

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

Form #7

Do Not Mark In This Box
Filing Date

2013 APR 25 AM 10:30

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: WV Code 19-2B-3(a)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Inspection of Meat and Poultry

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

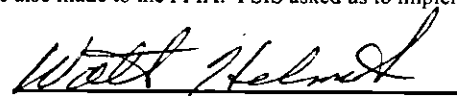
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

To update our Meat and Poultry Inspection Division rules to maintain our "equal to" status with the Food Safety and Inspection Service (FSIS). This allows us to adopt current Federal regulations as well as changes in the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA). FSIS has required states to adopt changes made in the FMIA and PPIA into their regulations to facilitate enforcement in state programs. Changes required any establishment subject to inspection that believes, or has reason to believe, that an adulterated or misbranded meat or meat food product received by or originating from the establishment has entered into commerce shall promptly notify the Secretary with regard to the type, amount, origin, and destination of the meat or meat food product. Changes were also made to require recall plans, documentation of process control plan reassessments, and upon request to make procedures and reassessed process control plans available to inspectors. Corresponding changes were also made to the PPIA. FSIS asked us to implement these changes as soon as reasonable.

Use additional sheets if necessary


Authorized Signature

EMERGENCY RULE QUESTIONNAIRE

DATE: April 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
Robert E. Pitts, DVM 1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-2206

EMERGENCY RULE TITLE: Inspection of Meat and Poultry

1. Date of filing April 25, 2013

2. Statutory authority for promulgating emergency rule:
WV Code 19-2B-3(a)

3. Date of filing of proposed legislative rule: April 25, 2013

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amend current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
This rule mandates inspected establishments to notify the Department if any adulterated product is received or allowed into commerce which will enable the Department to take necessary measures to minimize harm to individuals and protect the health and safety of consumers of adulterated meat or poultry products.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Consumption of adulterated meat or poultry products would not only be harmful to individuals that consumed the adulterated products but the resulting publicity would be highly detrimental to the businesses involved in the production and/or distribution of the products. Market loss could result in the closing of businesses and loss of jobs.

Summary of Proposed Emergency Rule and Statement of Circumstances Constituting the Emergency.

This rule change adopts changes made through May 6, 2011 and March 1, 2013 to the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), and Federal Regulations into the State-Federal Cooperative Meat and Poultry Inspection Program and allows the Meat and Poultry Inspection Division of the West Virginia Department of Agriculture to maintain an "equal to" program and the Federal funding associated with that program.

During this time period changes to the FMIA were included which required any establishment subject to inspection that believes, or has reason to believe, that an adulterated or misbranded meat or meat food product received by or originating from the establishment has entered into commerce shall promptly notify the Secretary with regard to the type, amount, origin, and destination of the meat or meat food product. In an additional section the Secretary shall require that each establishment subject to inspection under this chapter shall, at a minimum require each establishment to have current procedures for the recall of all meat or meat food products shipped by the establishment, document each reassessment of the process control plans of the establishment, and upon request, make the procedures and reassessed process control plans available to the inspectors.

Changes were also made to the PPIA to reflect corresponding changes relating to poultry or poultry products produced or shipped by the establishment. In all sections references made to the Secretary would be interpreted as the Director in the case of state establishments

Even though our program has been enforcing these rules, the Food Safety and Inspection Service in consultation with our counsel believed that it would be better to ask for this emergency rule to reinforce enforcement until these rules can be adopted through the regular rule making process.

FISCAL NOTE FOR PROPOSED RULES

Inspection of Meat and Poultry

Rule Title:

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

West Virginia Department of Agriculture

Address:

1900 Kanawha Blvd. E., Charleston, WV 25305

Phone Number:

304-558-2206

Email: rpitts@wyda.us**Fiscal Note Summary**

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

None

Fiscal Note Detail

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

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Inspection of Meat and Poultry

Rule Title:

Rule Title: _____

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

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

N/A

MEMORANDUM

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

Changes in rules are related to standards related to sanitation and food safety that are already enforced in establishments by meat inspection personnel and relate to changes in reporting that should not have any fiscal impact on plant personnel reporting or meat inspection personnel enforcement.

