNATURE



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

Gus R. Douglass  
Commissioner

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Robert G. Morris  
Assistant Commissioner

**SB 64 authorizing, Title 61, Series 1, Animal Disease Control**  
**SB 64 authorizing, Title 61, Series 23D, Inspection of Nontraditional Domesticated Animals**

Date filed in State Register with Notice of Hearing	-	May 31, 1994
Date of Hearing	-	July 5, 1994
Date filed in State Register the agency approved proposed Legislative Rule following public hearing	-	July 22, 1994
Passed the Legislature	-	March 11, 1995
Signed by the Governor	-	March 23, 1995

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SERIES 1  
ANIMAL DISEASE CONTROL

FILED

AUG 9 1 12 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE: Animal Disease Control

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§61-1-1. General

1.1. Scope - This legislative rule establishes general operating rules and procedures in the Animal Health Division and are established to prevent, suppress, control and eradicate communicable diseases of livestock and poultry.

1.2. Authority - W. Va. Code 19-9-2.

1.3. Filing Date -

1.4. Effective Date -

1.5. Amendment of Former Rules - ~~This legislative rule amends WV61CSR "Animal Disease Control" filed April 23, 1992 and effective April 27, 1992. This legislative rule amends WV61CSR "Animal Disease Control" filed \_\_\_\_\_ and effective April 18, 1994.~~

§61-1-2. Definitions

2.1. Accredited Veterinarian means any veterinarian accredited by APHIS and approved by the Animal Health Official of the state where the veterinarian is doing business.

2.2. Animal means a bird, fish, reptile, or mammal other than man.

2.3. APHIS means the Animal and Plant Health Inspection Service or its successor agency of the United States Department of Agriculture.

2.4. Approved E.I.A. and/or Pseudorabies Laboratory means any United States Department of Agriculture laboratory approved for conducting an official E.I.A. (Coggins') test and/or an official pseudorabies test.

2.5. Biologicals mean products that are intended for diagnostic or therapeutic purposes in animals other than man.

2.6. Boar means any male swine used for or intended to be used for breeding purposes.

2.7. Brucellosis or Bang's Disease is an infectious disease in bovine animals caused by any member of the Genus Brucella. Any animal is considered infected with brucellosis if it has a positive reaction to any APHIS approved test for brucellosis, or if any member of the Genus Brucella has been found in the body or its secretions or discharges, or if it has been treated with a live culture of Brucella.

2.8. Calves mean bovine animals which have not reached the usual age of maturity for the particular breed. The singular of the term is calf.

2.9. Cattle means bison or bovine animals of any age.

2.10. Certified Brucellosis Free Herd means a herd which is certified as free from brucellosis by the Commissioner and APHIS.

2.11. Cervidae means a deer or elk of any age.

2.12. Commissioner means the Commissioner of the West Virginia Department of Agriculture or his or her agent. Employees of the Veterinary Services of APHIS have the authority to act as agents of the commissioner.

2.13. Communicable disease means all the diseases listed in WV Code §19-9-1-e and the disease avian influenza.

2.14. Equine means an animal that is a member of the Equinae genus including horses, ponies, mules, asses and zebras.

2.15. E.I.A. Reactor means an equine one year of age or older who has had two consecutive positive tests for E.I.A. performed in an approved E.I.A. laboratory and one additional positive test performed in a United States Department of Agriculture. The animal may not show clinical signs of the disease.

2.16. Exposed E.I.A. Animal means any equine is or has been stabled or commingling (racetracks excluded) within 200 yards of any equine that has had a positive E.I.A. (Coggins') test and may include an animal which has had the same handler as the equine that has had the positive E.I.A. (Coggins') test.

2.17. Farm means one contiguous parcel of land operated as a unit. Parcels of land owned by a farmer, but separated by other farms are considered separate farms.

2.18. Feeder pig means any immature swine used for or intended to be used exclusively for feeding for slaughter.

2.19. Fur-Bearing animal means mink, weasel, muskrat, beaver, opossum, skunk, civet cat (commonly called polecat), otter, red fox, gray fox, wildcat, bobcat, bay lynx, raccoon or fisher.

2.20. Indemnity means money paid by the commissioner to the owner of an animal found to be a reactor for a communicable disease which cannot be cured or controlled by isolation and adequate or proper veterinary treatment. The amount of the indemnity will be the difference between the sale price of the animal and the value of the animal in the certificate of appraisal.

2.21. Non-reactor means an animal showing a negative reaction noted by a specific titer to a test.

2.22. Official Health Certificate means an official form issued by an accredited veterinarian in the state of origin and approved by the Animal Health Official of the state of origin listing all animals (with an accurate description or other identification) covered by the certificate that have been examined by the person issuing the form, stating the nature of the examination and the findings of the health of the animals covered by the certificate. In addition, the official health certificate shall contain the names and address of the consignor and the consignee of the animals, the vaccinations that the animals may have received and the dates that the vaccinations occurred. The official health certificate is void thirty (30) days after issuance.

2.23. Official Pseudorabies Serologic Test is an official pseudorabies test conducted on swine serum to detect the presence or absence of pseudorabies antibodies.

2.24. Official Pseudorabies Test is any test for the diagnosis of pseudorabies approved by the United States Department of Agriculture and conducted in an approved laboratory.

2.25. Person means any individual, partnership, association, fiduciary, firm, company, corporation or any organized group of persons whether incorporated or not. The term extends to the agents, servants, officers and employees of the person.

2.26. Pseudorabies or Aujeszky's disease (mad itch) is an infectious and contagious disease of swine and certain other warm-blooded animals.

2.27 Ratite means any group of flightless birds having a flat breastbone without the keellike prominence characteristic of most flying birds. This includes, but not limited to the emu, ostrich, and rhea.

2.27-28 Reactor means any animal that responds to a test for a particular disease showing a positive titer above that which is considered a negative or suspect reaction for a particular disease.

2.28-29 Sow means any female swine used for or intended to be used for breeding purposes.

2.29-30 Stocker Cattle means sexually intact cattle not consigned to slaughter.

2.30-31 Suspect means an animal that shows a titer to a particular test that makes it uncertain whether the animal has been exposed or has the particular disease.

2.31-32 Test means an examination made to determine the presence or absence of antibodies to a disease or an incriminating reaction to an antigen or other activities to determine whether or not an animal has a particular disease.

2.32-33 Tuberculosis means an infectious disease caused by *Mycobacterium bovis*, commonly known as the tubercle bacillus.

2.33-34 Vaccine means any biological that is a preparation of live, modified-live or killed infectious agents or a preparation of tissue that is administered to produce or artificially increase immunity to a particular disease.

2.34-35 Vaccination means the inoculation of an animal with a vaccine.

2.35-36 Veterinarian means any veterinarian employed by a state or federal agency, any veterinarian in this state that is recognized by the West Virginia Veterinary Medical Association, any licensed veterinarian, or any livestock technician employed by the commissioner.

2.36-37 Wild Animal means any mammal native to the State of West Virginia, occurring either in a natural state or in captivity. The term does not include mice and rats.

2.37-38 Wild Bird means any bird native to the state, or migrating through this state and includes any imported foreign game bird, such as pheasant, partridge, quail, grouse or waterfowl regardless of whether the birds are held in captivity or not. The term does not include chicken, duck, goose, guinea fowl, peafowl, turkeys, common canary, exotic finches, ring doves or psittacidae.

2.38-39 Wildlife means any wild bird, wild animal, game animal, fur-bearing animal, fish (including minnows), amphibians, aquatic turtles or any aquatic animal used as fish bait, whether dead or alive.

### §61-1-3. Biologicals

3.1. The commissioner restricts the sale of any vaccine containing live, modified-live or killed infectious agents for any disease known to be a public health hazard to man or that is not yet known to occur in this state, referred to as "Restricted Vaccines"; to licensed veterinarians, to any person authorized by a county commission to conduct rabies clinics, and may further restrict the sale of any biological capable of causing harm to the public or animal health when misused to particular persons or situations.

3.1.a. The commissioner shall publish a list of Restricted Vaccines containing live, modified-live or killed infectious agents for any disease known to be a public health hazard to man or that is not yet known to occur in this state, known as "Restricted Vaccines", on January 1 of each year. The commissioner will provide this list to any person upon request.

3.2.. No person may manufacture, offer for sale, or sell any biological in this state without a valid permit for the sale of biologicals issued by the commissioner.

### §61-1-4. Quarantines

4.1. The commissioner may place a special or a general quarantine on any animal or animals as provided by WV Code §19-9-13,14 and 15 and by this rule, when any animal is found to be infected with any contagious or infectious disease, when he suspects that any animal is infected with any contagious or infectious disease, or when the animal has been imported into this state in violation of the provisions of WV Code §19-9-1 et seq. or this rule.

4.2. The commissioner may extend the special or general quarantine to the premises where the animal is or has been located when the premises is suspected of being capable of transmitting the disease to other animals or humans, or the animal needs to be segregated from other animals so as not to transmit the disease to other animals or humans.

4.3. The commissioner may extend the special or general quarantine to the meat or milk products of any animal found to be, or suspected of having, any contagious or infectious disease and to any equipment used in the collection, transportation, processing or manufacturing of the meat or milk products of these animals.

4.4. No person may move any animal or article under quarantine from the area specified in the quarantine while the quarantine is in effect, except when the commissioner gives written permission for this movement to take place.

4.5. The commissioner will release a quarantine when the animal, product or location under quarantine is found to be free of disease or not capable of causing the transmission of disease to other animals or man.

4.6. The commissioner shall allow those animals that were released from quarantine when found to be free of disease to enter commerce free from any restraint caused by the quarantine.

#### §61-1-5. Tuberculosis or Brucellosis in Cattle

5.1. No person other than an accredited veterinarian, a qualified official of the United States Department of Agriculture or agents of the commissioner may perform any activity for the control or eradication of brucellosis or tuberculosis.

5.2. Each laboratory performing tests for brucellosis or tuberculosis is responsible for reporting in writing to the commissioner the results on all tests for brucellosis and tuberculosis as soon as the test results are received. Each report shall contain a description of the animal including the tattoo or ear tag number and any other marks of identification, the sex, the age the breed, the complete test results, the name and address of the owner of the animal, the place where the animal was located when tested, and the name and address of the person testing the animal.

5.3. The test results for brucellosis will be evaluated with other factors such as the age of the animal, the vaccination status, if any, and the herd conditions when the commissioner is determining if an animal is a reactor; provided that an animal tested at a public market ~~will~~ may be considered a reactor when both the buffered plate antigen at a 1/25 dilution of serum and the standard card test results are positive.

5.4. The commissioner may quarantine any female animal who has not had a calf when found to be a progeny of a cow that is a reactor to brucellosis until the animal has had a calf and a subsequent negative test for brucellosis.

5.5. The commissioner will quarantine any nursing bull calf found in this state that is a progeny of a cow that is a reactor to brucellosis until that animal has been castrated or the commissioner gives a special permit for the movement of that animal.

5.6. The commissioner shall mark any animal found to be infected with tuberculosis or brucellosis by placing an ear tag supplied by APHIS in the left ear of the animal and branding the left jaw of the animal with the capital letter "B" for brucellosis or the capital letter "T" for tuberculosis in letters not less than 2 inches high and 1 1/2 inches wide. The commissioner may accept

the use of hot brands for this purpose.

