

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61
West Virginia Code Chapter 19 Article 29 Section 4
CITE AUTHORITY _____

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

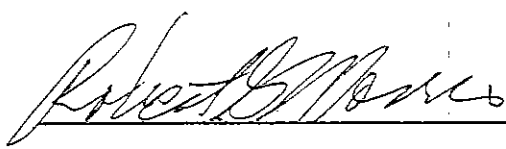
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: _____
West Virginia Aquaculture Farm Rules

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



4.80

requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of a brokerage business, as modified.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.

61-23

Amend.

1 ~~(a)~~ The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the commissioner of agriculture
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 fourteenth day of October, one thousand nine hundred
7 ninety-four, relating to the commissioner of agriculture
8 (West Virginia aquaculture farm rules, 61 CSR 23), are
9 authorized with the amendments set forth below:

10 On page 1, section 61-23-1, by striking out section 1.1
11 and substituting in lieu thereof the following:

12 "1.1 The commissioner will inspect aquaculture
13 production on a voluntary basis for a period of three
14 years. At the end of this three year period the Aquacul-
15 ture Farm Rule shall be reviewed to determine whether
16 the rule should become mandatory. Aquaculture pro-
17 ducers wishing to participate in the voluntary inspection
18 program must apply in writing to the commissioner.
19 Once a producer enters the voluntary program they will
20 be required to produce fish according to all of the
21 provisions of this rule for the remaining portion of the
22 three year period. The inspections will be conducted on
23 a risk assessment basis with the purpose of educating
24 farmers and assuring the production of wholesome,
25 unspoiled and unadulterated fish and fishery products."

26 On page 4, section 61-23-3, by striking out section 3.1

27 and substituting in lieu thereof the following:

28 "3.1 All producers of fish participating in the volun-
29 tary inspection program outlined in this rule shall have
30 and implement a written Hazard Analysis Critical
31 Control Point Plan, approved by the commissioner, for
32 each location where fish are grown. The commissioner
33 shall furnish a model Hazard Analysis Critical Control
34 Point Plan to the producers for them to follow."

35 On page 5, section 61-23-3, by striking out section 3.4.

36 On page 6, section 61-23-4, by striking out all of
37 section 4.6 and substituting in lieu thereof the following:

38 "4.6 Septic tanks, home aeration units, vault privy, or
39 other sewage tanks shall not be located within 50 feet of
40 a well or groundwater supply used as an aquaculture
41 water source, or aquaculture production areas in order
42 to prevent fecal and other contamination of water where
43 fish are raised for human consumption, except that tanks
44 or other aquaculture production systems with a barrier
45 preventing possible contamination may be located
46 closer."

47 On page 8, section 61-23-7, by striking out section 7.1
48 and substituting in lieu thereof the following:

49 "7.1 All fish transported for sale and/or processing by
50 producers participating in this voluntary program shall
51 be:"

52 On page 8, section 61-23-7, by striking out section 7.5
53 and substituting in lieu thereof the following:

54 "7.5 All shipments of human food fish to other pro-
55 ducers, wholesalers, retailers, and/or processors required
56 to operate under a HACCP plan shall be accompanied by
57 a written notification stating that any and all drugs, feed
58 and color additives, pesticides and/or medicated feeds
59 have been legally administered and withdrawal periods
60 have been followed. This notification shall include the
61 name, address, and telephone number of the grower; date
62 of sale; and the lot number of fish. This notification

63 shall be signed by the grower. Except that:"

64 On page 8, section 61-23-7, by striking out section
65 7.5.a. and substituting in lieu thereof the following:

66 "7.5.a. Shipments of fish to other producers before the
67 completion of a required withdrawal period shall be
68 accompanied by a written notification including the
69 name and dose of the drug, feed, color additive, pesti-
70 cide, and/or medicated feed; date administered and
71 length of required withdrawal period; date of sale; and
72 lot number of the fish. This notification shall be signed
73 by the grower."

