

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF THE  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES , NO

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 64

SECTION 61-9-1(a), PASSED ON March 11, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 1, 1995



AUTHORIZED SIGNATURE

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 23  
WEST VIRGINIA AQUACULTURE FARM RULES

§61-23-1. General. C ✓

1.1. Scope. -- The Commissioner will inspect aquaculture production on a voluntary basis for a period of three (3) years. At the end of this three (3) year period the Aquaculture Farm Rules shall be reviewed to determine whether the rule should become mandatory. Aquaculture producers wishing to participate in the voluntary inspection program must apply in writing to the commissioner. Once a producer enters the voluntary program they will be required to produce fish according to all the provisions of this rule for the remaining portion of the three (3) year period. The inspections will be conducted on a risk assessment basis with the purpose of educating farmers and assuring the production of wholesome, unspoiled and unadulterated fish and fishery products.

1.2. Authority. -- W. Va. Code §19-29-1 et seq.

1.3. Filing Date. -- April 5, 1995.

1.4. Effective Date. -- May 1, 1995.

§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. C ✓

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. C ✓

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

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. 10 ✓

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

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"plan"

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 participating in the voluntary inspection program outlined in this rule shall have and implement a written Hazard Analysis Critical Control Point Plan, approved by the commissioner, for each location where fish are grown. The commissioner shall furnish a model Hazard Analysis Critical Control Point Plan to the producers for them to follow.

3.2. The HACCP plan shall include all seven (7) 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

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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 <sup>two</sup> 2 years unless otherwise specified. Records kept on computer files shall have a backup file on a separate disk, or hardcopy.

#### §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 tanks, home aeration units, vault privy, or other sewage tanks shall not be located within 50 feet of a well or groundwater supply used as an aquaculture water source, or aquaculture production areas in order to pre-

vent fecal and other contamination of water where fish are raised for human consumption, except that tanks or other aquaculture production systems with a 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.

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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

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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.

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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.).

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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.

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

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

§61-23-7. Transport.

7.1. All fish transported for sale and/or processing by producers participating in this voluntary program 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:

constantly iced

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;

correct

7.1.b.2. Shucked shell-

constantly iced

fish 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 required to operate under a HACCP plan shall be accompanied by a written notification stating that any and all drugs, feed and color additives, pesticides and/or medicated feeds have been legally administered and withdrawal periods have been followed. This notification shall include the name, address, and telephone number of the grower; date of sale; and the lot number of fish. This notification shall be signed by the grower. Except that:

7.5.a. Shipments of fish to other producers before the completion of a required withdrawal period shall be accompanied by a written notification including the name and dose of the drug, feed, color additive, pesticide, and/or medicated feed; date administered and length of required withdrawal period; date of sale; and lot number of fish. This notification shall be signed by the grower.

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

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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 prohibited 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;

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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. Confidentiality of Trade Secrets.

10.1. 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.

#### §61-23-11. Powers and Duties of the Commissioner.

11.1. The commissioner has the power and authority to:

11.1.a. Enter and inspect, during reasonable hours, any aquaculture production area participating in the voluntary inspection program, where fish are produced, sold, stored or transported. 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, 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;

11.1.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;

11.1.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;

11.1.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:

11.1.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

11.1.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;

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

11.1.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;

11.1.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;

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

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

11.2. 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.

11.3. 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 (4) aquaculture producers, one aquaculture processor, two (2) aquaculture educators, and shall be chaired by the commissioner or his or her designee.

11.4. 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;

**§61-23-12. Enforcement Policy.**

12.1. Aquaculture farms will receive a grade of "A", "B", "C", or "Unsatisfactory". Farms will be initially inspected at least once every three (3) months for a minimum of two (2) inspections. After this initial inspection period:

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

12.1.b. A grade of "B" during an inspection will require reinspection at least once every six (6) months;

12.1.c. A grade of "C" during an inspection will require reinspection at least once every three (3) months; and

12.1.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".

12.2. 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.

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 23  
Proposed West Virginia Aquaculture Farm Rules

§61-23-1. General

1.1 The commissioner will inspect aquaculture production on a voluntary basis for a period of three years. At the end of this three year period the Aquaculture Farm Rules shall be reviewed to determine whether the rule should become mandatory. Aquaculture producers wishing to participate in the voluntary inspection program must apply in writing to the commissioner. Once a producer enters the voluntary program they will be required to produce fish according to all the provisions of this rule for the remaining portion of the three year period. The inspections will be conducted on a risk assessment basis with the purpose of educating farmers and assuring the production of wholesome, unspoiled and unadulterated fish and fishery products.

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

1.3 Filing Date - March 24, 1995

1.4 Effective Date - May 1, 1995

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.

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

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

3.1 All producers of fish participating in the voluntary inspection program outlined in this rule shall have and implement a written Hazard Analysis Critical Control Point Plan, approved by the commissioner, for each location where fish are grown. The commissioner shall furnish a model Hazard Analysis Critical Control Point Plan to the producers for them to follow.

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.

#### §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 tanks, home aeration units, vault privy, or other sewage tanks shall not be located within 50 feet of a well or groundwater supply used as an aquaculture water source, or aquaculture production areas 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 a 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 by producers participating in this voluntary program 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 required to operate under a HACCP plan shall be accompanied by a written notification stating that any and all drugs, feed and color additives, pesticides and/or medicated feeds have been legally administered and withdrawal periods have been followed. This notification shall include the name, address, and telephone number of the

grower; date of sale; and the lot number of fish. This notification shall be signed by the grower. Except that:

7.5.a. Shipments of fish to other producers before the completion of a required withdrawal period shall be accompanied by a written notification including the name and dose of the drug, feed, color additive, pesticide, and/or medicated feed; date administered and length of required withdrawal period; date of sale; and lot number of fish. This notification shall be signed by the grower.

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 prohibited 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. Confidentiality of Trade Secrets

10.1 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.

#### §61-23-11. Powers and Duties of the Commissioner

11.1 The commissioner has the power and authority to:

11.1.a. Enter and inspect, during reasonable hours, any aquaculture production area participating in the voluntary inspection program, where fish are produced, sold, stored or transported. 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, 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;

11.1.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;

11.1.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;

11.1.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:

11.1.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

11.1.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;

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

11.1.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;

11.1.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;

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

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

11.2 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.