5.7. Any person owning any animal infected with or exposed to tuberculosis or brucellosis that is under quarantine may apply to the commissioner for permission to move the animal to slaughter. The application shall include the complete description of the animal, the place where the owner wishes to have the animal slaughtered and any other information that the commissioner may require to determine if he should grant such a permit.

5.7.a. If the commissioner grants permission to move to slaughter and issues a VS FORM 1-27 for this purpose, the permit shall specify all conditions for movement under which the permit is approved including the requirement that the slaughter take place under the supervision of an authorized Federal or State meat plant veterinarian. The commissioner will require the authorized Federal or State meat plant veterinarian supervising the slaughter to provide him forthwith a post-mortem report on the animal in the case where the animal was found to be a reactor to tuberculosis.

5.8. The commissioner will pay an indemnity to the owner of any bison or bovine animal that has been found to be infected with either brucellosis or tuberculosis or to be a reactor to these diseases under the following conditions:

5.8.a. Funds for the payment of indemnities are available to the commissioner

5.8.b. The animal was located in this state when it was when found to be infected or when found to be a reactor.

5.8.c. The animal was tested for brucellosis using an APHIS approved test by veterinarians employed by APHIS or by the commissioner or for tuberculosis using an APHIS approved test by an accredited veterinarian.

5.8.d. The animal had been vaccinated for brucellosis within the age limits prescribed by the commissioner, as specified in section 9 of this rule, and the animal was at least 20 months of age, if an animal of a dairy type breed, or at least 24 months of age, if an animal of a beef type breed when found to be infected or when found to be a reactor.

5.8.e. The animal was not vaccinated for brucellosis as an adult nor maintained in a herd where vaccination for brucellosis of any animal in the herd has occurred at an age other than that specified in section 9 of this rule of these rules.

5.8.f. The animal has been quarantined, branded, been issued a certificate of appraisal by the commissioner and slaughtered under the supervision of a Federal or State meat plant veterinarian.

5.8.g. The owner of the animal has allowed a quarantine to be placed on all the animals remaining under his ownership, signed an agreement with the commissioner listing all cattle owned by him and agreed to testing for brucellosis or tuberculosis on all cattle listed in the agreement. The owner has further agreed to destroy any animal found to be infected within 15 days of the date that the commissioner issues a certificate of appraisal for any animal found to be infected.

5.8.h. The owner of the animal has agreed to comply with WV Code §19-9-28 through §19-9-37 and with the provisions of this rule.

5.8.i. The owner of the animal has agreed to make any further additions to the herd in compliance with the provisions of WV Code §19-9-1 et seq. and with section 6 of this rule.

5.8.j. The owner of the animal has cleaned and disinfected all premises where the animal was located while it was infected.

5.8.k. The owner has not been negligent nor carelessly exposed any animals under his care to brucellosis or tuberculosis, and the owner has not purchased any animal that he knew or had reason to believe that had a communicable disease.

5.8.l. The owner of the animal is not any governmental agency or a political sub-division of this state.

5.8.m. The owner of the animal or his agent has not been previously found to have engaged in any fraudulent attempt to obtain an indemnity for any animal.

5.8.n. The owner of the animal has sold the animal at the highest possible price.

5.9. The commissioner will issue a certificate of appraisal based on the purebred value of the animal only when the purebred registration certificate is submitted to the commissioner prior to making the appraisal, unless the animal is less than three years of age, in which case the commissioner will be allowed to amend the appraisal within 30 days after the original certificate was issued when the breed association submits the registration certificate for the animal. All other certificates of appraisal shall appraise the cattle at a value of a non-purebred, or grade, animal.

5.10. The commissioner will require that any herd that has been released from a brucellosis quarantine after the reactor animals in the herd have been removed, be retested for brucellosis at 9 and at 12 months after the quarantine is lifted.

§61-1-6. Animal Importation

6.1. No person may import any animal into this state in violation of the provisions of WV Code §19-9-1 et seq. or with these rules. Any animal that is imported into this state in violation of WV Code §19-9-1 et seq. or these rules is subject to quarantine at the expense of the owner of the animal. Animals imported into this state for the sole purpose of exhibition at a fair or festival or for sale at a purebred consignment sale are subject to the provisions of section 8 of this rule in addition to those of this section.

6.2. No person may import any animal into this state that is infected with a communicable disease, that has recently been exposed to a communicable disease, or that is from an area under a state or federal quarantine; except for the provisions of this section of the rule.

6.3. No person may import any animal into this state for breeding purposes or that is to be included in a dairy herd without a valid official health certificate.

6.4. The commissioner may require that an animal that is imported into this state for sale at a public market or when exhibited at a fair or festival in this state have a valid official health certificate issued by an accredited veterinarian when the protection of the public and/or animal health of this state warrants this requirement.

6.5. The animal health official of the state of origin of the animal to be imported into this state should forward the official health certificate to the commissioner, in care of the Animal Health Division, prior to the importation of the animal.

6.5.a. The commissioner will not accept an official health certificate unless the name of the consignor and the consignee of the animal, an accurate description or identity of the animal, the general health status and any other information that is required by the provisions of this rule is listed on the certificate.

6.6. The commissioner may decline to accept the official health certificate of any animal, and thus prevent the importation of the animal, under the provisions of WV Code §19-9-25.

6.7. The commissioner may require that an animal have a special permit issued by him prior to importation into this state as specified by this section of the rule.

6.7.a. When the commissioner requires that the animal to be imported have a special permit, the owner or cosigner of the animal shall apply to the commissioner for the permit. The

application shall state the name of the owner, the description of the animal, the place of origin and destination of the animal. The application may cover the importation of more than one animal if the origin and destination are the same.

6.7.b. No person may import an animal that requires a special permit for entry without a valid special permit and may not import an animal in any manner that is contrary to the provisions of the permit issued.

6.7.c. The commissioner will not issue a special permit for any animal that is not consigned to a legal resident of this state.

6.7.d. The commissioner will issue a special permit for a period not to exceed fifteen days after the date of issue.

6.8. The commissioner may allow any animal that does not have, or that has not been exposed to a communicable disease, to be imported into this state for immediate slaughter without an official health certificate. The commissioner will allow an animal to be imported into this state for immediate slaughter when that animal has a communicable disease or has been exposed to a communicable disease only under the provisions of this section of the rule.

6.9. Nursing animals may be imported into this state on the dam's test or status, except where otherwise specified.

6.10. Any person in possession of any animal that is imported into this state shall maintain the official health certificate on the waybill that shall accompany the animal at all times.

6.11. All owners and operators of common carriers, railway cars, trucks and any other conveyance are prohibited from moving livestock into this state or through this state unless the common carrier, railway car, truck or other conveyance:

6.11.a. is maintained in a sanitary condition, or

6.11.b. has been thoroughly cleaned and sanitized after the use for the transportation of any animal that has been exposed to or that has any communicable disease, provided that in the case where any animal that has been exposed to or that has tuberculosis, the owner or operator of that conveyance shall maintain proof with the waybill that the cleaning and sanitizing of the conveyance has occurred under official supervision.

#### 6.12. Cattle

6.12.a. No person may import into this state any bison or bovine animal that is affected with or that has been exposed to

scabies.

6.12.b. The commissioner may require bison or bovine animals that are not capable of reproducing to have had a tuberculosis test prior to entry.

6.12.c. The commissioner will allow any bison or bovine animal infected with brucellosis or tuberculosis to enter this state only for slaughter, and only when a VS FORM 1-27 has been issued for that animal.

6.12.d. No person may import any bison or bovine animal into this state that has been infected with or has been exposed to brucellosis or tuberculosis without a valid special permit issued by the commissioner.

6.12.d.A. The special permit that the commissioner issues for an animal exposed to brucellosis or tuberculosis shall require that the animal be quarantined for not less than ninety days after importation and shall be retested after that time at the owner's expense to determine that the animal is not infected with, or a reactor to, brucellosis or tuberculosis.

6.12.e. No person may import any bovine into this state that is from a herd that has been under quarantine for tuberculosis during the twelve months previous to the importation unless that animal has had a negative tuberculosis test no more than 2 months prior to importation into this state.

6.12.f. The commissioner will allow any bison or bovine animal imported for breeding purposes or for use in a dairy herd to be imported into this state with an official health certificate and

6.12.f.A. without a tuberculosis test on the animal when that animal comes from a herd that has been completely tested for tuberculosis and found to contain no reactors within 12 months previous to the importation, or when the animal comes from a herd that is accredited as Tuberculosis Free by APHIS, or

6.12.f.B. with a negative tuberculosis test no more than 2 months prior to importation into this state.

6.12.g. The commissioner will allow any female animal that has not had a calf but that has been vaccinated for brucellosis and that comes from a herd of unknown brucellosis status to be imported into this state only when a special permit has been issued. The special permit shall require that the animal shall be quarantined until after the animal's first parturition and a subsequent negative test result for the presence of brucellosis.

6.12.h. The commissioner will allow any bovine to be imported for immediate slaughter, or to a public stockyard without

an official health certificate or a special permit; except for any bovine that has been vaccinated for brucellosis at an age older than 240 days when he will require that the animal be issued a VS FORM 1-27 prior to the importation of the animal for the purpose of immediate slaughter.

6.12.i. No person may import for feeding purposes any bison or bovine animal that has been infected with tuberculosis or brucellosis.

6.12.i.A. The commissioner will require that any bison or bovine animal that has been infected with tuberculosis or brucellosis be imported into this state only with a valid VS FORM 1-27 issued by APHIS and only for movement directly to slaughter.

6.12.j. No person may import any bovine into this state for breeding or milking purposes from any state that is designated a "Free", "Class A", "Class B" or "Class C" state as designated by the United States Department of Agriculture unless the following conditions are met:

6.12.j.A. The animal is

6.12.j.A.(a) from a herd that is a United States Department of Agriculture Certified Brucellosis Free Herd, is a verifiable progeny of the herd, and the latest complete herd test date and results are noted on the official health certificate; or

6.12.j.A.(b) from a "Free" state and has been tested and found to be free of brucellosis within 1 month of importation into this state, unless the animal is a dairy type animal less than 20 months of age and is an official vaccinate or is a beef type animal less than 24 months of age and an official vaccinate, where the commissioner will not require a brucellosis test on that animal; or

6.12.j.A.(c) from a "Class A" state must be

6.12.j.A.(c)(A) from a herd that has had a complete herd test for brucellosis not more than 12 months and not less than 3 months prior to the importation; or

6.12.j.A.(c)(B) shall be from a herd that has had a negative milk ring test not more than 6 months and not less than 180 days prior to entry; and

6.12.j.A.(c)(C) each individual animal shall have had a negative brucellosis test no more than 30 days prior to entry, except for official vaccinates of dairy breeds that are less than 20 months of age, or for official vaccinates of beef breeds that are less than 24 months of age where the brucellosis

test is not required.