Date: April 22, 2013

Signature of Agency Head or Authorized Representative

Walt Helmick

**TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE**

2013 APR 25 AM 10:31

**SERIES 16
INSPECTION OF MEAT AND POULTRY**

STATE

§61-16-1. General.

1.1. Scope. -- This rule is established in order to implement the requirements of W. Va. Code §19-2B-1 et seq. Inspection of Meat and Poultry, and to maintain and administer an effective State-Federal Cooperative Meat and Poultry Inspection Program in the State of West Virginia by establishing requirements which equal those imposed by the applicable provisions of the Federal Meat Inspection Act (34 Stat. 1260) as amended by the Wholesome Meat Act (81 Stat. 584, 84 Stat. 438, 92 Stat. 1069, U.S.C., Sec. 601 et seq.), and the Poultry Products Inspection Act (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791; U.S.C. 451 et seq.). This rule establishes general operating procedures, requirements and standards in the West Virginia Department of Agriculture, Meat and Poultry Inspection Division.

1.2. Authority. -- W. Va. Code §19-2B-3.

1.3. Filing Date. --

1.4. Effective Date. --

§61-16-2. Incorporation by Reference of Federal Meat and Poultry Inspection Regulations.

The Mandatory Meat Inspection Regulations (9 CFR, Parts 301 et seq.) the Mandatory Poultry Products Inspection Regulations (9 CFR, Part 381) and Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act (9 CFR, Parts 416, 417, 424, 430, 441 and 442) of the United States Department of Agriculture, promulgated in the Federal Register prior to ~~May 6, 2011~~ March 1, 2013 are hereby adopted in their entirety with the exception of the deleted regulations specified in section 3 of this rule.

§61-16-3. Deleted Regulations.

The following sections of the Federal regulations governing the mandatory meat inspection (9 CFR, Part 301 et seq.) and the mandatory poultry products inspection (9 CFR, Part 381) of the United States Department of Agriculture incorporated by reference under section 2 of this rule are deleted and are not rules of the West Virginia Department of Agriculture: 302.2; 303.1 (c); 304; 305.2 (b); 307.5; 307.6; 312; 316.12; 316.13 (c); 317.7; 317.9; 318.8; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 381.6; 381.10 (a)(2), (5), (6), and (7); 381.10 (b); 381.13 (b); 381.16; 381.17; 381.30; 381.31; 381.38; 381.39; 381.96, 381.98, 381.104 through 381.112; 381.123 (b)(1) and (4); 381.179; 381.185; 381.186; 381.195 through 381.236.

In 9CFR 381.10(a) (3) and (4) the words "and the statement 'Exempt - P. L. 90-492' " are deleted.

In 9CFR 381.123(b) (2) the words "and accompanied by the prefix 'P' " are deleted.

§61-16-4. Definitions.

4.1. All terms used in this rule are those defined in W. Va. Code §19-2B-2, except for the terms defined in this section.

4.2. Definitions in the incorporated parts of the Federal regulations on mandatory meat inspection (9 CFR, Part 301 et seq.) and mandatory poultry products inspection (9 CFR, Part 381) of the United States Department of Agriculture are amended to read as follows:

4.2.a. "The Act" means W. Va. Code §19-2B-1 et seq.

4.2.b. "The United States Department of Agriculture" and "Department" means the West Virginia Department of Agriculture. For brevity, the acronym WVDA for the West Virginia Department of Agriculture is used in this rule.

4.2.c. "Secretary" means the Commissioner of Agriculture.

4.2.d. "Administrator", "Regional Director", and "Area Supervisor" mean the Director, Meat and Poultry Inspection Division, WVDA.

4.2.e. "Federal Meat Inspection", "Program", "Federal Inspection", "Federal Poultry Inspection", "Meat and Poultry Inspection Program", "Inspection Service", "Standards and Labeling Division", "Meat and Poultry Inspection", "Technical Services", and "Agency" mean the Meat and Poultry Inspection Division, WVDA.

4.2.f. "Federal" means State.

4.2.g. "Food Inspector", "Inspection Service Employee", "USDA Inspector", "USDA Program Official", and "Program Inspector" mean Inspector, Meat and Poultry Inspection Division, WVDA.

4.2.h. "Inspection Service Supervisor", "Veterinary Inspector", and "Circuit Supervisor" mean Veterinary Supervisor, Meat and Poultry Inspection Division, WVDA.