11.3 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.

11.4 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;

#### §61-23-12 Enforcement Policy

12.1 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:

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

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

12.1.c. A grade of "C" during an inspection will require reinspection at least once every three months; and

12.1.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".

12.2 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.

## Summary

### West Virginia Aquaculture Farm Rules

§61-23-1 et seq.

Legislative Rule

This rule is intended to provide a level playing field for all aquaculture producers in the state and assure the domesticated production of aquatic species is done in a manner that will assure the quality and the safety of the finished product.

This rule requires every producer of fish for human consumption to develop and implement a Hazard Analysis Critical Control Point, or HACCP, plan. The content of the HACCP plan will be individualized for each producing operation and the minimum contents of that plan are outlined in the rule.

The rule requires the Commissioner to maintain or provide for a laboratory testing facility for the purpose of enforcing the analytical aspects of this rule. The rule also provides actions levels for specific contaminants in fish and fishery products.

The rule outlines specific prohibited acts. The rule also gives authority to the Commissioner to assess civil penalties of up to five hundred dollars for a first offense and up to two thousand dollars for subsequent offenses.

The rule has a provision for maintaining the confidentiality of trade secrets.

The rule gives the Commissioner the authority to inspect, embargo, quarantine, issue cease and desist orders, cooperate or enter into agreements with other agencies or associations, and to develop appropriate regulatory forms as necessary.

The rule provides an enforcement policy which determines inspection frequency based on "risk assessment".

61-23

Bill-Agriculture, Aquaculture

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H. B. 2140

(By Delegates Gallagher, Douglas, Compton,  
Linch, Faircloth and Riggs)

(Introduced January 23, 1995; referred to the  
Committee on Agriculture and Natural Resources then  
the Judiciary)

A BILL to amend and reenact section one, article nine, chapter  
sixty-four of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to authorizing the  
commissioner of agriculture to promulgate legislative rules  
relating to West Virginia aquaculture farm rules.

Be it enacted by the Legislature of West Virginia:

That section one, 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.**

(a) The legislative rules filed in the state register on the  
sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers),  
22 are authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the twenty-fourth day of  
13 September, one thousand nine hundred ninety-one, relating to the  
14 commissioner of agriculture (commercial feed), are authorized  
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new  
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any  
19 commercial feed or feed ingredients used in the manufacture of  
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new  
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed  
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new  
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the  
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for  
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir du poids) of the commercial feed  
8 and each feed ingredient used in the feed shall not be required  
9 to be listed."

10 (y) The legislative rules filed in the state register on the  
11 fourth day of June, one thousand nine hundred ninety-one,  
12 modified by the commissioner of agriculture to meet the  
13 objections of the legislative rule-making review committee and  
14 refiled in the state register on the second day of August, one  
15 thousand nine hundred ninety-one, relating to the commissioner  
16 of agriculture (wood destroying insect treatment standards), are  
17 authorized.

18 (z) The legislative rules filed in the state register on the  
19 twentieth day of December, one thousand nine hundred ninety,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the thirtieth day of April, one  
23 thousand nine hundred ninety-one, relating to the commissioner  
24 of agriculture (fee structure for the pesticide control act of  
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twelfth day of November, one  
6 thousand nine hundred ninety-one, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on  
9 the eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the tenth day of September, one  
13 thousand nine hundred ninety-one, relating to the commissioner  
14 of agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the  
16 twenty-sixth day of July, one thousand nine hundred ninety-one,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the sixteenth day of October,  
20 one thousand nine hundred ninety-one, relating to the  
21 commissioner of agriculture (licensing of pesticide businesses),  
22 are authorized.

23 (dd) The legislative rules filed in the state register on the  
24 eighth day of August, one thousand nine hundred ninety-one,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the second day of October, one  
3 thousand nine hundred ninety-one, relating to the commissioner of  
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on  
6 the eighth day of August, one thousand nine hundred ninety-one,  
7 modified by the commissioner of agriculture to meet the  
8 objections of the legislative rule-making review committee and  
9 refiled in the state register on the twenty-fourth day of  
10 September, one thousand nine hundred ninety-one, relating to the  
11 commissioner of agriculture (assessment of civil penalties and  
12 procedures for consent agreements and negotiated settlements),  
13 are authorized.

14 (ff) The legislative rules filed in the state register on  
15 the eighth day of August, one thousand nine hundred ninety-one,  
16 modified by the commissioner of agriculture to meet the  
17 objections of the legislative rule-making review committee and  
18 refiled in the state register on the twenty-fourth day of  
19 September, one thousand nine hundred ninety-one, relating to the  
20 commissioner of agriculture (aerial application of herbicides to  
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on  
23 the eighth day of August, one thousand nine hundred ninety-one,  
24 modified by the commissioner of agriculture to meet the  
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of  
2 September, one thousand nine hundred ninety-one, relating to the  
3 commissioner of agriculture (frozen desserts and imitation frozen  
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and  
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code  
9 §19-11B-1 et seq. or of these rules against the manufacturer of  
10 product and/or the distributor of the mix used to manufacture  
11 the product.