6.12.j.A.(d) from a "Class B" or "Class C" state where the commissioner will require that the animal has a special permit prior to entry. The special permit will require that any animal that is not from a Certified Brucellosis Free Herd be quarantined upon arrival into this state, and be retested for brucellosis at the owner's expense not more than 6 months, but not less than 2 months after entry. The quarantine will be released when the animal is found to test negative after the test. An animal from these states must be

6.12.j.A.(d)(A) from a Certified Brucellosis Free Herd; or

6.12.j.A.(d)(B) be from a herd that has had two negative complete herd tests for brucellosis not more than 12 months and not less than 3 months prior to the importation of the animals (with the tests at least 3 months apart); or

6.12.j.A.(d)(C) may be from a herd that has had two negative milk ring tests not more than 12 months and not less than 3 months prior to entry; and

6.12.j.A.(d)(D) each individual animal shall have had a negative brucellosis test no more than 30 days prior to entry, except for official vaccinates of dairy breeds that are less than 20 months of age, or for official vaccinates of beef breeds that are less than 24 months of age where the brucellosis test is not required.

6.12.k. No person may import any bovine under 18 months of age that is capable of reproducing into this state for feeding purposes without an official health certificate, some form of permanent identification, and without allowing the commissioner to place the animal under quarantine until slaughtered or moved out of this state. The commissioner will require any animal that is capable of reproducing that is over 18 months of age when imported into this state meet all the requirements of cattle imported for breeding cattle, in this section of these rules.

6.12.l. Any animal that is imported into a dairy or breeding herd should be segregated from the herd until a brucellosis test is made within 45-120 days after importation and negative results are received.

### 6.13. Goats

6.13.a. No person may import any goat into this state that has been infected with or has been exposed to brucellosis or tuberculosis without a valid special permit issued by the commissioner.

6.13.b. No person may import any goat into this state for breeding or milking purposes unless that animal has a valid official health certificate showing that the animal has had a negative tuberculosis test within 2 months prior to entry into this state or the animal has been maintained in a herd that is a United States Department of Agriculture Accredited Tuberculosis Free Herd.

6.13.c. No person may import any goat into this state for breeding or milking purposes without a valid official health certificate showing that the animal has had a negative brucellosis test within 1 month prior to entry into this state or the animal has been maintained in a herd that is a United States Department of Agriculture Certified Brucellosis Free Herd.

#### 6.14. Equines

6.14.a. No person may import any equine, for any purpose except for sale at a public market, without a valid official health certificate showing the results of a negative approved APHIS test for E.I.A. attached to or noted on the certificate and that the animal has been found free of symptoms of any infectious or clinical disease. The commissioner will accept the test result from a test within 12 months prior to importation into this state if the state of importation has an E.I.A. program that equals or exceeds the program outlined in section 11 of this rule. In all other cases, the commissioner will accept the test result from a test within 6 months prior to importation into this state.

#### 6.15. Sheep and lambs

6.15.a. No person may import any sheep or lambs into this state for any purpose other than immediate slaughter without a valid official health certificate showing that that flock of origin was fully examined not more than thirty days prior to entry and found to be free of scabies, contagious ecthyma (sore mouth), foot rot, or any other contagious or communicable disease.

6.15.b. The commissioner will prohibit the importation of any sheep or lambs into this state that have a condition that can be treated with full immersion in a pesticidal solution, unless that animal has been so treated within 10 days prior to entry.

#### 6.16. Swine

6.16.a. No person may import into this state any swine that have been vaccinated for pseudorabies.

6.16.b. No person may import into this state any swine that does not have a valid official health certificate that identifies the animal and states that the animal is free of any infectious or contagious disease, unless the animal has been consigned to immediate slaughter upon entry.

6.16.c. No person may import into this state any swine that are to be used for breeding purposes that does not contain the following information on the official health certificate;

6.16.c.A. a negative brucellosis test within 1 month prior to importation into this state unless the animal is from a herd that has a certification from the United States Department of Agriculture as a Validated Brucellosis Free Herd and the official health certificate shows the date of the last brucellosis test on that herd; and

6.16.c.B. a negative official pseudorabies serologic test or other official pseudorabies test within 1 month prior to importation, unless the animal is from a herd that has a certification as a qualified pseudorabies negative herd.

6.16.d. All brucellosis tests must be a United States Department of Agriculture approved test.

#### 6.17. Wildlife

6.17.a. The commissioner will not allow the importation of any wildlife into this state without a valid official health certificate and without evidence that the animal has been issued a valid "Wildlife Importation Permit" by the Department of Natural Resources, unless that animal is not required to obtain that permit by the Department of Natural Resources.

#### 6.17.b. Cervidae and Elk

6.17.b.A. No person may import any animal of the Cervidae genus, except for animals that are consigned directly to slaughter, without a valid official health certificate issued by an accredited veterinarian and a special permit from the commissioner. The official health certificate shall indicate that the animal

6.17.b.A.(a) is from a herd that has had no tuberculosis reactors found during a complete herd test for tuberculosis on all animals six months of age and older within the 12 months prior to the importation; and

6.17.b.A.(b) is an animal that has had a negative tuberculosis test within 2 months prior to the importation of the animal; and

6.17.b.A.(c) that the animal has had a negative brucellosis test within 1 month prior to the importation of the animal.

6.17.b.B For purposes of this section of the rule, the complete herd test for tuberculosis shall use the single cervical test as prescribed by the United States Department of

Agriculture on December 31, 1990.

6.17.b.C. No person may import any animal of the Cervidae genus consigned directly to slaughter without an official health certificate and may only import an animal that has been exposed to tuberculosis or brucellosis with a VS FORM 1-27 issued by APHIS accompanying the animal.

6.17.c. No person may import any animal into West Virginia that is to be placed in a zoo, or is of a species likely to be found in a zoo, without a valid official health certificate issued by an accredited veterinarian. The official health certificate shall state that the animal has been examined within 1 month prior to entry and found to be free of any communicable disease nor known to have been exposed to any communicable disease.

#### 6.18 Dogs and Cats

6.18.a. No person may import any dog or cat into this state that is over 6 months of age without a valid official health certificate that states that the animal has had a rabies vaccination within the 12 months prior to the importation.

#### 6.19. Birds (Other than ratites)

6.19.a. No person shall import any bird that is from a flock that is known to be infected with pullorum/typhoid or that is from an area under quarantine for Avian Influenza or Viscerotropic Velogenic Newcastle Disease.

6.19.b. The commissioner requires that any bird that is imported into this state be accompanied by

6.19.b.A. a statement completed and signed by the owner of the bird upon entry that the bird has been free from disease for the 30 days prior to the importation of the bird and did not originate from a flock known to be infected with pullorum/typhoid;

6.19.b.B. a United States Department of Agriculture Form 9-2 from the tester stating that the birds have been tested for pullorum typhoid within 3 months prior to the date of the importation;

6.19.b.C. a United States Department of Agriculture Form 9-3 from the tester indicating that the bird has originated from a flock that is not infected with pullorum/typhoid; or

6.19.b.D. the commissioner will require that the bird must be tested for pullorum typhoid and shown to be free of disease by a tester at the time and place of importation.

6.20. Ratites

6.20.a. No person may import any ratite that is from a flock or farm that is known to be infected with any communicable disease.

6.20.b. The Commissioner requires that any ratite that is imported into this state be accompanied by

6.20.b.A. An approved health certificate issued by an accredited veterinarian; and

6.20.b.B. A negative AGID test for avian influenza in a federal approved laboratory within ten days prior to shipment with test date and results listed on the health certificate; and

6.20.b.C. Permanent identification listed on the health certificate; and

6.20.b.D. A Permit issued by the West Virginia Department of Agriculture, with the permit number listed on the interstate health certificate.

**§61-1-7. Rules for Livestock Sales**

7.1. The commissioner shall test all bovine animals for the presence of brucellosis that are over 18 months of age and sexually intact, except for

7.1.a. any male animal that is considered to be too dangerous to test; and

7.1.b. any official vaccinate that is under 20 months of age for animals of dairy-type breeds and under 24 months of age for animals of beef-type breeds.

7.2. The commissioner will require that any animal considered to be too dangerous to test for brucellosis be consigned directly to slaughter.

7.3. The commissioner ~~will~~ may require that any animal, including female nursing calves of a reactor, found to be a reactor for brucellosis at a public sale be issued a VS FORM 1-27 and be permanently identified as a brucellosis reactor by his agents at the sale and be consigned directly to a slaughterhouse from the public sale; except for male nursing calves which may be returned to the owner after castration.

7.4. The Commissioner will allow animals at a public sale found to be ~~exposed commingled to~~ with positive brucellosis-tested animals, as well as the animals that are positive to the buffered plate antigen at 1/25 dilution of serum and the standard card test to be;

7.4.a. returned to the owner in the State of West Virginia, after ~~the~~ the animal(s) and the herd of origin will be are placed under quarantine and animals not returned to ~~public sale~~ commerce until the ~~quarantined is removed~~ herd is tested clean.

7.4.b. returned to the owner in a state other than West Virginia after agreement of the commissioner, the United States Department of Agriculture and the animal health official of the state of origin.

7.5. The commissioner will require that any animal found to be diseased, down, drugged or dying be consigned directly to slaughter.

7.6. No person may import any cattle to a public sale from a United States Department of Agriculture "Class B" or "Class C" state unless that animal meets to requirements set forth in section 6 of this rule.

#### §61-1-8. Requirements for West Virginia Fairs, Festivals and Purebred Consignment Sales

##### 8.1. General

8.1.a. No person should import any animal into the state of West Virginia for showing at a fair, festival, show or sale without a valid official health certificate that has been received by the commissioner at least 5 days prior to the importation of the animal.

8.1.b. The commissioner will permit a nursing animal to move based on the test status of the dam.

##### 8.2. Cattle

8.2.a. No person may import an animal into this state for the purpose of exhibition without a valid official health certificate.

8.2.b. No person may import an animal into this state for the purpose of exhibition without a special permit when the commissioner requires that a special permit be issued due to a disease outbreak in the state of origin.

8.2.c. The commissioner recommends that no bovine or bison animal be exhibited in this state that is affected with warts, pinkeye, or ringworm.

##### 8.2.d. Tuberculosis

8.2.d.A. No person may show any bovine or bison

originating within this state unless the animal :

8.2.d.A.(a) is from a United States Department of Agriculture Accredited Tuberculosis Free Herd;

8.2.d.A.(b) is from a herd that has had a complete negative tuberculosis herd test within the 12 months prior to the show;

8.2.d.A.(c) will not be sold at the show and is less than 24 months of age;

8.2.d.A.(d) has had a negative tuberculosis test within the calendar year of the exhibition but prior to the date of exhibition; or

8.2.d.A.(e) will be shown in a slaughter class.

8.2.d.B. No person may show any bovine or bison originating from without this state unless the animal meets all the requirements of subparagraph 8.2.d.A. of these rules; except that

8.2.d.B.(a) the animal has had a negative tuberculosis test within 3 months prior to the date of exhibition, when a test is required; and

8.2.d.B.(b) animals shown in slaughter classes must have an individual test and meet the requirements of the paragraphs 6.12.e. and 6.12.f. of this rule, except that the negative tuberculosis test must be within 3 months prior to the importation into this state.

