

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Fish Processing Rules

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd. E.
Charleston, WV 25305-0170

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

The modifications to the existing rule have no monetary impact on either the department or those regulated.

3. Objectives of these rules:

To align with federal regulations pertaining to the same industry.

Rule Title: West Virginia Fish Processing Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/20/97

Signature of Agency Head or Authorized Representative

Dan Powell Deputy Commissioner

FILED

JUN 19 3 58 PM '97

Title 61
Legislative Rule
West Virginia Department of Agriculture

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Series 23A
West Virginia Fish Processing Rules

1 §61-23A-1 General

2
3 1.1 Scope - This rule is intended to provide a vehicle for uniform inspection of fish
4 processing facilities in the state with the purpose of assuring the highest quality and safety of the
5 finished product as possible.

6
7 1.2 Authority - WV Code 19-29-1 et seq.

8
9 1.3 Filing Date -

10
11 1.4 Effective Date -

12
13 1.5 This is a modification of an existing rule

14
15
16 §61-23A-2 Incorporated by Reference

17
18 2.1 The following documents are adopted in their entirety:

19
20 2.1.a. 21 CFR parts 123 and 1240.60;

21
22 2.1.b. The U. S. Food and Drug Administration "Fish and Fishery Products
23 Hazards and Controls Guide";

24
25 2.1.c. The U. S. Food and Drug Administration "National Shellfish Sanitation
26 Program Manual of Operations Part I Sanitation of Shellfish Growing Areas" & " Part II
27 Sanitation of the Harvesting, Processing and Distribution of Shellfish";

28
29 2.1.d. 21 CFR part 110 Current Good Manufacturing Practice in Manufacturing,
30 Packing, or Holding Human Food.

31
32 2.1.e. The Seafood List, FDA's Guide to Acceptable Market Names for Seafood
33 Sold In Interstate Commerce

35 §61-23A-3 Definitions
36

37 3.1 "Adulterated" means a fish or fishery product carries or contains any poisonous or
38 deleterious substance or compound or pathogen in a quantity that may render it injurious to
39 human health; was produced, processed, transported or held under unsanitary conditions; was
40 treated with or exposed to chemicals, chemotherapeutics(drugs), heavy metals, pesticides,
41 temperatures or any conditions in a manner that violates this rule; or was not produced according
42 to an approved HACCP plan.

43
44 3.2 "Aquaculture" means the commercial production of fish and/or other aquatic life.
45

46 3.3 "Commissioner" means the Commissioner of Agriculture or his or her designee.
47

48 3.4 "Establishment number" means an official number assigned by the commissioner to
49 each fish processing plant and included on the label or container of all fishery products produced
50 by that plant.

51
52 ~~3.4 "Fish" means fresh or saltwater fin fish, molluscan shellfish, crustaceans, and~~
53 ~~other forms of aquatic life other than birds or mammals.~~

54
55 3.5 "Fish" means fresh or saltwater finfish, crustaceans, other forms of aquatic life
56 (including but not limited to, alligator, frog, aquatic turtle, jellyfish, and sea urchin and the roe of
57 such animals) other than birds or mammals, and mollusks, where such animal life is intended for
58 human consumption.

59
60 3.6 "Fishery Product" means any human food product in which fish is a characterizing
61 ingredient.

62
63 3.7 "Food safety hazard" means any biological, chemical, or physical property that may
64 cause a food to be unsafe for human consumption.

65
66 3.8 "Lot number" means a legible and permanently marked number on each container of
67 cooked ready-to-eat and smoked fishery products which identifies the date the product was
68 packaged.

69
70 3.9 "Modified atmosphere-packaging" means the food-packaging technique in which
71 the air in the package or container is replaced by one or more gases, in various concentrations,
72 before sealing. The purpose of this type of packaging is to extend the refrigerated shelf life of
73 the product by limiting microbial growth or detrimental changes in the food.
74

75 3.10 "Official Sample" means any sample of water, soil, fish, feed, drugs, pesticides,
76 other ingredients, containers and/or products taken by the commissioner or approved laboratory
77 in accordance with this rule.
78

79 3.11 "Processing" means handling, storing, heading, gutting, shucking, freezing,
80 changing into different market forms, manufacturing, preserving, packing, labeling, or holding.
81 This definition does not apply to the operation of a retail establishment.
82

83 3.12 "Sanitary Zone" means a separation of operations by location, partition, air flow,
84 or enclosed systems.
85

86 3.13 "Risk Assessment Basis" means considering grades from past inspections,
87 violations, trends, conditions, observations and other information to estimate the likelihood of a
88 danger or safety hazard occurring and to determine the frequency and priority of future
89 inspections.
90

91 ~~3.10 "Safety Hazard" means any biological, chemical, or physical property that may~~
92 ~~cause, allow, or contribute to an unacceptable human health risk in the final product or food.~~

93 ~~3.11 "Smoked fish" means fish that is prepared by treating material.~~
94

95
96 3.14 "Smoked or smoke-flavored fishery products means the finished food prepared by:
97 (1) Treating fish with salt (sodium chloride), and (2) Subjecting it to the direct action of smoke
98 from burning wood, sawdust, or similar material and/or imparting to it the flavor of smoke by a
99 means such as immersing it in a solution of wood smoke.

100
101 3.15 "Vacuum-packaged" means the food-packaging technique in which air in a
102 package is removed before sealing.
103

104 3.16 "Water-phase salt content" means the percent salt(sodium chloride)in the finished
105 product as determined by the method of analysis for water-phase salt content on the "Official
106 Methods of Analysis of the Association of Official Analytical Chemists," 15th ed.(1990)
107

108 3.17 "Wholesome" means in sound condition, clean, free from adulteration, and
109 otherwise suitable for use as human food.
110

111 ~~3.15 "Fishery Product" means any edible human food product derived in whole or in~~
112 ~~part from fish, including fish that has been processed in any manner.~~
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114
115
116 **§61-23A-4 Powers and Duties of the Commissioner**

117
118 4.1 The commissioner has the power and authority to:
119

120 4.1.a. Enter and inspect, during reasonable hours, any location except fish
121 hatcheries operated by the State of West Virginia or the United States of America, where fish or
122 fishery products are processed, sold, stored or transported for human consumption. The
123 inspection includes, but is not limited to photographing, video taping, verifying, copying, and
124 auditing computer files, records and papers relating to the processing of fish for human food as is
125 necessary to determine compliance with this rule and to investigate consumer complaints.
126

127 4.1.a.1. The inspection also includes, but is not limited to photographing,
128 video taping, verifying, and observing the premises, vehicles, personnel and activities;
129

130 4.1.b. Examine, sample and test water, fish, pesticides, raw materials, other
131 ingredients, containers, packaging, and/or products used or intended for use in the processing,
132 storage, sale and/or transportation of fish or fishery products for human consumption;
133

134 4.1.c. Cooperate with and enter into agreements with governmental agencies of
135 this state and any other states, agencies of the federal government and foreign governments, and
136 private associations in order to carry out the purpose and provisions of this rule;
137

