

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 27 3 19 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY Chapter 19, Article 2B

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

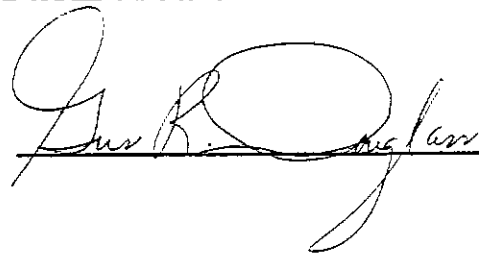
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 16

TITLE OF RULE BEING PROPOSED: Rules on Inspection of Meat and Poultry

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



5.00

BRIEF STATEMENT OF CIRCUMSTANCES OF PROPOSED RULES ON INSPECTION OF MEAT AND POULTRY

The 1995 Legislature extensively amended Chapter 19, Article 2B Inspection of Animals, Meat and Meat Products by adding provisions on mandatory inspection of poultry and changed the Article title to "Inspection of Meat and Poultry". The amended law authorizes the Commissioner of Agriculture to promulgate rules on inspection of meat and poultry. The rules should be in conformity with USDA rules. The proposed Rules on Inspection of Meat and Poultry will encompass the existing Regulations Governing Meat Inspection and the rules pertaining to inspection of poultry and poultry products. Since the proposed changes are very extensive and include a number of changes to meat inspection regulations, the proposed rules are submitted as new rules.

The proposed rules on poultry inspection are based on the incorporation by reference of the poultry products inspection regulations of the United States Department of Agriculture, Food Safety and Inspection Service (9 CFR, Section 381) promulgated and in effect as of January 1, 1995.

The provisions of the State-Federal Cooperative Inspection Program, signed by the U. S. Department of Agriculture and the West Virginia Department of Agriculture, require that the State law, regulations, inspection procedures, technical requirements, training, etc. are at least equal to Federal. In order to meet the conditions and receive continuous Federal funding, USDA regulations on mandatory meat and poultry inspection are proposed to be adopted, with some exceptions that do not apply to our State-Federal program.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules on Inspection of Meat and Poultry

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0179

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No increase or decrease is anticipated

3. Objectives of these rules:

To provide for inspection of poultry in the existing meat plants allowing them to expand production and better compete with competitors under Federal inspection.

Rule Title: Rules on Inspection of Meat and Poultry

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

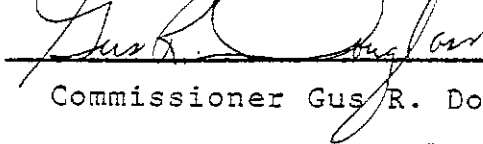
Beneficial impact on the meat industry. The rule will allow for processing poultry in existing meat plants

C. Economic Impact on Citizens/Public at Large.

Positive - The proposed rules may lead to slightly increased employment

Date: July 27, 1995

Signature of Agency Head or Authorized Representative



Commissioner Gus R. Douglass

DATE: July 27, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Commissioner Gus R. Douglass *GD*

LEGISLATIVE RULE TITLE: Inspection of Meat and Poultry

1. Authorizing statute(s) citation Chapter 19, Article 2B

2. a. Date filed in State Register with Notice of Hearing
June 21, 1995

b. What other notice, including advertising, did you give of the hearing?
Notified the Bureau of Public Health, Department of Health and Human Resources

c. Date of Hearing(s) N/A (written comments only)

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
Filed with Secretary of State on July 27, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:
Dr. W. J. Charminski, Director, Meat Inspection Division
(304) 558-2207

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BRIEF SUMMARY OF PROPOSED RULES ON INSPECTION OF MEAT AND POULTRY

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TITLE 61
Legislative Rules
Department of Agriculture

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Series 16
Rules on Inspection of Meat and Poultry

§61-16-1. General

1.1. Scope - Rules governing inspection of meat and poultry are established in order to implement the requirements of Chapter 19, Article 2B "Inspection of Meat and Poultry" of the Code of West Virginia, as amended by the 1995 Legislature, and to maintain and administer an effective State-Federal Cooperative Meat and Poultry Inspection Program in the State of West Virginia by establishing rules and 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.). The following regulations establish general operating rules, procedures, requirements and standards in the West Virginia Department of Agriculture, Meat and Poultry Inspection Division.