8.2.d.C. No person may offer any bovine or bison for sale at a purebred consignment sale unless that animal meets the requirements set forth in paragraphs 6.12.e. and 6.12.f. of this rule.

#### 8.2.e. Brucellosis

8.2.e.A. No person may exhibit any animal, except for steers, at a fair, festival or show that is from a herd that is under quarantine for brucellosis.

8.2.e.B. No person may exhibit an animal at a fair, festival or show that requires an official health certificate when that certificate does not show the animal to be a verifiable progeny of a particular herd.

8.2.e.C. No person may exhibit an animal at a fair, festival or show unless that animal originated from a herd

8.2.e.C.(a) that is a United States Department of Agriculture Certified Brucellosis Free Herd;

8.2.e.C.(b) the herd of origin has had a complete negative brucellosis test within the 12 months prior to the exhibition of that animal;

8.2.e.C.(c) the animal originates in West Virginia and has had a negative brucellosis test within the calendar year of the exhibition but prior to the exhibition except for official vaccinates that are less than 20 months of age for dairy type breeds, or 24 months of age for beef type breeds, in which case no individual test is required; or

8.2.e.C.(d) the animal originated in a state other than West Virginia and has had a negative brucellosis test within 1 month prior to the exhibition except for official vaccinates that are less than 20 months of age for dairy type breeds, or 24 months of age for beef type breeds, in which case no individual test is required.

8.2.e.D. No person may offer any bovine or bison for sale at a purebred consignment sale unless that animal meets the requirements of paragraph 6.12.j. of this rule.

#### 8.2.f. Leptospirosis

8.2.f.A. No person may exhibit any non-pregnant female animal or any other animal other than those to be slaughtered within 1 month after the exhibition at a fair, festival, or show unless that animal has been vaccinated with Leptospirosis pomona within 12 months prior to the exhibition.

8.2.f.B. No person may exhibit any animal that is required to have had a vaccination with Leptospirosis pomona without showing to the officials in charge of the exhibit a vaccination certificate that shows the date of vaccination, the name of the herd owner, the serial number of the vaccine, the pharmaceutical company distributing the vaccine and the name of the person vaccinating the animal.

8.2.f.C. The commissioner recommends, but does not require, that all bovines be vaccinated with Leptospirosis pomona, L. canicola, L. icterohaemorrhagiae, L. hardjo and L. grippotyphosa within 12 months prior to the date of the exhibition.

#### 8.3. Goat

8.3.a. No person may import any goat into this state for the purpose of showing at an exhibition without a valid official health certificate.

8.3.b. No person may import an animal into this state for the purpose of exhibition without a special permit when the commissioner requires that a special permit be issued due to a disease outbreak in the state of origin.

8.3.c. No person may import any goat showing signs of caseous lymphadenitis, unless the animal has been issued a written statement from an accredited veterinarian that the node, or nodes, show no signs of rupture during the time the animal is expected to be in this state.

8.3.d. The commissioner recommends that any goat being imported into this state follow the same rules for cattle for tuberculosis set forth in paragraph 8.2.d. of this rule.

8.3.e. The commissioner recommends that no goat be exhibited in this state that is affected with warts, pinkeye, or ringworm.

#### 8.4.. Equine

8.4.a. No person may exhibit any equine from any band that is under quarantine for any communicable disease.

8.4.b. No person may exhibit any equine that shows signs of any infectious or communicable disease.

8.4.c. The officials of the exhibition are responsible to see that all equines shown meet the requirements of this subsection.

8.4.d. No person may exhibit any equine originating from outside this state without a valid official health certificate that shows the test results for an E.I.A. test.

8.4.e. No person may exhibit any equine without a negative E.I.A. test within 24 months prior to the exhibition, if the animal originates from within this state, or that the animal has had a negative E.I.A. test within 12 months prior to the exhibition if the state of origin has an E.I.A. program at least equal to the program set forth in section 11 of this rule, or that the animal has had a negative E.I.A. test within 6 months prior to the exhibition.

8.4.e.A. For purposes of this section the negative E.I.A. test must have been performed in an approved United States Department of Agriculture laboratory.

#### 8.5. Sheep and Lambs

8.5.a. No person may exhibit any sheep or lamb that is capable of breeding that does not have a valid official health

certificate or that does not have a certificate that the animal originates from an Honor Flock as designated by the commissioner.

8.5.b. The commissioner will inspect all sheep or lambs in the market class for the presence of any infectious disease when the animal is exhibited. The commissioner may refuse to allow an animal to be shown based on the results of the examination.

#### 8.6. Swine

8.6.a. No person may exhibit any swine without an official health certificate or official test record from an approved pseudorabies laboratory that shows that the animal has had a negative pseudorabies test within 60 days prior to the exhibition or that shows that the animal is from a qualified pseudorabies negative herd. The chart or record shall show the qualified pseudorabies negative number and the date(s) of the last qualifying test(s).

8.6.b. No person may exhibit any swine originating within this state that is capable of breeding that has not had an examination by a veterinarian within 5 days prior to the exhibition and been found to be free from any symptoms of infectious disease.

8.6.b.A. For purposes of this section a serum neutralization test or other pseudorabies test approved by APHIS will be accepted.

8.6.c. The commissioner may require a statement from the animal health official of the state of origin that the animal did not originate from an area where pseudorabies is known to be present.

#### 8.7. Birds

8.7.a. The provisions of subsection 6.19 of this rule apply to the exhibition of birds in this state.

8.7.b. The management of the exhibit shall maintain records of the documents required by this section including the names and addresses of all exhibitors and the number of birds exhibited by those persons for a period of 2 years after the show and shall provide the records to the commissioner upon request.

8.7.c. The management of the exhibit shall deny entry to all birds of a particular owner when any one of the birds of that owner tests positive for pullorum-typhoid.

8.7.d. The owner of any bird found to test positive for pullorum typhoid will submit the bird to the commissioner who will necropsy the bird and sample the tissues for recovery of the organism.

## §61-1-9. Official Vaccinates

9.1. Official vaccinates are calves that have been vaccinated for brucellosis between the ages of 120 days and 240 days by an accredited veterinarian who

9.1.a. marks the calf at the time of vaccination with a legible tattoo consisting of the numeral of the quarter of the year, a "V-shield", followed by number indicating the last number in the current year in the right ear of any calf and securely fastens a metal ear tag in the right ear of any calf that does not already have a legible purebred registration tattoo; and who

9.1.b. completes a Calfhood Vaccination Report on the animal using forms supplied by the commissioner. The completed report contains the name and address of the owner of the calf, the county where the animal was located when vaccinated, the date of the vaccination, the manufacturer and serial number of the vaccine, the number of the ear tag or the purebred animal tattoo, a stamp of the tattoo, the breed, designation of purebred or grade, the sex of the animal, the date of birth, the name and address of the person completing the report.

9.2. The accredited veterinarian shall forward the original and one copy of the Calfhood Vaccination Report to the commissioner, in care of the Animal Health Division and one copy to the owner of the calf no later than five days following the vaccination. The accredited veterinarian shall keep one copy of the report for ten years following the vaccination.

9.3. No person shall classify any official vaccinate as a reactor or suspect for brucellosis, even though the test results may indicate a reactor or suspect, until the animal has been tested after they have reached 20 months of age for animals of the dairy breeds or 24 months of age for animals of the beef breeds.

9.4. The commissioner will classify vaccinated calves or adults from herds containing reactors to brucellosis as reactors when reaching the age of 20 months for animals of dairy type breeds or 24 months for animals of beef type breeds, only if they have a titer of a reactor.

## §61-1-10. Establishment and Maintenance of a Certified Brucellosis Free Herd.

10.1 For the purpose of this section, the term herd means one or more cattle six months of age or older that are cows or bulls. No steers or spayed heifers or official vaccinates that are less than 20 months of age for dairy animals or 24 months of age for beef animals will be considered to be part of a herd. A herd shall be located on a farm any may consist of animals located in separate

fields of a farm. The animals in a herd may have several owners.

#### 10.2. Establishment of Herd Status

10.2.a. The owner, or owners, of the herd must sign an agreement with the commissioner that they will comply with WV Code §19-9-20 through 24 and with the provisions of this rule.

10.2.b. The commissioner and the United States Department of Agriculture will certify the herd as brucellosis free after two series of tests for brucellosis between 10 and 14 months apart shows that all animals in the herd are free from brucellosis.

10.2.c. The commissioner and the United States Department of Agriculture will then issue a certificate for the Certified Brucellosis Free herd. The certificate shall be valid for one year unless sooner revoked by the commissioner for non-compliance with the provisions of WV Code §19-9-20 through 24 or with the provisions of this rule.

#### 10.3. Maintenance of Herd Status

10.3.a. The commissioner and the United States Department of Agriculture will renew a certificate for a Certified Brucellosis Free Herd for the period of one year when the herd has shown no reactors after a complete herd test.

10.3.b. The owner, or owners, of the herd shall cause any animal in a certified herd that is suspected of having brucellosis to be segregated from the herd. The animal shall be retested between 30 and 60 days after the initial test. If the animal is found to test negative to the retest, it can be returned to the herd and the animal will not be the cause for non-renewal of the certified herd certificate. The commissioner recommends that all animals in the herd be tested at 180 days under these conditions.

10.3.b.A. If the suspect tests as a reactor during the subsequent test, then all animals in the herd shall be tested again for brucellosis.

10.3.c. If more than one reactor is found in a herd, the commissioner will refuse to renew, or revoke, the certificate and the owner of the herd must be in the process of establishment of herd status.

10.3.c.A. The commissioner shall quarantine the herd until brucellosis testing has been performed to establish the status of the herd and the animals in the herd.

#### 10.3.d. Addition of animals

10.3.d.A. The owner, or owners, of the herd may add animals to the herd during the period of establishment of herd status or while the herd is certified under the following conditions:

10.3.d.A.(a). The animal is from a herd that is certified as free of brucellosis. The commissioner will not require the animal to have had a test for brucellosis prior to entry.

10.3.d.A.(b). The animal is over 6 months of age and is from a herd that is in the process of establishing brucellosis certification. The animal must have a negative brucellosis test within 30 days of importation into the herd. The animal must be separated from other animals in the herd until they show a negative brucellosis test at 60 days after importation into the herd and segregation.

#### §61-1-11. Equine Infectious Anemia

11.1. The commissioner shall immediately quarantine any equine that is found to be an E.I.A. Reactor. The quarantine shall extend to all Exposed E.I.A. Animals and to any place or location that the commissioner deems necessary to protect the health of the equines of this state.

11.1.a. The commissioner may consider all racehorses handled by the same trainer as Exposed E.I.A. Animals.

11.1.b. The commissioner may consider all other equines that have been housed in the same shed row or stall area as Exposed E.I.A. Animals.

11.1.c. If the E.I.A. Reactor has a foal, the foal should be isolated from the reactor as soon as possible after birth and E.I.A. tested. Any foal that is found to be an E.I.A. Reactor shall be placed under quarantine. If the foal is tested at 12 months of age and found to be an E.I.A. Reactor at that time, then the quarantine shall remain in effect and the commissioner will brand the animal.

11.2. Under terms of the quarantine the commissioner will require the E.I.A. Reactor to be isolated from all equines by stabling or pasturing at least 200 yards from all other equines.