12 15.2. The commissioner will assess any violations of W. Va.  
13 Code §19-11B-1 et seq. or of this rule to the distributor for  
14 mix sampled from unopened containers. The company will not be  
15 assessed additional cumulative notices of violations until the  
16 commissioner has determined that the firm has had adequate notice  
17 of the previous notice, generally 10 days from the mailing of the  
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official  
20 product sample(s) taken on separate days within a one year period  
21 are found to be adulterated or misbranded, the commissioner shall  
22 send a written "First Notice" to the manufacturer or distributor  
23 whichever is appropriate. This notice shall notify the  
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy  
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official  
4 product sample(s) taken on separate days within a one year period  
5 are found to be adulterated or misbranded the commissioner shall  
6 send a written "Second Notice" to the manufacturer or distributor  
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official  
9 product sample(s) within 21 days of the sending of a Second  
10 Notice to the manufacturer or distributor, but shall not collect  
11 product samples before the lapse of 7 days from the sending of a  
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official  
14 product sample(s) taken on separate days within a one year period  
15 are found to be adulterated or misbranded the commissioner shall  
16 send a written "Third Notice" to the manufacturer or distributor  
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official  
19 product sample(s) within 21 days of the sending of the Third  
20 Notice to the manufacturer or distributor, but shall not collect  
21 additional product samples before the lapse of 7 days from the  
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a  
24 period of 24 hours to a manufacturer or distributor when the  
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when  
2 three out of the last five samples from the same machine are  
3 violative. The "Shut-down Order" will normally be issued with  
4 the "Third Notice". The "Shut-down Order" will give the reasons  
5 for the order, state the portion of the manufacturing or  
6 distributing operation that is prohibited from operating while  
7 the order is in effect, give conditions of the order, state the  
8 length of time that the Shut-down Order will be in effect and  
9 specify a time and place for a hearing to be held in this matter.  
10 Except that in the case where the public health, safety or  
11 welfare is at risk, the commissioner will issue an immediate  
12 Shut-down Order and give notice to the manufacturer or  
13 distributor under the provisions of subdivision 15.6.a. of this  
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down  
16 Order without giving the manufacturer or distributor the  
17 opportunity to be heard where there is a hazard to the public  
18 health, safety or welfare. In these cases, the manufacturer or  
19 distributor will be given the opportunity to request a hearing  
20 before the commissioner after the notification of the order is  
21 received by the manufacturer or distributor. All Shut-down  
22 Orders issued due to noncompliance with subdivision 8.1.c.,  
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk  
24 to the public health, safety or welfare.

1        15.6.b. The manufacturer or distributor will be responsible  
2 for causing all operations covered by the Shut-down Order to  
3 cease and follow all other conditions of the order. At the end  
4 of the period of the order, the manufacturer or distributor may  
5 resume operations without further action by the commissioner.

6        15.7. If after a Shut-down Order has been issued the  
7 commissioner finds that effective corrective action has not been  
8 taken, he may issue a suspension of the Frozen Desserts  
9 Manufacturer Permit. The suspension shall state the time that  
10 the suspension will become effective, give the reasons for the  
11 suspension and specify a time and place for a hearing to be held  
12 in this matter. Except that in the case of a summary suspension  
13 the commissioner will give the manufacturer the opportunity to  
14 request a hearing in this matter subsequent to the notification  
15 of the suspension.

16        15.7.a. All suspensions due to nonconformance to subdivision  
17 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.

18        15.7.b. A suspension of the Frozen Desserts Manufacturer  
19 Permit remains in effect until the manufacturer submits and the  
20 commissioner accepts a written plan of correction and a request  
21 for a reinstatement of the permit.

22        15.7.c. The commissioner has seven days from the date of  
23 receipt of this application to respond to a suspension in the  
24 case of violations of subdivision 8.1.c., 8.1.d. or 8.1.g. of  
25 this rule and fourteen days to respond for all other violations

1 of W. Va. Code §19-11B-1 et seq. or these rules. The  
2 commissioner will accept or deny the application for a  
3 reinstatement of the permit and will give the terms and  
4 conditions under which the permit will be reinstated.

5 15.8. If the commissioner finds that after the firm has  
6 resumed production following a suspension of their Frozen  
7 Desserts Manufacturer Permit that effective corrective action  
8 has not been taken, then the commissioner will hold a hearing to  
9 determine if the Frozen Desserts Manufacturer Permit should be  
10 revoked.

11 15.9. Persons who manufacture a product on an intermittent or  
12 infrequent basis, so that the standard enforcement policy cannot  
13 apply, will enter into a consent agreement with the commissioner  
14 for correction of all items found to be not in conformance with  
15 W. Va. Code §19-11B-1 et seq. or these rules.

16 15.10. Whenever an antibiotic or pesticide residue test is  
17 found to be above tolerance, the commissioner shall notify the  
18 manufacturer and/or distributor immediately of this fact and  
19 shall begin an investigation to determine the cause of the  
20 residue. The commissioner shall require that any person found  
21 to be responsible for the residue shall correct the cause of the  
22 residue prior to the resumption of the manufacturing or  
23 distribution of the product.

24 15.11. A person who performs a recall by voluntarily removing  
25 product from sale and distribution in an effective manner so as

1 to limit the potential harm to the health and well-being of the  
2 public may be eligible for exemptions from the normal enforcement  
3 policy. The commissioner shall consider the facts of each case  
4 when making a decision on an exemption.

5 15.12. The commissioner may apply the enforcement policy in a  
6 liberal manner in cases where all official product sample results  
7 that involve a product in the form actually sold to the public  
8 have been found to be in conformance with W. Va. Code §19-11B-1  
9 et seq. or these rules.

10 15.13. The commissioner may suspend the standard enforcement  
11 policy in cases where such action is necessary to protect the  
12 public health, safety or welfare.

13 15.14. Resamples will only be taken from machines that were  
14 shown to be producing violative product the previous visit,  
15 except for resamples needed to check that the nonviolative status  
16 is being maintained according to the following schedule:

17 15.14.a. After a first notice and one nonviolative sample,  
18 resamples will be taken between 5 to 6 months after the  
19 nonviolative sample.

20 15.14.b. After a second notice and one nonviolative sample,  
21 resamples will be taken between 3-4 months after the nonviolative  
22 sample.

23 15.14.c. Other resamples may be considered necessary to  
24 determine that the nonviolative status is being maintained."

1 (hh) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-fourth day of  
6 September, one thousand nine hundred ninety-one, relating to the  
7 commissioner of agriculture (West Virginia apiary law of 1991),  
8 are authorized.

9 (ii) The legislative rules filed in the state register on  
10 the eighth day of August, one thousand nine hundred ninety-one,  
11 modified by the commissioner of agriculture to meet the  
12 objections of the legislative rule-making review committee and  
13 refiled in the state register on the twenty-fourth day of  
14 September, one thousand nine hundred ninety-one, relating to the  
15 commissioner of agriculture (disposal of dead poultry), are  
16 authorized with the amendments set forth below:

17 On page two, section two, by adding a new subsection to read  
18 as follows:

19 "2.8 'Disposal pit' means an opening dug in the ground to a  
20 minimum depth of six feet, containing a minimum capacity of 150  
21 cubic feet, covered with a minimum of 12 inches of dirt, and  
22 provided with one or more openings for the introduction of  
23 poultry. The openings shall be a minimum size of eight inches  
24 square and equipped with tight lids. A disposal pit shall be  
25 located in a site which will prevent contamination of the

1 groundwater or the surface water. This site should conform to  
2 the standards established in this rule."