74 On page 9, section 61-23-9, by striking out section 9.1
75 and substituting in lieu thereof the following:

76 "9.1 It is prohibited to:"

77 On page 10, section 61-23-10, by striking out section
78 61-23-10 in its entirety, and renumbering the remaining
79 sections.

80 On page 11, section 61-23-12, by striking out section
81 12.1.a and substituting in lieu thereof the following:

82 "12.1.a. Enter and inspect, during reasonable hours,
83 any aquaculture production area participating in the
84 voluntary inspection program, where fish are produced,
85 sold, stored, or transported. The inspection includes, but
86 is not limited to, photographing, video taping, verifying,
87 copying and auditing computer files, records and papers
88 relating to the production of fish, as is necessary to
89 determine compliance with this rule and to investigate
90 consumer complaints. The inspection also includes, but
91 is not limited, to photographing, video taping, observing
92 and verifying the premises, vehicles, personnel and
93 activities;"

94 On page 12, section 61-23-12, by striking out section
95 12.1.i.

96 On page 13, section 61-23-13, by striking out section
97 13.3.

98 And,

99 On page 13, section 61-23-13, by striking out section
100 13.4.

61-1

~~101~~ (b) The legislative rules filed in the state register on the
102 twenty-second day of July, one thousand nine hundred
103 ninety-four, modified by the commissioner of agriculture
104 to meet the objections of the legislative rule-making
105 review committee and refiled in the state register on the
106 ninth day of August, one thousand nine hundred
107 ninety-four, relating to the commissioner of agriculture
108 (animal disease control, 61 CSR 1), are authorized.

61-23D

(c) The legislative rules filed in the state register on the
109 fifteenth day of August, one thousand nine hundred
110 ninety-four, modified by the commissioner of agriculture
111 to meet the objections of the legislative rule-making
112 review committee and refiled in the state register on the
113 eleventh day of October, one thousand nine hundred
114 ninety-four, relating to the commissioner of agriculture
115 (inspection of nontraditional, domesticated animals, 61
116 CSR 23D), are authorized.

61-4d

(d) The legislative rules filed in the state register on the
118 fifteenth day of August, one thousand nine hundred
119 ninety-four, modified by the commissioner of agriculture
120 to meet the objections of the legislative rule-making
121 review committee and refiled in the state register on the
122 fourteenth day of October, one thousand nine hundred
123 ninety-four, relating to the commissioner of agriculture
124 (labeling of dairy products for rBST or rBGH, 61 CSR
125 4D), are authorized.

61-23a

(e) The legislative rules filed in the state register on the
127 fifteenth day of August, one thousand nine hundred
128 ninety-four, modified by the commissioner of agriculture
129 to meet the objections of the legislative rule-making
130 review committee and refiled in the state register on the
131 fourteenth day of October, one thousand nine hundred
132 ninety-four, relating to the commissioner of agriculture
133 (West Virginia fish processing rules, 61 CSR 23D), are
134

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 23
Proposed West Virginia Aquaculture Farm Rules

§61-23-1. General

1.1 Scope - The Commissioner will inspect aquaculture production on a risk assessment basis with the sole purpose of assuring wholesome, unspoiled and unadulterated fish and fishery products.

1.2 Authority - WV Code 19-29-1 et seq.

1.3 Filing Date -

1.4 Effective Date -

1.5 This is a new legislative rule

61-23-2. Definitions

2.1 "Adulterated" means a fish or fishery product carries or contains any poisonous or deleterious substance or compound or pathogen in a quantity that may render it injurious to human health; was produced, processed, transported or held under unsanitary conditions; was treated with or exposed to chemicals, chemotherapeutics (drugs), heavy metals, pesticides, temperatures or any conditions in a manner that violates this rule; or was not produced according to an approved HACCP plan.

2.2 "Aquaculture" means the commercial production of fish and/or other aquatic life.

2.3 "Aquaculture production area" means the site and the immediate vicinity where fish are produced and kept for aquaculture purposes, i.e. tanks, raceways, ponds, etc.

2.4 "Aquaculture water source" means springs, wells, ponds, streams, lakes, rivers, impoundments and/or any other manmade or natural source of water where fish are grown or from which water is taken to conduct aquaculture.