138 4.1.d. Detain, embargo, or quarantine fish or fishery product, processing area,
139 holding area, or transporting vehicle by affixing thereto a tag or other appropriate marking, and
140 giving notice thereof in writing to the processor, holder or transporter. The Commissioner may
141 take this action when fish or fishery products have been found to be or are believed to be:
142

143 4.1.d.1. In violation of the provisions of this rule; or
144

145 4.1.d.2. Infected with a human pathogen that could present a public
146 health safety hazard.
147

148 4.1.d.2.a. Upon confirmation of a violation of this rule or the
149 presence of a human pathogen, the Commissioner may seize and/or condemn and order the fish
150 or fishery product disposed of as necessary to ensure the safety of consumers
151

152 4.1.e. Embargo, detain, or quarantine a perishable product, even if the practical
153 result is to bring about the involuntary disposal of the product.
154

155 4.1.e.1. The Commissioner shall exercise this power using all reasonable
156 means to determine if the product is adulterated or otherwise not in compliance with this rule in
157 as short a time frame as possible and shall promptly lift the embargo order if the product is found
158 to be in compliance with this rule;

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4.1.f. Issue, suspend, revoke or deny licenses in accordance with this rule;

4.1.g. Inspect and/or copy all records required by this rule. All requested records must be made available to the commissioner within 24 hours of his or her request. Records kept on computer files shall have a backup file on a separate disk, or hardcopy;

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

4.1.i. Assess civil penalties and refer violations to a court of competent jurisdiction for the violation of this rule. Nothing in this rule shall be construed as requiring the commissioner to assess a civil penalty, report for prosecution or institute an embargo, detainment, or quarantine for the violation of this rule when he or she believes that the public interest may best be served by a written notice.

4.2 The Commissioner shall be guided by the analytical results when determining whether fish or fishery products conform to this rule and other rules and laws of the State of West Virginia.

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

§61-23A-5. Hazard Analysis Critical Control Point Plan

~~5.1 All commercial processors of fish and fishery products for human consumption shall have and implement a written Hazard Analysis Critical Control Point Plan approved by the Commissioner, for each product and processing location using the U. S. Food and Drug Administration Fish and Fishery Products Hazards and Controls Guide.~~

~~5.2 The HACCP plan shall include all seven recognized principles of a HACCP plan. The plan shall:~~

~~5.2.a. Identify the potential safety hazards associated with food production at all stages, from growing, harvesting, processing, manufacturing, and distribution, until the point of consumption. It shall assess the likelihood of the hazards occurring and identify the preventative measures for their control;~~

~~5.2.b. Determine the critical control points, or points, procedures and operational steps, that can be controlled to eliminate or minimize the likelihood of the safety hazards occurring;~~

201
202 ~~5.2.c. Establish the critical limits, or target levels and tolerances which must be~~
203 ~~met to ensure the critical control point is under control;~~

204
205 ~~5.2.d. Establish a monitoring system to ensure control of each critical control~~
206 ~~point by scheduled testing or observations;~~

207
208 ~~5.2.e. Establish corrective action to be taken when there is a deviation or loss of~~
209 ~~control at a critical control point identified by monitoring;~~

210
211 ~~5.2.f. Establish a system for verification which includes supplementary tests and~~
212 ~~procedures to affirm that HACCP is working effectively; and~~

213
214 ~~5.2.g. Establish a record keeping system to document all procedures, monitoring~~
215 ~~information and the HACCP plan.~~

216
217 ~~5.3. Failure of a processor to have and implement a HACCP plan that complies with~~
218 ~~this rule or to meet other requirements set forth by this rule will render their fish and/or fishery~~
219 ~~products adulterated.~~

220
221 ~~5.4. Processors producing their own fish for processing may have one combined~~
222 ~~HACCP plan addressing both production and processing.~~

223
224 **§61-23A-5. Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan.**

225
226 5.1. Hazard analysis. Every processor shall conduct, or have conducted for it, a hazard analysis to
227 determine whether there are food safety hazards that are reasonably likely to occur for each kind
228 of fish and fishery product processed by that processor and to identify the preventive measures
229 that the processor can apply to control those hazards. Such food safety hazards can be introduced
230 both within and outside the processing plant environment, including food safety hazards that can
231 occur before, during, and after harvest. A food safety hazard that is reasonably likely to occur is
232 one for which a prudent processor would establish controls because experience, illness data,
233 scientific reports, or other information provide a basis to conclude that there is a reasonable
234 possibility that it will occur in the particular type of fish or fishery product being processed in the
235 absence of those controls.

236
237 5.2. The HACCP plan. Every processor shall have and implement a written HACCP plan
238 whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to
239 occur, as described in paragraph 5.1. of this section. A HACCP plan shall be specific to:

240
241 5.2.a. Each location where fish and fishery products are processed by that processor; and
242

243 5.2.b. Each kind of fish and fishery product processed by the processor. The plan may group
244 kinds of fish and fishery products together, or group kinds of production methods together, if the
245 food safety hazards, critical control points, critical limits, and procedures required to be
246 identified and performed in paragraph 5.3. of this section are identical for all fish and fishery
247 products so grouped or for all production methods so grouped.

248
249 5.3. The contents of the HACCP plan. The HACCP plan shall, at a minimum:

250
251 5.3.a. List the food safety hazards that are reasonably likely to occur, as identified in accordance
252 with paragraph (a) of this section, and that thus must be controlled for each fish and fishery
253 product. Consideration should be given to whether any food safety hazards are reasonably likely
254 to occur as a result of the following:

255
256 5.3.a.1. Natural toxins;

257
258 5.3.a.2. Microbiological contamination;

259
260 5.3.a.3. Chemical contamination;

261
262 5.3.a.4. Pesticides;

263
264 5.3.a.5. Drug residues;

265
266 5.3.a.6. Decomposition in scombroid toxin-forming species or in any other species where a food
267 safety hazard has been associated with decomposition;

268
269 5.3.a.7. Parasites, where the processor has knowledge or has reason to know that the
270 parasite-containing fish or fishery product will be consumed without a process sufficient to kill
271 the parasites, or where the processor represents, labels, or
272 intends for the product to be so consumed;

273
274 5.3.a.8. Unapproved use of direct or indirect food or color additives; and

275
276 5.3.a.9. Physical hazards;

277
278 5.4. List the critical control points for each of the identified food safety hazards, including as
279 appropriate:

280
281 5.4.a. Critical control points designed to control food safety hazards that could be introduced in
282 the processing plant environment; and

284 5.4.b. Critical control points designed to control food safety hazards introduced outside the
285 processing plant environment, including food safety hazards that occur before, during, and after
286 harvest;

287
288 5.5. List the critical limits that must be met at each of the critical control points;

289
290 5.6. List the procedures, and frequency thereof, that will be used to monitor each of the critical
291 control points to ensure compliance with the critical limits;

292
293 5.7. Include any corrective action plans that have been developed in accordance with 5.13., to be
294 followed in response to deviations from critical limits at critical control points;

295
296 5.8. List the verification procedures, and frequency thereof, that the processor will use in
297 accordance with 5.16.;

298
299 5.9. Provide for a recordkeeping system that documents the monitoring of the critical control
300 points. The records shall contain the actual values and observations obtained during monitoring.

