

Document: Proposed Rule

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TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #01-166

DIGEST

Amends 345 IAC 7-3.5 to reflect changes made in IC 15-2.1-14 by the Indiana general assembly, including eliminating fees for livestock dealer licenses and eliminating annual renewal of licenses. Requires annual reports from licensees. Makes other changes in the law of livestock dealers and markets. Effective 30 days after filing with the secretary of state.

345 IAC 7-3.5-1	345 IAC 7-3.5-5.5
345 IAC 7-3.5-2	345 IAC 7-3.5-6
345 IAC 7-3.5-3	345 IAC 7-3.5-8
345 IAC 7-3.5-5	345 IAC 7-3.5-8.5

SECTION 1. 345 IAC 7-3.5-2, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-2 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-2-15; IC 15-2.1-2-27; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-14; IC 15-2.1-15

Sec. 2. The following definitions apply throughout this rule:

- (1) "Board" means the Indiana state board of animal health **appointed under IC 15-2.1-3.**
- (2) "Cattle" means all dairy and beef animals and bison.
- (3) "Concentration point" means a licensed place of business under the provisions of IC 15-2.1-14 where only feeder pigs, to which the licensee of such point has taken title, are assembled for resale within or without of the state of Indiana.
- (4) "Consignee" means one to whom livestock is delivered or assigned for the purpose of sale, resale, or exchange.
- (5) "Consignment" or "consigning" means the act of delivering or shipping domestic animals to another for sale, resale, or exchange.
- (6) "Consignor" means any person consigning, shipping, or delivering domestic animals for sale, resale, or exchange.
- (7) "Dealer" means any person engaged in the business of dealing and includes, but is not limited to, stockyards, auction markets, buying stations, and concentration points.
- (8) "Dealing" means buying, selling, trading, or negotiating the transfer of livestock either for processing into meat products in conjunction with the operation of a business enterprise or for the purpose of resale, transfer, or final disposition in any other manner.
- (9) "Domestic animals" has the meaning set forth in IC 15-2.1-2-15.
- (10) "Draft" means a group of animals that are weighed and sold together as a unit.
- (11) "Immediate slaughter" means any domestic animals purchased or sold for slaughter, must be consigned to a recognized slaughtering establishment or be slaughtered within seven (7) days of first consignment, and must not be diverted for further feeding or breeding purposes.
- (12) "Inspection" means a critical observation of livestock by a licensed, accredited veterinarian or by one under his or her direct supervision, and conducted in a manner that will lend itself to the disclosure of the apparent physical condition or health status of the animals inspected.
- (13) "Licensee" means any person licensed by the state of Indiana as an individual or market facility dealer or holding a combination license.
- (14) "Livestock" has the meaning set forth in IC 15-2.1-2-27(a).

(15) "Livestock auction market" or "auction market" means an established place of business and contiguous surroundings where domestic animals are consigned to be sold at public auction upon a commission basis to be paid by the consignor at which place the operator of the business acts as agent for consignor.

(16) "Market facility" means a livestock auction market, stockyard, or concentration point.

(17) "Nonambulatory" or "downed" animal means a conscious animal that is unable to stand or walk without assistance.

(18) "Official health certificate" or "certificate of veterinary inspection" means the printed form adopted by any of the various states and designed to record the identification, description, tests, vaccinations, and other data concerning the health status of domestic animals listed thereon.

(19) "Permit" means permission granted by the board for the importation of domestic animals that will include an identification number of the permit.

(20) "Person" means individual(s) of either sex, firms, copartnerships, corporations, associations, cooperatives, and joint ventures of all kinds, and places of residence, or any other groups or combinations acting in concert.