3 On page two, subsection 3.1 after the word "incinerator," by  
4 adding the words "disposal pit,"

5 And,

6 On page two, by adding a new section, designated section 4,  
7 to read as follows:

8 "§61-1C-4. Standards for Site Location for Disposal Pits.

9 4.1 No part of a disposal pit system shall be located in a  
10 poorly drained or filled area, or in any area where seasonal  
11 flooding occurs.

12 4.2 No part of a disposal pit system shall be located within  
13 10 feet of a building, foundation or property line.

14 4.3 No part of a disposal pit system shall be located within  
15 50 feet of a public water supply line or within 10 feet of a  
16 private water supply system.

17 4.4 A disposal pit shall be located at least 50 feet from a  
18 private well or groundwater supply.

19 4.5 There shall be a minimum of three feet between the bottom  
20 of a disposal pit and seasonal groundwater or rock, shale or any  
21 other impermeable layer.

22 4.6 The evaluation of the site for installation of a disposal  
23 pit shall be based upon percolation test results. Percolation  
24 tests shall be performed in the following manner:

1 4.6.1 Location - At least two holes shall be placed over the  
2 selected site. The results of these two test holes will be  
3 averaged.

4 4.6.2 Holes shall be dug or bored from six to eight inches  
5 in diameter at the site where the disposal pit will be installed.  
6 The holes should be at least 24 inches in depth.

7 4.6.3 The bottom and sides of the holes shall be scratched  
8 with a sharp pointed instrument or wire brush to remove any  
9 smeared soil surfaces which interfere with the absorption of  
10 water into the soil.

11 4.6.4 Loose dirt shall be removed from the bottom of the test  
12 holes and two inches of coarse sand or fine gravel shall be  
13 placed into the holes to prevent sealing.

14 4.6.5 An eight or ten penny nail shall be placed in the wall  
15 of each hole exactly six inches above the level of sand or  
16 gravel.

17 4.6.6 The test hole shall be completely filled with water to  
18 ground level. Water in the hole shall be kept to a depth of at  
19 least 12 inches for a minimum period of four hours before  
20 beginning the percolation rate measurement.

21 4.7 Percolation rate measurement - Upon completion of the  
22 above, the water depth in the holes shall be adjusted to the  
23 level of the nail. The number of minutes it takes for this six  
24 inches of water (all the water) to be absorbed into the soil  
25 shall be accurately determined. This time in minutes, divided by

1 six, gives the rate of fall per inch. The average rate of fall  
2 must be between five minutes and 60 minutes."

3 (jj) The legislative rules filed in the state register on  
4 the eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the commissioner of agriculture to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the twenty-fourth day of  
8 September, one thousand nine hundred ninety-one, relating to the  
9 commissioner of agriculture (licensing of livestock dealers), are  
10 authorized.

11 (kk) The legislative rules filed in the state register on the  
12 fifteenth day of September, one thousand nine hundred ninety-two,  
13 modified by the commissioner of agriculture to meet the  
14 objections of the legislative rule-making review committee and  
15 refiled in the state register on the eighteenth day of November,  
16 one thousand nine hundred ninety-two, relating to the  
17 commissioner of agriculture (commercial feed), are authorized.

18 (ll) The legislative rules filed in the state register on the  
19 fifteenth day of September, one thousand nine hundred ninety-two,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the nineteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the  
24 commissioner of agriculture (general groundwater protection rules  
25 for fertilizers and manures), are authorized.

1 (mm) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred ninety-two,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of February,  
6 one thousand nine hundred ninety-three, relating to the  
7 commissioner of agriculture (primary and secondary containment of  
8 fertilizers), are authorized with the amendments set forth below:

9 "On page five, by striking out all of subsection 5.5 and  
10 inserting in lieu thereof a new subsection 5.5 to read as  
11 follows: 'The operator or his licensed representative shall sign  
12 and date each application under oath.'; and

13 On page eighteen, by striking out all of subsection 14.1 and  
14 inserting in lieu thereof a new subsection 14.1 to read as  
15 follows:

16 'All moneys for the purpose of the enforcement and  
17 administration of this rule shall come from general revenue funds  
18 appropriated by the legislature for that purpose. The net  
19 proceeds of civil penalties collected pursuant to W. Va. Code  
20 §20-5M-10a or any civil administrative penalties collected  
21 pursuant to W. Va. Code §20-5M-10c will be deposited in the  
22 groundwater remediation fund established in W. Va. Code §20-5M-1.  
23 et seq.'".

24 (nn) The legislative rules filed in the state register on the  
25 fifteenth day of September, one thousand nine hundred ninety-two,

1 modified by the commissioner of agriculture to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of February,  
4 one thousand nine hundred ninety-three, relating to the  
5 commissioner of agriculture (general groundwater protection rules  
6 for pesticides), are authorized.

7 (oo) The legislative rules filed in the state register on the  
8 fifteenth day of September, one thousand nine hundred ninety-two,  
9 modified by the commissioner of agriculture to meet the  
10 objections of the legislative rule-making review committee and  
11 refiled in the state register on the nineteenth day of February,  
12 one thousand nine hundred ninety-three, relating to the  
13 commissioner of agriculture (bulk pesticide operational rules),  
14 are authorized.

15 (pp) The legislative rules filed in the state register on the  
16 fifteenth day of September, one thousand nine hundred ninety-two,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the nineteenth day of February,  
20 one thousand nine hundred ninety-three, relating to the  
21 commissioner of agriculture (non-bulk pesticide rules for  
22 permanent operational areas), are authorized.

23 (qq) The legislative rules filed in the state register on the  
24 sixteenth day of April, one thousand nine hundred ninety-three,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twenty-sixth day of July,  
3 one thousand nine hundred ninety-three, relating to the  
4 commissioner of agriculture (animal disease control), are  
5 authorized.