301
302 5.10. Signing and dating the HACCP plan. The HACCP plan shall be signed and dated, either by
303 the most responsible individual onsite at the processing facility or by a higher level official of the
304 processor. This signature shall signify that the HACCP plan has been accepted for
305 implementation by the firm. The HACCP plan shall be dated and signed;

306
307 5.10.a. Upon initial acceptance;

308
309 5.10.b. Upon any modification; and

310
311 5.10.c. Upon verification of the plan in accordance with 5.16.a.

312
313 5.11. Sanitation. Sanitation controls may be included in the HACCP plan. However, to the extent
314 that they are monitored in accordance with sec 10.2 they need not be included in the HACCP
315 plan, and vice versa.

316
317 5.12. Legal basis. Failure of a processor to have and implement a HACCP plan that complies
318 with this section whenever a HACCP plan is necessary, otherwise operate in accordance with the
319 requirements of this rule, shall render the fish or fishery products of that processor adulterated.
320 Whether a processor's actions are consistent with ensuring the safety of food will be determined
321 through an evaluation of the processors overall implementation of its HACCP plan, if one is
322 required.

323
324 **§61-23A-6. Corrective actions.**

325

326 6.1. Whenever a deviation from a critical limit occurs, a processor shall take corrective action
327 either by:

328
329 6.1.a. Following a corrective action plan that is appropriate for the particular deviation, or
330

331 6.1.b. Following the procedures in 6.3 of this section.
332

333 6.2. Processors may develop written corrective action plans, which become part of their HACCP
334 plans in accordance with section 5.7, by which they predetermine the corrective actions that they
335 will take whenever there is a deviation from a critical limit. A corrective action plan that is
336 appropriate for a particular deviation is one that describes the steps to be taken and assigns
337 responsibility for taking those steps, to ensure that:

338
339 6.2.a. No product enters commerce that is either injurious to health or is otherwise adulterated as
340 a result of the deviation; and

341
342 6.2.b. The cause of the deviation is corrected.
343

344 6.3. When a deviation from a critical limit occurs and the processor does not have a corrective
345 action plan that is appropriate for that deviation, the processor shall:

346
347 6.3.a. Segregate and hold the affected product, at least until the requirements of 6.3.b. and 6.3.c.
348 of this section are met;

349
350 6.3.b. Perform or obtain a review to determine the acceptability of the affected product for
351 distribution. The review shall be performed by an individual or individuals who have adequate
352 training or experience to perform such a review.
353

354 6.3.c. Take corrective action, when necessary, with respect to the affected product to ensure that
355 no product enters commerce that is either injurious to health or is otherwise adulterated as a
356 result of the deviation;

357
358 6.3.d. Take corrective action, when necessary, to correct the cause of the deviation;
359

360 6.3.e. Perform or obtain timely reassessment by an individual or individuals who have been
361 trained in accordance with section 9, to determine whether the HACCP plan needs to be
362 modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as
363 necessary.
364

365 6.4. All corrective actions taken in accordance with this section shall be fully documented in
366 records that are subject to verification in accordance with 7.1.c.2. and the recordkeeping
367 requirements of sec 8.

368
369 **§61-23A-7. Verification**
370

371 7.1. Overall verification. Every processor shall verify that the HACCP plan is adequate to control
372 food safety hazards that are reasonably likely to occur, and that the plan is being effectively
373 implemented. Verification shall include, at a minimum:
374

375 7.1.a. Reassessment of the HACCP plan. A reassessment of the adequacy of the HACCP plan
376 whenever any changes occur that could affect the hazard analysis or alter the HACCP plan in any
377 way or at least annually. Such changes may include changes in the following: Raw materials or
378 source of raw materials, product formulation, processing methods or systems, finished product
379 distribution systems, or the intended use or consumers of the finished product. The reassessment
380 shall be performed by an individual or individuals who have been trained in accordance with sec
381 9. The HACCP plan shall be modified immediately whenever a reassessment reveals that the
382 plan is no longer adequate
383 to fully meet the requirements of sec 5.
384

385 7.1.b. Ongoing verification activities. Ongoing verification activities including:
386

387 7.1.b.1. A review of any consumer complaints that have been received by the processor to
388 determine whether they relate to the performance of critical control points or reveal the existence
389 of unidentified critical control points;
390

391 7.1.b.2. The calibration of process-monitoring instruments; and,
392

393 7.1.b.3. At the option of the processor, the performing of periodic end-product or in-process
394 testing.
395

396 7.1.c. Records review. A review, including signing and dating, by an individual who has been
397 trained in accordance with sec 9., of the records that document:
398

399 7.1.c.1 The monitoring of critical control points. The purpose of this review shall be, at a
400 minimum, to ensure that the records are complete and to verify that they document values that
401 are within the critical limits. This review shall occur within 1 week of the day that the records are
402 made;
403

404 7.1.c.2. The taking of corrective actions. The purpose of this review shall be, at a minimum, to
405 ensure that the records are complete and to verify that appropriate corrective actions were taken
406 in accordance with sec 6. This review shall occur within 1 week of the day that the records are
407 made; and
408

409 7.1.c.3 The calibrating of any process control instruments used at critical control points and the
410 performing of any periodic end-product or in-process testing that is part of the processor's
411 verification activities. The purpose of these reviews shall
412 be, at a minimum, to ensure that the records are complete, and that these activities occurred in
413 accordance with the processor's written procedures. These reviews shall occur within a
414 reasonable time after the records are made.

415
416 7.2. Corrective actions. Processors shall immediately follow the procedures in sec 6. whenever
417 any verification procedure, including the review of a consumer complaint, reveals the need to
418 take a corrective action.

419
420 7.3. Reassessment of the hazard analysis. Whenever a processor does not have a HACCP plan
421 because a hazard analysis has revealed no food safety hazards that are reasonably likely to occur,
422 the processor shall reassess the adequacy of that hazard analysis whenever there are any changes
423 that could reasonably affect whether a food safety hazard now exists. Such changes may include,
424 but are not limited to changes in: Raw materials or source of raw materials, product formulation,
425 processing methods or systems, finished product distribution systems, or the intended use or
426 consumers of the finished product. The reassessment shall be performed by an individual or
427 individuals who have been trained in accordance with sec 9.

428
429 7.4. Recordkeeping. The calibration of process-monitoring instruments, and the performing of
430 any periodic end-product and in-process testing, in accordance with paragraphs 7.1.b.2. through
431 7.1.b.3. of this section shall be documented in records
432 that are subject to the recordkeeping requirements of sec 8.

433 **§61-23A-8. Records**

434
435
436 8.1. General record requirements. All records required by this part shall include:

437
438 8.1.a. The name and location of the processor or importer;

439
440 8.1.b. The date and time of the activity that the record reflects;

441
442 8.1.c. The signature or initials of the person performing the operation; and

443
444 8.1.d. Where appropriate, the identity of the product and the production code, if any. Processing
445 and other information shall be entered on records at the time that it is observed.