~~(21) "Producer" or "farmer" means a person who buys or sells livestock in connection with business of raising, feeding, grazing, or breeding livestock as an incident to his or her farming enterprise and who does not follow a definite or routine pattern in disposing of such livestock whereby such livestock reenters the channels of trade in less than sixty (60) days from the date of acquisition.~~

~~(22) "Recognized slaughtering establishment" means a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.~~

~~(23) (21) "Sale" means sale, lease, donation, trade, or exchange in any manner.~~

~~(24) (22) "Sell" means to sell, lease, donate, trade, barter, or exchange in any manner.~~

~~(25) (23) "Selling" means selling, leasing, donating, trading, bartering, or exchanging in any manner.~~

~~(26) (24) "Quarantined" means the subject of an order issued by the board restricting the movement of animals onto or off of a premises.~~

~~(27) (25) "Slaughter only market" means any market facility where all animals purchased are consigned directly to a recognized slaughtering establishment or sold for direct reassignment to a recognized slaughtering establishment but not including auction markets.~~

(26) "Slaughtering establishment" means a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.

(27) "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4.

(28) "Stockyard" means any place of business commonly known or advertised as a stockyard, and which is operated for compensation or profit as a public market consisting of sheds, pens, or other enclosures, and their contiguous appurtenances in which live livestock is received from the public and kept temporarily for sale, marketing, or shipping.

(Indiana State Board of Animal Health; 345 IAC 7-3.5-2; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1750; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1285; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 2. 345 IAC 7-3.5-3, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-3 Individual and market facility dealer license and exceptions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-14-2

Sec. 3. (a) ~~No~~ A person may **not** engage in the business of operating a market facility, buying, selling, or otherwise dealing in livestock without obtaining a license **from the state veterinarian**. The following persons and activities are exempt from the livestock dealer license requirement:

(1) ~~Purchases~~ **The purchase** of livestock by an individual for ~~his or her~~ **the individual's** own use other than resale on the livestock market.

(2) ~~A distributor~~ **The distribution** of livestock **in connection with programs** dedicated to improvement of breeding practices or experimental procedures and ownership **is of the livestock remains**, in whole or in part, **a in the** distributor or breeder.

(3) The sale or purchase **of livestock** by a producer or farmer ~~(as defined in section 2(21) of this rule)~~ **that buys or sells livestock in connection with a business of raising, feeding, grazing, or breeding livestock as an incident to part of a farming enterprise**, as distinguished from that of a dealer or trader, **and does not follow a definite or routine pattern of disposing of acquired livestock through the channels of trade in less than sixty (60) days from the date of acquisition.**

(4) Purchases of livestock by operators of restaurants, grocery stores, meat processing plants, and slaughtering plants for the sole purpose of processing and sale in connection with the business enterprise if the total number of head of livestock purchased does

not exceed twenty (20) head in any one (1) week.

(b) Nothing contained in this rule shall apply to any of the following:

- (1) Pens or enclosures where livestock is housed or kept temporarily for the purpose of public exhibition.
- (2) Pens and enclosures maintained by ~~recognized~~ slaughtering establishments and used for the temporary deposit and holding of livestock immediately prior to their being slaughtered and processed for human consumption.

(c) No person may continue the business of operating a market facility, buying, selling, or otherwise dealing in livestock after his or her license has expired or been suspended or revoked. (*Indiana State Board of Animal Health; 345 IAC 7-3.5-3; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1751; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1287; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895*)

SECTION 3. 345 IAC 7-3.5-5, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-5 Classification; fees

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-14-4

Sec. 5. (a) Classifications under which livestock dealer licenses will be issued ~~and the fees to be charged~~ are as follows:

- (1) ~~A market facility dealer licenses for license issued to~~ stockyards, packers, concentration points, and livestock auction markets. ~~one hundred dollars (\$100):~~
- (2) ~~An individual dealer license for issued to~~ individual dealers ~~twenty-five dollars (\$25):~~
- (3) ~~Combination licenses: a market facility license and an individual dealer license: one hundred twenty-five dollars (\$125):~~ **market agencies not operating as a market facility.**

(b) The following requirements shall be used in determining license classifications:

- (1) A person is operating a market facility at a location when more than one (1) auction that is not exempt under section 3 of this rule is conducted at that location in a twelve (12) month period. Separate licenses are required for each location a market facility is operated. **Even if a market facility license is not required for an auction, an individual dealer license may be required.**
- (2) Any person who operates a licensed market facility and deals in livestock outside of said market facility must have an individual dealer license in addition to the market facility dealer license. ~~known as a combination license:~~
- (3) Final determination of classifications will be made by the state veterinarian.