2.5 "Chemotherapeutic" or "Drug" means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than man; and substances other than nutritive components, intended to affect the structure or any function of the animal body.

2.6 "Commissioner" means the commissioner of agriculture or his or her designee.

2.7 "Control" means managing the points, steps and procedures of an operation to maintain compliance with established criteria.

2.8 "Corrective Action" means procedures to be followed when a deviation occurs, including disposition of products, avoidance of further deviations, and records of actions taken as a result of the deviation.

2.9 "Critical Control Point" means any point, step or procedure in a production or food process where there is a high probability that improper control may cause, allow, or contribute to a safety hazard in the final product or food.

2.10 "Critical Limit" means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk of occurrence of the identified hazard.

2.11 "Deviation" means failure to meet a critical limit at a critical control point or follow the HACCP plan.

2.12 "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals.

2.13 "Fishery product" means any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

2.14 "Hazard Analysis Critical Control Point Plan" or "HACCP Plan" is an inspectional or quality control plan in written form, approved by the Commissioner that:

2.14.a. Assesses hazards associated with growing, harvesting, processing, manufacturing, marketing, preparation and or use of fish as a food product;

2.14.b. Identifies critical control points on a flow chart of the operation;

2.14.c. Sets critical limits for critical control points;

2.14.d. Establishes a monitoring system;

2.14.e. Establishes standards for evaluating compliance with the plan and corrective actions for the identified critical control points;

2.14.f. Establishes verification procedures; and

2.14.g. Establishes a record keeping system.

2.15 "Log for Notice of Unusual Occurrence and Corrective Action" means a record for situations or safety hazards taking place that are not anticipated by the HACCP plan, and corrective actions taken as a result of the situations or safety hazards.

2.16 "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, or scallops or edible portions thereof, except when the scallop product consists entirely of the shucked adductor muscle.

2.17 "Monitoring" means a planned sequence of observations or measurements of critical limits designed to produce an accurate record intended to insure that the critical limit maintains product safety.

2.18 "Official Sample" means any sample of water, soil, fish, feed, drugs, pesticides, other ingredients, containers and/or products taken by the commissioner or approved laboratory in accordance with this rule.

2.19 "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

2.20 "Record" means a book, ledger or other written or printed means used to log required information.

2.21 "Risk Assessment Basis" means considering grades from past inspections, violations, trends, conditions, observations and other information to estimate the likelihood of a danger or safety hazard occurring and to determine the frequency and priority of future inspections.

2.22 "Safety Hazard" means any biological, chemical, or physical property that may cause, allow, or contribute to an unacceptable human health risk in the final product or food.

2.23 "Shellstock" means live molluscan shellfish in the shell.

2.24 "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

2.25 "Terrestrial Livestock" means cattle, sheep, horses, swine, goats, poultry and/or other domestic animals inhabiting the land.

2.26 "Verification" means methods, procedures, and tests used to determine if the HACCP system is in compliance with the HACCP Plan.

2.27 "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

§61-23-3. Hazard Analysis Critical Control Point Plan

3.1 All producers of fish for human consumption shall have and implement a written Hazard Analysis Critical Control Point Plan approved by the commissioner, for each location where fish are grown.

3.2 The HACCP plan shall include all seven recognized principles of HACCP. The HACCP plan shall:

3.2.a. Identify the safety hazards associated with aquaculture production. It shall also assess the likelihood of the hazards occurring and identify the preventative measures for their control;

3.2.b. Determine critical control points, or the points, procedures and operational steps that must be controlled to eliminate or minimize the likelihood of the safety hazards occurring; and will include as applicable:

- i) Site Selection
- ii) Aquaculture Water Source
- iii) Feed
- iv) Drugs
- v) Pesticides
- vi) Feed and Color Additives
- vii) Holding and Transportation

The commissioner may identify and require other critical control points based on inspection and/or observation of aquaculture operations to prevent an unacceptable risk to consumers;

3.2.c. Establish the critical limits, or target levels and tolerances that must be met to ensure the identified critical control points are under control;