6 (rr) The legislative rules filed in the state register on  
7 the third day of August, one thousand nine hundred ninety-three,  
8 modified by the commissioner of agriculture to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the eighth day of October, one  
11 thousand nine hundred ninety-three, relating to the commissioner  
12 of agriculture (auctioneers), are authorized.

13 (ss) The legislative rules filed in the state register on the  
14 fifteenth day of August, one thousand nine hundred ninety-four,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the fourteenth day of October,  
18 one thousand nine hundred ninety-four, relating to the  
19 commissioner of agriculture (West Virginia aquaculture farm  
20 rules), are authorized.

21

22 NOTE: The purpose of this bill is to authorize the  
23 Commissioner of Agriculture to promulgate legislative rules  
24 relating to West Virginia aquaculture farm rules.

25  
26 Strike-throughs indicate language that would be stricken from  
27 the present law, and underscoring indicates new language that  
28 would be added.

SENATE BILL NO. 64

(By Senators Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20, 1995; referred to the  
Committee on Agriculture; then to the Committee  
on Finance; and then to the Committee on the  
Judiciary]

61-23

9

10 A BILL to amend and reenact section one, article nine, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 commissioner of agriculture to promulgate legislative rules  
14 relating to West Virginia aquaculture farm rules.

15 Be it enacted by the Legislature of West Virginia:

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

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

21 §64-9-1. Commissioner of agriculture.

22 (a) The legislative rules filed in the state register on the  
23 sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges  
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 third day of August, one thousand nine hundred eighty-three,  
5 relating to the commissioner of agriculture (licensing of  
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 eighth day of February, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (conduct of beef  
10 industry self-improvement assessment program referendum), are  
11 authorized.

12 (d) The legislative rules filed in the state register on the  
13 fourth day of June, one thousand nine hundred eighty-four,  
14 relating to the commissioner of agriculture (feeding untreated  
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the  
17 fourth day of June, one thousand nine hundred eighty-four,  
18 relating to the commissioner of agriculture (registration,  
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the  
21 first day of November, one thousand nine hundred eighty-four,  
22 relating to the commissioner of agriculture (public markets), are  
23 authorized.

24 (g) The legislative rules filed in the state register on the  
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),  
2 are authorized.

3 (h) The legislative rules filed in the state register on the  
4 fourth day of June, one thousand nine hundred eighty-four,  
5 relating to the commissioner of agriculture (animal disease  
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the  
8 fifth day of January, one thousand nine hundred eighty-four,  
9 relating to the commissioner of agriculture (use of certain  
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the  
12 eighth day of March, one thousand nine hundred eighty-five,  
13 relating to the commissioner of agriculture (increasing certain  
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 thirteenth day of January, one thousand nine hundred eighty-six,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the thirty-first day of January,  
20 one thousand nine hundred eighty-six, relating to the  
21 commissioner of agriculture (licensing of livestock dealers),  
22 are authorized.

23 (l) The legislative rules filed in the state register on the  
24 eighteenth day of June, one thousand nine hundred eighty-six,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the fifth day of January, one  
3 thousand nine hundred eighty-seven, relating to the commissioner  
4 of agriculture (West Virginia pesticide use and application act),  
5 are authorized.

6 (m) The legislative rules filed in the state register on the  
7 eighteenth day of August, one thousand nine hundred eighty-six,  
8 modified by the director of the division of forestry of the  
9 department of agriculture to meet the objections of the  
10 legislative rule-making review committee and refiled in the state  
11 register on the fifth day of January, one thousand nine hundred  
12 eighty-seven, relating to the director of the division of  
13 forestry of the department of agriculture (ginseng), are  
14 authorized.

15 (n) The legislative rules filed in the state register on the  
16 tenth day of April, one thousand nine hundred eighty-seven,  
17 relating to the commissioner of agriculture (schedule of charges  
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the  
20 thirteenth day of August, one thousand nine hundred eighty-seven,  
21 modified by the commissioner of agriculture to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the eighth day of September, one  
24 thousand nine hundred eighty-seven, relating to the commissioner  
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred  
3 eighty-eight, relating to the commissioner of agriculture (sale  
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the  
6 fifteenth day of September, one thousand nine hundred  
7 eighty-eight, modified by the commissioner of agriculture to meet  
8 the objections of the legislative rule-making review committee  
9 and refiled in the state register on the twenty-sixth day of  
10 October, one thousand nine hundred eighty-eight, relating to the  
11 commissioner of agriculture (animal disease control), are  
12 authorized.

13 (r) The legislative rules filed in the state register on the  
14 fifteenth day of May, one thousand nine hundred eighty-nine,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-first day of August,  
18 one thousand nine hundred eighty-nine, relating to the  
19 commissioner of agriculture (production of milk and cream for  
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the  
22 seventh day of August, one thousand nine hundred eighty-nine,  
23 modified by the commissioner of agriculture to meet the  
24 objections of the legislative rule-making review committee and  
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the  
2 commissioner of agriculture (animal disease control), are  
3 authorized.

4 (t) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the commissioner of agriculture to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the fifth day of October, one thousand nine hundred  
9 ninety, relating to the commissioner of agriculture (meat  
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the  
12 tenth day of August, one thousand nine hundred ninety, modified  
13 by the commissioner of agriculture to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the third day of October, one thousand nine hundred  
16 ninety, relating to the commissioner of agriculture (agricultural  
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the  
19 tenth day of August, one thousand nine hundred ninety, modified  
20 by the commissioner of agriculture to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the third day of October, one thousand nine hundred  
23 ninety, relating to the commissioner of agriculture (public  
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the  
2 nineteenth day of September, one thousand nine hundred ninety,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the ninth day of November, one  
6 thousand nine hundred ninety, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the  
9 eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the twenty-fourth day of  
13 September, one thousand nine hundred ninety-one, relating to the  
14 commissioner of agriculture (commercial feed), are authorized  
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new  
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any  
19 commercial feed or feed ingredients used in the manufacture of  
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new  
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed  
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new  
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the  
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for  
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir dupois) of the commercial feed  
8 and each feed ingredient used in the feed shall not be required  
9 to be listed."

