WEST VIRGINIA CODE CHAPTER 19 ARTICLE 14

WV Legislature

§19-14-1. Title.

This article shall be known as the “West Virginia Commercial Feed Law.”

WV Legislature

§19-14-2. Definitions.

(a) "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor, guarantor, or manufacturer and distinguishing it from all others.

(b) "Bulk" refers to commercial feed or feed ingredients distributed in nonpackaged form where a label cannot be attached and accompanied by an invoice or delivery slip.

(c) "Commercial feed" means all materials or combinations of materials which are distributed, or intended for distribution, for use as feed or for mixing in feed, unless such materials are specifically exempted, for animals, other than humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds are not chemically changed or adulterated; (2) unprocessed hay, straw, stover, silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated; (3) individual chemical commodities, compounds or substances when such commodities, compounds or substances are not inter-mixed with other materials, and are therefore not adulterated within the meaning of §19-14-10 of this code. The term commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and specialty pet foods.

(d) "Commissioner" refers to the commissioner of agriculture of the State of West Virginia or a duly authorized employee of the commissioner.

(e) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished, or provided to the independent contractor and such contractor’s remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(f) "Customer-formula feed" means a commercial feed that consists of a mixture of commercial feed and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(g) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

(h) "Distributor" means any person who distributes. a commercial feed.

(i) "Drug" means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans; and any substance intended to affect the structure or any function of the animal body.

(j) "Feed" means any material consumed, or intended to be consumed, by animals other than humans, or any element of that material that contributes nutrition, taste, or aroma, or otherwise has a technical effect on the consumed material. The term "feed" includes raw materials, ingredients, and finished product.

WV Legislature

(k) "Feed ingredient" means each constituent material making up feed, including individual chemical compounds labeled for use as a feed ingredient.

(l) "Guarantor" means any person whose name appears on a label and who is therefore responsible for the product and its labeling.

(m) "Label" means a display of written, printed, or graphic matter printed upon or otherwise affixed to the container in which commercial feed is distributed; or printed upon or otherwise affixed to the invoice, delivery slip, or other shipping document which accompanies bulk shipments of commercial feed or customer-formula feed. All such labels shall be legible and in English.

(n) "Labeling" means and includes all labels as well as all other written, printed, or graphic matter found: (1) upon a commercial feed or any of its containers or wrappers, or (2) accompanying such commercial feed.

(o) "Manufacture" means to grind, mix, blend, package, pack, repackage, repack, or otherwise process a commercial feed for distribution.

(p) "Medicated feed" means any feed which contains one or more drugs. Antibiotics included in a feed growth promotion and/or efficiency level are drug additives and feeds containing such antibiotics are included in the definition of "medicated feed".

(q) "Mineral feed" means a commercial feed designed or intended to supply primarily mineral elements or inorganic nutrients.

(r) "Official sample" means any sample of feed taken by the commissioner in accordance with the provisions of this article and rules promulgated hereunder.

(s) "Percent" or "percentage" means percentage by weights.

(t) "Person" means an individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not.

(u) "Pet" means dog (Canis familiaris) or cat (Felis catus).

(v) "Pet food" means any commercial feed manufactured and distributed for consumption by pets.

(w) "Process" means a method used to prepare, treat, convert, or transform materials into feed or feed ingredients. The word "processed" can be used to further describe an ingredient name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

(x) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand

WV Legislature

name.

(y) "Quantity statement" means the net weight (mass), liquid measure, or count.

(z) "Repack" or "repackaging" means to pack and label a previously manufactured feed.

(aa) "Specialty pet" means any animal normally maintained in a household, such as rodents, ornamental birds, fish, reptiles, amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

(bb) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(cc) "Ton" means a net weight of two thousand pounds avoirdupois.

WV Legislature

§19-14-3. Powers and duties of the commissioner.

The commissioner has the power and authority to:

(1) Enter and inspect, during reasonable hours, any location where commercial feed is manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection may include, but is not limited to, examining, photographing, verifying, copying, and auditing records as necessary to determine compliance with this article; and reviewing labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial feeds.

(2) Open, examine, sample, and test commercial feed, unmixed or unprocessed whole seeds, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of commercial feeds.

(3) Issue permits and registrations pursuant to this article.

(4) Refuse, suspend, or revoke permits and registrations as provided in this article.

(5) Issue embargoes as provided in this article.

(6) Condemn and confiscate any product that is not brought into compliance with this article.