3.2.d. Establish a monitoring system to ensure control of each critical control point by scheduled testing or observations, including procedures and frequency of the testing or observations, that will be used to control and monitor each critical control point to ensure compliance with the critical limits. The procedures shall include calibration of instruments and the use of consumer complaints relating to a critical control point received by the producer;

3.2.e. Establish corrective actions to be taken when there is a deviation or loss of control at a critical control point identified by monitoring;

3.2.f. Provide for a verification system to ensure the HACCP plan is working correctly. This system shall consist of procedures, tests and documentation as necessary to assess compliance with the HACCP plan and to ensure the HACCP plan is working effectively. The HACCP plan and all records shall be reviewed, evaluated and signed by the producer on at least an annual basis to confirm the adequacy of the HACCP plan and system; and

3.2.g. Provide for a record keeping system that will document all procedures, the monitoring of the critical control points and the HACCP plan.

3.2.g.1. Records shall be kept for critical control points, indicating that the critical control points have been monitored according to the approved HACCP plan.

3.2.g.2. Records shall indicate the actual values obtained during monitoring, documentation of the verification process and what corrective action was taken if critical limits were exceeded.

3.2.g.3. Records shall also include a Log for Notice of Unusual Occurrence and Corrective Action.

3.2.g.4. Records shall include the date, the appropriate lot numbers of the fish, and the signature of the individual logging the information.

3.3 Records required by this rule must be kept for a minimum of 2 years unless otherwise specified. Records kept on computer files shall have a backup file on a separate disk, or hardcopy.

3.4 Failure of a producer of fish for human consumption to have and implement a HACCP plan that complies with this rule will render fish and/or fishery products adulterated and subject to embargo or other enforcement action by the Commissioner under this rule.

§61-23-4. Site Selection and Water Source Critical Control Points

4.1 Aquaculture water sources, except those utilizing a public water system certified by State or Local Health Authorities, shall be tested for pesticide and chemical residues by the Commissioner at an approved laboratory prior to commencing aquaculture production.

4.2 Aquaculture water sources utilizing surface waters, except those sources utilizing a public water system certified by State or Local Health Authorities, shall be tested for pesticide and chemical residues by the Commissioner at an approved laboratory on at least an annual basis.

4.3 Aquaculture water sources and aquaculture production areas shall be tested by the Commissioner at an approved laboratory whenever the Commissioner suspects contamination.

4.4 The Commissioner may require testing for other possible contaminants that he or she concludes is necessary to protect the safety of consumers.

4.5 Terrestrial livestock shall be excluded by fencing or a permanent structure from the immediate vicinity of aquaculture water sources and

aquaculture production areas where fish are raised for human consumption.

4.6 Septic systems shall not be located within 200 feet of an aquaculture water source or aquaculture production area in order to prevent fecal and other contamination of water where fish are raised for human consumption, except that tanks or other aquaculture production systems with an impervious barrier preventing possible contamination may be located closer.

4.7 Manure and/or sewage sludge shall not be applied within 50 feet of an aquaculture water source or aquaculture production area.

4.8 Every reasonable effort shall be made to keep water used for aquaculture production pure and free from contamination.

4.9 Permanent records of all analysis of aquaculture water sources and aquaculture production areas for contaminants shall be kept.

§61-23-5. Feed Critical Control Point

5.1 Aquaculture feeds shall conform to the West Virginia Commercial Feed Law (WV Code §19-14-1 et seq.) and West Virginia Department of Agriculture Commercial Feed rules, 61 CSR 5.

5.2 Medicated feeds shall not contain chemotherapeutics or drugs not approved by the U.S. Food and Drug Administration Center for Veterinary Medicine and the West Virginia Department of Agriculture.

§61-23-6. Drugs, Feed and Color Additives and Pesticides Critical Control Points

6.1 Only drugs approved for food fish aquaculture or listed as low regulatory priority by the U.S. Food and Drug Administration's Center for Veterinary Medicine, used under an Investigational New Animal Drug application or prescribed by a licensed veterinarian following FDA Compliance Policy Guide 7126.06, Extra-label Use of New Animal Drugs in Food-Producing Animals may be used for the production of human food fish. Except that veterinary biological products (vaccines) licensed by the United States Department of Agriculture Animal and Plant Health Inspection Service may be used.