10 (y) The legislative rules filed in the state register on the  
11 fourth day of June, one thousand nine hundred ninety-one,  
12 modified by the commissioner of agriculture to meet the  
13 objections of the legislative rule-making review committee and  
14 refiled in the state register on the second day of August, one  
15 thousand nine hundred ninety-one, relating to the commissioner  
16 of agriculture (wood destroying insect treatment standards), are  
17 authorized.

18 (z) The legislative rules filed in the state register on the  
19 twentieth day of December, one thousand nine hundred ninety,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the thirtieth day of April, one  
23 thousand nine hundred ninety-one, relating to the commissioner  
24 of agriculture (fee structure for the pesticide control act of  
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twelfth day of November, one  
6 thousand nine hundred ninety-one, relating to the commissioner of  
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on  
9 the eighth day of August, one thousand nine hundred ninety-one,  
10 modified by the commissioner of agriculture to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the tenth day of September, one  
13 thousand nine hundred ninety-one, relating to the commissioner  
14 of agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the  
16 twenty-sixth day of July, one thousand nine hundred ninety-one,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the sixteenth day of October,  
20 one thousand nine hundred ninety-one, relating to the  
21 commissioner of agriculture (licensing of pesticide businesses),  
22 are authorized.

23 (dd) The legislative rules filed in the state register on the  
24 eighth day of August, one thousand nine hundred ninety-one,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the second day of October, one  
3 thousand nine hundred ninety-one, relating to the commissioner of  
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on  
6 the eighth day of August, one thousand nine hundred ninety-one,  
7 modified by the commissioner of agriculture to meet the  
8 objections of the legislative rule-making review committee and  
9 refiled in the state register on the twenty-fourth day of  
10 September, one thousand nine hundred ninety-one, relating to the  
11 commissioner of agriculture (assessment of civil penalties and  
12 procedures for consent agreements and negotiated settlements),  
13 are authorized.

14 (ff) The legislative rules filed in the state register on  
15 the eighth day of August, one thousand nine hundred ninety-one,  
16 modified by the commissioner of agriculture to meet the  
17 objections of the legislative rule-making review committee and  
18 refiled in the state register on the twenty-fourth day of  
19 September, one thousand nine hundred ninety-one, relating to the  
20 commissioner of agriculture (aerial application of herbicides to  
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on  
23 the eighth day of August, one thousand nine hundred ninety-one,  
24 modified by the commissioner of agriculture to meet the  
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of  
2 September, one thousand nine hundred ninety-one, relating to the  
3 commissioner of agriculture (frozen desserts and imitation frozen  
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and  
6 substituting a new section 15, to read as follows:

7 "61-4B-15. Enforcement policy.

8 15.1. The commissioner may assess a violation of W. Va. Code  
9 §19-11B-1 et seq. or of these rules against the manufacturer of  
10 product and/or the distributor of the mix used to manufacture  
11 the product.

12 15.2. The commissioner will assess any violations of W. Va.  
13 Code §19-11B-1 et seq. or of this rule to the distributor for  
14 mix sampled from unopened containers. The company will not be  
15 assessed additional cumulative notices of violations until the  
16 commissioner has determined that the firm has had adequate notice  
17 of the previous notice, generally 10 days from the mailing of the  
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official  
20 product sample(s) taken on separate days within a one year period  
21 are found to be adulterated or misbranded, the commissioner shall  
22 send a written "First Notice" to the manufacturer or distributor  
23 whichever is appropriate. This notice shall notify the  
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy  
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official  
4 product sample(s) taken on separate days within a one year period  
5 are found to be adulterated or misbranded the commissioner shall  
6 send a written "Second Notice" to the manufacturer or distributor  
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official  
9 product sample(s) within 21 days of the sending of a Second  
10 Notice to the manufacturer or distributor, but shall not collect  
11 product samples before the lapse of 7 days from the sending of a  
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official  
14 product sample(s) taken on separate days within a one year period  
15 are found to be adulterated or misbranded the commissioner shall  
16 send a written "Third Notice" to the manufacturer or distributor  
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official  
19 product sample(s) within 21 days of the sending of the Third  
20 Notice to the manufacturer or distributor, but shall not collect  
21 additional product samples before the lapse of 7 days from the  
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a  
24 period of 24 hours to a manufacturer or distributor when the  
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when  
2 three out of the last five samples from the same machine are  
3 violative. The "Shut-down Order" will normally be issued with  
4 the "Third Notice". The "Shut-down Order" will give the reasons  
5 for the order, state the portion of the manufacturing or  
6 distributing operation that is prohibited from operating while  
7 the order is in effect, give conditions of the order, state the  
8 length of time that the Shut-down Order will be in effect and  
9 specify a time and place for a hearing to be held in this matter.  
10 Except that in the case where the public health, safety or  
11 welfare is at risk, the commissioner will issue an immediate  
12 Shut-down Order and give notice to the manufacturer or  
13 distributor under the provisions of subdivision 15.6.a. of this  
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down  
16 Order without giving the manufacturer or distributor the  
17 opportunity to be heard where there is a hazard to the public  
18 health, safety or welfare. In these cases, the manufacturer or  
19 distributor will be given the opportunity to request a hearing  
20 before the commissioner after the notification of the order is  
21 received by the manufacturer or distributor. All Shut-down  
22 Orders issued due to noncompliance with subdivision 8.1.c.,  
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk  
24 to the public health, safety or welfare.

1        15.6.b. The manufacturer or distributor will be responsible  
2 for causing all operations covered by the Shut-down Order to  
3 cease and follow all other conditions of the order. At the end  
4 of the period of the order, the manufacturer or distributor may  
5 resume operations without further action by the commissioner.

6        15.7. If after a Shut-down Order has been issued the  
7 commissioner finds that effective corrective action has not been  
8 taken, he may issue a suspension of the Frozen Desserts  
9 Manufacturer Permit. The suspension shall state the time that  
10 the suspension will become effective, give the reasons for the  
11 suspension and specify a time and place for a hearing to be held  
12 in this matter. Except that in the case of a summary suspension  
13 the commissioner will give the manufacturer the opportunity to  
14 request a hearing in this matter subsequent to the notification  
15 of the suspension.

16        15.7.a. All suspensions due to nonconformance to subdivision  
17 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.