(7) Collect fees and penalties, and expend moneys under the terms of this article.

(8) Conduct sampling in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

(9) Conduct hearings as provided by this article.

(10) Assess civil penalties and refer violations to a court of competent jurisdiction.

(11) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit.

(12) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

(13) Be guided by the analytical results of the official sample when determining whether the commercial feed is deficient in any component.

WV Legislature

(14) Report the analytical results on all official samples to the guarantor and, in the case of deficient samples, also to the dealer and the purchaser, if known.

(15) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the guarantor.

(16) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations to carry out the purpose and provisions of this article.

(17) Promulgate rules, in accordance with §29A-3-1 *et seq*. of this code, dealing with commercial feeds and enforcement of this article.

WV Legislature

§19-14-4. Special revenue fund.

Except as otherwise provided in this article, all fees and penalties collected under the provisions of this article shall be deposited with the state Treasurer in a special revenue account. Such moneys shall be expended by the commissioner of agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

WV Legislature

§19-14-5. Permits; registration.

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least 30 days prior to the expiration of the current permit or registration; or at least 30 days prior to the date that the person intends to engage in the business of selling or marketing commercial feed products in this state. All applications shall be accompanied by the required fee. A penalty shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit from the commissioner, except for persons manufacturing feed for only his or her animals on his or her premises, or those producing pet food. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(d) Each person distributing commercial feed in West Virginia must obtain a Commercial Feed Distributor Permit from the commissioner, except:

(1) Persons distributing pet food exclusively;

(2) Persons holding a valid Commercial Feed Manufacturing Permit issued by the commissioner; and

(3) Persons holding a Commercial Feed Guarantor Permit issued by the commissioner;

Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(e) Each person whose name appears on the label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial Feed Guarantor Permit from the commissioner for each manufacturing facility or location that distributes feed in or into the state, except those facilities or locations for which a Commercial Feed Manufacturing Permit has already been issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Guarantor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(f) Pet food in packages over 10 pounds or bulk shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each

WV Legislature

registration shall expire on August 31 next following the date of issue: *Provided*, That an additional registration fee of $50 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

(g) Pet food packaged in packages of 10 pounds and under shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each registration shall expire on December 31, next following the date of issue: *Provided*, That an additional registration fee of $35 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

(h) Specialty pet food shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each registration shall expire on December 31, next following the date of issue.

(i) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.

(j) Alteration of a pet food or specialty pet food that changes the label requires a new application for registration be made and approved before distribution.

WV Legislature

§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.

The commissioner may refuse to grant, or may suspend or revoke any Commercial Feed Manufacturing Permit; any Commercial Feed Guarantor Permit; any Commercial Feed Distributor Permit; or the registration of any Pet Food or Specialty Pet Food when it is determined that: (1) The applicant, permittee, or guarantor has violated the provisions of this article or any official rule promulgated hereunder; or (2) this article or the rules promulgated hereunder cannot be or will not be complied with: *Provided*, That the permittee or guarantor shall have the opportunity to be heard prior to the suspension or revocation of the registration or permit.

WV Legislature

§19-14-7. Hearings and appeals.

(a) No application shall be refused until the applicant has the opportunity to amend his/her application to comply with the requirements of this article.

(b) No registration or permit shall be refused, suspended, or revoked until the guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

(c) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this article, may bring an action for judicial review in the circuit court of the county in which the violation occurred in accordance with §29A-5-1 *et seq*. of this code.

WV Legislature

§19-14-8. Labeling.

(a) When commercial feed, except customer-formula feed, is distributed in this state in bags or other containers, the label shall be affixed to the container; when commercial feed is distributed in bulk, the label shall accompany delivery.

(b) All commercial feed labels, except customer-formula feeds, shall include the following:

(1) The quantity statement.

(2) The product name, including brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis, expressed on an "as is" basis, stating what the commissioner determines by rules is required to advise the user of the composition of the commercial feed and other necessary information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or other methods approved by the commissioner.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds. An ingredient statement shall include:

(A) The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

(B) Feed terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (revised April 1, 2019) of the Federal Drug and Cosmetic Act as amended August, 1985;

(D) The common or usual name of substances which are so common to not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar; or

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.

(5) The name and principal mailing address of the manufacturer or the distributor.