1.2. Authority - Code of West Virginia, Chapter 19, Article 2B

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of former rules and regulations - These rules repeal and replace in their entirety Title 61, Legislative Rules, Department of Agriculture, Series 16: Regulations Governing Meat Inspection, filed on April 11, 1991, and effective July 1, 1991.

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

The Mandatory Meat Inspection Regulations (9 CFR, Parts 301 et seq.) and the Mandatory Poultry Products Inspection Regulations (9 CFR, Part 381) of the United States Department of Agriculture, promulgated in the Federal Register prior to January 1, 1995 are hereby adopted in their entirety with the exception of the deleted regulations specified in section 3 of these rules.

§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 et seq.) of the United States Department of Agriculture shall be deleted and shall not become regulations of the West Virginia Department of Agriculture: 302.2; 303.1 (c); 303.1 (d)(2)(i)(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; 381.19 (a)(2); 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 regulation 381.10(a)(3) and (4) the words "and the statement 'Exempt - P. L. 90-492'" shall be deleted.

In regulation 381.123(b)(2) and (4) the words "and accompanied by the prefix 'P' shall be deleted".

§61-16-4. Definitions

4.1. All terms used in these regulations shall be those as defined in WV Code 19-2B-2, except for the following definitions in 4.2.

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:

4.2.1. "The Act" means WV Code 19-2B-1 et seq.

4.2.2. "The United States Department of Agriculture" and "Department" means the West Virginia Department of Agriculture.

4.2.3. "Secretary" means Commissioner of Agriculture.

4.2.4. "Administrator", "Regional Director", and "Area Supervisor" mean the Director, Meat and Poultry Inspection Division.

4.2.5. "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, West Virginia Department of Agriculture.

4.2.6. "Federal" means State.

4.2.7. "Food Inspector", "Inspection Service Employee", "USDA Inspector", "USDA Program Official", and "Program Inspector" mean Inspector, Meat and Poultry Inspection Division, West Virginia Department of Agriculture.

4.2.8. "Inspection Service Supervisor", "Veterinary Inspector", and "Circuit Supervisor" mean Veterinary Supervisor, Meat and Poultry Inspection Division; West Virginia Department of Agriculture.

4.2.9. "Food Safety and Inspection Service" means the Meat and Poultry Inspection Division, West Virginia Department of Agriculture.

4.2.10. "USDA Inspection Legend" and "Official Inspection Legend" mean WVDA Inspection Legend.

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

4.2.12. "U.S. Passed for Cooking" means WV Passed for Cooking.

4.2.13. "U.S. Passed for Refrigeration" means WV Passed for Refrigeration.

4.2.14. "U.S. Inspected and Condemned" means WV Inspected and Condemned.

4.2.15. "U.S. Retained" or "U.S. Detained" means WV Retained.

4.2.16. "U.S. Rejected" means WV Rejected.

4.2.17. "U.S. Suspect" means WV Suspect.

4.2.18. "U.S. Condemned" means WV Condemned.

4.2.19. "U.S. Government Seals" means WV Department of Agriculture Seals.

4.3. Whenever an official form, certificate, or seal is designated by Federal regulations, the appropriate West Virginia 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 shall be applicable to the West Virginia Department of Agriculture, as determined by the Commissioner of Agriculture:

- (1) "U.S. Inspected Meat and Poultry Packing Plants: A Guide to Construction and Layout", Agriculture Handbook 570
- (2) "The Meat and Poultry Inspection Manual"
- (3) "Sanitation Handbook for Meat and Poultry Inspectors"
- (4) "Accepted Meat and Poultry Equipment" MPI-2
- (5) "List of Proprietary Substances and Nonfood Compounds", Miscellaneous Publication Number 1419
- (6) "Standards and Labeling Policy Book"
- (7) "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 is required to obtain a license from the Commissioner.

6.1.1. Before the license is issued and inspection granted, each person who intends to conduct operations at an establishment subject to the Code, whether tenant, subsidiary, or landlord, shall make application therefore to the Commissioner for license and inspection.

6.1.2. Every application under this section shall be made on an official form furnished by the Commissioner and shall be completed to include all information requested. Each applicant for inspection shall be held responsible for compliance with the Code and rules governing meat and poultry inspection, when the license is granted. Conducting operations at the establishment for which the license is granted may be conducted only by the applicant named in the application.