4.2.i. "Food Safety and Inspection Service" means the Meat and Poultry Inspection Division, WVDA.

4.2.j. "USDA Inspection Legend" and "Official Inspection Legend" mean WVDA Inspection Legend.

4.2.k. "Federally Inspected and Passed", "U.S. Inspected and Passed", "U.S. Inspected for Wholesomeness", and "Federally Inspected for Wholesomeness" mean WVDA Inspected and Passed.

4.2.l. "U.S. Passed for Cooking" means WVDA Passed for Cooking.

4.2.m. "U.S. Passed for Refrigeration" means WVDA Passed for Refrigeration.

4.2.n. "U.S. Inspected and Condemned" means WVDA Inspected and Condemned.

4.2.o. "U.S. Retained" or "U.S. Detained" means WVDA Retained.

4.2.p. "U.S. Rejected" means WVDA Rejected.

4.2.q. "U.S. Suspect" means WVDA Suspect.

4.2.r. "U.S. Condemned" means WVDA Condemned.

4.2.s. "U.S. Government Seals" means WVDA Seals.

4.3. Whenever an official form, certificate, or seal is designated by Federal regulations, the appropriate WVDA form, certificate, or seal shall be substituted.

§61-16-5. The United States Department of Agriculture's Guidelines and Procedures Applicable to the West Virginia Department of Agriculture.

The following publications prepared and approved by the United States Department of Agriculture are applicable to the West Virginia Department of Agriculture, as determined by the Commissioner of Agriculture:

5.1. "U.S. Inspected Meat and Poultry Packing Plants: A Guide to Construction and Layout", Agriculture Handbook 570;

5.2. "Standards and Labeling Policy Book"; and

5.3. Food Safety and Inspection Service's Directives, Notices, and Bulletins.

§61-16-6. Licensing.

6.1. Application for license and inspection. -- Every commercial slaughterer, custom slaughterer, commercial processor, custom processor, or distributor shall obtain a license from the Commissioner.

6.1.a. An applicant for a license shall make application on an official form furnished by the Commissioner and shall complete the application to include all information requested. Only the applicant named in the application may conduct operations at the establishment for which the license is granted.

6.1.b. The licensee shall apply for a new license when ownership or the location of the business changes.

6.2. Drawings and specification to be furnished.

6.2.a. Each applicant for the license shall submit to the Director, Meat and Poultry Inspection Division; WVDA;

6.2.a.1. Three (3) sets of complete drawings containing a plot plan showing the limits of the establishment's premises, locations in outline of buildings on the premises, cardinal points of the compass, and roads and railroads serving the establishment; the floor plans of the establishment for which inspection is requested, showing the locations of principal pieces of equipment, floor drains, principal drainage lines, handwashing basins and hose connections for cleanup purposes; and a room schedule showing the finish of walls, floors, and ceilings of all rooms in the establishments;

6.2.a.2. Three (3) sets of specifications which shall include statements, describing water supply, plumbing, drainage, refrigeration, equipment, lighting, and operations to be performed at the establishment; and

6.2.a.3. A current certificate from the local or state health authority certifying the water potability at the establishment and approval of the sewage disposal system of the establishment.

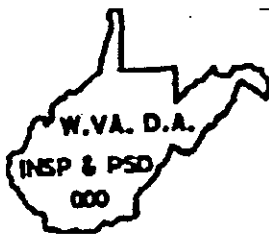
§61-16-7. Official Inspection Marks and Devices.

7.1. General. -- The inspection marks and devices, prescribed or referenced in this section are official marks and devices, for purposes of the W. Va. Code §19-2B-6 and shall be used in accordance with the provisions of this section and the United States Department of Agriculture regulations governing meat and poultry inspection as incorporated in this rule.

7.2. The inspection marks shall be affixed by the establishment under the oversight of the inspectors of the Meat and Poultry Inspection Division, WVDA.

7.3. Inspection legends on animal carcasses and parts of carcasses.

7.3.a. The inspection legend to identify WV inspected and passed animal carcasses, primal cuts, beef livers, beef tongues, beef hearts, and smoked meats not in casings and for application to materials that enclose carcasses or parts of carcasses, is as shown in this subdivision. The establishment number shall be placed in the inspection legend by the establishment where the three zeros appear. The size of the inspection legend shall be 1-7/8"x2".