11.3. The commissioner will identify all E.I.A. Reactors with a visible freeze brand under the mane on the left side of the equine. The brand shall start with "54 A" and end with a number that the commissioner assigns to the equine.

11.4. The commissioner will allow the E.I.A. Reactor to be

removed from the quarantine area only upon written permission.

11.5. The quarantine will remain in effect for all Exposed E.I.A. Animals after the E.I.A. Reactor has been removed.

11.6. The commissioner shall not release the quarantine for Exposed E.I.A. Animals until all Exposed E.I.A. Animals have been determined to be non-E.I.A. Reactors at least 30 days after the E.I.A. Reactor has been removed from the band.

11.7. The commissioner will perform testing for Equine Infectious Anemia on any other equine that the E.I.A. Reactor has been in contact with during the past 12 months, within the limits of his resources.

11.8. The commissioner will not pay an indemnity for any E.I.A. Reactor that must be destroyed.

#### §61-1-12. Pseudorabies in Swine

12.1. No person shall perform a test for pseudorabies on any swine without placing an eartag on each animal that is not previously identified with ear notches for their purebred registry. The commissioner will allow only a metal eartag be used for identification of feeder pigs, when eartags are used. The person performing the test shall record the sex, age, breed and the identification of the animal by the eartag number or by recording the purebred registry ear notches.

12.2. No person shall sell, lend, lease, or trade any feeder or breeder swine in this state, or import into this state or export out of this state any feeder pig unless that animal

12.2.a. originates from a pseudorabies monitored herd or a qualified pseudorabies negative herd from within this state, or from a herd that meets or exceeds the requirements of these herds provided by this section; or

12.2.b. the animal has been tested and found to be free of pseudorabies within 1 month prior to the movement of the animal or the date of the sale.

#### 12.3. Pseudorabies Monitored Herds

12.3.a. A swine breeding herd may establish their status as a pseudorabies monitored herd after all the animals required by this subsection have been found to be free of pseudorabies. All boars will be tested. All sows will be tested in herd of 10 sows or fewer. Ten randomly selected sows will be tested in herds containing 11 to 35 sows. Thirty percent of the sows, or 30 randomly selected sows, whichever is fewer, will be tested in herds

containing 36 or more sows.

12.3.b. A swine breeding herd may maintain their status as a pseudorabies monitored herd when a herd test performed twelve months after the previous test on the animals prescribed by subsection 12.3.a., all the boars, and thirty percent of the sows added to the herd since the previous herd test has shown that all animals are free from pseudorabies.

#### 12.4. Qualified Pseudorabies Negative Herds

12.4.a. A swine breeding herd may establish their status as a qualified pseudorabies negative herd after the provisions of Title 9 Part 85.1 of the Code of Federal Regulations have been met; and

12.4.a.A. all swine over 6 months of age, plus a number of progeny equal to 20% of the breeding swine population of the herd (Progeny shall be randomly selected from the older swine in the herd less than 6 months of age.) have been found to be free of disease when tested using an official pseudorabies serologic test, the herd is not known to have been exposed to the disease within the month previous to the test, and at least ninety percent of the animals in the herd have been in the herd and on the premises for at least 2 months prior to the test or have entered the herd directly from another qualified pseudorabies negative herd.

12.4.b. A swine breeding herd may maintain their status as a qualified pseudorabies negative herd after

12.4.b.A. all swine over 6 months of age, and their progeny as described in Section 12.4.a.A. Of this rule have been found to be free of disease when tested using an official pseudorabies serologic test; and

12.4.b.B. twenty-five percent of all swine over 6 months of age and their progeny as described in Section 12.4.a.A. of this rule have been found to be free of disease when tested every 80-105 days using an official pseudorabies serologic test, provided that no animal will be tested more often than once every 12 months; or ten percent of all swine over 6 months of age and their progeny as described in Section 12.4.a.A. of this rule have been found to be free of disease when tested every month using an official pseudorabies serologic test, provided that no animal is tested more often than once every 10 months.

12.5. The commissioner will accept a valid Swine Herd Health Certificate issued by the state veterinarian as proof that any animal is part of a Pseudorabies Negative Herd.

12.6. The commissioner will accept an official

pseudorabies test chart indicating that the animal has been tested and found free of pseudorabies within the past month and identifying the individual feeder pig tested as proof that the animal is free of pseudorabies.

12.7. The commissioner will quarantine any swine herd when any animal is found to be a reactor to an official pseudorabies test. The quarantine may be released only after the provisions of Title 9 Part 85.1 of the Code of Federal Regulations has been met including:

12.7.a. depopulation of all animals that have found to be reactors and all exposed swine, followed by cleaning and disinfecting the location of the herd by a method that has been approved by the commissioner; or

12.7.b. removal of all swine that have been found to be reactors, cleaning and disinfecting the premises as directed by the commissioner, followed by the testing schedule as follows:

12.7.b.A. after 1 month, testing all swine, except for nursing animals and finding all animals to test negative to pseudorabies, then

12.7.b.B. after an additional 1 to 2 months, testing all swine over 6 months of age and finding all animals to test negative to pseudorabies.

#### §61-1-13. Rules for Hatcheries, Growers and Contractors Pertaining to Poultry Disease Control and Eradication

##### 13.1. General

13.1.a. For the purposes of this section a flock means a group of poultry that are characteristic of the breed, variety, cross or other combination which they are stated to represent.

13.1.b. The owners of any flock shall test all poultry on the premises, except for wild birds or unmated and segregated birds held for laying purposes, for pullorum-typhoid.

13.1.c. No person shall maintain a flock containing any individuals testing positive for pullorum-typhoid without complying with the provisions of this section of this rule.

13.1.d. The commissioner intends for the provisions of this section of the rule to supplement, and not supersede, the regulations set forth in the National Poultry Improvement Plan and Auxiliary Provisions set forth in Title 44 of the Code of Federal Regulations Parts 145 through 147 (published October 26, 1979).

13.1.e. Any person owning a hatchery or a flock will be responsible for furnishing transportation on the premises and necessary labor needed for handling birds at no expense to the commissioner or the tester when needed by the tester to perform his duties under this section of the rule.

13.1.f. The commissioner requires that all birds found to be reactors or suspected of being a reactor to any disease be removed from the flock and destroyed within 10 days after the test was reported. The owner of the animal must certify to the commissioner that the birds were destroyed within 10 days of test results in a manner approved by the commissioner.

### 13.2. Testing

13.2.a. The commissioner will accept only official test results. The commissioner will accept tests performed by inspectors certified by the commissioner and performed according to the provisions of this section of the rule and the National Poultry Improvement Plan and Auxiliary Provisions as official tests.

13.2.b. No person may use any chicken for breeding purposes without having that animal tested and found negative for the presence of pullorum-typhoid when over 5 months of age but before the animal is used for breeding.

13.2.c. No person may use any turkey for breeding purposes without having that animal tested and found negative for the presence of pullorum-typhoid when over 4 months of age, but before the animal is used for breeding.

13.2.d. The commissioner will not accept any test performed with any lot of pullorum-typhoid antigen that was not approved by the United States Department of Agriculture.

13.2.e. The commissioner will not accept any test performed with pullorum-typhoid antigen on any animal that has had a previous test with any Salmonella antigen within 21 days of the pullorum-typhoid test.

13.2.f. The commissioner shall set the fee for testing and inspection at a rate to reflect the actual costs of doing the testing and inspection for the commissioner's employees. The costs for testing and inspection for the commissioner's employees is 24 cents per mile for all travel and \$10 per hour for the time for travel, testing and inspection. The owner of the birds tested shall pay the fee to the West Virginia Department of Agriculture within 10 days of billing by the commissioner.

13.2.g. The owner of birds may contract with independent certified testers to perform official testing and inspection. The fees charged by the independent certified tester are not bound by

the fees charged by the commissioner.

13.2.h. The tester shall identify each bird that has been officially tested with an officially sealed and numbered leg or wing band.

### 13.3. Reporting

13.3.a. All persons owning hatcheries shall report the total number of eggs set and the total number of chicks and poults hatched on a weekly basis to the Federal-State Crop and Livestock Reporting Service, United States Department of Agriculture, Capitol Building/Guthrie Center, Charleston, West Virginia 25305.

13.3.b. The tester shall mail all official test records within seven days of the completion of the test on the flock to the commissioner, in care of the Animal Health Division, Charleston, WV. The official test records shall include the name and address of the owner of the birds, the date of test, the number of the leg or wing band attached to the bird, the test results and the total number of birds tested in the flock.

13.3.c. Any dealer in baby chicks and broiler contractors shall keep records of the number of shipments of chicks and poults into this state for a period of 5 years and shall provide them to the commissioner upon request.

### 13.4. Classification of a flock

13.4.a. The provisions of the National Poultry Improvement Plan and Auxiliary Provisions will determine the classification of a flock.

13.4.b. The commissioner will not consider the test results of any animal for the purposes of classifying the flock that was found to be a reactor using antigen and subsequently found to be not infected upon necropsy and subsequent bacterial examination.

SENATE BILL NO. 31

(By Senators Manchin, Anderson, Boley, Grubb and  
Macnaughtan)

[Introduced January 20, 1995; referred to the  
Committee on Agriculture; and then to the  
Committee on the Judiciary]

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61-1

10 A BILL to amend and reenact section one, article nine, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 commissioner of agriculture to promulgate legislative rules  
14 relating to animal disease control.

15 Be it enacted by the Legislature of West Virginia:

16 That section one, article nine, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS  
20 TO PROMULGATE LEGISLATIVE RULES.

21 §64-9-1. Commissioner of agriculture.

22 (a) The legislative rules filed in the state register on the  
23 sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers),  
22 are authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the twenty-fourth day of  
13 September, one thousand nine hundred ninety-one, relating to the  
14 commissioner of agriculture (commercial feed), are authorized  
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new  
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any  
19 commercial feed or feed ingredients used in the manufacture of  
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new  
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed  
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new  
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the  
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for  
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir dupois) of the commercial feed  
8 and each feed ingredient used in the feed shall not be required  
9 to be listed."

10 (y) The legislative rules filed in the state register on the  
11 fourth day of June, one thousand nine hundred ninety-one,  
12 modified by the commissioner of agriculture to meet the  
13 objections of the legislative rule-making review committee and  
14 refiled in the state register on the second day of August, one  
15 thousand nine hundred ninety-one, relating to the commissioner  
16 of agriculture (wood destroying insect treatment standards), are  
17 authorized.

18 (z) The legislative rules filed in the state register on the  
19 twentieth day of December, one thousand nine hundred ninety,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the thirtieth day of April, one  
23 thousand nine hundred ninety-one, relating to the commissioner  
24 of agriculture (fee structure for the pesticide control act of  
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twelfth day of November, one  
6 thousand nine hundred ninety-one, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on  
9 the eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the tenth day of September, one  
13 thousand nine hundred ninety-one, relating to the commissioner  
14 of agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the  
16 twenty-sixth day of July, one thousand nine hundred ninety-one,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the sixteenth day of October,  
20 one thousand nine hundred ninety-one, relating to the  
21 commissioner of agriculture (licensing of pesticide businesses),  
22 are authorized.