446 8.2. Record Retention

447
448
449 8.2.a. All records required by this part shall be retained at the processing facility or importer's
450 place of business in the United States for at least 1 year after the date they were prepared in the

451 case of refrigerated products and for at least 2 years after the date they were prepared in the case
452 of frozen, preserved, or shelf-stable products.

453
454 8.2.b. Records that relate to the general adequacy of equipment or processes being used by a
455 processor, including the results of scientific studies and evaluations, shall be retained at the
456 processing facility or the importer's place of business
457 in the United States for at least 2 years after their applicability to the product being produced at
458 the facility.

459
460 8.2.c. If the processing facility is closed for a prolonged period between seasonal packs, or if
461 record storage capacity is limited at a remote processing site, the records may be transferred to
462 some other reasonably accessible location at the end of the seasonal pack but shall be
463 immediately returned for official review upon demand.

464
465 8.3. Official review. All records required by this part and all plans and procedures required by
466 this part shall be available for official review and copying at reasonable times.

467
468 8.4. Records maintained on computers. The maintenance of records on computers is acceptable,
469 provided that appropriate controls are implemented to ensure the integrity of the electronic data
470 and signatures.

471
472 11-1-8.5. Every operator of a fish processing plant shall keep a record of every transaction
473 involving the sale and distribution of processed fish and fishery products. The records, in
474 addition to the names and addresses of the persons or firms involved shall contain the code
475 numbers of each lot involved.

476
477 11-2-8.6. Fish processing records shall be legibly written, printed or filed on electronic
478 media in English and shall identify the product processed, identifying lot code, the number of
479 containers per coding interval, and the year, and day and period when each lot was packaged.

480 **§61-23A-9. Training.**

481
482
483 9.1. At a minimum, the following functions shall be performed by an individual who has
484 successfully completed training in the application of HACCP principles to fish and fishery
485 product processing at least equivalent to that received under standardized curriculum recognized
486 as adequate by the U.S. Food and Drug Administration or who is otherwise qualified through job
487 experience to perform these functions. Job experience will qualify an individual to perform these
488 functions if it has provided knowledge at least equivalent to that provided through the
489 standardized curriculum.

490
491 9.1.a. Developing a HACCP plan, which could include adapting a model or generic-type HACCP
492 plan, that is appropriate for a specific processor, in order to meet the requirements of sec 5.2;

493
494 9.1.b. Reassessing and modifying the HACCP plan in accordance with the corrective action
495 procedures specified in sec 6.3.c., the HACCP plan in accordance with the verification activities
496 specified in sec 7.1.a., and the hazard analysis in accordance with the verification activities
497 specified in sec 7.3; and
498

499 9.1.c. Performing the record review required by sec 7.1.c.; The trained individual need not be an
500 employee of the processor.
501

502 **§61-23A-10. Sanitation control procedures.**
503

504 10.1. Sanitation SOP. Each processor should have and implement a written sanitation standard
505 operating procedure (herein referred to as SSOP) or similar document that is specific to each
506 location where fish and fishery products are produced. The SSOP should specify how the
507 processor will meet those sanitation conditions and practices that are to be monitored in
508 accordance with paragraph 10.2 of this section.
509

510 10.2. Sanitation monitoring. Each processor shall monitor the conditions and practices during
511 processing with sufficient frequency to ensure, at a minimum, conformance with those conditions
512 and practices specified in 21 CFR Chapter 1 part 110 adopted by reference, that are both
513 appropriate to the plant and the food being processed and relate to the following:
514

515 10.2.a. Safety of the water that comes into contact with food or food contact surfaces, or is used
516 in the manufacture of ice;
517

518 10.2.b. Condition and cleanliness of food contact surfaces, including utensils, gloves, and outer
519 garments;
520

521 10.2.c. Prevention of cross-contamination from insanitary objects to food, food packaging
522 material, and other food contact surfaces, including utensils, gloves, and outer garments, and
523 from raw product to cooked product;
524

525 10.2.d. Maintenance of hand washing, hand sanitizing, and toilet facilities;
526

527 10.2.e. Protection of food, food packaging material, and food contact surfaces from adulteration
528 with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other
529 chemical, physical, and biological contaminants;
530

531 10.2.f. Proper labeling, storage, and use of toxic compounds;
532

533 10.2.g. Control of employee health conditions that could result in the microbiological
534 contamination of food, food packaging materials, and food contact surfaces; and

535
536 10.2.h. Exclusion of pests from the food plant.

537
538 10.2.i. The processor shall correct in a timely manner, those sanitation conditions and practices
539 that are not met.

540
541 10.3. Sanitation control records. Each processor shall maintain sanitation control records that, at
542 a minimum, document the monitoring and corrections prescribed by paragraph 10.2 of this
543 section. These records are subject to the requirements of sec 8.

544
545 10.4. Relationship to HACCP plan. Sanitation controls may be included in the HACCP plan,
546 required by sec 5.3. However, to the extent that they are monitored in accordance with paragraph
547 10.2 of this section they need not be included in the HACCP plan, and vice versa.

548
549 **§61-23A-611. Processor Licensing**

550
551 6.1.11.1. All commercial processors in the state of West Virginia shall:

552
553 6.1.a.11.1.a. Apply for a fish processing license from the Commissioner,

554
555 6.1.b.11.1.b. Submit a HACCP plan to the Commissioner with the request for
556 licensing; other requirements for licensing and has been issued a license, he/she may operate
557 under the provisionally approved HACCP plan. The commissioner will review the actual
558 operation of the HACCP plan, and may require revisions as necessary to protect the health and
559 safety of consumers.

560
561 6.1.c.11.1.c. Submit for review and approval three(3) complete sets of
562 blueprints or drawings with specifications that fully and clearly illustrate plans as the applicant
563 proposes to have the facility constructed or modified;

564
565 6.1.d.11.1.d. Submit to the West Virginia Department of Agriculture with the
566 request for licensing a letter from the State or County Health Authorities stating that the plant
567 wastesewage system is acceptable;

568
569 6.1.e.11.1.e. Submit to the West Virginia Department of Agriculture with the
570 request for licensing a letter from the State or County Health Authorities stating that the plant
571 potable water supply has been tested and is acceptable;

572
573 6.1.f.11.1.f. Submit the fee required in this subdivision along with application
574 for license:

577		Average Finished Product	Annual
578	Class	Poundage Processed per Year	Fee
579			
580	Small	1-25,000	\$25.00
581	Medium	25,001 - 50,000	\$50.00
582	Large	over 50,000	\$75.00
583			
584			

585 ~~6.1.g.11.1.g.~~ Submit required materials for each location of processing
586 operations on forms prescribed by the Commissioner;

587
588 ~~6.2.11.2.~~ Before issuing any license required by the provisions of this rule, the
589 Commissioner shall inspect the applicant's establishment and review the provisional HACCP
590 plan and other license application materials. If the Commissioner is satisfied that the
591 establishment is clean and sanitary, properly equipped, has met the requirements set forth by this
592 rule and all employees are properly trained and have met requirements set forth in this rule, he or
593 she may issue the license. The license when issued shall designate the establishment number of
594 the plant.