6.2 Pesticides not registered with the U.S. Environmental Protection Agency for the use with fish intended as human food shall not be used in or land applied within 100 feet of aquaculture water sources or aquaculture production areas containing fish in aquaculture production for human food. Aerial application of pesticides not registered with the U.S. Environmental Protection Agency for use with fish intended as human food shall not be made within 500 feet of aquaculture water sources or aquaculture production areas containing fish in aquaculture production for human food.

6.3 A locked cabinet or area shall be maintained and used to store only drugs, medicated feeds and/or pesticides used for the production of fish for human consumption.

6.4 Drugs shall be used in accordance with U.S. Food and Drug Administration regulations and labelling. Feed and color additives shall be used according to U.S. Food and Drug Administration regulations and labelling. Biological veterinary products(vaccines) shall be used in accordance with United States Department of Agriculture's regulations and labelling. Pesticides shall be used in accordance with U.S. Environmental Protection Agency's regulations and labelling.

6.5 A permanent record shall be kept when drugs, pesticides, feed and color additives or medicated feeds are used to produce fish intended as human food. The record shall include the name and dose of any or all drugs, pesticides, feed and color additives, or medicated feeds; the date and/or dates administered and the length of the required withdraw period; the date of sale; the lot number of the fish; and the name and address of the purchaser of the treated fish.

6.6 Aquaculture pesticide use shall otherwise conform to the West Virginia Pesticide Control Act (WV Code §19-16A-1 et seq.).

6.7 Fish and fishery products containing levels of the chemicals listed in this section in excess of action levels set by the Food and Drug Administration in Table 1 will be considered adulterated and subject to embargo or other enforcement action by the Commissioner under this rule.

6.7.a Table 1 - Action levels for chemicals in Fish and Fishery products

Chemical	Action Level
Aldrin plus Dieldrin	0.3 ppm
Chlordane	0.3 ppm
Endrin	0.3 ppm
Heptachlor plus Heptachlor epoxide	0.3 ppm
Chlordecone	0.3 ppm
DDT plus TDE plus DDE	5.0 ppm
Mirex	0.1 ppm
Toxaphene	5.0 ppm
PCB	2.0 ppm
Methyl Mercury	1.0 ppm
Sulfite	100 ppm

6.8 Fish and fishery products containing levels of the drugs listed in this section in excess of action levels set by the Food and Drug Administration in Table 2 will be considered adulterated and subject to embargo or other enforcement action by the Commissioner under this rule.

6.8.a Table 2 - Action levels for drugs in Fish and Fishery

products

Drug	Action Level
Oxytetracycline	0.1 ppm
Sulfamerazine	0.0 ppm
Sulfadimethoxine plus ormetoprim	0.1 ppm

§61-23-7. Transport

7.1 All fish transported for sale and/or processing for human food in the state of West Virginia shall be:

7.1.a. Alive and in good health when harvested from the water;

7.1.b. Maintained alive; or maintained in a constant-iced or mechanically refrigerated state ensuring an internal body temperature of 40°F (4.4°C) or below; except that:

7.1.b.1. Shellstock shall be maintained in a constantly iced or mechanically refrigerated state ensuring an internal body temperature of 50°F (10°C) or below after harvest;

7.1.b.2. Shucked shellfish shall be maintained in a constant iced or mechanically refrigerated state ensuring an internal temperature of 40°F (4.4°C) or below; and

7.1.b.3. Processed fish that have a water-phase salt level of at least 17 percent do not require refrigeration.

7.2 All fish intended for human consumption shall be transported or held in clean non-toxic, pathogen-free containers.

7.3 Unprotected raw fish and fishery products, cooked ready-to-eat fishery products, smoked fishery products and molluscan shellfish shall be physically separated to minimize the possibility of cross contamination during transport.