(c) Each license described in this section shall be valid for a period of ~~one (1) year: until such time as the state veterinarian shall select an annual renewal date at which time all licenses will be renewed: Fees for licenses issued at times other than license is voluntarily surrendered by~~ the annual renewal date shall be as follows:

- (1) Licenses issued after the annual renewal date and prior to the first day of the seventh month following the annual renewal date, ~~the full amount of the annual fee:~~
- (2) For licenses issued on licensee or after suspended or revoked by the first day of the seventh month following the annual renewal date, ~~one-half (2) of the full amount of the annual fee:~~

state veterinarian.

(d) ~~Wherever scales are utilized by Applications for a dealer for the purpose of weighing livestock; an additional fee of twenty-five dollars (\$25) per annum shall be charged as an inspection fee if the license fee provided in this section is less than fifty dollars (\$50): shall be on a form supplied by the state veterinarian and must contain the information requested on the form. The state veterinarian may issue a license under this rule if the applicant submits a completed application, obtains the security required under section 8 of this rule, and meets all other requirements of IC 15-2.1-14 and this rule.~~

(e) ~~The board will not state veterinarian may require that an applicant for a license for a new facility that is intended to be used as a market facility in Indiana unless the facility owner provides provide proof to the board that the new facility will be constructed in conformance with local zoning ordinances and other laws governing the establishment and operation of such a business in Indiana. The state veterinarian may refuse to issue a license until such proof is submitted. (Indiana State Board of Animal Health; 345 IAC 7-3.5-5; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; errata, 11 IR 2901; filed Nov 20, 1997, 1997, 2:45 p.m.: 21 IR 1287; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)~~

SECTION 4. 345 IAC 7-3.5-5.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 7-3.5-5.5 Annual report; license termination

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 5.5. (a) A person holding a license under this rule shall submit to the state veterinarian an annual report of the licensee's livestock dealing. The report shall be filed with the state veterinarian not sooner than January 1 and not later than April 15 of each year and shall cover the previous year's business. The report shall be one (1) of the following:

(1) A report on a form prescribed by the state veterinarian that includes all information that the state veterinarian determines is required to ascertain the nature of the business enterprise, the amount of the bond or other security required under IC 15-2.1-14-6 and this rule, and compliance with the other provisions of IC 15-2.1-14-6 and this rule.

(2) A licensee that is registered with the United States Department of Agriculture Grain Inspection and Packers and Stockyards Administration (USDA-GIPSA) and holds a Packers and Stockyards bond or other USDA-GIPSA approved security may submit a copy of the most recent USDA-GIPSA annual report, as required under 9 CFR 201.97, for the licensee's business.

(b) A licensee shall notify the state veterinarian when the licensee ceases operating as a livestock dealer and no longer desires to be licensed as such. Said license shall be considered surrendered and no longer active as of the date of notification.

(c) If a licensee fails to comply with any provision of IC 15-2.1 or this rule, the state veterinarian may do the following:

(1) Suspend the licensee's license for a time certain or until such time as the violation has been corrected.

(2) Revoke the licensee's license.

(Indiana State Board of Animal Health; 345 IAC 7-3.5-5.5)

SECTION 5. 345 IAC 7-3.5-6, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-6 Agents

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-14-5

Sec. 6. (a) All agents for market facilities and individual dealers must be listed on the license application. To add or delete an agent after a license has been issued, the principal must send a written request to the state veterinarian's office for approval. Any person whose dealer license has been suspended or revoked in any state may not be designated as an agent by any livestock dealer for a period of two (2) years from the date of such suspension or revocation. A licensee must request the deletion of an agent from its license immediately upon learning of the revocation of an agent's dealer's license by any state.

(b) Where the license fee charged the dealer is twenty-five dollars (\$25), an additional fee of five dollars (\$5) shall be charged for each agent designated in the excess of three (3) in number.