595
596
597 ~~6.3.11.3.~~ Processors are responsible for having potable water supplies retested and
598 certified by local or state health authorities:

599
600
601 ~~6.3.a.11.3.a.~~ Annually for approved public water supplies; and

602
603 ~~6.3.b.11.3.b.~~ Every six months for private wells or springs.

604
605 ~~6.4.11.4.~~ The Commissioner may deny, revoke or suspend any fish processing
606 license when he/she concludes the seriousness of violations, including irreparable harm to the
607 environment, hazards to the health and safety of the public and economic damages to the public
608 warrant such action.

609
610 ~~6.5.11.5.~~ The Commissioner shall deny the issuance of a Fish Processing License"
611 until all conditions set forth under this section have been complied with. Once issued the "Fish
612 Processing License" remains valid unless voluntarily surrendered, suspended or revoked by the
613 Commissioner. Once the Fish Processor License is voluntarily surrendered, or revoked the
614 processor must reapply and submit all materials required under this section to receive a new
615 license.

616
617
618

619 §61-23A-712. Current Good Manufacturing Practices
620

621 ~~7.1. Regulations applicable to Current Good Manufacturing Practices apply in~~
622 ~~determining whether the facilities used in the manufacture, processing, packing or holding of fish~~
623 ~~and fishery products for human consumption are safe, and whether these products have been~~
624 ~~processed under sanitary conditions.~~
625

626 12.1. In addition to the requirements of this rule, 21 CFR Chapter 1 Part 110 adopted by
627 reference applies in determining whether the facilities, methods, practices, and controls used to
628 process fish and fishery products are safe, and whether these products have been processed under
629 sanitary conditions.
630

631 §61-23A-813. Buildings and Facilities
632

633 ~~8.1.13.1. The fish or fishery product must be processed in a manner to prevent~~
634 ~~contamination by exposure to areas, utensils, or equipment involved in earlier processing steps,~~
635 ~~refuse, or other safety hazards.~~
636

637 ~~8.2.13.2. All utensils and surfaces of equipment that contact food during processing~~
638 ~~shall be cleaned and sanitized with effective cleaning and sanitizing preparations at the following~~
639 ~~intervals:~~
640

641 ~~8.2.a.13.2.a. Cleaned at the end of the days operations;~~
642

643 ~~8.2.b. Cleaned and sanitized at least every four hours during the processing of~~
644 ~~cooked, ready-to-eat fishery products;~~
645

646 ~~8.2.c.13.2.b. Sanitized before the beginning of the days operations; and~~
647

648 ~~8.2.d.13.2.c. Cleaned and sanitized after any interruptions during which food~~
649 ~~contact surfaces may have become contaminated.~~
650

651 ~~8.3.13.3. Until properly cleaned and sanitized, employees' hands, gloves and outer~~
652 ~~garments and utensils and surfaces of equipment that contact raw product shall not contact 1)~~
653 ~~The fish or fishery product after it has entered the smoking chamber, 2) cooked product, or 3)~~
654 ~~ice.~~
655

656 ~~8.4.13.4. Readily understandable signs directing employees handling unprotected~~
657 ~~food, unprotected food-packaging materials, or food-contact surfaces to wash and sanitize their~~
658 ~~hands before they start work, after each absence from post of duty, and when their hands have~~
659 ~~become soiled or contaminated, shall be conspicuously posted in the processing room(s),~~
660 ~~finished product packing room(s), and in all other areas where sanitary conditions are required.~~

661
662 ~~8.5.13.5.~~ Handwash facilities shall be conveniently located to permit use by all
663 employees in fish preparation and processing areas. Handwashing facilities shall be accessible to
664 these employees at all times.

665
666 ~~8.6.~~ 13.6. Handwashing facilities shall be located in or immediately adjacent to toilet
667 rooms or their vestibules, and readily understandable signs directing employees to wash and
668 sanitize their hands after using toilet facilities and before returning to the processing or packing
669 areas shall be conspicuously posted.

670
671
672 **§61-23A-914. Equipment**

673
674 ~~9.1.14.1.~~ All plant equipment and utensils must be properly maintained and
675 designed and of such material and workmanship as to be adequately cleaned, sanitized and
676 corrosion resistant. The design, construction, and use of equipment must prevent the
677 contamination of food with lubricants, fuel, metal, fragments, wood fragments, contaminated
678 water, or any other contaminants. All equipment must be installed and maintained as to facilitate
679 the cleaning and sanitizing of the equipment and all adjacent spaces. Surfaces that contact food
680 must be corrosion resistant when in contact with food. Food contact surfaces must be made of
681 nontoxic materials and designed to withstand the environment of their intended purpose and the
682 action of the food, and cleaning and sanitizing agents. Food contact surfaces must be maintained
683 to protect the food from being contaminated from any source, including unlawful indirect food
684 additives.

685
686 ~~9.2.14.2.~~ Containers used to transport, brine or store fish must not be nested while
687 they contain fish or otherwise handled during processing or storage in a manner conducive to
688 contamination of their contents.

689
690 ~~9.3.14.3.~~ Cleaning and sanitizing of utensils and portable equipment must be
691 conducted in an area set aside for these purposes or in a segregated fashion so as to prevent
692 contamination of food.

693
694 ~~9.4.14.4.~~ Each freezer and cold storage compartment used to store and hold food
695 must be fitted with a thermometer or temperature recording device installed to show the
696 temperature accurately within the compartment.

697
698 ~~9.5.14.5.~~ Instruments and controls used for measuring, regulating, or recording
699 temperatures must be accurate and maintained on a regular schedule, and adequate in number for
700 their designated uses.

702 ~~9.6.14.6.~~ Thermometers or other temperature-measuring devices must have an
703 accuracy of + or - 2° Fahrenheit and graduations must not exceed 2° Fahrenheit within a range of
704 10° Fahrenheit of the processing temperature. The accuracy of these devices must be
705 maintained.

706
707 ~~9.7.14.7.~~ Compressed air or other gases used to clean food-contact surfaces or equipment
708 must be treated or filtered in such a way that food is not contaminated with unlawful indirect
709 food additives.

710
711 ~~9.8.14.8.~~ Each smoking chamber must be equipped with a temperature monitoring
712 device ~~so installed as to accurately indicate at all times the temperature of the air and of the fish~~
713 ~~within the smoking chamber.~~

714
715 ~~9.9.14.9.~~ Equipment and utensils must be positively marked or segregated in some
716 way to ensure that equipment and utensils used to handle raw fish or fishery products are not
717 used to handle fish or fishery products which have entered the smoking chamber or cooked
718 ready-to-eat fish or fishery products until properly cleaned and sanitized.