7.4 No other cargo shall be placed on or above fish or fishery products unless all cargo is packed in sealed, crush resistant waterproof containers.

7.5 All shipments of human food fish to other producers, wholesalers, retailers and/or processors shall be accompanied by a written notification of any and all drugs, feed and color additives, pesticides and/or medicated feeds administered, including the name, address, and telephone number of the grower; the name and dose of the drug, color additive, feed additive, pesticide or medicated feed; the date administered and the length of required withdraw period; the date of sale; and the lot number of the fish. This notification shall be signed by the grower.

7.5.a. If no drugs, feed and color additives, pesticides or

medicated feeds have been administered, a written statement including the lot number of the fish signed by the grower indicating the absence of drugs, feed and color additives, pesticides and medicated feeds shall accompany the shipment.

7.6 Every reasonable effort shall be made to keep fish and fishery products intended for human consumption wholesome, unspoiled, and unadulterated.

7.7 Ice used for cooling fish and fishery products shall be made from drinking water certified potable by State or County Health authorities.

7.7.a. After use for cooling fish or fishery products, ice shall not be used as human food.

§61-23-8 Laboratory Testing

8.1 The Commissioner of Agriculture shall establish and maintain or make provisions for approved laboratory testing facilities for the purpose of enforcing the analytical aspects of this rule.

8.2 The methods used for analyzing samples will be those found in the Official Methods of Analysis by the Association of Analytical Chemists, 15th edition 1990; or the United States, Food and Drug Administrations Bacteriological Analytical Manual, 7th edition, 1992; or The Pesticide Analytical Manual, Volume I, and II, Foods and Feeds; or other methods as approved by the Commissioner.

8.3 The Commissioner shall collect and provide for the transportation and analytical testing of all samples specifically required by this rule. The cost for additional analytical testing required by individual HACCP plans are the individual farmer's responsibility.

§61-23-9. Prohibited Acts

9.1 It is unlawful to:

9.1.a. Produce, hold, transport, sell or offer for sale fish or fishery products in violation of this rule;

9.1.b. Sell or offer for sale any fish or fishery product for human consumption which is adulterated or not wholesome;

9.1.c. Remove any tag or order affixed by the Commissioner unless the removal is authorized by him or her;

9.1.d. Impede, hinder or otherwise prevent, or attempt to prevent the commissioner in the performance of his or her duties in connection with the provisions of this rule;

9.1.e. Falsify or falsely log any values on any record or records required by this rule;

9.1.f. Remove or dispose of detained, embargoed, or quarantined fish or fishery products by sale or otherwise without the permission of the Commissioner or the courts; and

9.1.g. Continue aquaculture operations until released from the cease and desist order by the Commissioner or the courts.

§61-23-10. Penalties

10.1 Civil Penalties

10.1.a. Any person violating any of the provisions of this rule may be assessed a civil penalty of up to five hundred dollars for a first offense and up to two thousand dollars for subsequent offenses. In determining the amount of the 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 any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this rule before and after written notification of the violation.

10.1.b. The civil penalty is payable to the West Virginia Department of Agriculture and is collectable in any manner now or hereafter provided for the collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of that person after the lien has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter the lien to record without requiring payment of costs as a condition precedent to recording.

10.1.c. Nothing in this rule shall be construed as requiring the Commissioner to assess a civil penalty or to institute an embargo, detainment, quarantine or cease and desist order for violation of this rule when he or she believes that the public interest may best be served by a written notice of violation.

§61-23-11. Confidentiality of Trade Secrets

11.1 The Commissioner may not make public information which relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided that when the information is necessary to carry out the provisions of this rule, this information may be revealed, subject to protective order, to any federal, state or local agency consultant or may be revealed, subject to protective

order, at a closed hearing or in findings of fact issued by the commissioner.