6.1.3. In cases of ownership or location change, a new application shall be made.

6.2. Drawings and specification to be furnished.

6.2.1. Each applicant for the license shall submit to the Director, Meat and Poultry Inspection Division:

6.2.1.1. Three (3) sets of complete drawings containing a plot plan showing 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;

6.2.1.2. 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;

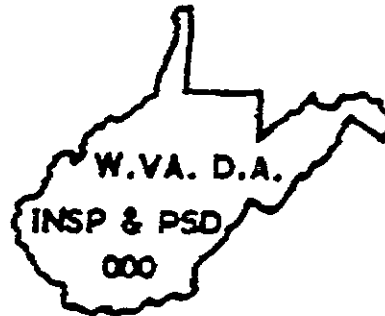
6.2.1.3. A current certificate from the local health authority certifying the water potability at the establishment and approval of the sewage disposal system of the establishment.

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

7.1. General - The inspection marks and devices, prescribed or referenced in this section shall be official marks and devices, for purposes of the Code, 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 herein.

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

7.2.1. 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, shall be as shown below. The establishment number shall be placed in the inspection legend where the three zeros appear. The size of the inspection legend shall be 1-7/8"x2".



7.2.2. 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, sausages in animal casings.

7.3. Inspection legends on labels.

7.3.1. 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 paragraph 7.2.1, 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."

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

7.3.3. The inspection legend described in paragraph 7.3.1 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.

7.4. Any brand, stamp, label, or other device approved by the Director, Meat and Poultry Inspection Division, and bearing any inspection legend presented in this section shall be an official device for purposes of the Code.

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

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

7.5.1.1. A custom stamp as provided for in paragraph 7.5.2 of these regulations 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.

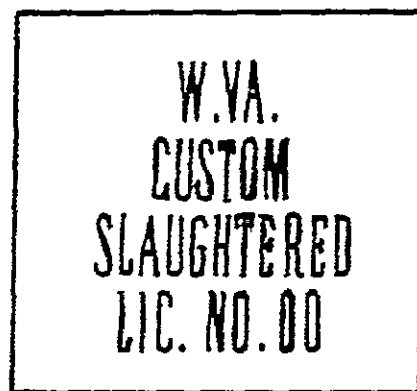
7.5.1.2. A custom stamp with the words "NOT FOR SALE" in uppercase letters at least 3/8" in height applied immediately upon receipt of a carcass or carcass parts which were slaughtered at a location other than the receiving licensed establishment.

7.5.1.3. 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.

7.5.1.4. 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.

7.5.1.5. 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.

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



§61.16.8. Article, Livestock, Poultry, or Animal Subject to Seizure and Condemnation.

8.1. Any carcass, part of a carcass, meat or poultry food product, or any dead, dying, disabled, or diseased animal or poultry, that is being transported in intrastate commerce or is otherwise subject to WV Code 19-2B-6 and 10, or is held for sale in West Virginia after such transportation is subject to seizure and condemnation under these Sections of the heretofore cited statute if such animal, poultry, carcass, meat or poultry food product:

8.1.1. Is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of the Code; or

8.1.2. Is capable of use as human food and is adulterated or misbranded; or

8.1.3. In any other way is in violation of the provisions of the Code.

8.2. Procedure for seizure and condemnation - Any carcass, part of a carcass, meat or poultry food product, or any dead, dying, disabled, or diseased animal or poultry subject to seizure and condemnation under this Section may be proceeded against and seized and condemned, and disposed of at any time, by the authority of the Commissioner as specified in WV Code 19-2B-6 and 10. The Commissioner may order and direct the person having custody or possession of such animal, poultry, carcass, meat or poultry food product, or the licensee of the establishment in which it is found, to be responsible for the disposition thereof; as well as any necessary storage, handling, or other incidentals related thereto.

8.3. Authority for condemnation or seizure under other provisions of the Code - The provisions of this Section relating to seizure, condemnation, and disposition of animals, poultry, carcasses, meat and poultry food products do not derogate from authority for condemnation or seizure conferred by other provisions of the Law, or other laws.

§61-16-9. Overtime and Holiday Inspection Service.

9.1. The management of a licensed establishment shall reimburse the Department for the cost of inspection service furnished on any holiday as specified in subsection 9.3 of this Section, or for providing inspection for more than eight (8) hours on any day or more than forty (40) hours in any administrative workweek, Saturday through Friday.

9.2. When a licensed establishment requires 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 such 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.

9.3. Holidays shall be those specified in WV Code 2-2-1 et seq.

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