719
720
721 **§61-23A-1015. Product Management**

722
723
724 ~~10.1.15.1.~~ The evisceration of fish shall be conducted in an area segregated or
725 separate from other processing operations. The evisceration shall be performed with minimal
726 disturbance of the intestinal tract contents. The fish, including the body cavity, shall be washed
727 thoroughly with a vigorous spray or a continuous water flow system immediately following
728 evisceration.

729
730 ~~10.2.15.2.~~ Sanitary zones shall be established around areas where unpackaged cooked
731 or smoked product is handled and stored. In such areas, objects and employees that have come
732 into contact with waste, raw product, or other insanitary objects shall be excluded.

733
734 ~~10.3.15.3.~~ Packaging material, equipment, employees, and in-process materials that
735 enter a sanitary zone shall be treated in a manner that will minimize the risk of the introduction
736 of microorganisms.

737
738 ~~10.4.15.4.~~ All operations including receiving, processing, and packaging shall be
739 conducted utilizing clean and sanitary methods and shall be conducted as rapidly as practical and
740 at temperatures that will not cause any material increase in bacterial or other microorganic
741 content or any deterioration or contamination of the processed fish.

743 ~~10.5.15.5.~~ Unpackaged cooked ready-to-eat and smoked fish or fishery products shall
744 be handled only with clean and sanitized hands, gloves or utensils. These products shall be
745 handled with a minimum of manual contact.

746
747 ~~10.6.15.6.~~ Unprocessed fish, raw fish and fishery products, cooked ready-to-eat
748 fishery products, smoked fishery products, and raw molluscan shellfish shall be physically
749 separated from each other during refrigerated storage to minimize the possibility of cross
750 contamination.

751
752 ~~10.7.15.7.~~ Refrigeration units used to store fish, fishery products, or raw materials
753 during any stage before and during processing shall operate at a temperature at or below 40°F
754 (4.4°C). All processed fish shall be distributed and sold at refrigerated internal temperatures that
755 do not exceed 40°F (4.4°C) except that processed fish that have a water-phase salt level of at
756 least 17 percent do not require refrigeration.

757
758 ~~10.8.15.8.~~ Fish and fishery products must be protected against contamination
759 including contaminants which may drip, drain, or be drawn into the product before, during and
760 after processing.

761
762 ~~10.9. Vacuum packaging or modified atmosphere packaging of processed fish or~~
763 ~~fishery products shall only be conducted within the facilities of the manufacturer.~~

764
765 ~~10.10.15.10.~~ Shipping containers, retail packages, and shipping records relating to
766 processed fish shall indicate by appropriate labeling, the perishable nature of the product. Frozen
767 product shall indicate that the product shall remain frozen until thawed at refrigerated
768 temperatures and shall not be refrozen. Refrigerated product shall clearly and conspicuously
769 state "Keep Refrigerated at 40°F or below".

770
771 ~~10.11.15.11.~~ Each container of ~~cooked ready to eat and smoked~~ fishery product
772 ~~processed under the auspices of this rule~~ shall have an ~~identifying code~~ establishment number
773 which shall be legible and permanently marked. This ~~code~~ establishment number shall identify
774 the plant where the product was produced ~~and the date the product was packaged.~~ Each container
775 of fishery products shall have a lot number which shall be legible and permanently marked. This
776 lot number shall identify the date the product was produced.

777
778 15.12 Brining must be carried out so the temperature of the brine does not exceed 60° F
779 at the start of brining. If the brining time exceeds four hours the brining must take place in a
780 refrigerated area at 40° F or lower.

781
782 15.13 Different species of fish must not be mixed in the same brining tank.
783

784 15.14 For dry salting, the fish must be returned to a refrigerated area of 40° F or lower
785 immediately after the application of salt.

786
787 15.15 Fish must be rinsed with potable water after brining.

788
789 15.16 For hot process smoked fish to be air packaged, a controlled process must be used
790 to heat fish to a continuous temperature of at least 145° F through out each fish for a minimum of
791 30 minutes for fish brined to contain not less than 2.5 percent water phase salt in the loin muscle
792 of the finished product.

793
794 15.17 For hot process smoked fish to be vacuum or modified atmosphere packaged, a
795 controlled process must be used to heat fish to a continuous temperature of at least 145° F
796 through out each fish for a minimum of 30 minutes for fish brined to contain not less than 3.5
797 percent water phase salt in the loin muscle of the finished product.

798
799 15.18 Cold process smoked fish shall be produced by a control process hat utilizes a
800 temperature monitoring system positioned within the smoking chamber to assure that all
801 products do not exceed process temperatures in accordance with one of the following methods:

802
803 15.18.a. The temperature in the smoking chamber does not exceed 90° F
804 during a drying and smoking period that does not exceed 20 hours;or

805
806 15.18.b. The temperature in the smoking chamber does not exceed 50° F
807 during a drying and smoking period that does not exceed 24 hours;or

808
809 15.18.c. The temperature in the smoking chamber does not exceed 120° F
810 during a drying and smoking period that does not exceed 6 hours for cold process sablefish.

811
812 15.19. For cold process fish to be air packaged, only fish that have been brined to contain
813 not less than 2.5 percent water phase salt in the loin muscle of the finished product may be used.

814
815 15.20. For cold process fish to be vacuum or modified atmosphere packaged, only fish
816 that have been brined to contain not less than 3.5 percent water phase salt in the loin muscle of
817 the finished product may be used.

818
819
820 §61-23A-11.—Records

821
822 ~~11.1.—Every operator of a fish processing plant shall keep a record of every transaction~~
823 ~~involving the sale and distribution of processed fish and fishery products. The records, in~~
824 ~~addition to the names and addresses of the persons or firms involved shall contain the code~~
825 ~~numbers of each lot involved.~~

826
827 ~~11.2. Fish processing records shall be legibly written, printed or filed on electronic media in~~
828 ~~English and shall identify the product processed, identifying lot code, the number of containers~~
829 ~~per coding interval, and the year, and day and period when each lot was packaged.~~
830

831
832 **§61-23A-~~12~~16. Employees**

833
834 ~~12.1.16.1.~~ All employees shall thoroughly wash and sanitize their hands and
835 forearms before starting work. All employees shall wash and sanitize hands during work hours
836 as often as necessary to remove soil and contamination, after working with raw fish products,
837 before handling ready-to-eat products, after visiting the toilet room, after using tobacco, or after
838 eating or drinking.

839
840 ~~12.2.16.2.~~ Effective hair and beard restraints shall be used by employees who
841 process, prepare or handle food to keep exposed hair and beards from food or food contact
842 surfaces.

843
844 ~~12.3.16.3.~~ No person shall use tobacco, eat, or drink in food receiving, processing,
845 packaging, storage or handling areas.

846
847 ~~12.4.16.4.~~ Employees shall maintain a high degree of personal cleanliness and shall
848 conform to good hygienic practices during all working periods. Personal cleanliness includes
849 clean clothing.

850
851 ~~12.5.16.5.~~ Employees shall remove all insecure jewelry, and shall remove from the
852 hands and forearms any jewelry that cannot be properly sanitized.