23 (dd) The legislative rules filed in the state register on the  
24 eighth day of August, one thousand nine hundred ninety-one,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the second day of October, one  
3 thousand nine hundred ninety-one, relating to the commissioner of  
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on  
6 the eighth day of August, one thousand nine hundred ninety-one,  
7 modified by the commissioner of agriculture to meet the  
8 objections of the legislative rule-making review committee and  
9 refiled in the state register on the twenty-fourth day of  
10 September, one thousand nine hundred ninety-one, relating to the  
11 commissioner of agriculture (assessment of civil penalties and  
12 procedures for consent agreements and negotiated settlements),  
13 are authorized.

14 (ff) The legislative rules filed in the state register on  
15 the eighth day of August, one thousand nine hundred ninety-one,  
16 modified by the commissioner of agriculture to meet the  
17 objections of the legislative rule-making review committee and  
18 refiled in the state register on the twenty-fourth day of  
19 September, one thousand nine hundred ninety-one, relating to the  
20 commissioner of agriculture (aerial application of herbicides to  
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on  
23 the eighth day of August, one thousand nine hundred ninety-one,  
24 modified by the commissioner of agriculture to meet the  
25 objections of the legislative rule-making review committee and

1. refiled in the state register on the twenty-fourth day of  
2 September, one thousand nine hundred ninety-one, relating to the  
3 commissioner of agriculture (frozen desserts and imitation frozen  
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and  
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code  
9 §19-11B-1 et seq. or of these rules against the manufacturer of  
10 product and/or the distributor of the mix used to manufacture  
11 the product.

12 15.2. The commissioner will assess any violations of W. Va.  
13 Code §19-11B-1 et seq. or of this rule to the distributor for  
14 mix sampled from unopened containers. The company will not be  
15 assessed additional cumulative notices of violations until the  
16 commissioner has determined that the firm has had adequate notice  
17 of the previous notice, generally 10 days from the mailing of the  
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official  
20 product sample(s) taken on separate days within a one year period  
21 are found to be adulterated or misbranded, the commissioner shall  
22 send a written "First Notice" to the manufacturer or distributor  
23 whichever is appropriate. This notice shall notify the  
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy  
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official  
4 product sample(s) taken on separate days within a one year period  
5 are found to be adulterated or misbranded the commissioner shall  
6 send a written "Second Notice" to the manufacturer or distributor  
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official  
9 product sample(s) within 21 days of the sending of a Second  
10 Notice to the manufacturer or distributor, but shall not collect  
11 product samples before the lapse of 7 days from the sending of a  
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official  
14 product sample(s) taken on separate days within a one year period  
15 are found to be adulterated or misbranded the commissioner shall  
16 send a written "Third Notice" to the manufacturer or distributor  
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official  
19 product sample(s) within 21 days of the sending of the Third  
20 Notice to the manufacturer or distributor, but shall not collect  
21 additional product samples before the lapse of 7 days from the  
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a  
24 period of 24 hours to a manufacturer or distributor when the  
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when  
2 three out of the last five samples from the same machine are  
3 violative. The "Shut-down Order" will normally be issued with  
4 the "Third Notice". The "Shut-down Order" will give the reasons  
5 for the order, state the portion of the manufacturing or  
6 distributing operation that is prohibited from operating while  
7 the order is in effect, give conditions of the order, state the  
8 length of time that the Shut-down Order will be in effect and  
9 specify a time and place for a hearing to be held in this matter.  
10 Except that in the case where the public health, safety or  
11 welfare is at risk, the commissioner will issue an immediate  
12 Shut-down Order and give notice to the manufacturer or  
13 distributor under the provisions of subdivision 15.6.a. of this  
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down  
16 Order without giving the manufacturer or distributor the  
17 opportunity to be heard where there is a hazard to the public  
18 health, safety or welfare. In these cases, the manufacturer or  
19 distributor will be given the opportunity to request a hearing  
20 before the commissioner after the notification of the order is  
21 received by the manufacturer or distributor. All Shut-down  
22 Orders issued due to noncompliance with subdivision 8.1.c.,  
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk  
24 to the public health, safety or welfare.

1        15.6.b. The manufacturer or distributor will be responsible  
2 for causing all operations covered by the Shut-down Order to  
3 cease and follow all other conditions of the order. At the end  
4 of the period of the order, the manufacturer or distributor may  
5 resume operations without further action by the commissioner.

6        15.7. If after a Shut-down Order has been issued the  
7 commissioner finds that effective corrective action has not been  
8 taken, he may issue a suspension of the Frozen Desserts  
9 Manufacturer Permit. The suspension shall state the time that  
10 the suspension will become effective, give the reasons for the  
11 suspension and specify a time and place for a hearing to be held  
12 in this matter. Except that in the case of a summary suspension  
13 the commissioner will give the manufacturer the opportunity to  
14 request a hearing in this matter subsequent to the notification  
15 of the suspension.

16        15.7.a. All suspensions due to nonconformance to subdivision  
17 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.

18        15.7.b. A suspension of the Frozen Desserts Manufacturer  
19 Permit remains in effect until the manufacturer submits and the  
20 commissioner accepts a written plan of correction and a request  
21 for a reinstatement of the permit.

22        15.7.c. The commissioner has seven days from the date of  
23 receipt of this application to respond to a suspension in the  
24 case of violations of subdivision 8.1.c., 8.1.d. or 8.1.g. of  
25 this rule and fourteen days to respond for all other violations

1 of W. Va. Code §19-11B-1 et seq. or these rules. The  
2 commissioner will accept or deny the application for a  
3 reinstatement of the permit and will give the terms and  
4 conditions under which the permit will be reinstated.

5 15.8. If the commissioner finds that after the firm has  
6 resumed production following a suspension of their Frozen  
7 Desserts Manufacturer Permit that effective corrective action  
8 has not been taken, then the commissioner will hold a hearing to  
9 determine if the Frozen Desserts Manufacturer Permit should be  
10 revoked.

11 15.9. Persons who manufacture a product on an intermittent or  
12 infrequent basis, so that the standard enforcement policy cannot  
13 apply, will enter into a consent agreement with the commissioner  
14 for correction of all items found to be not in conformance with  
15 W. Va. Code §19-11B-1 et seq. or these rules.

16 15.10. Whenever an antibiotic or pesticide residue test is  
17 found to be above tolerance, the commissioner shall notify the  
18 manufacturer and/or distributor immediately of this fact and  
19 shall begin an investigation to determine the cause of the  
20 residue. The commissioner shall require that any person found  
21 to be responsible for the residue shall correct the cause of the  
22 residue prior to the resumption of the manufacturing or  
23 distribution of the product.

24 15.11. A person who performs a recall by voluntarily removing  
25 product from sale and distribution in an effective manner so as

1 to limit the potential harm to the health and well-being of the  
2 public may be eligible for exemptions from the normal enforcement  
3 policy. The commissioner shall consider the facts of each case  
4 when making a decision on an exemption.

5 15.12. The commissioner may apply the enforcement policy in a  
6 liberal manner in cases where all official product sample results  
7 that involve a product in the form actually sold to the public  
8 have been found to be in conformance with W. Va. Code §19-11B-1  
9 et seq. or these rules.

10 15.13. The commissioner may suspend the standard enforcement  
11 policy in cases where such action is necessary to protect the  
12 public health, safety or welfare.

13 15.14. Resamples will only be taken from machines that were  
14 shown to be producing violative product the previous visit,  
15 except for resamples needed to check that the nonviolative status  
16 is being maintained according to the following schedule:

17 15.14.a. After a first notice and one nonviolative sample,  
18 resamples will be taken between 5 to 6 months after the  
19 nonviolative sample.

20 15.14.b. After a second notice and one nonviolative sample,  
21 resamples will be taken between 3-4 months after the nonviolative  
22 sample.

23 15.14.c. Other resamples may be considered necessary to  
24 determine that the nonviolative status is being maintained."

1 (hh) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-fourth day of  
6 September, one thousand nine hundred ninety-one, relating to the  
7 commissioner of agriculture (West Virginia apiary law of 1991),  
8 are authorized.

9 (ii) The legislative rules filed in the state register on  
10 the eighth day of August, one thousand nine hundred ninety-one,  
11 modified by the commissioner of agriculture to meet the  
12 objections of the legislative rule-making review committee and  
13 refiled in the state register on the twenty-fourth day of  
14 September, one thousand nine hundred ninety-one, relating to the  
15 commissioner of agriculture (disposal of dead poultry), are  
16 authorized with the amendments set forth below:

17 On page two, section two, by adding a new subsection to read  
18 as follows:

19 "2.8 'Disposal pit' means an opening dug in the ground to a  
20 minimum depth of six feet, containing a minimum capacity of 150  
21 cubic feet, covered with a minimum of 12 inches of dirt, and  
22 provided with one or more openings for the introduction of  
23 poultry. The openings shall be a minimum size of eight inches  
24 square and equipped with tight lids. A disposal pit shall be  
25 located in a site which will prevent contamination of the

1 groundwater or the surface water. This site should conform to  
2 the standards established in this rule."

3 On page two, subsection 3.1 after the word "incinerator," by  
4 adding the words "disposal pit,"

5 And,

6 On page two, by adding a new section, designated section 4,  
7 to read as follows:

8 "§61-1C-4. Standards for Site Location for Disposal Pits.

9 4.1 No part of a disposal pit system shall be located in a  
10 poorly drained or filled area, or in any area where seasonal  
11 flooding occurs.

12 4.2 No part of a disposal pit system shall be located within  
13 10 feet of a building, foundation or property line.

14 4.3 No part of a disposal pit system shall be located within  
15 50 feet of a public water supply line or within 10 feet of a  
16 private water supply system.

17 4.4 A disposal pit shall be located at least 50 feet from a  
18 private well or groundwater supply.

19 4.5 There shall be a minimum of three feet between the bottom  
20 of a disposal pit and seasonal groundwater or rock, shale or any  
21 other impermeable layer.

22 4.6 The evaluation of the site for installation of a disposal  
23 pit shall be based upon percolation test results. Percolation  
24 tests shall be performed in the following manner:

1        4.6.1 Location - At least two holes shall be placed over the  
2 selected site. The results of these two test holes will be  
3 averaged.

4        4.6.2 Holes shall be dug or bored from six to eight inches  
5 in diameter at the site where the disposal pit will be installed.  
6 The holes should be at least 24 inches in depth.

7        4.6.3 The bottom and sides of the holes shall be scratched  
8 with a sharp pointed instrument or wire brush to remove any  
9 smeared soil surfaces which interfere with the absorption of  
10 water into the soil.

11       4.6.4 Loose dirt shall be removed from the bottom of the test  
12 holes and two inches of coarse sand or fine gravel shall be  
13 placed into the holes to prevent sealing.

14       4.6.5 An eight or ten penny nail shall be placed in the wall  
15 of each hole exactly six inches above the level of sand or  
16 gravel.

17       4.6.6 The test hole shall be completely filled with water to  
18 ground level. Water in the hole shall be kept to a depth of at  
19 least 12 inches for a minimum period of four hours before  
20 beginning the percolation rate measurement.