(6) For all commercial feeds containing drugs and for all other such commercial feeds as the commissioner may require by legislative rules, adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(7) If a drug or drug containing product is used, then the following shall be stated:

WV Legislature

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the medicated commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word “medicated” shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

(c) Pet food and specialty pet food labels shall have such additional information as required by the commissioner through rules.

(d) All customer-formula feeds shall be labeled at all times and shall be supplied to the purchaser at the time of delivery. The label shall bear the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture and/or delivery.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the mixture.

(5) For all customer-formula feeds containing drugs and for all other such customer-formula feeds as the commissioner may require by legislative rules, adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(6) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word “medicated” shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

WV Legislature

§19-14-9. Tonnage reports; inspection fees.

(a) Each person holding a Commercial Feed Manufacturing Permit or a Commercial Feed Guarantor Permit, except those persons exclusively manufacturing pet food or specialty pet food, shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:

(1) Commercial feed, if the payment was previously made by a distributor, manufacturer, or guarantor.

(2) Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.

(3) Commercial feeds which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.

(4) Commercial feed supplied to a poultry contract feeder.

(5) Pet food or specialty pet food.

(b) An annual fee for commercial feed which does not meet the minimum inspection fee shall be paid in lieu of the inspection fee as established by legislative rule.

(c) Each person holding a Commercial Feed Manufacturing Permit or a Commercial Feed Guarantor Permit, except those persons exclusively distributing or manufacturing pet food or specialty pet food, shall file a semiannual statement under oath before January 31 and July 31 of each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or distributed in this state during the preceding six-month period.

(d) Each report shall be accompanied by an inspection fee at the rate established by legislative rule, including a minimum inspection fee, on commercial feed and feed ingredients.

Inspection fees which are due and payable and not remitted to the commissioner within 15 days following the due date shall be assessed a penalty of 10 percent of the amount due, except that semiannual reports with no fees due received 15 days after the due date shall be assessed a penalty in an amount established by legislative rule. The assessment of this penalty fee shall not prevent the commissioner from taking other actions as provided in this chapter.

(e) All persons must keep accurate records, as may be necessary or required by the commissioner, to indicate the tonnage of commercial feed distributed in this state. The commissioner shall have the right to examine such records.

WV Legislature

§19-14-10. Adulteration.

Commercial feed or feed ingredients is adulterated:

(1) If it bears or contains any poisonous or deleterious substance, which may render it injurious to human or animal health; unless the substance is not an added substance, in which case such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to human or animal health;

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw commodity; or (B) a food additive;

(3) If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) If it bears or contains any color additive which is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act;

(6) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

(7) If it consists, in whole or part, of any filth, putrid, or decomposed substance, or if it is otherwise unfit for feed;

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(9) If it is, in whole or in part, the product of a diseased animal, or of an animal that has died other than by slaughter that is unsafe within the meaning of Section 402(a)(1) or (a)(2) of

WV Legislature

the Federal Food, Drug, and Cosmetic Act;

(10) If the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor;

(13) If its composition or quality falls below or differs from that which it is purported or represented to possess by its labeling; or

(14) If it contains a drug, and the methods used in the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug meets the requirements of this law as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the commissioner may adopt the current good manufacturing practice regulations for Type A medicated Articles and Type B and Type C Medicated Feeds established under authority of the Federal Food, Drug, and Cosmetic Act;

(15) If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by legislative rule.

WV Legislature

§19-14-11. Misbranding.

Commercial feed shall be deemed to be misbranded:

(1) If its label or labeling is false or misleading;

(2) If it is not labeled as required by this article;

(3) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient that does not conform to the definition of identity prescribed by the commissioner by rules;

(5) If any damage or inferiority has been concealed; or

(6) If it is distributed under the name of another commercial feed.

WV Legislature

§19-14-12. Embargoes; condemnation and confiscation; injunctions.

(a) Embargo orders.

(1) When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then he or she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner until the embargo is released by the commissioner or by court order.

(2) When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that he or she has a right to request an immediate hearing.

(3) The commissioner shall release the commercial feed lot so embargoed when said commercial feed has been brought into compliance with this article and its rules.

(4) The commissioner shall have the authority to issue an embargo against a perishable product, even if the result is the involuntary disposal of the product.

(5) The commissioner may take action to seize and condemn any product if not brought into compliance with this article and the rules issued hereunder, within 90 days of the notice to the custodian.

(b) Condemnation and confiscation.