§61-23-12. Powers and Duties of the Commissioner

12.1 The commissioner has the power and authority to:

12.1.a. Enter and inspect, during reasonable hours, any location, except fish hatcheries operated by the State of West Virginia or the United States of America, where fish are produced, sold, stored or transported for human consumption. The inspection includes, but is not limited to photographing, video taping, verifying, copying, and auditing, computer files, records and papers relating to the production of fish for human food as is necessary to determine compliance with this rule and to investigate consumer complaints. The inspection also includes, but is not limited to photographing, video taping, observing, and verifying the premises, vehicles, personnel and activities;

12.1.b. Examine, sample and test water, soil, fish, feed, drugs, pesticides, other ingredients, containers and/or products used or intended for use in the production, storage and/or transportation of fish or fishery products for human consumption;

12.1.c. Cooperate with and enter into agreements with governmental agencies of this state and any other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this rule;

12.1.d. Detain, embargo or quarantine or issue a cease and desist order by affixing thereto or in the vicinity of the aquaculture production area, holding area or transporting vehicle a tag or other appropriate marking, and giving notice thereof in writing to the producer, holder or transporter. The Commissioner may take this action when:

12.1.d.1. Fish or fishery products have been found by the commissioner to be or are believed to be in violation of the provisions of this rule. Upon confirmation of a violation he or she may condemn and order the fish or fishery product disposed of as necessary to ensure the safety of consumers; or

12.1.d.2. Fish or fishery products have been found by the Commissioner to be or are believed to be infected with a fish or human pathogen that the Commissioner concludes could affect other aquaculture areas and wild fish stocks or present a public health hazard. Upon confirmation of the pathogen he or she may condemn and order the fish or fishery products disposed of as necessary to prevent the spread of the pathogen;

12.1.e. Embargo a perishable product, even if the practical result is to bring about the involuntary disposal of the product;

12.1.e.1. The Commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this rule in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this rule;

12.1.f. Inspect or copy all records required by this rule. All records required by this rule must be presented to the commissioner during an on premise inspection;

12.1.g. Inspect all aquaculture water sources and aquaculture production areas producing fish for human food;

12.1.h. Develop appropriate inspection, embargo, quarantine, detainment and other regulatory forms as necessary for the enforcement of this rule; and

12.1.i. Assess civil penalties of up to two thousand dollars for the violation of this rule.

12.2 The Commissioner shall provide assistance, education, information, and training on the HACCP system to improve the safety and quality of the aquaculture industry in West Virginia.

12.3 The Commissioner shall appoint member's to the Commissioner's Aquaculture Committee. The Commissioner's Aquaculture Committee shall meet at least annually with the purpose of evaluating the status of aquaculture and making recommendations to the commissioner concerning aquaculture. The Committee shall consist of four aquaculture producers, one aquaculture processor, two aquaculture educators, and shall be chaired by the commissioner or his or her designee.

12.4 The Commissioner shall be guided by the analytical results of an official sample when determining whether fish or fishery products conform to this rule and other rules or laws of the state of West Virginia;

§61-23-13 Enforcement Policy

13.1 Aquaculture farms will receive a grade of "A", "B", "C", or "Unsatisfactory". Farms will be initially inspected at least once every three months for a minimum of two inspections. After this initial inspection period:

13.1.a. A grade of "A" will require reinspection on at least an annual basis;

13.1.b. A grade of "B" during an inspection will require reinspection at least once every six months;

13.1.c. A grade of "C" during an inspection will require

reinspection at least once every three months; and

13.1.d. An aquaculture farm receiving a grade of "Unsatisfactory" will not be permitted to sell fish for use as human food until a subsequent inspection results in a grade of "A", "B" or "C".

13.2 In no way is this enforcement policy intended to prohibit the Commissioner from inspecting a producer's facility more frequently in the event that he or she believes it is necessary.

13.3 All fish raised for sale as human food shall be produced according to all provisions in this rule. Fish raised exclusively for consumption of the producer and his or her immediate family, nonpaying guests, and employees, and fish raised in fish hatcheries operated by the State of West Virginia or the United States of America are exempt from this rule.

13.4 Aquaculture producers have three years to comply with Hazard Analysis Critical Control Point Plan, in section 3 of this rule and two years to comply with the remainder of the West Virginia Aquaculture Farm Rules.