7.3.b. The inspection legend may be proportionally reduced in size, provided it shall not be smaller than 7/8"x1", for application to the loins and ribs of pork, beef tails, and sausages in animal casings.

7.4. Inspection legends on labels.

7.4.a. The inspection legend required to be shown on all labels for inspected and passed products of cattle, sheep, swine, goats, and poultry shall be in the form as shown in subdivision 7.3.a of this rule, except that it need not be of the size illustrated, provided that it is of a sufficient size and of such color as to be conspicuously displayed and readily legible and the same proportions of letter size and boldness are maintained. The establishment number shall be placed in the inspection legend where the three zeros appear, and it may be preceded by the abbreviation "EST."

7.4.b. The inspection legend shall be applied on labels by mechanical means and shall not be applied by a hand stamp.

7.4.c. The inspection legend described in subdivision 7.3.a of this section may also be used on shipping containers, band labels, artificial casings, and other articles with the approval of the Director, Meat and Poultry Inspection Division, WVDA.

7.5. Any brand, stamp, label, or other device approved by the Director, Meat and Poultry Inspection Division, WVDA, and bearing any inspection legend presented in this section is an official device for purposes of the W. Va. Code §19-2B-6.

7.6. Custom stamps and devices to identify custom slaughtered animals or custom prepared product.

7.6.a. An establishment licensed for custom slaughter, custom processing operations, or both shall identify all custom carcasses, carcass parts, and custom meats with:

7.6.a.1. A custom stamp as provided for in subdivision 7.6.b of this rule and a custom stamp with the words "NOT FOR SALE" in uppercase letters at least 3/8" in height applied to the animal carcass immediately after slaughter;

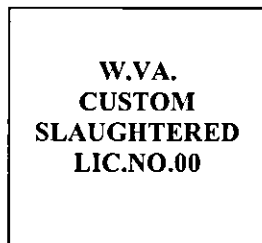
7.6.a.2. A custom stamp with the words "NOT FOR SALE" in uppercase letters at least 3/8" in height applied immediately upon receipt of a carcass or carcass parts which were slaughtered at a location other than the receiving licensed establishment;

7.6.a.3. A tag made from a material that is nontoxic and waterproof, that identifies the name of the owner or a number which identifies the owner of the meat, which must be placed on the carcass immediately after slaughter or on the carcass or carcass parts upon receipt. The tag may be omitted if the identification number is legibly applied directly on the meat or poultry by an approved marking pencil;

7.6.a.4. A stamp or legible printing or pressure sensitive tape with the words "NOT FOR SALE" in uppercase letters at least 3/8" in height on all custom wrapped or packaged meats or poultry immediately after final preparation. All custom meat or poultry must remain so identified while on the establishment's premises; and

7.6.a.5. A stamp, legible printing or pressure sensitive tape or tag attached with the words "NOT FOR SALE" in uppercase letters at least 3/8" in height on closed containers when utilized for packing unwrapped, wrapped, or packaged custom meats or poultry. All custom meat or poultry must remain so identified immediately after packing the containers and while on the establishment's premises.

7.6.b. The official custom stamp (brass faced) required to identify animal carcasses or parts of carcasses resulting from custom establishment slaughter is as shown in this subdivision. The size of the stamp shall be 2"X2" with uppercase letters 3/8" in height.



§61-16-8. Overtime and Holiday Inspection Service.

8.1. The management of a licensed establishment shall reimburse WVDA for the cost of inspection service furnished on any holiday as specified in subsection 8.3 of this Section, or for providing inspection services for more than eight (8) hours on any day or more than forty (40) hours in any administrative workweek, Saturday through Friday.

8.2. When a licensed establishment requires an inspection service on a holiday or for more than eight (8) hours on any other day, it shall request the veterinary supervisor to furnish inspection during that period. The request shall be made at least seven (7) days before the holiday and at least two (2) days in advance of planned overtime.

8.3. Holidays are those specified in W. Va. Code §2-2-1.

8.4. The Commissioner shall determine from time to time the rate for overtime and holiday services.