853
854 ~~12.6.16.6.~~ Employees who have an illness, skin infections and/or communicable
855 forms of infection, including but not limited to cuts, burns, boils, abrasions, wounds, open
856 lesions or bandages on the hands, face or forearms shall not perform work activities in which
857 there is a likelihood of contaminating food, food packaging or food contact surfaces until the
858 condition is corrected. It is the duty of the supervisor to ask employees about such medical
859 conditions and the duty of the employee to report them prior to the start of each workshift.

860
861
862 **§61-23A-~~13~~17. Transport**

863
864 ~~13.117.1.~~ All fish transported for sale and/or processing for human food in the state
865 of West Virginia shall be:

866
867 ~~13.1.a.17.1.a.~~ Alive and in good health when harvested from the water; and

868
869 ~~13.1.b.17.1.b.~~ Maintained alive; or maintained in a constant iced or mechanically
870 refrigerated state ensuring an internal body temperature of 40°F (4.4°C) or below; except that:

871
872 ~~13.1.b.1.17.1.b.1.~~ Shellstock shall be maintained in a constantly iced or
873 mechanically refrigerated state ensuring an internal body temperature of 50°F (10°C) or below
874 after harvest;

875
876 ~~13.1.b.2.17.1.b.2.~~ Shucked shellfish shall be maintained in a constant iced or
877 mechanically refrigerated state ensuring an internal temperature of 40°F (4.4°C) or below; and

878
879 ~~13.1.b.3.17.1.b.3.~~ Processed fish that have a water-phase salt level of at least
880 17 percent do not require refrigeration.

881
882 ~~13.217.2.~~ All fish intended for human consumption shall be transported or held in
883 clean non-toxic, ~~pathogen-free~~ containers.

884 ~~13.317.3.~~ Unprotected raw fish and fishery products, cooked ready-to-eat fishery
885 products, smoked fishery products and molluscan shellfish shall be physically separated to
886 minimize the possibility of cross contamination during transport.

887
888 ~~13.417.4.~~ No other cargo shall be placed on or above fish or fishery products unless
889 all cargo is packed in sealed, crush resistant waterproof containers.

890
891 ~~13.5~~ A written notification of any and all drugs, feed and color additives, pesticides
892 and/or medicated feeds administered to the fish or fishery product, shall accompany all
893 shipments of human food fish to other producers, wholesalers, retailers and/or processors. The
894 written notification shall include the name, address, and telephone number of the grower; the
895 name and dose of the drug, color additive, feed additive, pesticide or medicated feed; the date
896 administered and the length of required withdraw period; the date of sale; and the lot number of
897 the fish. This notification shall be signed by the grower.

898
899 ~~13.5.a.~~ If no drugs, feed and color additives, pesticides or medicated feeds have
900 been administered, a written statement including the lot number of fish signed by the grower
901 indicating the absence of drugs, feed and color additives, pesticides or medicated feeds shall
902 accompany the shipment.

903
904 ~~13.617.6.~~ Every reasonable effort shall be made to keep fish and fishery products
905 intended for human consumption wholesome, unspoiled, and unadulterated.

906
907 ~~13.717.7.~~ Ice used for cooling fish and fishery products shall be made from drinking
908 water certified potable by State or County Health authorities.

910 ~~13.7.a.17.7.a.~~ After use for cooling fish or fishery products, ice shall not be used
911 as human food.
912
913

914 **§61-23A-1418. Laboratory Testing**

915
916 ~~14.118.1.~~ The Commissioner of Agriculture shall establish and maintain or make
917 provisions for approved laboratory testing facilities for the purpose of enforcing the analytical
918 aspects of this rule.
919

920 ~~14.218.2.~~ The methods used for analyzing samples will be those found in the most
921 recent editions of the Official Methods of Analysis by the Association of Analytical Chemists,
922 15th edition 1990; or the United States, Food and Drug Administrations Bacteriological
923 Analytical Manual, 7th edition, 1992; or The Pesticide Analytical Manual, Volume I, and II,
924 Foods and Feeds; or other methods as approved by the commissioner.
925
926

927 **§61-23A-1519. Prohibited Acts**

928
929 ~~15.119.1.~~ It is unlawful to:

930 ~~15.1.a.19.1.a.~~ Produce, hold, transport, sell or offer for sale fish or fishery
931 products in violation of this rule;
932

933 ~~15.1.b.19.1.b.~~ Sell or offer for sale any fish or fishery product for human
934 consumption which is adulterated or not wholesome;
935

936 ~~15.1.c.19.1.c.~~ Remove any tag or order affixed by the Commissioner unless the
937 removal is authorized by him or her;
938

939 ~~15.1.d.19.1.d.~~ Impede, hinder or otherwise prevent, or attempt to prevent the
940 Commissioner in the performance of his or her duties in connection with the provisions of this
941 rule;
942

943 ~~15.1.e.19.1.e.~~ Falsify or falsely log any values on any record or records required
944 by this rule;
945

946 ~~15.1.f.19.1.f.~~ Remove or dispose of detained, embargoed, or quarantined fish or
947 fishery products by sale or otherwise without the permission of the Commissioner or the courts;
948

949 ~~15.1.g.19.1.g.~~ Continue aquaculture fish processing operations until released
950 from the embargo or cease and desist order by the Commissioner or the courts;
951

952
953 15.1.h.19.1.h. Process, sell or offer for sale to the public any molluscan shellfish
954 unless it is obtained from a shellfish dealer listed in the most recent monthly publication of the
955 Interstate Certified Shellfish Shippers List published by the U.S. Food and Drug Administration;

956
957 15.1.i.19.1.i. Sell or offer for sale fish or fishery products unless the label
958 displays the acceptable market name or common name specified for the species in the most
959 recent ~~annual~~ publication of "The Seafood List, FDA's Guide to Acceptable Market Names for
960 Seafood Sold In Interstate Commerce";

961
962 15.1.j.19.1.j. Process fish or fishery products for sale unless the processor is
963 licensed and inspected by the Commissioner;

964
965 15.1.k.19.1.k. Sell or offer for sale fish or fishery products for human
966 consumption which contain levels of chemicals or drugs in excess of the action levels listed in
967 the tables in this subdivision:

968
969 15.1.k.a.19.1.k.a. Table 1 - Action levels for chemicals in Fish and
970 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(<u>Shrimp only</u>)	100 ppm

984
985
986 15.1.k.b.19.1.k.b. Table 2 - Action levels for drugs in Fish and Fishery
987 products.