18        15.7.b. A suspension of the Frozen Desserts Manufacturer  
19 Permit remains in effect until the manufacturer submits and the  
20 commissioner accepts a written plan of correction and a request  
21 for a reinstatement of the permit.

22        15.7.c. The commissioner has seven days from the date of  
23 receipt of this application to respond to a suspension in the  
24 case of violations of subdivision 8.1.c., 8.1.d. or 8.1.g. of  
25 this rule and fourteen days to respond for all other violations

1 of W. Va. Code §19-11B-1 et seq. or these rules. The  
2 commissioner will accept or deny the application for a  
3 reinstatement of the permit and will give the terms and  
4 conditions under which the permit will be reinstated.

5 15.8. If the commissioner finds that after the firm has  
6 resumed production following a suspension of their Frozen  
7 Desserts Manufacturer Permit that effective corrective action  
8 has not been taken, then the commissioner will hold a hearing to  
9 determine if the Frozen Desserts Manufacturer Permit should be  
10 revoked.

11 15.9. Persons who manufacture a product on an intermittent or  
12 infrequent basis, so that the standard enforcement policy cannot  
13 apply, will enter into a consent agreement with the commissioner  
14 for correction of all items found to be not in conformance with  
15 W. Va. Code §19-11B-1 et seq. or these rules.

16 15.10. Whenever an antibiotic or pesticide residue test is  
17 found to be above tolerance, the commissioner shall notify the  
18 manufacturer and/or distributor immediately of this fact and  
19 shall begin an investigation to determine the cause of the  
20 residue. The commissioner shall require that any person found  
21 to be responsible for the residue shall correct the cause of the  
22 residue prior to the resumption of the manufacturing or  
23 distribution of the product.

24 15.11. A person who performs a recall by voluntarily removing  
25 product from sale and distribution in an effective manner so as

1 to limit the potential harm to the health and well-being of the  
2 public may be eligible for exemptions from the normal enforcement  
3 policy. The commissioner shall consider the facts of each case  
4 when making a decision on an exemption.

5 15.12. The commissioner may apply the enforcement policy in a  
6 liberal manner in cases where all official product sample results  
7 that involve a product in the form actually sold to the public  
8 have been found to be in conformance with W. Va. Code §19-11B-1  
9 et seq. or these rules.

10 15.13. The commissioner may suspend the standard enforcement  
11 policy in cases where such action is necessary to protect the  
12 public health, safety or welfare.

13 15.14. Resamples will only be taken from machines that were  
14 shown to be producing violative product the previous visit,  
15 except for resamples needed to check that the nonviolative status  
16 is being maintained according to the following schedule:

17 15.14.a. After a first notice and one nonviolative sample,  
18 resamples will be taken between 5 to 6 months after the  
19 nonviolative sample.

20 15.14.b. After a second notice and one nonviolative sample,  
21 resamples will be taken between 3-4 months after the nonviolative  
22 sample.

23 15.14.c. Other resamples may be considered necessary to  
24 determine that the nonviolative status is being maintained."

1 (hh) The legislative rules filed in the state register on  
2 the eighth day of August, one thousand nine hundred ninety-one,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-fourth day of  
6 September, one thousand nine hundred ninety-one, relating to the  
7 commissioner of agriculture (West Virginia apiary law of 1991),  
8 are authorized.

9 (ii) The legislative rules filed in the state register on  
10 the eighth day of August, one thousand nine hundred ninety-one,  
11 modified by the commissioner of agriculture to meet the  
12 objections of the legislative rule-making review committee and  
13 refiled in the state register on the twenty-fourth day of  
14 September, one thousand nine hundred ninety-one, relating to the  
15 commissioner of agriculture (disposal of dead poultry), are  
16 authorized with the amendments set forth below:

17 On page two, section two, by adding a new subsection to read  
18 as follows:

19 "2.8 'Disposal pit' means an opening dug in the ground to a  
20 minimum depth of six feet, containing a minimum capacity of 150  
21 cubic feet, covered with a minimum of 12 inches of dirt, and  
22 provided with one or more openings for the introduction of  
23 poultry. The openings shall be a minimum size of eight inches  
24 square and equipped with tight lids. A disposal pit shall be  
25 located in a site which will prevent contamination of the

1 groundwater or the surface water. This site should conform to  
2 the standards established in this rule."

3 On page two, subsection 3.1 after the word "incinerator," by  
4 adding the words "disposal pit,"

5 And,

6 On page two, by adding a new section, designated section 4,  
7 to read as follows:

8 "§61-1C-4. Standards for Site Location for Disposal Pits.

9 4.1 No part of a disposal pit system shall be located in a  
10 poorly drained or filled area, or in any area where seasonal  
11 flooding occurs.

12 4.2 No part of a disposal pit system shall be located within  
13 10 feet of a building, foundation or property line.

14 4.3 No part of a disposal pit system shall be located within  
15 50 feet of a public water supply line or within 10 feet of a  
16 private water supply system.

17 4.4 A disposal pit shall be located at least 50 feet from a  
18 private well or groundwater supply.

19 4.5 There shall be a minimum of three feet between the bottom  
20 of a disposal pit and seasonal groundwater or rock, shale or any  
21 other impermeable layer.

22 4.6 The evaluation of the site for installation of a disposal  
23 pit shall be based upon percolation test results. Percolation  
24 tests shall be performed in the following manner:

1        4.6.1 Location - At least two holes shall be placed over the  
2 selected site. The results of these two test holes will be  
3 averaged.

4        4.6.2 Holes shall be dug or bored from six to eight inches  
5 in diameter at the site where the disposal pit will be installed.  
6 The holes should be at least 24 inches in depth.

7        4.6.3 The bottom and sides of the holes shall be scratched  
8 with a sharp pointed instrument or wire brush to remove any  
9 smeared soil surfaces which interfere with the absorption of  
10 water into the soil.

11       4.6.4 Loose dirt shall be removed from the bottom of the test  
12 holes and two inches of coarse sand or fine gravel shall be  
13 placed into the holes to prevent sealing.

14       4.6.5 An eight or ten penny nail shall be placed in the wall  
15 of each hole exactly six inches above the level of sand or  
16 gravel.