(1) Any commercial feed not in compliance with the provisions of this article or the rules promulgated hereunder shall be subject to condemnation and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feed in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

(2) If the court finds that the commercial feed is in violation of the provisions of this article or its rules and should be confiscated, then the court shall order the condemnation and confiscation of such commercial feed and its disposition in a manner consistent with the quality of such commercial feed which is not in violation of any other laws of this state: *Provided*, That the owner thereof must first be given an opportunity to process or relabel such commercial feed or dispose of the same in full compliance with the provisions of this article and its rules.

(c) Injunctions. Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred, or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated hereunder. An injunction shall be

WV Legislature

issued without bond.

WV Legislature

§19-14-13. Confidentiality of trade secrets.

The commissioner may not make public any information which contains or relates to trade secrets, acquired under the authority of this article, concerning any methods, formulas, processes, sales, or distribution information: Provided, That the commissioner may exchange information of a regulatory nature with duly appointed officials of the United States Government, of other states, or of other foreign governments who are similarly prohibited by law from revealing this information.

WV Legislature

§19-14-14. Prohibited acts.

It shall be unlawful:

(a) To manufacture or distribute any commercial feed that is adulterated or misbranded.

(b) To adulterate or misbrand any commercial feed.

(c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo order, or condemnation and confiscation order provided for under this article.

(d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

(e) To fail or refuse to register pet foods or specialty pet foods.

(f) To fail or refuse to obtain permits required under this article.

(g) To fail to make an accurate statement of tonnage.

(h) To fail to pay inspection fees as required under this article.

(i) To distribute or knowingly use any commercial feed that has not had an accurate statement of tonnage reported to the commissioner in the previous reporting period.

(j) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of commercial feed.

(k) To interfere with the commissioner’s official duties.

(l) To distribute raw milk for use as commercial feed for any species, unless:

(1) It has been decharacterized using a sufficient quantity of food coloring as designated by the commissioner;

(2) It has been decharacterized using food coloring approved by the U.S. Food and Drug Administration, or in the case of raw milk labeled as organic, approved by the U.S. Department of Agriculture;

(3) It has been decharacterized and the nutritive value of the milk has not been adversely affected by the decharacterization;

(4) The packaging of the raw milk does not resemble that used for the packaging of milk for human consumption;

WV Legislature

(5) It is not stored at retail with, or in the vicinity of, milk or milk products intended for human consumption; and

(6) It does not otherwise violate this section.

(m) To distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of §19-14-10 of this code.

WV Legislature

§19-14-15. Penalties.

(a) Criminal penalties. -- Any person violating any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for each subsequent offense, shall be fined not less than $500 nor more than $1,000, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. --

(1) Any person violating any of the provisions of this article or the rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person; the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and to the animals consuming or intended to consume the commercial feed; and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than $500 for the first offense or nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code, and not more than $1,000 for a serious, repeat, or intentional violation, as determined by the commissioner in accordance with such promulgated rules.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the same, shall be assessed interest at ten percent from the date the penalty was assessed. Such penalty and interest constitute a lien in favor of the State of West Virginia and shall attach on the person's property when such lien is properly recorded in the county where such property is located. There shall be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of a violation of the provisions of this article.

(d) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) Nothing in this article shall be construed as to require the commissioner to report minor violations of this article when he/she believes that the public interest will be best served by a written notice.

WV Legislature

(f) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.

WV Legislature

§19-14-16. Deviations and Penalties.

(a) The commissioner is authorized to adopt regulations establishing permitted analytical variation and providing for reasonable deviation from the guaranteed analysis.

(b) If the analysis of a sample shows a deviation from permitted analytical variation established by the commissioner, the guarantor or other responsible person shall be penalized as established by legislative rule.

(c) Penalties for multiple deviations within a sample shall be cumulative: *Provided*, That in no case shall the penalty exceed the retail value of the product.

(d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or purchasers cannot be found, the amount of the penalty assessed shall be paid to the commissioner and deposited in the department's fees account to be used for feed related program maintenance and educational training of the industry and consumers.

(e) If any penalty has not been paid within 90 days of notice of such penalty, a late payment penalty established by legislative rule will be added to the original penalty.

(f) If a product is found to be adulterated, the guarantor or other responsible party shall be penalized as established by legislative rules.

WV Legislature

§19-14-17. Severability.

If any clause, sentence, paragraph, or part of this law shall for any reason be judged invalid by any court of competent jurisdiction, such judgement shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgement shall be rendered.

WV Legislature