

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

Form #3

Do Not Mark In This Box

FILED

2011 JUL 27 AM 10:55

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: WV Code 19-2B-3

AMENDMENT TO AN EXISTING RULE: YES  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 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.

  
\_\_\_\_\_  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 21, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture  
Meat and Poultry Inspection Division  
State Capitol  
1900 Kanawha Blvd., East  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: 61  
Rules on Inspection of Meat and Poultry

1. Authorizing statute(s) citation WV Code 19-2B-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 2, 2011 for Public Comment Period

b. What other notice, including advertising, did you give of the hearing?  
Notices mailed to all state commercially licensed slaughter and processing facilities.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 15, 2011 at 4 P.M.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2011

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

West Virginia Department of Agriculture, Meat and Poultry Inspection Division

Attn: Dr. Robert E. Pitts

State Capitol

1900 Kanawha Blvd. East

Charleston, WV 25305

Ph: 304-558-2206

Email: rpitts@ag.state.wv.us

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

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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

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b. Date of hearing or comment period:

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



State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

**Janet L. Fisher**  
Deputy Commissioner

**Bob Tabb**  
Deputy Commissioner

**Steve Miller**  
Assistant Commissioner

**SUMMARY OF THE PROPOSED RULE**

The intent of the proposed revisions to the existing rules is to update the rules to conform to Federal requirements. They are intended to incorporate by reference the applicable changes to USDA mandatory meat and poultry inspection regulations promulgated in the *Federal Register* between June 1, 2010 and May 6, 2011. This revision also incorporates Part 442 – “Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights” of the federal rules which was overlooked when it was relocated and updated in the Federal Code in the September 9, 2008 Federal Register.



State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

Janet L. Fisher  
Deputy Commissioner

Bob Tabb  
Deputy Commissioner

Steve Miller  
Assistant Commissioner

**STATEMENT OF CIRCUMSTANCES**

Rules on Inspection of  
Meat and Poultry  
Title 61, Series 16

The Federal Meat Inspection Act and the Poultry Products Inspection Act require a State meat and poultry inspection program in terms of law, regulations, inspection procedures, etc be "at least equal to" the Federal program.

Periodical updates to our rules are needed in order to maintain the equivalency of the State inspection program and continuation of the Federal 50% funding for the program (approximately \$775,000 per year).

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

The first change is to add Part 442 which concerns Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights which was published in the Federal Register on September 9, 2008 but never formally added to the West Virginia Meat and Poultry Rules. These regulations appeared in a different section of the Federal Code until being moved to Part 442.

It is requested to update our rules by the adoption of new regulations that have been implemented between June 1, 2010 and May 6, 2011. This includes new rules on Permission to Use Air Inflation of Meat Carcasses and Parts, Uniform Compliance Date for Food Labeling Regulations, Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products, and Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Inspection of Meat and Poultry

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: State Capitol, 1900 Kanawha Blvd., East  
Charleston, WV 25305-0170

Phone Number: 304-558-2206 Email: rpitts@ag.state.wv.us

**Fiscal Note Summary**

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

The agency approved rule will have no economic impact on costs and revenues of State government.

**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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Inspection of Meat and Poultry

Rule Title:

Inspection of Meat and Poultry

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.

The proposed rules will only slightly modify inspection techniques and procedures but will have no fiscal impact.

Date: JUNE 1 2011

Signature of Agency Head or Authorized Representative

Rhett C. Tall Deputy Commissioner

**TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE**

**SERIES 16  
INSPECTION OF MEAT AND POULTRY**

2011 JUL 27 AM 10:55  
OFFICE OF THE CLERK  
SECRETARY OF 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 and 441) of the United States Department of Agriculture, promulgated in the Federal Register prior to May 6, 2011 ~~June 1, 2010~~ 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:

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

4.2.2. "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.

4.2.3. "Secretary" means the Commissioner of Agriculture.

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

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, WVDA.

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, WVDA.

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

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

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 WVDA Passed for Cooking.

4.2.13. "U.S. Passed for Refrigeration"

means WVDA Passed for Refrigeration.

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

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

4.2.16. "U.S. Rejected" means WVDA Rejected.

4.2.17. "U.S. Suspect" means WVDA Suspect.

4.2.18. "U.S. Condemned" means WVDA Condemned.

4.2.19. "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:

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

(2) "Standards and Labeling Policy Book"; and

(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.

6.1.1. 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.

6.1.2. 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.

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

6.2.1.1. 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;

6.2.1.2. 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; and

6.2.1.3. 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.**

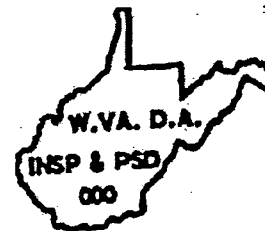
7.1. General - The inspection marks and devices, prescribed or referenced in this section

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.

7.3.1. 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, 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".



7.3.2. 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, and sausages in animal casings.

7.4. Inspection legends on labels.

7.4.1. 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 subdivision 7.3.1 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."

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

7.4.3. The inspection legend described in subdivision 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, 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.

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

7.6.1.1. A custom stamp as provided for in subdivision 7.6.2 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;

7.6.1.2. 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;

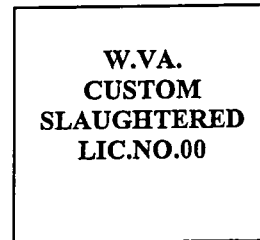
7.6.1.3. A tag made from a material that is nontoxic and waterproof, that identifies the name of the owner or a number which identifies the owner of the meat, which must be placed on the carcass immediately after slaughter or on the carcass or carcass parts upon receipt. The tag may be omitted if the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

pencil;

7.6.1.4. 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; and

7.6.1.5. 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.

7.6.2. 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.