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

994
995 ~~15.1.1.19.1.1~~ Slaughter or process products other than fishery products in a licensed fish
996 processing facility.
997
998
999
000

001
002 **§61-23A-1620. Penalties**
003

004 ~~16.120.1~~ Civil Penalties
005

006 ~~16.1.a.20.1.a~~ Any person violating any of the provisions of this rule may be
007 assessed a civil penalty of up to five hundred dollars for a first offense and up to five thousand
008 dollars for subsequent offenses. In determining the amount of the civil penalty, the
009 commissioner shall give due consideration to the history of previous violations of any person; the
010 seriousness of the violation, including any irreparable harm to the environment, any hazards to
011 the health and safety of the public and any economic damages to the public and the demonstrated
012 good faith of any person charged in attempting to achieve compliance with this rule before and
013 after written notification of the violation.
014

015 ~~16.1.b.20.1.b~~ The civil penalty is payable to the West Virginia Department of
016 Agriculture and is collectable in any manner now or hereafter provided for the collection of debt.
017 If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of
018 the civil penalty, together with interest at ten percent, is a lien in favor of the state of West
019 Virginia upon the property, both real and personal, of that person after the lien has been entered
020 and docketed to record in the county where such property is situated. The clerk of the county,
021 upon receipt of the certified copy of the lien, shall enter the lien to record without requiring
022 payment of costs as a condition precedent to recording.
023

024 ~~16.1.c.20.1.c~~ Nothing in this rule shall be construed as requiring the
025 Commissioner to assess a civil penalty or to institute an embargo, detainment, quarantine or
026 cease and desist order for violation of this rule when he or she believes that the public interest
027 may best be served by a written notice of violation.
028

029 ~~16.220.2~~ Criminal Penalties
030

031 ~~16.2.120.2.1~~ Any person who violates any provision of this rule is guilty of a
032 misdemeanor, and upon conviction thereof:
033

034 ~~16.2.1.a.20.2.1.a~~ Shall for the first offense be fined not less than fifty
035 nor more than five hundred dollars;

036
037 ~~16.2.1.b.20.2.1.b.~~ Shall upon each subsequent offense be fined not
038 less than one hundred nor more than one thousand dollars;

039
040 ~~16.2.1.c.20.2.1.c.~~ May be imprisoned in the county or regional jail not
041 more than six months or both fined and imprisoned; and

042
043 20.2.1.d. Shall have the Fish Processing License suspended until the
044 facility is in compliance with the provisions of this rule.

045
046 ~~16.2.220.2.~~ Magistrates have concurrent jurisdiction with circuit courts to
047 enforce the provisions of this rule.

048
049
050 **§61-23A-1721. Confidentiality of Trade Secrets**

051
052 ~~17.121.1.~~ The commissioner may not make public information which relates to trade
053 secrets and procedures, commercial or financial information obtained from a person or privileged
054 or confidential information: Provided that when the information is necessary to carry out the
055 provisions of this rule, this information may be revealed, subject to protective order, to any
056 federal, state or local agency consultant or may be revealed, subject to protective order, at a
057 closed hearing or in findings of fact issued by the commissioner.

058
059 **§61-23A-1822. Enforcement Policy**

060
061 ~~18.122.1.~~ The Commissioner will inspect fish processors on a risk assessment basis with
062 the purpose of assuring wholesome, unspoiled and unadulterated fish and fishery products. All
063 processors inspected will receive a grade of "A", "B", "C", or "Unsatisfactory". Processors will
064 initially be inspected at least once a week for a minimum of a one month period. After this an
065 initial inspection period processors earning:

066
067 ~~18.1.a.22.1.a.~~ A grade of "A" during an inspection will require reinspection at
068 least once every three months;

069
070 ~~18.1.b.22.1.b.~~ A grade of "B" during an inspection will require reinspection at
071 least once every two months;

072
073 ~~18.1.c.22.1.c.~~ A grade of "C" during an inspection will require reinspection at
074 least once every month;

076 ~~18.1.d.22.1.d.~~ A grade of "Unsatisfactory" during an inspection shall result in the
077 suspension of the Fish Processing License. When reinspection of the plant results in a grade of C
078 or higher the Commissioner may reinstate the Aquaculture Processing License; and
079

080 ~~18.1.e.22.1.e.~~ A grade of "Failure" during an inspection shall result in the
081 revocation of the "Aquaculture Processing License" until the processor successfully reapplies for
082 and is issued a new license.
083

084 ~~18.222.2.~~ In no way is this enforcement policy intended to prohibit the
085 Commissioner from inspecting a producer's facility more frequently in the event that he or she
086 believes it is necessary.
087

088 ~~18.322.3.~~ All fish and fishery products for sale as human food shall be processed and
089 transported according to all provisions of this rule. Fish and fishery products transported and/or
090 processed by private citizens exclusively for the consumption by themselves, their immediate
091 family, nonpaying guests, and employees, or fish transported in the operation of fish hatcheries
092 by the state of West Virginia or the United States of America are exempt from this rule.
093

094 ~~18.4.~~ Processors have three years from the effective date of this rule to comply with
095 sections 5 and 6.1.b. and 6.1.b.1. and 6.2 of this rule concerning the implementation of HACCP.
096 ~~Processors have two years from the effective date of this rule to fully comply with all other~~
097 ~~sections of this rule.~~
098

099
100 **§61-23A-23. Humane Slaughter**
101

102 23.1. Fish before being cut must be rendered insensible to pain by a single blow, or by
103 electrical, chemical, temperature or other means that is safe, rapid and effective; or

104 23.2. By slaughtering in accordance with any method of humane slaughter approved by
105 the United States department of agriculture; or

106 23.3. By slaughtering in accordance with any method of humane slaughter approved by
107 the commissioner.
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118 **Summary**

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120 **West Virginia Fish Processing Rules**

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122 §61-23A-1 et seq.

123
124 **Legislative Rule**

125
126
127 This rule is intended to provide a vehicle for the uniform inspection of fish processing
128 facilities in the state with the purpose of assuring the highest quality and safety of the finished
129 product as possible.

130
131 This rule requires every processor of fish and fishery products for human consumption to
132 be licensed by the West Virginia Department of Agriculture. To facilitate licensing each
133 processor must submit design plans for the facility where fish will be processed. The
134 Commissioner will assure the facilities are then adequate for the sanitary processing of
135 aquaculture products.

136
137 Each processor is responsible for developing their own Hazard Analysis Critical Control
138 Point (HACCP) plan. These plans will reveal critical control points where the processor must
139 pay careful attention to the assure product safety and quality.

140
141 The rules provide guidance for employee sanitation. The transportation requirements for
142 fish and fishery products is outlined. The powers and duties of the Commissioner are outlined
143 and prohibited acts are listed. The Commissioner is given authority to issue civil penalties up to
144 five hundred dollars for the first offense and up to five thousand dollars for subsequent offenses.
145 This rule restricts methods used to slaughter fish in fish processing establishments to those
146 approved as humane.

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157 FISHPROC.97A

Statement of Circumstances

The modification to this rule are necessary in order to be consistent with Federal Legislation regarding seafood Processing. The changes to the rule are fairly minimal and largely cosmetic; however, they are necessary for maintaining consistency between our rule and The U.S. Food and Drug Administration's rule. In several instances the standards were implied but never clearly spelled out. The modifications to this rule clearly specify those areas which may have been unclear previously.

In addition to aligning with Federal requirements and clarifications, the following changes are being proposed. The addition of a section pertaining to the humane slaughter of fish. Elimination of the month long weekly inspection requirement for new fish processors.