21       4.7 Percolation rate measurement - Upon completion of the  
22 above, the water depth in the holes shall be adjusted to the  
23 level of the nail. The number of minutes it takes for this six  
24 inches of water (all the water) to be absorbed into the soil  
25 shall be accurately determined. This time in minutes, divided by

1 six, gives the rate of fall per inch. The average rate of fall  
2 must be between five minutes and 60 minutes."

3 (jj) The legislative rules filed in the state register on  
4 the eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the commissioner of agriculture to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the twenty-fourth day of  
8 September, one thousand nine hundred ninety-one, relating to the  
9 commissioner of agriculture (licensing of livestock dealers), are  
10 authorized.

11 (kk) The legislative rules filed in the state register on the  
12 fifteenth day of September, one thousand nine hundred ninety-two,  
13 modified by the commissioner of agriculture to meet the  
14 objections of the legislative rule-making review committee and  
15 refiled in the state register on the eighteenth day of November,  
16 one thousand nine hundred ninety-two, relating to the  
17 commissioner of agriculture (commercial feed), are authorized.

18 (ll) The legislative rules filed in the state register on the  
19 fifteenth day of September, one thousand nine hundred ninety-two,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the nineteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the  
24 commissioner of agriculture (general groundwater protection rules  
25 for fertilizers and manures), are authorized.

1 (mm) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred ninety-two,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of February,  
6 one thousand nine hundred ninety-three, relating to the  
7 commissioner of agriculture (primary and secondary containment of  
8 fertilizers), are authorized with the amendments set forth below:

9 "On page five, by striking out all of subsection 5.5 and  
10 inserting in lieu thereof a new subsection 5.5 to read as  
11 follows: 'The operator or his licensed representative shall sign  
12 and date each application under oath.'; and

13 On page eighteen, by striking out all of subsection 14.1 and  
14 inserting in lieu thereof a new subsection 14.1 to read as  
15 follows:

16 'All moneys for the purpose of the enforcement and  
17 administration of this rule shall come from general revenue funds  
18 appropriated by the legislature for that purpose. The net  
19 proceeds of civil penalties collected pursuant to W. Va. Code  
20 §20-5M-10a or any civil administrative penalties collected  
21 pursuant to W. Va. Code §20-5M-10c will be deposited in the  
22 groundwater remediation fund established in W. Va. Code §20-5M-1.  
23 et seq.'".

24 (nn) The legislative rules filed in the state register on the  
25 fifteenth day of September, one thousand nine hundred ninety-two,

1 modified by the commissioner of agriculture to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of February,  
4 one thousand nine hundred ninety-three, relating to the  
5 commissioner of agriculture (general groundwater protection rules  
6 for pesticides), are authorized.

7 (oo) The legislative rules filed in the state register on the  
8 fifteenth day of September, one thousand nine hundred ninety-two,  
9 modified by the commissioner of agriculture to meet the  
10 objections of the legislative rule-making review committee and  
11 refiled in the state register on the nineteenth day of February,  
12 one thousand nine hundred ninety-three, relating to the  
13 commissioner of agriculture (bulk pesticide operational rules),  
14 are authorized.

15 (pp) The legislative rules filed in the state register on the  
16 fifteenth day of September, one thousand nine hundred ninety-two,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the nineteenth day of February,  
20 one thousand nine hundred ninety-three, relating to the  
21 commissioner of agriculture (non-bulk pesticide rules for  
22 permanent operational areas), are authorized.

23 (qq) The legislative rules filed in the state register on the  
24 sixteenth day of April, one thousand nine hundred ninety-three,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twenty-sixth day of July,  
3 one thousand nine hundred ninety-three, relating to the  
4 commissioner of agriculture (animal disease control), are  
5 authorized.

6 (rr) The legislative rules filed in the state register on  
7 the third day of August, one thousand nine hundred ninety-three,  
8 modified by the commissioner of agriculture to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the eighth day of October, one  
11 thousand nine hundred ninety-three, relating to the commissioner  
12 of agriculture (auctioneers), are authorized.

13 (ss) The legislative rules filed in the state register on the  
14 twenty-second day of July, one thousand nine hundred ninety-four,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the ninth day of August, one  
18 thousand nine hundred ninety-four, relating to the commissioner  
19 of agriculture (animal disease control), are authorized.

20

21 NOTE: The purpose of this bill is to authorize the  
22 Commissioner of Agriculture to promulgate legislative rules  
23 relating to animal disease control.

24

25 Strike-throughs indicate language that would be stricken from  
26 the present law, and underscoring indicates new language that  
27 would be added.

Bill-Agriculture, Animal

61-1

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9E12 H. B. 2136

(By Delegates Gallagher, Douglas, Compton,  
Linch, Faircloth and Riggs )  
(Introduced January 23, 1995 ; referred to the  
Committee on Agriculture and Natural Resources then )  
the Judiciary

10 A BILL to amend and reenact section one, article nine, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 commissioner of agriculture to promulgate legislative rules  
14 relating to animal disease control.

15 Be it enacted by the Legislature of West Virginia:

16 That section one, article nine, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS  
20 TO PROMULGATE LEGISLATIVE RULES.

21 §64-9-1. Commissioner of agriculture.

22 (a) The legislative rules filed in the state register on the  
23 sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers),  
22 are authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the twenty-fourth day of  
13 September, one thousand nine hundred ninety-one, relating to the  
14 commissioner of agriculture (commercial feed), are authorized  
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new  
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any  
19 commercial feed or feed ingredients used in the manufacture of  
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new  
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed  
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new  
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the  
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for  
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir dupois) of the commercial feed  
8 and each feed ingredient used in the feed shall not be required  
9 to be listed."

10 (y) The legislative rules filed in the state register on the  
11 fourth day of June, one thousand nine hundred ninety-one,  
12 modified by the commissioner of agriculture to meet the  
13 objections of the legislative rule-making review committee and  
14 refiled in the state register on the second day of August, one  
15 thousand nine hundred ninety-one, relating to the commissioner  
16 of agriculture (wood destroying insect treatment standards), are  
17 authorized.

18 (z) The legislative rules filed in the state register on the  
19 twentieth day of December, one thousand nine hundred ninety,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the thirtieth day of April, one  
23 thousand nine hundred ninety-one, relating to the commissioner  
24 of agriculture (fee structure for the pesticide control act of  
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twelfth day of November, one  
6 thousand nine hundred ninety-one, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on  
9 the eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the tenth day of September, one  
13 thousand nine hundred ninety-one, relating to the commissioner  
14 of agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the  
16 twenty-sixth day of July, one thousand nine hundred ninety-one,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the sixteenth day of October,  
20 one thousand nine hundred ninety-one, relating to the  
21 commissioner of agriculture (licensing of pesticide businesses),  
22 are authorized.

23 (dd) The legislative rules filed in the state register on the  
24 eighth day of August, one thousand nine hundred ninety-one,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the second day of October, one  
3 thousand nine hundred ninety-one, relating to the commissioner of  
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on  
6 the eighth day of August, one thousand nine hundred ninety-one,  
7 modified by the commissioner of agriculture to meet the  
8 objections of the legislative rule-making review committee and  
9 refiled in the state register on the twenty-fourth day of  
10 September, one thousand nine hundred ninety-one, relating to the  
11 commissioner of agriculture (assessment of civil penalties and  
12 procedures for consent agreements and negotiated settlements),  
13 are authorized.

14 (ff) The legislative rules filed in the state register on  
15 the eighth day of August, one thousand nine hundred ninety-one,  
16 modified by the commissioner of agriculture to meet the  
17 objections of the legislative rule-making review committee and  
18 refiled in the state register on the twenty-fourth day of  
19 September, one thousand nine hundred ninety-one, relating to the  
20 commissioner of agriculture (aerial application of herbicides to  
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on  
23 the eighth day of August, one thousand nine hundred ninety-one,  
24 modified by the commissioner of agriculture to meet the  
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of  
2 September, one thousand nine hundred ninety-one, relating to the  
3 commissioner of agriculture (frozen desserts and imitation frozen  
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and  
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code  
9 §19-11B-1 et seq. or of these rules against the manufacturer of  
10 product and/or the distributor of the mix used to manufacture  
11 the product.

12 15.2. The commissioner will assess any violations of W. Va.  
13 Code §19-11B-1 et seq. or of this rule to the distributor for  
14 mix sampled from unopened containers. The company will not be  
15 assessed additional cumulative notices of violations until the  
16 commissioner has determined that the firm has had adequate notice  
17 of the previous notice, generally 10 days from the mailing of the  
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official  
20 product sample(s) taken on separate days within a one year period  
21 are found to be adulterated or misbranded, the commissioner shall  
22 send a written "First Notice" to the manufacturer or distributor  
23 whichever is appropriate. This notice shall notify the  
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy  
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official  
4 product sample(s) taken on separate days within a one year period  
5 are found to be adulterated or misbranded the commissioner shall  
6 send a written "Second Notice" to the manufacturer or distributor  
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official  
9 product sample(s) within 21 days of the sending of a Second  
10 Notice to the manufacturer or distributor, but shall not collect  
11 product samples before the lapse of 7 days from the sending of a  
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official  
14 product sample(s) taken on separate days within a one year period  
15 are found to be adulterated or misbranded the commissioner shall  
16 send a written "Third Notice" to the manufacturer or distributor  
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official  
19 product sample(s) within 21 days of the sending of the Third  
20 Notice to the manufacturer or distributor, but shall not collect  
21 additional product samples before the lapse of 7 days from the  
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a  
24 period of 24 hours to a manufacturer or distributor when the  
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when  
2 three out of the last five samples from the same machine are  
3 violative. The "Shut-down Order" will normally be issued with  
4 the "Third Notice". The "Shut-down Order" will give the reasons  
5 for the order, state the portion of the manufacturing or  
6 distributing operation that is prohibited from operating while  
7 the order is in effect, give conditions of the order, state the  
8 length of time that the Shut-down Order will be in effect and  
9 specify a time and place for a hearing to be held in this matter.  
10 Except that in the case where the public health, safety or  
11 welfare is at risk, the commissioner will issue an immediate  
12 Shut-down Order and give notice to the manufacturer or  
13 distributor under the provisions of subdivision 15.6.a. of this  
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down  
16 Order without giving the manufacturer or distributor the  
17 opportunity to be heard where there is a hazard to the public  
18 health, safety or welfare. In these cases, the manufacturer or  
19 distributor will be given the opportunity to request a hearing  
20 before the commissioner after the notification of the order is  
21 received by the manufacturer or distributor. All Shut-down  
22 Orders issued due to noncompliance with subdivision 8.1.c.,  
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk  
24 to the public health, safety or welfare.

1        15.6.B. The manufacturer or distributor will be responsible  
2 for causing all operations covered by the Shut-down Order to  
3 cease and follow all other conditions of the order. At the end  
4 of the period of the order, the manufacturer or distributor may  
5 resume operations without further action by the commissioner.

6        15.7. If after a Shut-down Order has been issued the  
7 commissioner finds that effective corrective action has not been  
8 taken, he may issue a suspension of the Frozen Desserts  
9 Manufacturer Permit. The suspension shall state the time that  
10 the suspension will become effective, give the reasons for the  
11 suspension and specify a time and place for a hearing to be held  
12 in this matter. Except that in the case of a summary suspension  
13 the commissioner will give the manufacturer the opportunity to  
14 request a hearing in this matter subsequent to the notification  
15 of the suspension.