17       4.6.6 The test hole shall be completely filled with water to  
18 ground level. Water in the hole shall be kept to a depth of at  
19 least 12 inches for a minimum period of four hours before  
20 beginning the percolation rate measurement.

21       4.7 Percolation rate measurement - Upon completion of the  
22 above, the water depth in the holes shall be adjusted to the  
23 level of the nail. The number of minutes it takes for this six  
24 inches of water (all the water) to be absorbed into the soil  
25 shall be accurately determined. This time in minutes, divided by

1 six, gives the rate of fall per inch. The average rate of fall  
2 must be between five minutes and 60 minutes."

3 (jj) The legislative rules filed in the state register on  
4 the eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the commissioner of agriculture to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the twenty-fourth day of  
8 September, one thousand nine hundred ninety-one, relating to the  
9 commissioner of agriculture (licensing of livestock dealers), are  
10 authorized.

11 (Kk) The legislative rules filed in the state register on the  
12 fifteenth day of September, one thousand nine hundred ninety-two,  
13 modified by the commissioner of agriculture to meet the  
14 objections of the legislative rule-making review committee and  
15 refiled in the state register on the eighteenth day of November,  
16 one thousand nine hundred ninety-two, relating to the  
17 commissioner of agriculture (commercial feed), are authorized.

18 (ll) The legislative rules filed in the state register on the  
19 fifteenth day of September, one thousand nine hundred ninety-two,  
20 modified by the commissioner of agriculture to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the nineteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the  
24 commissioner of agriculture (general groundwater protection rules  
25 for fertilizers and manures), are authorized.

1 (mm) The legislative rules filed in the state register on the  
2 fifteenth day of September, one thousand nine hundred ninety-two,  
3 modified by the commissioner of agriculture to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of February,  
6 one thousand nine hundred ninety-three, relating to the  
7 commissioner of agriculture (primary and secondary containment of  
8 fertilizers), are authorized with the amendments set forth below:

9 "On page five, by striking out all of subsection 5.5 and  
10 inserting in lieu thereof a new subsection 5.5 to read as  
11 follows: 'The operator or his licensed representative shall sign  
12 and date each application under oath.'; and

13 On page eighteen, by striking out all of subsection 14.1 and  
14 inserting in lieu thereof a new subsection 14.1 to read as  
15 follows:

16 'All moneys for the purpose of the enforcement and  
17 administration of this rule shall come from general revenue funds  
18 appropriated by the legislature for that purpose. The net  
19 proceeds of civil penalties collected pursuant to W. Va. Code  
20 §20-5M-10a or any civil administrative penalties collected  
21 pursuant to W. Va. Code §20-5M-10c will be deposited in the  
22 groundwater remediation fund established in W. Va. Code §20-5M-1.  
23 et seq.'".

24 (nn) The legislative rules filed in the state register on the  
25 fifteenth day of September, one thousand nine hundred ninety-two,

1 modified by the commissioner of agriculture to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of February,  
4 one thousand nine hundred ninety-three, relating to the  
5 commissioner of agriculture (general groundwater protection rules  
6 for pesticides), are authorized.

7 (oo) The legislative rules filed in the state register on the  
8 fifteenth day of September, one thousand nine hundred ninety-two,  
9 modified by the commissioner of agriculture to meet the  
10 objections of the legislative rule-making review committee and  
11 refiled in the state register on the nineteenth day of February,  
12 one thousand nine hundred ninety-three, relating to the  
13 commissioner of agriculture (bulk pesticide operational rules),  
14 are authorized.

15 (pp) The legislative rules filed in the state register on the  
16 fifteenth day of September, one thousand nine hundred ninety-two,  
17 modified by the commissioner of agriculture to meet the  
18 objections of the legislative rule-making review committee and  
19 refiled in the state register on the nineteenth day of February,  
20 one thousand nine hundred ninety-three, relating to the  
21 commissioner of agriculture (non-bulk pesticide rules for  
22 permanent operational areas), are authorized.

23 (qq) The legislative rules filed in the state register on the  
24 sixteenth day of April, one thousand nine hundred ninety-three,  
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twenty-sixth day of July,  
3 one thousand nine hundred ninety-three, relating to the  
4 commissioner of agriculture (animal disease control), are  
5 authorized.

6 (rr) The legislative rules filed in the state register on  
7 the third day of August, one thousand nine hundred ninety-three,  
8 modified by the commissioner of agriculture to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the eighth day of October, one  
11 thousand nine hundred ninety-three, relating to the commissioner  
12 of agriculture (auctioneers), are authorized.

13 (ss) The legislative rules filed in the state register on the  
14 fifteenth day of August, one thousand nine hundred ninety-four,  
15 modified by the commissioner of agriculture to meet the  
16 objections of the legislative rule-making review committee and  
17 refiled in the state register on the fourteenth day of October,  
18 one thousand nine hundred ninety-four, relating to the  
19 commissioner of agriculture (West Virginia aquaculture farm  
20 rules), are authorized.

21

22 NOTE: The purpose of this bill is to authorize the  
23 Commissioner of Agriculture to promulgate legislative rules  
24 relating to West Virginia aquaculture farm rules.

25

26 Strike-throughs indicate language that would be stricken from  
27 the present law, and underscoring indicates new language that  
28 would be added.

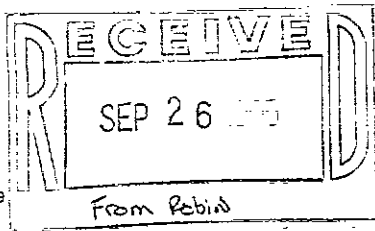
KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

(Plus all the volunteer  
help we can get)

SEP 17 8 42 AM '95

FILED

TO: Robert G. Morris

AGENCY: Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 20, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 23 TITLE: 61 Agriculture

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Assistant Director of Regulatory protection Division

DATE: 10-16-95

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 27, 1995

Robert G. Morris  
Agriculture  
Guthrie Agricultural Ctr. Bldg. 2  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

**SB 64** authorizing, **Title 61, Series 23, West Virginia Aquaculture Farm Rules**, passed the Legislature on **March 11, 1995**. It was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 64, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 64** section **64-9-1(a)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You  
Administrative Law Division