(c) Where the license fee charged the dealer is one hundred dollars (\$100), an additional fee of five dollars (\$5) shall be charged for each agent designated in the excess of twelve (12) in number.

(d) Where the combined license fee charged the dealer is one hundred twenty-five dollars (\$125), an additional fee of five dollars (\$5) shall be charged for each agent designated in the excess of fifteen (15) in number.

(e) **(b)** An act or omission of any agent of an individual dealer or market facility that falls within the scope of that agency shall be deemed the act or omission of the principal dealer for the purposes of this rule. *(Indiana State Board of Animal Health; 345 IAC 7-3.5-6; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; filed Apr 2, 1993, 5:00 p.m.: 16 IR 1942; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1288; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 6. 345 IAC 7-3.5-8, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-8 Bond requirements

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 8. (a) Every dealer, before engaging or continuing in the business of buying or selling livestock, must execute and maintain a bond **or other security** in the amount and in the form required by IC 15-2.1-14-6 and this section.

(b) Each dealer buying and selling livestock interstate shall obtain a U.S. Department of Agriculture, Packers and Stockyards bond **or other USDA approved security** where required by federal law. Where an applicant or licensee already has a bond **or other security** on file with the Packers and Stockyards Division, U.S. Department of Agriculture, further ~~bond coverage security~~ under this rule shall not be required if such ~~bond security~~ **is an** adequate amount and conditioned upon such terms so as to ~~meet~~ **provide at least as much protection as** the requirements of this rule.

(c) The surety on any ~~such~~ bond must be a surety company authorized to do business in Indiana, and the bond shall bear the seal of the surety company. The bonding company agent must attach a duly executed power of attorney form to such bond.

(d) Security in lieu of a bond must be in one (1) of the following forms:

(1) A trust fund agreement governing funds actually deposited or invested in fully negotiable obligations of the United States or federally insured deposits or accounts in the name of and readily convertible to currency by a trustee as provided in subsection (e).

(2) A trust fund agreement governing funds which may be drawn by a trustee as provided under subsection (e) under one (1) or more irrevocable, transferable, standby letters of credit issued by a federally insured bank or institution and physically received and retained by such trustee.

(e) A bond may be in favor of a trustee. The trustee shall be a financially responsible and disinterested person. Attorneys at law, banks, and trust companies are, without limitation, suitable trustees. If a trustee is not named in the bond, the state veterinarian may serve as trustee, or designate a person to act as trustee in an action to recover damages for breach of the bond's conditions. The state veterinarian may agree to serve as trustee under 9 CFR 201.32 in actions under the jurisdiction of the United States Department of Agriculture, Grain Inspection and Packers and Stockyards Administration.

(f) Bond and other security coverage shall be annually adjusted for business transacted during the preceding twelve (12) month period. (*Indiana State Board of Animal Health; 345 IAC 7-3.5-8; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; filed Apr 2, 1993, 5:00 p.m.: 16 IR 1942; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1288; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895*)

SECTION 7. 345 IAC 7-3.5-8.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 7-3.5-8.5 Claims

Authority: IC 15-2.1-3-19; IC 15-2.1-14-4

Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 8.5. Each bond and bond equivalent filed pursuant to section 8 of this rule shall contain provisions substantially equivalent to the following:

(1) Any persons damaged by failure of the principal to comply with any condition of the bond or bond equivalent may maintain a suit to recover on the bond or bond equivalent even though such claimant is not a party named in the bond or bond equivalent.

(2) Any claim for recovery on the bond or bond equivalent must be filed in writing with:

- (A) the surety, if any;**
- (B) the trustee, if any; or**
- (C) the state veterinarian.**

Whichever party receives notice of the claim shall notify the other party or parties as soon as possible.

(b) The proceeds of the bond or bond equivalent shall not be used to pay fees, salaries, or other expenses of the surety or principal. (*Indiana State Board of Animal Health; 345 IAC 7-3.5-8.5*)

SECTION 8. 345 IAC 7-3.5-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 18, 2001 at 10:05 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to rules concerning livestock dealer licenses. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health