16        15.7.a. All suspensions due to nonconformance to subdivision  
17 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.

18        15.7.b. A suspension of the Frozen Desserts Manufacturer  
19 Permit remains in effect until the manufacturer submits and the  
20 commissioner accepts a written plan of correction and a request  
21 for a reinstatement of the permit.

22        15.7.c. The commissioner has seven days from the date of  
23 receipt of this application to respond to a suspension in the  
24 case of violations of subdivision 8.1.c., 8.1.d. or 8.1.g. of  
25 this rule and fourteen days to respond for all other violations

1 of W. Va. Code §19-11B-1 et seq. or these rules. The  
2 commissioner will accept or deny the application for a  
3 reinstatement of the permit and will give the terms and  
4 conditions under which the permit will be reinstated.

5 15.8. If the commissioner finds that after the firm has  
6 resumed production following a suspension of their Frozen  
7 Desserts Manufacturer Permit that effective corrective action  
8 has not been taken, then the commissioner will hold a hearing to  
9 determine if the Frozen Desserts Manufacturer Permit should be  
10 revoked.

11 15.9. Persons who manufacture a product on an intermittent or  
12 infrequent basis, so that the standard enforcement policy cannot  
13 apply, will enter into a consent agreement with the commissioner  
14 for correction of all items found to be not in conformance with  
15 W. Va. Code §19-11B-1 et seq. or these rules.

16 15.10. Whenever an antibiotic or pesticide residue test is  
17 found to be above tolerance, the commissioner shall notify the  
18 manufacturer and/or distributor immediately of this fact and  
19 shall begin an investigation to determine the cause of the  
20 residue. The commissioner shall require that any person found  
21 to be responsible for the residue shall correct the cause of the  
22 residue prior to the resumption of the manufacturing or  
23 distribution of the product.

24 15.11. A person who performs a recall by voluntarily removing  
25 product from sale and distribution in an effective manner so as

1 to limit the potential harm to the health and well-being of the  
2 public may be eligible for exemptions from the normal enforcement  
3 policy. The commissioner shall consider the facts of each case  
4 when making a decision on an exemption.

5 15.12. The commissioner may apply the enforcement policy in a  
6 liberal manner in cases where all official product sample results  
7 that involve a product in the form actually sold to the public  
8 have been found to be in conformance with W. Va. Code §19-11B-1  
9 et seq. or these rules.

10 15.13. The commissioner may suspend the standard enforcement  
11 policy in cases where such action is necessary to protect the  
12 public health, safety or welfare.

13 15.14. Resamples will only be taken from machines that were  
14 shown to be producing violative product the previous visit,  
15 except for resamples needed to check that the nonviolative status  
16 is being maintained according to the following schedule:

17 15.14.a. After a first notice and one nonviolative sample,  
18 resamples will be taken between 5 to 6 months after the  
19 nonviolative sample.

20 15.14.b. After a second notice and one nonviolative sample,  
21 resamples will be taken between 3-4 months after the nonviolative  
22 sample.

23 15.14.c. Other resamples may be considered necessary to  
24 determine that the nonviolative status is being maintained."

1 (hh) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-fourth day of  
6 September, one thousand nine hundred ninety-one, relating to the  
7 commissioner of agriculture (West Virginia apiary law of 1991),  
8 are authorized.

9 (ii) The legislative rules filed in the state register on  
10 the eighth day of August, one thousand nine hundred ninety-one,  
11 modified by the commissioner of agriculture to meet the  
12 objections of the legislative rule-making review committee and  
13 refiled in the state register on the twenty-fourth day of  
14 September, one thousand nine hundred ninety-one, relating to the  
15 commissioner of agriculture (disposal of dead poultry), are  
16 authorized with the amendments set forth below:

17 On page two, section two, by adding a new subsection to read  
18 as follows:

19 "2.8. 'Disposal pit' means an opening dug in the ground to a  
20 minimum depth of six feet, containing a minimum capacity of 150  
21 cubic feet, covered with a minimum of 12 inches of dirt, and  
22 provided with one or more openings for the introduction of  
23 poultry. The openings shall be a minimum size of eight inches  
24 square and equipped with tight lids. A disposal pit shall be  
25 located in a site which will prevent contamination of the

1 groundwater or the surface water. This site should conform to  
2 the standards established in this rule."

3 On page two, subsection 3.1 after the word "incinerator," by  
4 adding the words "disposal pit,"

5 And,

6 On page two, by adding a new section, designated section 4,  
7 to read as follows:

8 "§61-1C-4. Standards for Site Location for Disposal Pits.

9 4.1 No part of a disposal pit system shall be located in a  
10 poorly drained or filled area, or in any area where seasonal  
11 flooding occurs.

12 4.2 No part of a disposal pit system shall be located within  
13 10 feet of a building, foundation or property line.

14 4.3 No part of a disposal pit system shall be located within  
15 50 feet of a public water supply line or within 10 feet of a  
16 private water supply system.

17 4.4 A disposal pit shall be located at least 50 feet from a  
18 private well or groundwater supply.

19 4.5 There shall be a minimum of three feet between the bottom  
20 of a disposal pit and seasonal groundwater or rock, shale or any  
21 other impermeable layer.

22 4.6 The evaluation of the site for installation of a disposal  
23 pit shall be based upon percolation test results. Percolation  
24 tests shall be performed in the following manner:

1 4.6.1 Location - At least two holes shall be placed over the  
2 selected site. The results of these two test holes will be  
3 averaged.

4 4.6.2 Holes shall be dug or bored from six to eight inches  
5 in diameter at the site where the disposal pit will be installed.  
6 The holes should be at least 24 inches in depth.

7 4.6.3 The bottom and sides of the holes shall be scratched  
8 with a sharp pointed instrument or wire brush to remove any  
9 smeared soil surfaces which interfere with the absorption of  
10 water into the soil.

11 4.6.4 Loose dirt shall be removed from the bottom of the test  
12 holes and two inches of coarse sand or fine gravel shall be  
13 placed into the holes to prevent sealing.

14 4.6.5 An eight or ten penny nail shall be placed in the wall  
15 of each hole exactly six inches above the level of sand or  
16 gravel.

17 4.6.6 The test hole shall be completely filled with water to  
18 ground level. Water in the hole shall be kept to a depth of at  
19 least 12 inches for a minimum period of four hours before  
20 beginning the percolation rate measurement.

21 4.7 Percolation rate measurement - Upon completion of the  
22 above, the water depth in the holes shall be adjusted to the  
23 level of the nail. The number of minutes it takes for this six  
24 inches of water (all the water) to be absorbed into the soil  
25 shall be accurately determined. This time in minutes, divided by

1 six, gives the rate of fall per inch. The average rate of fall  
2 must be between five minutes and 60 minutes."

3 (jj) The legislative rules filed in the state register on  
4 the eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the commissioner of agriculture to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the twenty-fourth day of  
8 September, one thousand nine hundred ninety-one, relating to the  
9 commissioner of agriculture (licensing of livestock dealers), are  
10 authorized.

11 (kk) The legislative rules filed in the state register on the  
12 fifteenth day of September, one thousand nine hundred ninety-two,  
13 modified by the commissioner of agriculture to meet the  
14 objections of the legislative rule-making review committee and  
15 refiled in the state register on the eighteenth day of November,  
16 one thousand nine hundred ninety-two, relating to the  
17 commissioner of agriculture (commercial feed), are authorized.

18 (ll) The legislative rules filed in the state register on the  
19 fifteenth day of September, one thousand nine hundred ninety-two,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the nineteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the  
24 commissioner of agriculture (general groundwater protection rules  
25 for fertilizers and manures), are authorized.

1 (mm) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred ninety-two,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of February,  
6 one thousand nine hundred ninety-three, relating to the  
7 commissioner of agriculture (primary and secondary containment of  
8 fertilizers), are authorized with the amendments set forth below:

9 "On page five, by striking out all of subsection 5.5 and  
10 inserting in lieu thereof a new subsection 5.5 to read as  
11 follows: "The operator or his licensed representative shall sign  
12 and date each application under oath."; and

13 -On page eighteen, by striking out all of subsection 14.1 and  
14 inserting in lieu thereof a new subsection 14.1 to read as  
15 follows:

16 'All moneys for the purpose of the enforcement and  
17 administration of this rule shall come from general revenue funds  
18 appropriated by the legislature for that purpose. The net  
19 proceeds of civil penalties collected pursuant to W. Va. Code  
20 §20-5M-10a or any civil administrative penalties collected  
21 pursuant to W. Va. Code §20-5M-10c will be deposited in the  
22 groundwater remediation fund established in W. Va. Code §20-5M-1.  
23 et seq.'".

24 (nn) The legislative rules filed in the state register on the  
25 fifteenth day of September, one thousand nine hundred ninety-two,

1 modified by the commissioner of agriculture to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of February,  
4 one thousand nine hundred ninety-three, relating to the  
5 commissioner of agriculture (general groundwater protection rules  
6 for pesticides), are authorized.

7 (oo) The legislative rules filed in the state register on the  
8 fifteenth day of September, one thousand nine hundred ninety-two,  
9 modified by the commissioner of agriculture to meet the  
10 objections of the legislative rule-making review committee and  
11 refiled in the state register on the nineteenth day of February,  
12 one thousand nine hundred ninety-three, relating to the  
13 commissioner of agriculture (bulk pesticide operational rules),  
14 are authorized.

15 (pp) The legislative rules filed in the state register on the  
16 fifteenth day of September, one thousand nine hundred ninety-two,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the nineteenth day of February,  
20 one thousand nine hundred ninety-three, relating to the  
21 commissioner of agriculture (non-bulk pesticide rules for  
22 permanent operational areas), are authorized.

23 (qq) The legislative rules filed in the state register on the  
24 sixteenth day of April, one thousand nine hundred ninety-three,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twenty-sixth day of July,  
3 one thousand nine hundred ninety-three, relating to the  
4 commissioner of agriculture (animal disease control), are  
5 authorized.

6 (rr) The legislative rules filed in the state register on  
7 the third day of August, one thousand nine hundred ninety-three,  
8 modified by the commissioner of agriculture to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the eighth day of October, one  
11 thousand nine hundred ninety-three, relating to the commissioner  
12 of agriculture (auctioneers), are authorized.

13 (ss) The legislative rules filed in the state register on the  
14 twenty-second day of July, one thousand nine hundred ninety-four,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the ninth day of August, one  
18 thousand nine hundred ninety-four, relating to the commissioner  
19 of agriculture (animal disease control), are authorized.

20

21 NOTE: The purpose of this bill is to authorize the  
22 Commissioner of Agriculture to promulgate legislative rules  
23 relating to animal disease control.

24

25 Strike-throughs indicate language that would be stricken from  
26 the present law, and underscoring indicates new language that  
27 would be added.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

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**SECRETARY OF STATE**  
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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

TO: Bob Morris

AGENCY: Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 28, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 61 Agriculture

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Commissioner

DATE: 9/7/95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Sep 7 1 49 PM '95

FILED

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.